

Queensland



FISHERIES AMENDMENT ACT 2001

Act No. 23 of 2001

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Fisheries Amendment Act 2001

Act No. 23 of 2001

An Act to amend the *Fisheries Act 1994*

[Assented to 25 May 2001]

The Parliament of Queensland enacts—**1 Short title**

This Act may be cited as the *Fisheries Amendment Act 2001*.

2 Act amended

This Act amends the *Fisheries Act 1994*.

3 Insertion of new pt 1, div 3, sdiv 1, hdg

Part 1, division 3—

insert—

‘Subdivision 1—Dictionary’.

4 Amendment of s 4 (Definitions)

(1) Section 4, ‘In this Act—’—

omit, insert—

‘The dictionary in the schedule defines particular words used in this Act.’.

(2) Section 4—

insert—

‘**“renew”** an authority (other than a permit) includes the renewal of a former authority made because of an application under section 56(2).’.

(3) Section 4, definitions, as amended by this section—

relocate to the schedule as inserted by this Act.

5 Insertion of new pt 1, div 3, sdiv 2, hdg

After section 4—

insert—

‘Subdivision 2—Key definitions’.

6 Amendment of s 32 (Making management plans)

Section 32(1), 'a fishery'—

omit, insert—

'the following—

- (a) a fishery;
- (b) a fish habitat or declared fish habitat area;
- (c) a fish way;
- (d) fisheries resources;
- (e) aquaculture.'

7 Amendment of s 33 (Procedure to make management plan)

Section 33(1), 'for a fishery'—

omit.

8 Replacement of s 35 (What management plan must deal with)

Section 35—

omit, insert—

'35 What management plan must deal with

'A management plan must state its objectives and how they are to be achieved.¹'

9 Amendment of s 36 (What management plan may deal with)

(1) Section 36, 'for the fishery'—

omit, insert—

'for this section'.

(2) Section 36, examples 1, 2, 6 and 7, 'the fishery'—

omit, insert—

'a fishery'.

¹ See also section 39(3) (Amendment of management plan).

(3) Section 36, example 3—

omit, insert—

- ‘3. Management of a fishery by a system of authorities and for any of the following in relation to the authorities—
- (a) their issue;
 - (b) their conditions;
 - (c) whether they can or can not be amended, renewed or transferred;
 - (d) if they can be amended, renewed or transferred—conditions for the amendment, renewal or transfer;
 - (e) for their cancellation or suspension or for how the chief executive may cancel or suspend them.’.

(4) Section 36, examples—

insert—

- ‘12. Boundaries of, and buffer zones for, a fish habitat or declared fish habitat area.
13. Regulation of development in a fish habitat or declared fish habitat area.
14. How a fish way must be operated.
15. How a fish habitat, declared fish habitat area or fisheries resources are to be managed or restored.
16. Fish migration.’.

10 Replacement of ss 38 and 39

Sections 38 and 39—

omit, insert—

‘38 Management plan may provide for quota

‘A management plan may prescribe, or authorise the issue of, a quota.

‘39 Amendment of management plan

‘(1) The chief executive may amend a management plan only if the chief executive has—

- (a) prepared a draft amending management plan and taken reasonable steps to engage in consultation about the draft; or
- (b) conducted a review of the plan, or part of the plan to which the amendment relates, the result of which included a proposal to make the amendment.

‘(2) However, subsection (1) does not apply if, under the *Statutory Instruments Act 1992*, section 46,² a regulatory impact statement is not required to be prepared for the amending management plan.

‘(3) The management plan may provide for how the consultation or review must be conducted.

‘(4) In this section—
“**amend**” includes repeal.

‘39A Effect of repeal of management plan on authorities

‘If a management plan is repealed, authorities issued by the chief executive in relation to the plan end, unless the plan otherwise provides.’.

11 Amendment of s 56 (Application for renewal of authority (other than permit))

(1) Section 56—

insert—

‘(1A) Also, a person may apply to renew an expired former authority if—

- (a) the person held the former authority immediately before its expiry; and
- (b) the application is—
 - (i) for an authority of the same type, and on substantially the same terms, as the former authority; and
 - (ii) made within 3 months after the expiry.

‘(1B) However, the chief executive may, at any time, extend the period for applying to renew an expired former authority.’.

(2) Section 56(2), ‘The application’—

omit, insert—

‘An application under this section’.

(3) Section 56(3), ‘holder’—

2 *Statutory Instruments Act 1992*, section 46 (When is preparation of a regulatory impact statement unnecessary?)

omit, insert—

‘applicant’.

(4) Section 56(1A) to (3)—

renumber as section 56(2) to (5).

