



**BERMUDA
1972 : 76**

FISHERIES ACT 1972

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[12 May 1972]

[*preamble and words of enactment omitted*]

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Interpretation

1 In this Act, unless the context otherwise requires, —

"charter fishing vessel" means a vessel which is available for hire or charter for the purpose of engaging in fishing on terms including the employment of the services of the operator of the vessel;

"court" means court of summary jurisdiction;

"exclusive economic zone" means the territorial waters of Bermuda together with the zone contiguous to the said waters which was proclaimed as an exclusive economic zone for Bermuda by a Proclamation made by the Governor to come into operation on the date on which the Fisheries Amendment Act 1996 comes into operation;

"fish" means fish of any kind found in the sea and includes turtles, crabs, crayfish, lobsters, shell-fish, shells, corals, seafans, and marine organisms of all descriptions, whether alive or dead;

"fish aggregation area" means a group of fishes that temporarily assembles in an area at higher than normal densities;

"fishing vessel" means a vessel of whatever size used by any person in fishing for reward or financial gain and includes a charter fishing vessel;

"licence" means a licence issued by the Minister;

"the Minister" means the Minister responsible for the environment;

"protected area" means an area declared by the Minister to be a protected area under section 4;

"taking" in relation to any fish includes injuring, capturing, killing, destroying, collecting and being in possession of any such fish;

"vessel" includes any ship, yacht, boat, lighter or other craft of any description used for transport by water.

[section 1 amended by 1996:10 effective 11 June 1996; by 2002:18 effective 1 April 2002; by 2006:24 s.2 effective 20 July 2006; by 2007:1 s.2 effective 10 March 2007; by 2008:29 s.3 effective 21 July 2008]

Persons who are fisheries inspectors

2 Every officer of the Department of Environmental Protection appointed for the purpose by the Minister by instrument in writing, every commissioned officer of Her Majesty's Royal Navy, every customs officer and every police officer shall be a fisheries inspector for the purposes of

this Act and shall have and may exercise the functions assigned to a fisheries inspector by or under this Act.

[section 2 amended by 1991:99 effective 1 April 1991; by 2000:20 effective 26 June 2000; by 2002:18 effective 1 April 2002]

Marine Resources Board

3 (1) The Minister shall by notice published in the Gazette appoint annually a body to be called the Marine Resources Board (hereinafter referred to as "the Board") which shall, subject to any general directions of the Minister, exercise the powers and discharge the functions assigned to it by this Act or any regulations made thereunder, by any other statutory provision or by the Minister.

(2) The Board shall advise the Minister on matters relating to this Act and to the protection and use of marine natural resources and of the environment in which the marine natural resources live and grow.

(3) The Statutory Instruments Act 1977 *[title 1 item 3]* shall not apply to a notice mentioned in subsection (1).

(4) The provisions of the Third Schedule shall have effect with respect to the constitution and operation of the Board and otherwise in relation thereto.

[section 3 repealed and replaced by 1991:99 effective 1 January 1992]

Commercial Fisheries Council

3A (1) There is established for the purpose of this Act a body to be called the Commercial Fisheries Council "(in this Act referred to as "the Council"), to be responsible among other things for—

(a) the issuing of licences, specified in Regulations made under this Act, to be issued by the Council; and

(b) assessing eligibility for benefits for fishermen in respect of fishing vessels, fishing equipment and related matters.

(1A) The Minister may give policy directions to the Council.

(2) The Fourth Schedule has effect with respect to the constitution and proceedings of the Council.

[section 3A inserted by 2006:24 s.3 effective 20 July 2006; and amended by 2007:1 s.3 effective 10 March 2007]

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Minister may declare protected areas within exclusive economic zone

4 (1) The Minister may by Order declare any area of the waters within the exclusive economic zone to be a protected area for the purposes of this Act.

(2) Any Order made under this section may prohibit the taking of fish within the protected area, or of such fish as may be specified in the order, either absolutely or during such periods or times as may be specified in the Order, by any person otherwise than under the authority of and in accordance with the terms and conditions of a licence in that behalf granted to that person for the purpose.

(2A) An Order made under this section may prohibit the anchoring of any vessel within a protected area or the use within a protected area of any anchor other than an anchor of a type specified in the Order.

