

THE HIMACHAL PRADESH FISHERIES ACT, 1976

ARRANGEMENT OF SECTIONS

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THE HIMACHAL PRADESH FISHERIES ACT, 1976 (Act No. 16 of 1976)¹

(Received the assent of the Governor, Himachal Pradesh on the 26th April, 1976 and was published in R.H.P. Extra., dated the 30th April, 1976, at page 1180-1186).

An Act to provide for certain matters relating to fisheries in Himachal Pradesh.

Amended, Repealed or otherwise affected by,-

- (i) H. P. Ordinance No. 1 of 1989 replaced by H. P. Act No 17 of 1989² assented to by the President of India on 7-9-1989 and published in R.H.P. Extra, dated 6-2-1990, p. 1979, effective w.e.f. 6-7-1989

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-seventh Year of the Republic of India as follows:-

1. Short title and commencement.-(1) This Act may be called the Himachal Pradesh Fisheries Act, 1976.

(2) It extends to the whole of Himachal Pradesh.

(3) It shall come into force at once.

2. Definitions.-In this Act, unless there is anything repugnant in the subject or

1 For Statement of Objects and Reasons see R.H.P. Extra., dated 26-3-1975, p. 362 and for its authoritative Hindi text see R.H.P. Extra., dated the 24th October, 1987, p. 2117

2 Passed in Hindi by Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons see R.H.P. Extra., dated the 2nd August, 1989, p. 1940-1944.

context,-

- (a) `fish' includes shell fish and fish in all stages of its life history including aquatic plants of fisheries;
- (b) `fishing craft' means any boat, whether manually operated or powered, used for fishing or transport of fish;
- (c) `fishing gear' means any net, line, rod and lime, fishing tackle and other appliances used for catching fish;
- (d) `fishing offence' means an offence punishable under this Act or under any rule made thereunder;
- (e) `fishery officer' means any person whom the Himachal Pradesh Government or any other officer, empowered by the Himachal Pradesh Government in this behalf, may from time to time, appoint by name or as holding an office to carry out all or any of the purposes of this Act or to do anything required by this Act or any rule made thereunder.-

Provided that no police officer below the rank of Sub-Inspector shall be so empowered;

- (f) `fixed engine' means any net, cage, trap or other contrivance for taking fish, fixed in the soil or made stationary in any other way;
- (g) `private waters' means waters, which are the exclusive property of any person, or in which any person has for the time being an exclusive right of fishery, whether as owner, lessee or in any other capacity and includes tanks, ponds, artificial lakes etc., excavated at the expense of the owner which have no communication in the rainy season with natural waters such as rivers, streams, canals and jhils;

Explanation.-Water shall not cease to be private water within the meaning of this definition by reason only that other persons may have by custom a right of fishery therein;

- (h) State Government' means the Government of Himachal Pradesh;
- (i) `religious water' means waters belonging to a religious body or institution and which have never been fished before on account of any restrictions on religious grounds;
- (j) `religious body' means the trustees or any other persons who are in charge of a religious institution or in whom the ownership of the religious institution vest for the time being; and
- (k) `religious institution' means a temple, a mosque, or a church, any other shrine dedicated to any God or Goddess, and such other institutions as the State Government may by notification in the Official Gazette declare in that behalf.

3. Power to make rules for prohibition and licensing of fishing in selected waters.-(1) The State Government may make rules for the purposes mentioned hereinafter in this section and shall under such rules declare the waters, not being private waters, to which all or any of them shall apply.

- (2) The State Government may, by notification in the Official Gazette, apply such

rules or any of them to any private waters with the consent in writing of the owner thereof and of all persons having for the time being any exclusive right of fishery therein, or, if the State Government is satisfied that the consent is un-reasonably withheld without such consent:

Provided that no rules under this section shall apply to any religious waters.

(3) Such rules may-

(a) prohibit or regulate all or any of the following matters,-

(i) the erection and use of fixed engines;

(ii) the construction, temporary or permanent of weirs, dams and bunds; and killing of fish by diversion of natural waters,; and

(iii) the dimension and kinds of fishing gears to be used and the mode of using them;

(b) prohibit fishing except under licence and regulate the granting of such licences, the fees payable therefor and the conditions to be inserted therein;

(c) prohibit the destruction or attempt to destroy fish by gun, spear, bow and arrow or like instrument or pollution of waters by trade effluents.