12 Amendment of s 58 (Consideration of application for renewal of authority (other than permit))

Section 58—

insert—

‘(3) If the application is an application under section 56(2) to renew an expired former authority and the chief executive decides to renew it—

- (a) the chief executive must fix the term of the renewed authority from the day after the former authority expired; but
- (b) the renewed authority takes effect only from the day the renewed authority is issued.’.

13 Insertion of new pt 5, div 3, sdiv 5A

Part 5, division 3—

insert—

‘Subdivision 5A—Leases

‘66A Lease of authority (other than permit)

‘(1) A regulation or management plan may provide for the following for an authority, other than a permit—

- (a) the lease of the authority by its holder;
- (b) the transfer of a lease of the authority.

‘(2) If a lease or transfer of a lease is permitted under a regulation or management plan, section 65(2) to (7) applies to an application for the lease or lease transfer—

- (a) as if a reference in the section to a transfer were a reference to the lease or lease transfer; and
- (b) with other necessary changes.

‘(3) However, despite section 65(2)(c), an application for a lease transfer must be accompanied by the holder’s written approval.

‘(4) An authority can not be leased, or a lease of an authority can not be transferred, other than under this section.

‘66B Effect of lease

‘(1) This section applies—

- (a) if the holder of an authority leases it under section 66A; but
- (b) only while the lease continues to be in force.

‘(2) The holder continues to be the holder of the authority.

‘(3) However, the things authorised by the authority—

- (a) can not be done by the holder; but
- (b) may be done by the lessee under the lease as if the lessee were the holder.

‘(4) A reference in the following to the holder of the authority is, if the context permits, taken to include the lessee—

- (a) a provision of this Act, other than this section or section 4, 57, 65, 66A, 72 or 73(6);
- (b) a regulation or management plan;
- (c) the conditions of the authority.’.

14 Amendment of s 67 (Suspension or cancellation of authorities)

(1) Section 67, heading, after ‘**authorities**’—

insert—

‘**by chief executive**’.

(2) Section 67—

insert—

‘(6) This section does not affect the suspension or cancellation of an authority under a regulation or management plan.’.

15 Amendment of s 68 (Procedure for cancellation or suspension)

(1) Section 68, heading, after ‘suspension’—

insert—

‘by chief executive’.

(2) Section 68(1), after ‘grounds exist’—

insert—

‘under section 67(1)’.

(3) Section 68—

insert—

‘(9) This section does not affect the suspension or cancellation of an authority under a regulation or management plan.’.

16 Amendment of s 73 (Registers of authorities)

Section 73(6), after ‘an interest’—

insert—

‘other than a lease’.

17 Amendment of s 92 (Duty of person who takes or possesses noxious or nonindigenous fisheries resources)

(1) Section 92(1), from ‘must—’ to ‘possessing the fisheries resources.’—

omit, insert—

‘must immediately—

(a) if the fisheries resource is a fish—kill it; or

(b) if the fisheries resource is a plant—destroy it.’.

(2) Section 92(3)—

omit.

18 Omission of s 121 (Management of declared fish habitat areas)

Section 121—

omit.

19 Amendment of s 124 (Chief executive may rehabilitate or restore land etc.)

(1) Section 124(1), from ‘if a person—’—

omit, insert—

‘if—

- (a) the land, waters, marine plants or fish habitat area has been removed, destroyed or damaged; and
- (b) the chief executive reasonably believes the removal, destruction or damage was caused by an act or omission that constituted a failure to comply with any of the following—
 - (i) this Act;
 - (ii) a former Act;
 - (iii) the repealed *Fisheries Act 1957*;
 - (iv) a condition of an authority.’.

(2) Section 124(2), after ‘person’—

insert—

‘who caused the removal, destruction or damage’.

(3) Section 124(3), ‘for the contravention’—

omit, insert—

‘against this Act constituted by the removal, destruction or damage’.

20 Amendment of s 199 (Powers of tribunal on appeal)

Section 199(3), ‘, for the purposes of this Act,’—

omit, insert—

‘for this Act, other than this division,’.

21 Insertion of new pt 11A

After part 11—

insert—

**‘PART 11A—SPECIAL PROVISIONS FOR CERTAIN
MANAGEMENT PLANS**

‘Division 1—Fisheries (Spanner Crab) Management Plan 1999

‘223A Definition for div 1

‘In this division—

“part 10” means part 10 of the plan.

“plan” means the *Fisheries (Spanner Crab) Management Plan 1999*.

‘223B Additional eligible licence

‘(1) The primary commercial fishing boat licence numbered QFV09644J is taken to be, and to have always been, an eligible licence under part 10.

‘(2) The first holder of the licence after the notification day under the plan is taken to be, and to have always been, an eligible person under part 10 in relation to the licence.