(3) Any person who, in contravention of any Order made under this section in respect of such area or of any term or condition attached to a licence granted under this section —

- (a) takes any fish in a protected area or who sells, purchases or transports fish so taken; and
- (b) the master or other person in charge of any vessel who suffers or permits any person on board that vessel to take, sell or purchase any fish in a protected area,

commits an offence.

(3A) A person found guilty of an offence under subsection (3) is, subject to section 14, liable on summary conviction, to imprisonment for two years or a fine of \$25,000.00 or both such imprisonment and fine, and any fish so taken and any vessel, instrument and equipment used in the taking, shall be liable to forfeiture.

(3B) Any person who —

- (a) anchors any vessel within a protected area, if the anchoring of the vessel is prohibited by an Order made under this section; or
- (b) uses within a protected area, any anchor other than an anchor of a type specified in such Order,

commits an offence and is liable on summary conviction to a fine of \$1,000.

(4) Where any person is found within a protected area in possession of any fish the taking of which within that area is prohibited by an Order made under this section he shall be deemed, until the contrary is proved, to have taken that fish within that area.

[section 4 amended by 1996:10 effective 11 June 1996; by 2000:5 effective 28 March 2000; by 2006:24 s.4 effective 20 July 2006; by 2007:1 s.4 & 7 effective 10 March 2007; by 2008:29 s.3 effective 21 July 2008]

Declaration of fish aggregation areas by gazette notice

4A (1) Notwithstanding section 4, where the Minister, on consideration of a report from the Director of the Department of Environmental Protection or other information in the Minister's possession, is satisfied that there is an immediate need for the prohibition of fishing in a fish aggregation area, for the conservation and protection of fish in the exclusive economic zone, the Minister may by notice published in the Gazette prohibit fishing in that fish aggregation area for a period not exceeding ninety days, pending the making of an Order under section 4.

(2) Where the Minister, by notice under subsection (1) prohibits fishing in an area declared to be a fish aggregation area within the exclusive economic zone, the provisions of section 4 shall apply with necessary modifications as if the notice were an Order made under section 4.

(3) When the Minister publishes a notice under subsection (1), as soon as possible after the notice is published in the Gazette, the Minister shall take concrete steps to disseminate the notice —

(a) in at least one newspaper with wide circulation in Bermuda; and

(b) by announcements on radio and television in Bermuda.

(4) Where it is proved in a prosecution under this section that the Minister has published the notice in accordance with subsection (1) and disseminated the notice in accordance with subsection (3), the accused shall be presumed to have notice of the offence, unless he establishes he did not know of the notice and could not reasonably have been expected to know of the notice.

(5) A notice published under subsection (1) shall expire at the end of the time specified by the Minister in the notice and no person shall be prosecuted under this section for committing an offence after the expiration of the notice.

(6) Section 6 of the Statutory Instruments Act 1977 shall not apply to a notice published under this section.

[section 4A inserted by 2007:1 s.5 effective 10 March 2007]

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Minister may prohibit taking of certain fish and use of certain methods of taking fish

- 5 (1) The Minister may by Order prohibit —
- (a) the taking, selling, purchasing or possession of any species or kind of fish specified in the Order (whether by reference to size or weight or otherwise) absolutely or during such period or periods as may be so specified;
 - (b) the taking of any fish by any method specified in the Order; and
 - (c) the use of any dredge, trap, device or apparatus for, or for the purpose of facilitating the taking of any fish,

anywhere within the exclusive economic zone and whether within a protected area or otherwise.

(2) Any person who takes any fish in contravention of an order made under this section, and the master or other person in charge of any vessel who suffers or permits the vessel or any person belonging to the vessel to be employed in so taking or to so take any fish, each commit an offence:

Punishment on summary conviction: subject to section 14, imprisonment for two years or a fine of \$25,000 or both such imprisonment and fine, and any fish so taken and any vessel, instrument and equipment used in such taking shall be liable to forfeiture.

[section 5 amended by 1996:10 effective 11 June 1996 and by 2006:24 s.5 effective 20 July 2006]

Licence required to import or export certain fish

6 (1) No person shall import or export any fish to which this section applies into or from Bermuda otherwise than under the authority of, and in accordance with the terms and conditions of, a licence granted in that behalf to that person for the purpose.

- (2) The fish to which this section applies are —
- (a) in relation to importation, any fish, living or dead, specified in an Order made under section 5(1)(a), other than living fish of such species as the Minister may exempt by notice published in the Gazette;
 - (b) in relation to exportation, any fish, whether living or dead, other than fish retained as a trophy or souvenir.

