



EXTRAORDINARY

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LAW AND LEGISLATIVE DEPARTMENT

NOTIFICATION

NO. 3/LL/80.

Dated Gangtok, the 5th April, 1980.

The following Act of the Sikkim Legislative Assembly having received the assent of the Governor on the 5th day of April, 1980, is hereby published for general information.

SIKKIM ACT NO. 3 OF 1980

THE SIKKIM FISHERIES ACT, 1980.

AN
ACT

to provide for conservation, propagation, development and the modes of disposal of fisheries in Sikkim.

Be it enacted by the Legislative Assembly of Sikkim in the Thirty-first year of the Republic of India as follows:—

1. (1) This Act may be called the Sikkim Fisheries Act, 1980.
- (2) It shall extend to the whole of Sikkim.
- (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Short title, extent and commencement.

2. In this Act and the rules made thereunder unless there is anything repugnant in the subject or context,—

Definitions.

- (i) 'fish' includes shell-fish in all stages of its life including aquatic plants and animals of fisheries value;
- (ii) 'fishing gear' means any net, line, rod and line, fishing tackle or other appliances used for the purpose of catching fish;
- (iii) 'fishing craft' means any boat manually operated or operated by power used for the purpose of fishing or the transport of fish;
- (iv) 'fishing offence' means any offence punishable under this Act or any rule made thereunder;
- (v) 'fishery officer' means any person whom the State Government 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;

- (vi) 'fixed engine' means any net, cage, trap or other contrivance for taking fish fixed in the soil or made stationary in the other way;
- (vii) 'notification' means a notification published in the Official Gazette;
- (viii) 'private waters' means water 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 lake etc; excavated at expenses of the owner which have no communication at any season with the natural waters of any river, streams or canals;

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;

- (ix) 'State Government' means the Government of the State of Sikkim;
- (x) 'religious water' means water belonging to a religious body or institution and which have by reason thereof and on religious grounds never been fished before;

Explanation.— The provisions of this definition shall not however, debar the State Government to develop such water with fisheries which, however, will not be subjected to commercial use without the consent of the religious body or institution or the persons who may have customs attached to such water;

- (xi) 'religious body' means the trustees or any other person who are in charge of a religious institution or in whom the ownership of the religious institution vests for the time being;
- (xii) 'religious institution' means a temple, a mosque, a church, a monastery or any other shrine dedicated to any God or Goddess and such other institutions as the State Government may, by notification, declare in this behalf;
- (xiii) 'section' or 'sub-section' means a section or sub-section of this Act unless referred to any other Act.

Powers to make rules.

3. (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 apply such rules or any of them to any private water with the consent in writing of the owner thereof and of all persons having for the time being any exclusive right of fishery therein.

(3) The State Government may make rules for the propagation and development of fisheries in private waters which may include grant of financial help therefor.

Explanation.— Financial help shall include loans, subsidy or grants-in-aid.

(4) 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 of weirs, bunds and diversion of natural waters for killing fish; and
- (iii) the dimension and kinds of fishing gears and modes of their use.

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

(c) prohibit destruction or attempt to destroy fish by any gear which the State Government may consider harmful or destructive;

- (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 of any prescribed species shall be caught, killed or sold;
- (f) prohibit fishing in any specified water for a specified period;
- (g) prescribe modes, means, agency and procedures of business of fisheries within and outside the State;
- (h) regulate export of fish or specified species of fish outside any area or areas and also prescribe the rate for sale of fish in any market of the State;
- (i) regulate and prescribe lease or mortgage of tank, pond or land for construction of pond intended for stocking in such tank or pond with fish of any class;
- (j) regulate the possession of fishing craft and gear within any specified limits as may appear to be necessary;
- (k) such rules may, among other matters, also provide for the examination of fish in transit within specified limits.

(5) In making any rules 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;
- (c) confiscation of any consignment of fish held or transported in contravention of the rules.

4. The State Government may by notification prohibit in any specified areas the offering or exposing for sale or barter of any fish killed or caught in contravention of any rules made under sub-section (4) of section 3 of this Act.

Powers to prohibit sale of fish.

5. (1) The breach of any rule made under section 3 or of any prohibition notified under section 4 shall be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both, and when the breach is a continuing one, with a further fine which may extend to ten rupees for each day during which the breach is continued after the first day.

Penalties.

(2) If any person convicted of an offence under this Act, commits a like offence afterwards then, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both for each subsequent offence.

6. If any person uses any dynamite or other explosive substances in any water with intent thereby to catch or destroy fish that may be therein, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

Destruction of fish by explosives and punishment therefor.

7. If any person puts any poison, lime or noxious materials into any water with intent thereby to catch or destroy any fish which may be therein, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

Destruction of fish by poisoning and punishment therefore.