‘223C Additional reported catch for certain eligible licences

‘For part 10, a reference to the reported catch under each eligible licence as follows for a stated period is taken to also include, and to have always included, the reported catch for the period under each previous licence stated opposite the eligible licence—

Number for eligible licence	Numbers for previous licences
QFV10865K	QFV01253J
QFV11507J	QFV10072B and QFV08595B

Number for eligible licence	Numbers for previous licences
QFV11812E	QFV10489B and QFV08428J
QFV10956H	QFV09486B and QFV09257F
QFV08370D	QFV10151F and QFV05045H
QFV10419A	QFV12373K and QFV06656G
QFV10521J	QFV10487F, QFV09438B and QFV09315G
QFV10587B	QFV12000F and QFV08654A
QFV12292K	QFV11891E and QFV09583D
QFV10829D	QFV12300E, QFV10797B and QFV06128J
QFV12531H	QFV08218J
QFV11660B	QFV11921K, QFV11783H, QFV06895K, QFV11577K, QFV11306I and QFV07819K
QFV11803F	QFV10857J and QFV00664E
QFV11689K	QFV12419B and QFV07768B

Number for eligible licence	Numbers for previous licences
QFV11928H	QFV12152E, QFV10459K and QFV09879E
QFV10846D	QFV10309H and QFV08685A
QFV10038B	QFV10740I and QFV07883B
QFV12223H	QFV12093F, QFV09839F and QFV07516G
QFV10472H	QFV12566K, QFV12128B and QFV06285E
QFV10873A	QFV12350A, QFV11856G and QFV06669I.

‘223D Changes to ITQ formula for certain eligible licences

‘(1) This section changes, for certain eligible licences under part 10, the figure ‘0.5’ in the formula under section 91(1) of the plan.³

‘(2) The change is taken to apply, and to have always applied, for the licences.

‘(3) For the eligible licences numbered as follows, the figure is changed to ‘1.0’—

- QFV10865K
- QFV11507J
- QFV11812E

³ Section 91 (Formula for amount) of the plan

- QFV10956H
- QFV08370D
- QFV10419A
- QFV10521J
- QFV10587B
- QFV12292K
- QFV10829D
- QFV12531H
- QFV11803F
- QFV11689K
- QFV11928H
- QFV10846D
- QFV10038B
- QFV12223H
- QFV10472H
- QFV10873A.

‘(4) For the eligible licence numbered QFV11660B, the figure is changed to ‘1.5’.

‘223E Application of s 94 of plan to certain eligible licences

‘Section 94 of the plan⁴ is taken to apply, and to have always applied, to the eligible licences under part 10 numbered QFV10865K and QFV11689K.

4 Section 94 (Adjustments for transfers from 1990 to 21 January 1994) of the plan

‘Division 2—Fisheries (East Coast Trawl) Management Plan 1999**‘223F Additional eligible licence**

‘(1) The primary commercial fishing boat licence numbered QFV08424G is taken to be, and to have always been, an eligible licence under the *Fisheries (East Coast Trawl) Management Plan 1999*.

‘(2) The first holder of the licence after midday on 15 December 2000 is taken to be, and to have always been, an eligible person under the plan in relation to the licence.

‘Division 3—Miscellaneous provisions**‘223G Part does not affect amendment of management plans**

‘A provision of a management plan mentioned in, or affected by, this part may be amended by an amending management plan.

‘223H Expiry of pt 11A

‘(1) This part expires the day after it commences.

‘(2) This part is declared to be a law to which the *Acts Interpretation Act 1954*, section 20A⁵ applies.’.

22 Insertion of new pt 12, div 3

Part 12, after section 238—

insert—

‘Division 3—Transitional provision for Fisheries Amendment Act 2001**‘239 Validation of renewals of expired former authorities**

‘(1) This section applies if, under former section 58, a fisheries agency renewed, or purported to renew, an expired former authority (other than a permit) that expired before the relevant renewal application was made.

5 *Acts Interpretation Act 1954*, section 20A (Repeal does not end saving, transitional, or validating effect etc.)

‘(2) The renewal, or purported renewal, is taken to be, and to have always been, validly made under this Act whether or not it could lawfully have been made under former section 58.

‘(3) In this section—

“**fisheries agency**” means the chief executive or the former Queensland Fisheries Management Authority.

“**former section 58**” means section 58 of this Act, as in force from time to time before the *Fisheries Amendment Act 2001* commenced.’.

23 Insertion of schedule

After section 238—

insert—

‘SCHEDULE

‘DICTIONARY

section 4’.

24 Amendment to omit headings following cross references

(1) This section applies to a section containing a cross reference to a provision of the Act followed by the heading to the provision in round brackets.

(2) The section is amended by omitting the brackets and the words in the brackets.