(3) Any person who imports or exports any fish in contravention of this section or of any term or condition attached to a licence thereunder commits an offence:

Punishment on summary conviction: subject to section 14, imprisonment for two years or a fine of \$25,000 or both such imprisonment and fine, and any fish so taken and any vessel, instrument and equipment used in such taking shall be liable to forfeiture.

(4) Any fish taken in the waters adjacent to Bermuda and landed in Bermuda shall not for the purposes of this section be deemed to be imported into Bermuda.

[section 6 amended by 2006:24 s.6 effective 20 July 2006; and by 2007:1 s.6 & 7 effective 10 March 2007]

Foreign fishing vessels

7 (1) Subject to this section, where any person on board a foreign vessel takes any fish within the exclusive economic zone then that person and also the master or other person in charge of the vessel each commit an offence:

Punishment on summary conviction: subject to section 14, a fine of \$1,000,000 and the vessel used in such taking and the fish on board shall be liable to forfeiture.

(2) Notwithstanding anything to the contrary, a taking by a person on board a foreign vessel shall be deemed not to be in contravention of subsection (1) if such taking was made —

- (a) for commercial or scientific research purposes under the authority of, and in accordance with the terms and conditions of, a licence in that behalf granted to the person operating the vessel; or
- (b) for sporting purposes, after the vessel has first made entry in respect of the voyage on which it is engaged, at a port of entry in Bermuda and has obtained a recreational fishing licence.

(2A) The log book or other documents of a vessel used in contravening subsection (1) may be seized and used as evidence.

(3) In this section "foreign" in relation to a fishing vessel means not bona fide owned by a person who possesses Bermudian status within the meaning of the Bermuda Immigration and Protection Act 1956 [*title 5 item 16*].

[section 7 amended by 1996:10 effective 11 June 1996; by 2007:1 s.7 effective 10 March 2007; by 2008:29 s.3 effective 21 July 2008]

Fisheries inspector may stop and search vessel; arrest

8 (1) A fisheries inspector may at any time stop, go on board and search any vessel within the exclusive economic zone, and if he has

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reason to suspect that any person on board such vessel has contravened any of the provisions of this Act or any regulations made thereunder he may without summons, warrant, or other process seize the vessel and detain it and arrest any person found on board.

(2) A fisheries inspector may at any time without summons, warrant or other process seize and detain any vessel or thing which is liable to forfeiture under this Act or which he has reasonable grounds to believe is so liable.

(3) Any fisheries inspector and any person whom he may call to his assistance may arrest and detain without warrant any person whom such inspector has reason to suspect has committed or permitted any offence against this Act or any regulations made thereunder.

(4) Any person who resists or obstructs any fisheries inspector in the exercise of any of his powers conferred by this section commits an offence:

Punishment on summary conviction: a fine of \$5,000, and such person may be detained by the fisheries inspector.

(5) Where any vessel or thing is seized or detained or any person is detained under this section by a fisheries inspector, the inspector shall take such vessel, thing or person as soon as may be to the nearest or most convenient place in Bermuda and there deliver it or him into the custody of the most senior police officer there available.

[section 8 amended by 1996:10 effective 11 June 1996 and by 2006:24 s.8 effective 20 July 2006]

Persons in custody

9 Where on delivering any person into the custody of a police officer in accordance with section 8—

- (a) the fisheries inspector makes a complaint to such officer that such person has committed an offence against this Act or any regulations made thereunder, the police officer shall as soon as may be cause such person to be brought before a court to be dealt with according to law; or
- (b) the fisheries inspector does not make any such complaint, the police officer shall forthwith release such person.

Detention of vessel

10 (1) Where any vessel other than a foreign vessel or thing is delivered into the custody of a police officer at any place by a fisheries inspector in accordance with section 8, such vessel or thing shall be detained in the custody of the Commissioner of Police to the order of the Minister at that place or at such other place as the Minister may direct

until the same shall be forfeited or released in accordance with this section, as the case may be.

(1A) Where a foreign vessel is delivered into the custody of a police officer at any place by a fisheries inspector in accordance with section 8, that vessel shall be detained in the custody of the Commissioner of Police to the order of the Minister at that place or at such other place as the Minister may direct and the provisions of section 10A shall apply.