(d) prescribe seasons in which the killing or catching or sale of any fish of any prescribed species shall be prohibited;

(e) prescribe a minimum size or weight below which no fish or any prescribed species shall be caught, killed or sold;

(f) prohibit fishing in any specified water for specified period;

(g) regulate the export of fish outside any area or areas and price at which fish may be brought or sold in any specified markets of all or any specified species;

(h) require to owner, mortgagee with possession or lessee of any tank or *jhil* for the stocking of such tanks or *jhils* with any class or classes of fish;

(i) prescribe the formation of associations of societies and the collection of funds for the uplift of fishermen and promotion of fishing industry;

(j) regulate the marketing of fish and also purchase and use of fish for preservation or for the manufacture of any fish products;

(k) regulate the possession of fishing craft and gear within such specified limits as may appear to be necessary; and

(l) regulate the transport of all fish or of certain species of fish or fish products within specified limits as may appear to be necessary. Such rules may, among other matters,-

(a) prescribe the routes by which alone fish or fish products may be imported into and exported from the State of Himachal Pradesh,

(b) prohibit the import, export or transport within specified limits of fish without a

pass from a fisheries officer or a person duly authorised to issue the same or otherwise than in accordance with the conditions of each pass,

(c) prescribe the form of such passes and provide for their issue, production and return, and

(d) provide for the examination of fish in transit within specified limits.

(4) In making any rule under this section the State Government may provide for-

(a) seizure, removal and forfeiture of any apparatus erected or used for fishing in contravention of the rules,

(b) forfeiture of any fish taken by means of any such apparatus, and

(c) confiscation of any consignment of fish held or transported in contravention of the rules.

(5) The power to make rules under this section shall be subject to the condition of the rules being made after previous publication.

(6) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the sessions immediately following, the Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

4. Power to prohibit sale of fish.-The State Government may, by notification in the Official Gazette, prohibit in such area or areas as may be specified in that behalf the offering or exposing for sale or barter of any fish killed in contravention of any rule made under sub-section (3) of section 3 of this Act.

5. Penalties.-The breach of any rule made under section 3 or of an prohibition notified under section 4 shall be punishable.-

(1) on first conviction with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and

(2) on every subsequent conviction with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

6. Punishment for destruction of fish by explosives.-(1) If any person uses any dynamite or other explosive substances in any water with intent thereby to catch or destroy any fish, that may be therein, he shall, be punishable with imprisonment for a term which may extend to ³[three years or with fine which may extend to five thousand] rupees, or with both.

(2) Whoever, having already been convicted of an offence under sub-section (1) is

³ Subs. for the words "one year or with fine which may extend to one Thousand" vide Act No. 17 of 1989 effective w.e.f. 6-7-89.

again convicted thereunder, shall, on every subsequent conviction, be punishable with imprisonment for a term which may extend to ¹[three years and with fine which may extend to five thousand] rupees.

⁴[(3) x x x x x x x

7. Punishment for destruction of fish by poisoning water.-If any person puts any poison, ⁵[bleaching powder] lime or noxious material in to any water with intent thereby to catch or destroy any fish, he shall be punishable with imprisonment for a term which may extend to ⁶[three years, or with fine, which may extend to five thousand] rupees, or with both.

⁷[**7A. Punishment for possession of dynamite and other explosive substance to be used for killing the fish.**-If a person is found to be in possession of a dynamite or any other explosive substance for the purpose of killing the fish near or in the vicinity or on the bank of a river, rivulet, khad, pond, lake, reservoir which are habitated by the fishes, shall, unless he explains satisfactorily that his possession or control over such a dynamite or the explosive substance was for a lawful object, be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both.

7B. Punishment for killing or catching fish during prohibited season.-Notwithstanding anything to the contrary contained in section 5 of this Act, if a person kills or catches fish with a net during the season, in which killing or catching of fish is prohibited under any rule framed under clause (a) of sub-section (3) of section 3, shall punishable be with imprisonment for a term which may extend to two years or with fine which may extend to three thousand rupees or with both.

7C. Offence to be cognizable and non-bailable.-Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) all offences under sections 6, 7, 7-A and 7B of this Act shall be cognizable and non-bailable offences.]

8. Arrest without warrant for offence under this Act.-(1) Any fisheries officer, police officer not below the rank of the Sub-Inspector, or any other person specially empowered by the State Government in this behalf, may arrest without warrant any person committed or attempting to commit, in his view a fishing offence,-

(a) if the name and address of the person are not known to him, and

(b) if the person declines to give his name and address, or if there is reason to doubt the accuracy of the name and address, if given.

(2) A person arrested under this section may be detained until his name and address have been correctly ascertained:

Provided that no person so arrested shall be detained longer than it may be necessary for bringing him before a Magistrate, except under the order of a Magistrate for his detention.

