

# FISHERIES AND OYSTER FARMS ACT.

Act No. 58, 1935.

George V.  
No. 58, 1935.

An Act relating to fisheries and fishing, and to oyster farms; to repeal the Fisheries Act, 1902, the Fisheries (Amendment) Act, 1910, and the Net Fishing (Port Hacking) Act, 1901; to amend the Sydney Corporation Act, 1932, and certain other Acts; and for purposes connected therewith. [Assented to, 17th December, 1935.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

## PART I.

### PRELIMINARY.

Short title.

**1.** (1) This Act may be cited as the "Fisheries and Oyster Farms Act, 1935."

(2)

Fisheries and Oyster Farms Act.

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(2) This Act shall commence on a date to be appointed by the Governor and notified by proclamation published in the Gazette.

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Commencement.

(3) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected.

Construction.

2. (1) The Fisheries Act, 1902, the Fisheries (Amendment) Act, 1910, and the Net Fishing (Port Hacking) Act, 1901, are hereby repealed.

Repeal of Acts  
No. 119, 1902,  
No. 14, 1910,  
and No. 18,  
1901.

(2) Such repeal shall not prejudice the past operation of, or any right lawfully acquired or penalty or forfeiture incurred under, any of the said Acts or the regulations made thereunder.

Savings.

(3) Any proclamation, notice, notification, or regulation issued or made under the authority of any Act repealed by this Act and which is still in force at the commencement of this Act, shall, unless inconsistent with this Act, remain in force until rescinded, cancelled, or repealed under the authority of this Act, or until the expiration of any period of time for which the same is expressed to remain in force.

(4) The repeal of the enactments repealed by this Act shall not of itself operate to annul, prejudice, or affect any lease which before the commencement of this Act was made under or by virtue of or by any repealed enactment.

But all such leases (subject however to the express provisions, if any, of this Act in relation thereto respectively) shall remain as valid and shall continue to have force and effect as if the repeal effected by this Act had not been effected.

And all the provisions in any repealed enactment respectively contained for the benefit or security either of the predecessors of His present Majesty, their heirs  
and

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and successors, or of His present Majesty, his heirs and successors, or of any of the parties to or with whom or in whose favour any such lease was made shall, so far as regards His Majesty, his heirs and successors, and such parties respectively and all persons claiming under him or them respectively (but only to the extent to which such provisions are not replaced by analogous provisions in this Act) remain and be of full force as if the enactments repealed by this Act had not been repealed:

Provided always that the foregoing provisions shall not be taken to have the effect of reinstating or reviving any lease which, having been cancelled, forfeited, made void, or otherwise determined by or under or by virtue of any repealed enactment, was not lawfully subsisting immediately before the commencement of this Act, or of reviving any other matter or thing not in force or existing immediately before such commencement.

(5) Nothing in this section shall limit any saving in the Interpretation Act of 1897.

Division into  
Parts.

3. This Act is divided into Parts as follows:—

PART I.—PRELIMINARY—ss. 1-4.

PART II.—ADMINISTRATION—ss. 5-17.

PART III.—FISHING GENERALLY—ss. 18-42.

DIVISION 1.—*Closing of waters*—ss. 18-20.

DIVISION 2.—*Close season for certain fish*—ss. 21, 22.

DIVISION 3.—*Licensing of fishing boats and fishermen*—ss. 23-25.

DIVISION 4.—*Nets*—ss. 26-32.

DIVISION 5.—*Prohibited methods of taking fish*—ss. 33, 34.

DIVISION 6.—*Consignment and sale of fish*—ss. 35-41.

DIVISION 7.—*Returns*—s. 42.

PART IV.—TROUT AND SALMON—ss. 43-57.

DIVISION 1.—*Acclimatisation districts*—s. 43.

DIVISION 2.—*Acclimatisation societies*—ss. 44-48.

DIVISION 3.—*Trout hatcheries*—s. 49.