(2) Any vessel or thing detained under subsection (1) shall be released upon demand to the owner or his duly accredited agent —

- (a) within the period of seven days next following the date of delivery of the vessel or thing to the police officer, if no proceedings are instituted within that period against the master or other person in charge of the vessel or thing in respect of an offence against this Act; or
- (b) in any case where such proceedings are instituted as aforesaid and the vessel or thing is not liable or ordered to be forfeited under this Act, upon the final determination of the proceedings and the payment of any fine or fines imposed by the court in such proceedings within the time prescribed by the court for such payment.

(3) Any vessel or thing detained under subsection (1) shall be subject to a lien in favour of Her Majesty for the amount of any fine imposed by the court upon the master or other person in charge thereof in any proceedings in respect of an offence against this Act or any regulations made thereunder, and if such fine shall not have been paid by the due date for payment thereof the Minister may, at any time thereafter, subject as in this subsection provided, after first serving upon the owner or the master or other person in charge of the vessel or thing at the time of its seizure notice in writing of his intention so to do, sell the vessel or thing by public auction and deduct the amount of the fine or fines unpaid and the expenses incurred in selling the vessel or thing from the proceeds of the sale and pay the balance to the Accountant General, to be held by the Accountant General and paid by him to such person as shall satisfy him that he is entitled thereto:

Provided that if within the period of fourteen days next following the date of service of a notice made under this subsection upon the owner, master or other person in charge of a vessel or thing, such owner, master or other person pays to the court the amount of any fine or fines unpaid, and pays to the Minister the amount of any expenses incurred by the Minister in respect of the proposed sale, the Minister shall not offer such vessel or thing for sale but shall release the vessel or thing to such owner, master or other person.

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(4) No action shall lie at the suit of any person against the Accountant General in respect of the payment by him in good faith of any moneys under subsection (3) to any person appearing to him to be entitled to the same.

[section 10 amended by 1996:10 effective 11 June 1996]

Owner of foreign vessel may enter into bond, etc.

10A (1) In the case of a foreign vessel referred to in section 10(1A), where—

- (a) within the period of seven days next following the date of delivery of the vessel to the police officer, no proceedings are instituted against the master or other person in charge of the vessel, the vessel shall be released upon demand to the owner or his duly accredited agent; or
- (b) such proceedings are instituted and the owner of the vessel, enters into a bond, with two sureties approved by the court, or gives such other security as the court considers appropriate, in treble the amount of any fine or fines which may be imposed by the court upon the final determination of such proceedings, the vessel shall be released upon demand to the owner or his duly accredited agent.

(2) The court shall, in addition to any fine which it may impose, make an order for the recovery of any costs incurred consequent on the detention of the vessel and the bond or other security shall have effect in respect of such costs.

(3) Where proceedings are instituted and the owner of the vessel fails or refuses to enter into a bond or to give other security in accordance with subsection (1), then, the provisions of section 10(3) and (4) shall have effect in respect of the foreign vessel.

[section 10A inserted by 1996:10 effective 11 June 1996]

Forfeiture; First Schedule

11 (1) The First Schedule shall have effect for the purpose of forfeitures, and proceedings for the condemnation of any vessel or thing as being forfeited, under this Act.

(2) Subject to the First Schedule, any vessel or thing seized or detained under this Act as being liable to forfeiture shall, if condemned or deemed to have been condemned as forfeited, be disposed of in such manner the Minister may direct.

Offence outside territorial waters but within exclusive economic zone

12 Where any offence against any of the provisions of this Act or of any regulation made thereunder is committed at some place on the water within the exclusive economic zone but outside the limits of territorial waters, the place of the commission of the offence shall for the purposes of the jurisdiction of any court be deemed to be the place in Bermuda where the offender is found or to which he is first brought after the commission of the offence.