8. Notwithstanding anything contained in the Law relating to Criminal Procedure in force in Sikkim, the offences under this Act shall be cognizable and any property used for committing fishing offence may be forfeited to the State.

Offence cognizable.

9. (1) Any Fishery Officer, Police Officer or any other person specially empowered by the State Government in this behalf, may, without warrant, arrest any person committing or attempting to commit in his view, any offence punishable under this Act and may detain him for investigation including ascertainment of name and residence.

Power to arrest without warrant and investigation of offences under this Act.

(2) When the investigation is completed or the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without surities, to appear before a Magistrate, if so required.

(3) Should the investigation not be concluded or the name and residence of such person not be ascertained within twenty four hours from the time of arrest, or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate along with copies of connected papers.

(4) The Magistrate to whom an accused person is forwarded under this section, shall follow the procedure relating to remand as laid down in the Code of Criminal Procedure for the time being in force.

Power of search and investigation.

10. Every Fishery Officer shall have the same power of search and investigation in respect of offences under this Act as that of a Police Officer under the provisions of the law relating to Criminal Procedure for the time being in force in Sikkim.

Power to compound certain offences and charge compensation.

11. (1) The State Government may, by notification, empower a Fishery Officer by name or as holding an office -

- (a) to accept from 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 payment of such sum to such officer such person, if in custody, shall be discharged and no further proceedings shall be instituted against him;
- (b) to accept compensation as damages for the loss caused to fish life as may be assessed by such officer at the prevalent market rate which shall be in addition to the compensation specified in the Schedule.
- (c) to release any property that has been seized as liable to confiscation on payment of the value of such property as estimated by such officer and on payment of such value such property shall be released and no further proceedings shall be taken in respect thereof.

(2) The sum of money accepted as compensation under sub-clause (a) of sub-section (1) shall be in no case exceed the amount mentioned in the second column of the Schedule for the particular offence detailed in the first column thereof:

Provided that provision of sub-section (2) shall not limit the act of an officer to charge compensation for different offences collectively if such offences are committed at the same time by a person.

Persons performing duties under this Act and protection of action taken on good faith.

12. Person empowered to exercise and execute duties under this Act or rules made thereunder shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code, and no suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Repeal and Savings.

13. All Acts, Rules, Notifications Regulations or Orders in force, permanently or temporarily, in Sikkim for the protection, conservation and development of fisheries immediately before the enforcement and commencement of this Act are hereby repealed, provided that,-

- (a) anything done or action taken or proceedings commenced or continued under the repealed Rules, Notifications, Orders, Regulations or Acts, promulgated, made or issued by the competent authority of the time shall be deemed to have been done, taken and commenced or continued under the corresponding provisions of this Act.
- (b) any appointment, order, regulation or notification made or issued under the provisions of the repealed Rules, Orders, Regulations or Notifications shall in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or made and issued under the provisions of this Act unless and until superseded by any appointment, order, regulation or notification made or issued under this Act.

SCHEDULE OF COMPENSATION

(As provided under section 11 of the Sikkim Fisheries Act, 1980).

Limits of amounts acceptable as compensation for certain matters of Fishing offences detailed under section 11 of the Act.

Description of offences	Maximum amount acceptable as compensation.
1. Fishing with a net having smaller mesh than that prescribed under the rules.	Rs. One hundred.
2. Fishing without a license.	Rs. One hundred.
3. Killing, catching or selling or attempting to kill, catch or sell any fish of a size and weight less than the standard prescribed under this Act.	Rs. Twenty-five.
4. Killing, catching or selling or attempting to do so, any fish of a prohibited species during a close season.	Rs. Fifty.
5. Fishing with any gear or method other than that permitted under the Rule.	Rs. Fifty.
6. Using at any one time more than the number of gears permitted under the rules.	Rs. Fifty.
7. Fishing or attempting to fish in any of the prohibited waters.	Rs. One hundred.
8. License holder employing or engaging non-licensees to help with their gear while fishing.	Rs. Fifty.
9. Offering or exposing for sale or barter of any fish, the sale of which is prohibited in any specified area which may be notified under Section 4 of this Act.	Rs. Fifty.
10. Exporting or attempting to export fishes or fish of any specified species in contravention of the provision of rules.	Rs. One hundred.
11. Selling or attempting to sell fish for a price above the prescribed market value.	Rs. Fifty.
12. Possessing tackle or gear unauthorisedly.	Rs. One hundred.

By Order of the Governor,

R. K. GUPTA,

Secretary to the Govt. of Sikkim,
Law & Legislative Department,
Government of Sikkim.

F. No. 16 (75) LL/79.