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DIVISION 4.—*Close season for trout*—s. 50.

DIVISION 5.—*Licenses*—s. 51.

DIVISION 6.—*Offences*—ss. 52-56.

DIVISION 7.—*Regulations*—s. 57.

PART V.—OYSTERS, OYSTER FARMS AND LEASED AREAS.—ss. 58-90.

PART VI.—GENERAL AND SUPPLEMENTAL—ss. 91-119.

PART VII.—REGULATIONS—ss. 120, 121.

SCHEDULES.

4. (1) In this Act, unless the context or subject-matter otherwise indicates or requires,— Interpretation.

“Boat” includes every steamer, launch, vessel, punt, or boat of any description or dimensions whatsoever and howsoever navigated.

“Crown lands” means and includes any foreshore as well as any land under the sea, within territorial limits, or under any tidal or inland water, or under any river, lake, lagoon, or other water, or any training-wall, breakwater, retaining-wall, or guide-bank, in New South Wales, the property in which is by law vested in the Crown, or in any trustees for the purpose of public recreation, or for any other public purpose, but does not include lands held under lease under this Act or any Act hereby repealed. cf. Act No. 119, 1902, s. 3.

“Engine” includes any implement, apparatus, or device for taking or facilitating the taking of fish.

“Fish” means all or any of the varieties of marine, estuarine or fresh-water fishes, and, unless the contrary intention be expressly stated or the context otherwise requires, includes crustacea and oysters and all marine, estuarine and fresh-water animal life, but does not include any species of whales.

“Fisherman” means any person licensed under this Act to take fish for purposes of sale.

“Fixed

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cf. Act No.  
119, 1902,  
s. 3.

*Ibid.*

“ Fixed engine ” includes any stake-net, bag-net, putt, putcher, night-line, fish-trap, fish-pound, fish-cage, and any fixed implement or engine for taking or facilitating the taking of fish.

*Ibid.*

“ Gaff ” means a metal hook fixed to the end of a rod or stake.

“ Hand-line ” means any line to which not more than six fishing-hooks are attached, and which is held, or intended to be held, by a person for the taking of fish.

“ Hauling ” includes casting and shooting any net with or without hauling lines.

*Ibid.*

“ High-water mark ” means the mean line between approximate high-water at spring tide and at neap tide.

*Ibid.*

“ Inland waters ” means all rivers and creeks for that portion of their course which is beyond the influence of the tide; also all fresh-water lakes, lagoons, and artificial dams, reservoirs, and ponds.

“ Inspector ” means any inspector of fisheries appointed under this Act, and includes a person who by the provisions of this Act has and may exercise the powers, authorities, duties and functions of an inspector.

*Ibid.*

“ Lease ” means any lease issued under this Act or under any Act hereby repealed.

*Ibid.*

“ Leased area ” means any area of land leased under this Act or under any Act hereby repealed.

*Ibid.*

“ Lessee ” means any person holding a lease under this Act or under any Act hereby repealed.

“ Market ” means any place where fish is sold chiefly by wholesale and to which the public have access for the purpose of purchasing fish; and includes any market established under Part XIII of the Sydney Corporation Act, 1932, as amended by subsequent Acts.

“ Original owner ” in relation to fish means the person by whom or by whose servants any fish are taken from any waters, and includes the first owner of any imported fish after the landing of such fish in New South Wales.