[section 12 amended by 1996:10 effective 11 June 1996]

Minister may make regulations

13 (1) The Minister may make regulations for the promotion, development, improvement and protection of the fisheries and fishing industry of Bermuda and, without prejudice to the generality of the foregoing words, may make regulations —

- (a) for the registration and licensing of fishing vessels and for the registration of fishermen;
- (b) for the issue of licences, their terms and conditions and for the transfer, amendment and revocation of licences;
- (c) for prohibiting or regulating the taking, sale, purchase, storing or possession of specified fish, absolutely, or during specified periods or times or for purposes other than specified purposes;
- (d) for prohibiting or regulating specified means or methods of taking fish or specified fish;
- (e) for prohibiting or regulating any act which is likely to result in the wholesale destruction of fish;
- (f) for the establishment, regulation and control of fish nurseries, aquaculture operations and preserves;
- (g) controlling or regulating the use of any tank, fish pond, enclosure, cold storage plant or apparatus for the conservation of fish which has been committed to the charge of the Minister;
- (h) providing for the regulation of the sale of any fish to the public and for the inspection, grading, packing, and storage of any fish intended for human consumption;
- (i) for the inspection of any premises, land, vessel, vehicle, fish pot or fishing net, and for the seizure and examination of any fish, fish pot, fishing net or other

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thing and for the forfeiture and disposal of any fish, fish pot, fishing net or other thing used or possessed in contravention of the regulations; and

(j) generally for the better carrying out of this Act.

(2) Regulations made by the Minister under this section shall apply generally to the waters within the exclusive economic zone except where it is expressly provided that any such regulation shall apply only in respect of any specified area of water, foreshore, coastal land, sea bed, or land under water.

(3) Regulations made by the Minister under this section may provide for the punishment of persons guilty of offences against the regulations, so, however, that no punishment shall, subject to section 14, exceed twenty-five thousand dollars or a term of imprisonment of two years or both such fine and imprisonment.

(3A) Any vessel, instrument or equipment used in contravention of this Act or any regulations made thereunder shall be liable to seizure and forfeiture.

(4) In this section "specified" means specified in the regulations.

[section 13 amended by 1996:10 effective 11 June 1996; by 2007:1 s.7 effective 10 March 2007; by 2008:29 s.2 effective 21 July 2008]

Penalty for subsequent conviction of same offence

14 (1) If any person, having been convicted of an offence against any provision of this Act or of any Regulations made thereunder, is convicted of a further offence against that provision, then, notwithstanding anything to the contrary, he shall be liable upon conviction of such further offence—

(a) in the case of a person referred to in section 7, to a double fine; and

(b) in any other case—

(i) to a double fine or double imprisonment; or

(ii) where a fine and a term of imprisonment may be imposed in respect of a first offence, to both such double fine and double imprisonment.

(2) In this section—

(a) "double fine" means a fine not exceeding double the amount; and

(b) "double imprisonment" means imprisonment for a term not exceeding double the term,

which might otherwise have been imposed in respect of the offence.

[section 14 replaced by 1996:10 effective 11 June 1996]

Amendments

15 *[omitted]*

[section 16 repealed by 1984:57 effective 29 December 1984]

Penalty for wrongful possession of article or fish

17 Any person, whether holding a licence or not, found in possession of any article prohibited to be used, or any fish prohibited to be taken, by virtue of any licence, Order or Regulations issued or made under this Act commits an offence:

Punishment on summary conviction: subject to section 14, imprisonment for one year or a fine of \$25,000 or both such imprisonment and fine.

[section 17 amended by 2007:1 s.7 effective 10 March 2007]

Saving for scientific research

18 Nothing in this Act or any Regulations or Order made thereunder prohibiting or restricting the taking, sale, purchase, or possession of any fish or fish of a specified description, size or weight shall apply to any person authorized by a permit issued by the Minister to take, sell, purchase or possess fish or fish of a specified description, size or weight for any of the following purposes—

- (a) for the purpose of scientific research;
- (b) for the purpose of the Bermuda Biological Station or any museum or aquarium, whether in or out of Bermuda;
- (c) for the purpose of the protection or conservation of fish and bait;
- (d) for the purpose of controlling the fishing industry; or
- (e) for the establishment and control of fish nurseries and preserves;
- (f) for the purpose of aquaculture.

[section 18 amended by 2006:24 effective 20 July 2006]

Commencement

19 *[omitted]*

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[This Act was brought into operation on 22 June 1972 by SR&O 24/1972]

Parliamentary scrutiny

19A The negative resolution procedure shall apply to Orders and Regulations made under this Act.

**FIRST SCHEDULE
PROVISIONS RELATING TO FORFEITURE**

Notice of Seizure

1 The Minister shall give notice of the seizure of any thing as liable to forfeiture, and of the grounds therefor, to any person who to his knowledge was at the time of seizure the owner or one of the owners thereof:

Provided that notice shall not be required to be given under this paragraph if the seizure was made in the presence of —

- (a) the person whose offence or suspected offence occasioned the seizure; or
- (b) the owner or any of the owners of the thing seized or any servant or agent of his; or
- (c) the master or commander, in the case of any thing seized in any vessel.