(3) Every fishery officer shall have the same powers of search and investigation relating to a fishing offence as a police officer of the rank of the Sub-Inspector has under the Code of Criminal Procedure, 1973 (2 of 1974).

4 Sub-section (3) omitted vide ibid.

5 Add vide ibid.

6 Subs. for the words "two years, or with fine which may extend to one Thousand" vide ibid.

7 Sections 7-A, 7-B & added vide Act No. 17 of 1989 effective w.e.f-6-7-89.

9. Cognizance of offences.-No court shall take cognizance of any offence under this Act, except on the complaint of a fishery officer or of a police officer not below the rank of the Sub-Inspector or of any other person or class of persons authorised by the State Government in this behalf.

10. Power to compound certain offences.-(1) The State Government may, by notification in the Official Gazette, empower a fishery officer by name or by virtue of office-

(a) to accept from any person concerning whom evidence exists, which if unrebutted, would prove that he has committed any fishing offence as described in the first column of the Schedule, a sum of money by way of compensation for the offence with regard to which such evidence exists and on the payment of such sum of such officer, such person, if in custody, shall be released and no further proceedings shall be taken against him;

(b) to release any property that has been seized as liable to confiscation without further payment or on payment of the value thereof as estimated by such officer and on the payment of such value such property shall be released and no further proceedings shall be taken in respect thereof.

(2) A sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the amount acceptable as compensation in the second column of the schedule for the particular offence described in the first column thereof.

11. Public servants indemnified for acts done under this Act.-(1) All persons empowered to exercise powers and perform duties under this Act or rules made thereunder shall be deemed to be public servants within the meaning of section 21 of Indian Penal Code, 1860. (45 of 1860).

(2) No suit or other legal proceedings shall lie in respect of the exercise of any powers or discretion conferred by this Act, or against any public servant or person duly appointed or authorised under this Act, in respect of anything in good faith done or purporting to be done under the provisions thereof or the rules made thereunder.

12. Repeal and savings.-The Punjab Fisheries Act, 1914 (2 of 1914), as in force in the areas comprised in Himachal Pradesh immediately before the 1st November, 1966, and as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Reorganisation Act, 1966 (31 of 1966), is hereby repealed:

Provided that,-

(i) anything done or action taken or proceeding commenced or continued under the repealed Act shall be deemed to have been done taken, commenced or continued under the corresponding provisions of this Act;

(ii) any appointment, order, regulation or notification made, issued or given under the provisions of the repealed Act, shall in so far as it is not inconsistent with the provisions of this Act, be deemed to have been made, issued or given under the provisions of this Act, unless or and until superseded by any appointment, order, regulation or notification made, issued or given under this Act.

⁸[THE SCHEDULE

(See section 10)

**MAXIMUM AMOUNT ACCEPTABLE AS COMPENASTION FOR CERTAIN
FISHING OFFENCES UNDER SECTION 10**

Description	Maximum amount acceptable as compensation
1	2
1. Fishing with a net having a smaller mesh than that prescribed under the rules made under the Act.	Rupees five hundred.
2. Fishing without a licence.	Rupees three hundred.
3. Killing or catching or selling or attempt to kill, catch or sell fish of a size or weight less than the standard prescribed under this Act.	Rupees three hundred.
4. Killing or catching or selling or attempt to kill, catch or sell any fish of a prohibited species during a close season.	Rupees three hundred.
5. Fishing or attempting to fish with any gear or method other than permitted under the rules.	Rupees three hundred.
6. Using at any one time more than two of either or any of the gears permitted under the rules.	Rupees three hundred.
7. Licence holders employing or engaging non-licensees to help them with their nets, while fishing.	Rupees three hundred.
8. Fishing or attempting to fish in prohibited water.	Rupees three hundred.
9. Offering or exposing for sale or barter any fish, the sale of which is prohibited in any specified area by a notification issued under section 4 of the Act.	Rupees three hundred.
10. Exporting or attempting to export fish in contravention of any rule made under sub-section 3 of section 3 of the Act.	Rupees one thousand
11. Selling or attempting to sell fish for	Rupees four hundred.

⁸ Subs vide Act No. 17 of 1989 effective w.e.f. 6-7-1989.

price above the specified market value.

12. Possessing fishing craft and tackles unauthorisingly in contravention of clause (k) of sub-section (3) of section 3 of the Act. Rupees four hundred

13. Transporting or attempting to transport fish or fish-products within specified limits in contravention of clause (1) of sub-section (3) of section 3 of the Act.] Rupees four hundred.