“ Oyster ”

- “ Oyster ” means any bivalve mollusc of the family *Ostreidæ*, and includes an oyster without the shell, but not a canned oyster. No. 58, 1935.
- “ Oyster farm ” means any area leased under Part V of this Act to any person. cf. Act No. 119, 1902, s. 3.
- “ Prescribed ” means prescribed by this Act or by any regulation or in any lease made thereunder. cf. *Ibid.*
- “ Recognised hauling ground ” means any area of Crown lands whereon fishermen haul and land their fishing nets, daily or intermittently throughout the year or at a certain period thereof, but does not include an area of Crown lands only occasionally used for such purpose; nor any area which can be staked or cultivated by lessees without prejudicing the hauling operations of fishermen.
- “ Regulations ” means regulations made under the authority of this Act.
- “ Salmon ” includes all migratory fish of the genus *Salmo*, known by the name salmon, grilse, sea trout, salmon trout, smolt, parr, or by any other local name. cf. *Ibid.*
- “ Sell ” includes to barter or exchange or to offer or expose for sale.
- “ Set line ” means any unattended line used or intended to be used for the purpose of taking fish.
- “ Set net ” means any net set in any waters for the purpose of taking fish and which is left unattended.
- “ Setting ” includes fixing, placing, and staking.
- “ Spat ” or “ Undersize oysters ” means all oysters of every kind below the prescribed minimum size or weight of marketable oysters.
- “ Take ” in relation to fish means to catch, capture, or enclose fish by means of any net, engine, or other structure or thing whatsoever.
- “ This Act ” includes any proclamation, regulation, notice, or notification made or issued thereunder.
- “ Tidal waters ” means all waters which ebb and flow over Crown lands, or over lands in the possession

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possession or under the control of the Crown or the Minister, within the territorial jurisdiction of the Crown in New South Wales, together with, in each case, the soil of such Crown lands or lands in the possession or under the control of the Crown or the Minister; and also all coastal saltwater lakes, lagoons and ponds in the said State and the soil or bed thereof.

“ Trout ” includes all non-indigenous fish of the family Salmonidæ.

cf. Act  
No. 119,  
1902, s. 3.

(2) In this Act the expression “ undersize fish ” means fish of any species mentioned in Schedule C to this Act which is of a less length than that for the time being set opposite the name of such fish in that Schedule.

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## PART II.

### ADMINISTRATION.

Duties, powers,  
and authority  
of the Minister.  
cf. *Ibid.* s. 4.  
Act No. 14,  
1910, s. 2.

5. The duty of protecting, developing, and regulating the fisheries of New South Wales and the general control of the administration of this Act shall be vested in the Minister.

The duties, powers and authority of the Minister under this Act shall extend to the territorial limits of New South Wales.

Appointment of  
inspectors and  
other persons.

6. The Governor may appoint such inspectors and other persons as he may think necessary for the purposes of this Act.

Vigilance  
committees.

7. The Governor may appoint honorary vigilance committees in places where constant supervision by inspectors of fisheries is considered to be unnecessary or impracticable or in places where it is considered that the effective supervision of the fisheries renders desirable the appointment of such committees.

Any such committee shall consist of not more than twelve members.

The term of office of any member of such a committee shall be specified in the instrument of appointment and shall not exceed five years, but any member shall be eligible for reappointment: Provided that the Governor may,

may, whether or not the term for which any member of any such committee was appointed has expired, cancel the appointment of any such committee or of any member of any such committee.

Every member of such a committee shall have and may exercise and perform such of the powers, authorities, duties and functions of an inspector relating to fisheries generally and to public oyster reserves and relating to the prevention of the use of any unlawful engine, instrument, or method for the taking of fish as are prescribed.

8. The Minister shall as soon as practicable after the thirtieth day of June in each year, cause a report to be prepared for submission to the Governor as to the condition of the fisheries of the State, and such report shall be laid before both Houses of Parliament.

Annual report.

9. Every inspector is hereby empowered, for the enforcement of the provisions of this Act, to exercise the powers and authorities of a member of the police force.

Inspectors to have police powers.

10. For the purposes of this Act every member of the police force shall have, and may exercise, all or any of the powers, authorities, duties and functions conferred thereby on an inspector.

Members of police force to have powers of inspectors.

11. The production by an inspector of a copy of the Gazette containing a notification of his appointment or of a certificate that he has been appointed an inspector purporting to be signed by the Under-Secretary of the Department by which this Act is administered, shall be sufficient authority for him to do all such acts and things as he is required or empowered to do under this Act; but it shall not be necessary for any member of the police force doing any such acts or things to produce any authority for so doing.