2 Notice under paragraph 1 shall be given in writing and shall be deemed to have been duly served on the person concerned—

- (a) if delivered to him personally; or
- (b) if addressed to him and left or forwarded by post to him at his usual or last known place of abode or business or, in the case of a body corporate, at its registered or principal office; or
- (c) where he has no address within Bermuda or his address is unknown, by publication of notice of the seizure in the Gazette.

Notice of Claim

3 Any person claiming that any thing seized as liable to forfeiture is not so liable (hereafter in this Schedule referred to as a "claimant") shall, within one month of the date of the notice of seizure or, where no such notice has been served on him, within one month of the date of the seizure, give notice of his claim in writing to the Minister.

4 Any notice under paragraph 3 shall specify the name and address of the claimant, and, in the case of a claimant who is outside Bermuda, shall specify the name and address of a barrister and attorney (hereinafter referred to as "an attorney") in Bermuda who is authorized to accept service of process and to act on behalf of the claimant; and service of process upon an attorney so specified shall be deemed to be proper service upon the claimant.

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Condemnation

5 If on the expiration of the relevant period aforesaid for the giving of notice of claim in respect of any thing no such notice has been given to the Minister, or if, in the case of any such notice given, any requirement of paragraph 4 is not complied with, the thing in question shall be deemed to have been duly condemned as forfeited.

6 Where notice of claim in respect of any thing is duly given in accordance with the foregoing provisions of this Schedule, the Attorney-General on behalf of the Minister shall take proceedings for the condemnation of that thing by the Supreme Court, and if the Court finds that the thing was at the time of seizure liable to forfeiture the Court shall condemn it as forfeited.

7 Where any thing is in accordance with either of paragraph 5 or 6 condemned or deemed to have been condemned as forfeited, then, without prejudice to any delivery up or sale of the thing by the Minister under paragraph 14, the forfeiture shall have effect as from the date when the liability to forfeiture arose.

Court Proceedings for Condemnation

8 Proceedings for condemnation shall be civil proceedings and shall be instituted in the Supreme Court by motion.

9 (1) In any such proceedings —

(a) the claimant or his attorney shall make oath that the thing seized was, or was to the best of his knowledge and belief, the property of the claimant at the time of the seizure; and

(b) the claimant shall give such security for the costs of the proceedings as may be determined by the Court.

(2) If any requirement of sub-paragraph (1) is not complied with the Court shall give judgment for the Attorney-General.

10 Where an appeal has been made against the decision of the Court in any proceedings for the condemnation of any thing, that thing shall, pending the final determination of the matter, be left in the custody of the Commissioner of Police.

Provision as to Proof

11 In any proceedings arising out of the seizure of any thing, the fact, form and manner of the seizure shall be taken to have been as set forth in the process without further evidence thereof, unless the contrary is proved.

12 In any proceedings, the condemnation by the Supreme Court of any thing as forfeited may be proved by the production either of the order

or certificate of condemnation or of a certified copy thereof purporting to be signed by the Registrar.

Special provisions as to certain claimants

13 For the purposes of any claim to, or proceedings for the condemnation of, anything, where that thing is at the time of seizure the property of a body corporate, of two or more partners or of any number of persons exceeding five, the oath required by this Schedule to be taken and any other thing required by this Schedule or by any rules of the Supreme Court to be done by, or by any person authorized by, the claimant or owner may be taken or done by, or by any other person authorized by, the following persons respectively—

- (a) where the owner is a body corporate, the secretary or some duly authorized officer of that body;
- (b) where the owners are in partnership, any one of those owners;
- (c) where the owners are any number of persons exceeding five not being in partnership, any two of those persons on behalf of themselves and their co-owners.

Power to deal with seizures before condemnation, etc.

14 Where anything has been seized as liable to forfeiture the Minister may at any time if he sees fit and notwithstanding that the thing has not yet been condemned, or is not yet deemed to have been condemned, as forfeited—

- (a) to deliver it up to any claimant upon his paying to the Accountant General such sum as the Minister thinks proper, being a sum not exceeding that which in the Minister's opinion represent the value of the thing, including any duty chargeable thereon which has not been paid; or
- (b) if the thing seized is a living creature or is in the opinion of the Minister of a perishable nature, sell or destroy it or release it into the sea.