Production of authority.

12. An inspector may, at any time or season, for the purpose of ascertaining whether the provisions of this Act have been contravened or of securing the observance of the provisions of this Act or of doing any act or thing which he is required or empowered to do under this Act, enter into and pass through or along any leased area or the banks or borders of any waters or within a reasonable distance

Inspector may enter certain lands.

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distance above high water mark on any land abutting thereon, and with boats or otherwise enter upon such waters, and pass along the same.

Power to  
search shops.

**13.** An inspector may for the purpose of searching for undersize fish or undersize oysters or for fish taken in contravention of the provisions of this Act—

- (a) at all reasonable times enter any market or any shop or the place of business of any person where fish are publicly exposed for sale, and any cool store, smoke-house, canning factory, or other place where fish are kept or treated for the purposes of business;
- (b) examine any basket, tray or other receptacle in the possession or under the control of any person whatsoever, which are suspected on reasonable grounds to contain undersize fish or fish taken in contravention of this Act, or undersize oysters;
- (c) stop and search any vehicle, and at all reasonable times enter and search any premises, and search any bags, baskets, or other receptacles thereon or therein which are suspected on reasonable grounds to contain or to be used for the concealment of fish taken in contravention of this Act.

Further  
powers of  
inspectors.

**14.** An inspector may—

- (a) board and enter upon any boat and search the same for any fish, engines, nets, or other articles;
- (b) examine any nets, engines, or other articles found in any place whatsoever in use for fishing or in the possession or under the control of any person, and intended or adapted for fishing;
- (c) seize, take, detain, remove, and secure any fish, engine, net, or other article (wheresoever the same may be or be found) which such inspector has reason to believe is liable to be forfeited under this Act;
- (d)

- (d) require the master or other person in charge of any boat required to be licensed under this Act to produce the license for the boat, and may take copies thereof or of any part thereof;
- (e) require the master or other person in charge of any boat required to be licensed under this Act to give any explanation concerning the boat and her crew, and any person on board such boat;
- (f) require any person who is on any boat required to be licensed under this Act, or who is engaged in fishing, or whom he may reasonably suspect of having committed a breach of this Act or of Part XIII of the Sydney Corporation Act, 1932-1934, as amended by subsequent Acts and by this Act, to state his name and place of abode;
- (g) require any person engaged in taking fish for the taking of which a license or other authority is required under this Act, or engaged in taking fish by a method in respect of which a license, registration, or other authority is required under this Act, to produce such license, authority, or evidence of registration.

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**15.** (1) The Minister, or any person authorised in that behalf by the regulations, may issue a permit to any person or body of persons, including an acclimatisation society registered under Part IV of this Act, authorising such person, body, or society to take, hold, or use under such conditions and at such times and in such manner in all respects as shall be stated in the permit fish of any kind or species or of such kinds or species as may be specified in such permit for the purpose of artificial propagation, or for scientific purposes, or for transplanting or distribution, or for such other purposes as may be prescribed.

Permit to take fish for scientific purposes.  
cf. Tasmanian Act No. 42, 1925, s. 18.

(2) A permit under this section may authorise the holder to take fish by any specified methods or in any waters notwithstanding the provisions of this Act.

(3) The holder of a permit shall not be liable to any penalty under this Act by reason of anything done by him which is authorised by such permit.

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Minister to  
institute  
experiments.  
cf. Act No.  
119, 1902,  
s. 63.

**16.** (1) It shall be lawful for the Minister from time to time—

- (a) to direct the institution and carrying out of experiments in methods of catching fish and in the culture and propagation of fish;
- (b) to take steps for the study and investigation of the life history of any species of fish;
- (c) to cause investigations to be made as to the prevalence of plankton in ocean and estuarine waters;
- (d) to establish and maintain or to assist in establishing and maintaining biological stations where such investigations and studies may be carried out;
- (e) to direct the institution and carrying out of investigations into any other biological, physical, chemical or technological problems associated with fisheries.