15 (1) If, where any thing is delivered up, sold, destroyed or released as aforesaid, it is held in proceedings taken under this Schedule that the thing was not liable to forfeiture at the time of its seizure, the Minister shall on demand by the claimant tender to him —

- (a) an amount equal to any sum paid by him under subparagraph (a) of paragraph 14; or

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- (b) where the Minister has sold the thing, an amount equal to the proceeds of sale; or
- (c) where the Minister has destroyed or released the thing, an amount equal to the market value of the thing at the time of its seizure:

Provided that where the said amount includes any sum on account of any duty chargeable on the thing which had not been paid before its seizure the Minister, may deduct as much of that amount as represents that duty.

(2) If the claimant accepts any amount tendered to him under sub-paragraph (1), he shall not be entitled to maintain any action on account of the seizure, detention, sale, destruction or release of the thing.

(3) For the purposes of head (c) of sub-paragraph (1), the market value of any thing at the time of its seizure shall be taken to be such amount as the Minister and the claimant may agree or, in default of agreement, as may be determined by a referee appointed by the Chief Justice, not being an official of any Government Department, whose decision shall be final and conclusive; and the procedure on any reference to a referee shall be such as may be determined by the referee.

SECOND SCHEDULE (Section 15)

[omitted]

THIRD SCHEDULE (Section 3(4))

Constitution and other provisions relating to the Board

- 1 The Board shall consist of not more than twelve members and—
 - (a) the Director of Environmental Protection (or his designate) shall be ex officio a member and shall be executive secretary to the Board; and
 - (b) the Director of Conservation Services (or his designate) shall be ex officio a member.
- 2 A person appointed to be a member of the Board shall hold office during the Minister's pleasure and unless his appointment is sooner terminated, shall hold office for one years [sic] from the date upon which his appointment took effect, but he shall be eligible for re-appointment upon expiration of his term of office.
- 3 There shall be a chairman and a deputy chairman of the Board both of whom shall be appointed by the Minister from among the members of the Board and each of whom shall, subject to paragraph 2, hold office as such during the Minister's pleasure.

4 In case of the absence or inability of any member to act, the Minister may appoint a person to act temporarily in his place.

5 Any member, other than the executive secretary, may at any time resign his office by writing addressed to the Minister and transmitted through the executive secretary and from the date of receipt by the Minister of such writing such member shall cease to be a member.

6 *[deleted]*

7 Subject to this Schedule, the Board shall be deemed to be properly constituted notwithstanding that there is a vacancy in the office of chairman or any other member.

8 (1) The Board shall meet at such times and on such days as may be necessary or expedient for the transaction of its business.

(2) The minutes of each meeting of the Board shall be kept in proper form.

(3) The chairman may at any time call a meeting of the Board and shall call a meeting within five days of a written request for that purpose addressed to him by any five members.

(4) The chairman shall preside at all meetings of the Board at which he is present, and in his absence, the deputy chairman shall preside, and in the absence of the chairman and the deputy chairman, the members present and constituting a quorum shall elect a chairman from among their members to preside at that meeting.

(5) Every member shall have one vote. The chairman shall not have an original vote but in the event of an equality of votes he shall have a casting vote only.

(6) Subject to sub-paragraph (5) the decisions of the Board shall be by majority vote.

(7) A quorum of the Board shall be five.

(8) Subject to this Schedule the Board may regulate its own proceedings.

(9) The validity of any proceedings of the Board shall not be affected by any defect in the appointment of a member.

9 Notwithstanding anything to the contrary no act done or proceeding taken under this Act by the Board shall be questioned on the ground of any omission, defect, or irregularity not affecting the merits of the case.

10 No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Board in

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respect of any act done bona fide in pursuance or execution or intended execution of this Act.

11 The office of chairman or (except in the case of the executive secretary) member of the Board shall not, by virtue of this Act alone, be a public office.

12 No decision or act of the Board or act done under the authority of the Board shall be invalid by reason of the fact that—

(a) the full number of members for which provision is made in paragraph 1 of this Schedule was not appointed or there was a vacancy or vacancies amongst such members; or

(b) a disqualified person acted as member of the Board at the time the decision was taken or the act was done or authorized,

if the decision was taken or the act was done or authorized by a majority vote of the persons who at the time were entitled to act as members.

13 Fees shall be paid to members (except the Director or his nominee) in accordance with the Government Authorities (Fees) Act 1971 [title 14 item 6].

[Third schedule amended by 1991:99 effective 1 January 1992; by 2000:20 effective 26 June 2000; and by 2002:18 effective 1 April 2002]

FOURTH SCHEDULE (Section 3A)

COMMERICAL FISHERIES COUNCIL - CONSTITUTION AND PROCEDURE

Constitution of the Council

1 The Council shall consist of the Director of the Department of Environmental Protection (ex officio) or his designate, and not more than eight persons appointed by the Minister, five of whom shall be commercial fishermen and three of whom shall be from other marine resource user groups.

Tenure of office

2 A person appointed to be a member of the Council shall hold office during the Minister's pleasure and unless his appointment is sooner terminated, shall hold office for three years from the date upon which his appointment took effect, but he shall be eligible for re-appointment upon the expiration of his term of office.

Chairman and Deputy Chairman

3 There shall be a Chairman and a Deputy Chairman of the Council both of whom shall be appointed by the Minister from among the members of the Council and each of whom shall, subject to paragraph 2, hold office as such during the Minister's pleasure.

Temporary appointment

4 In case of the absence or inability of any member to act, the Minister may appoint a person to act temporarily in his place.

Resignation

5 (1) Any member, other than the Chairman, may at any time resign his office in writing addressed to the Minister and transmitted through the Chairman and from the date of receipt by the Minister of such writing such member shall cease to be a member.

(2) The Chairman, may at any time resign his office in writing addressed to the Minister and from the date of receipt by the Minister of such writing such member shall cease to be a member.

Removal of member

6 The Minister, may at any time revoke the appointment of any member if he considers it expedient to do so.

Effect of vacancy on the Council

7 Subject to this Schedule, the Council shall be deemed to be properly constituted notwithstanding that there is a vacancy in the office of Chairman or any other member.

Procedure at meeting

8 (1) The Council shall meet at such times and on such days as may be necessary or expedient for the transaction of its business.

(2) The minutes of each meeting of the Council shall be kept in proper form.

(3) The Chairman may at any time call a meeting of the Council and shall call a meeting within five days of a written request for that purpose addressed to him by any three members.

(4) The Chairman shall preside at all meetings of the Council at which he is present, and in his absence, the deputy Chairman shall preside, and in the absence of the Chairman and the deputy Chairman, the members present and constituting a quorum shall elect a Chairman from among the members to preside at that meeting.

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(5) Every member, including the ex officio, shall have one vote; the Chairman shall have an original vote but in the event of an equality of votes he shall have a casting vote.

(6) Subject to sub-paragraph (5) decisions of the Council shall be by majority vote.

(7) A quorum of the Council shall be five, at least three of whom shall be commercial fishermen.

(8) Subject to this Schedule the Council may regulate its own proceedings.

(9) The validity of any proceedings of the Council shall not be affected by any defect in the appointment of a member.

Protection of the Council

9 Notwithstanding anything to the contrary no act done or proceedings taken under this Act by the Council shall be questioned on the ground of any omission, defect, or irregularity not affecting the merits of the case.

Protection of members

10 No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Council in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.

Office of member not public office

11 The office of Chairman or member of the Council shall not, by virtue of this Act alone, be a public office.

Validity of decision of Council

12 No decision or act of the Council or act done under the authority of the Council shall be invalid by reason of the fact that —

- (a) the full number of members for which provision is made in paragraph 1 of this Schedule was not appointed or there was a vacancy amongst such members; or
- (b) a disqualified person acted as member of the Council at the time the decision was taken or the act was done or authorized,

if the decision was taken or the act was done or authorized by a majority vote of the persons who at the time were entitled to act as members.

Remuneration

13 Fees shall be paid to members of the Council in accordance with the Government Authorities (Fees) Act 1971.

[Fourth schedule inserted by 2006:24 s.3 effective 20 July 2006]

[Amended by:

1975 : 34	2000 : 5
1977 : 35	2000 : 20
1977 : 45	2002 : 18
1984 : 57	2006 : 24
BR 52/1984	2007 : 1
1991 : 99	2008 : 29]
1996 : 10	