(2) For the purposes of this section the Minister may by notification in the Gazette declare any Crown lands to be reserved for experiments in the culture and propagation of fish.

Crown lands so reserved shall be vested in the Minister, who shall have and may exercise in relation thereto all the powers and authorities which by this Act are conferred on a lessee.

(3) The publication of such notification as aforesaid shall have the effect of vesting in the Minister—

- (a) the exclusive right of stocking the Crown lands so reserved with fish, and of taking therefrom any such fish and their shells;
- (b) the property (at law or in equity) in any such fish, while the same are within the limits of the Crown lands so reserved, any rule of law to the contrary notwithstanding;
- (c) the right to the influx and efflux of the tide into and over the Crown lands so reserved by cutting a trench or passage through, or laying one or more pipes under the shore; also the right to construct

- construct a sluice so as to permit the tide to ebb and flow into and from the Crown lands so reserved;
- (d) the right to sell or otherwise dispose of fish taken from the Crown lands so reserved, provided that the proceeds of any sale of such fish shall be paid into the Consolidated Revenue Fund.

**17.** (1) The Minister may approve of the erection of fish hatcheries, races, and spawning ponds, on any tidal or inland water, and may by writing under his hand, authorise any person, society, or association to carry out practical operations in connection with the hatching of any named species of fish, and to do and perform all things necessary for the successful propagation of such fish.

Erection of fish hatcheries, races, and spawning ponds.

(2) Notwithstanding anything in this Act the Minister may by writing under his hand authorise the capture and stripping, by such person, or any member of such society or association, of any named species of fish during spawning or close season.

After stripping the spent fish shall be dealt with in the manner prescribed in the authority granted by the Minister or in the manner prescribed by regulations.

(3) Except in pursuance of this section no fish and no eggs nor fry of any species of fish whatsoever shall be artificially deposited or liberated in any waters unless with the consent or by the direction of the Minister.

(4) Any fry or fish the product of any such hatchery may be sold and the proceeds thereof retained by the person, society or association authorised in that behalf, subject to any regulations dealing with same.

(5) Any person who contravenes any provision of this section shall be guilty of an offence and shall be liable to a penalty not exceeding ten pounds.

(6) Nothing in this section shall be construed to limit the power of any acclimatisation society for the time being registered under Part IV of this Act to do or perform, within the area in respect of which such society is registered, any act authorised by its rules.

## PART III.

## FISHING GENERALLY.

DIVISION 1.—*Closing of waters.*Closing of  
waters.

**18.** (1) (a) The Minister may from time to time by notification published in the Gazette prohibit the taking of fish from tidal waters or inland waters.

(b) Any such notification shall remain in force for the period or periods specified therein, but no such period shall exceed twelve consecutive months.

(c) The Minister may from time to time rescind or alter such notification by a further notification published in the Gazette.

(2) (a) The Governor may by proclamation published in the Gazette prohibit the taking of fish from tidal waters or inland waters.

(b) Any such proclamation shall remain in force for such period as the Governor thinks fit.

The period during which it is to remain in force shall be specified in the proclamation.

(c) The Governor may from time to time rescind or alter any such proclamation by a further proclamation published in the Gazette.

(3) Any provision inserted in any such notification or proclamation may apply—

(a) to tidal or inland waters generally, or to any specified tidal or inland waters or part thereof or to tidal or inland waters other than those specified;

(b) to the taking of fish generally, or to the taking of fish of any specified species or to the taking of all fish other than fish of any specified species;

(c) to all methods of taking fish, or to any specified method of taking fish or to methods of taking fish other than those specified.

(4)

(4) A notice setting out the date of the publication in the Gazette of any such notification or proclamation together with a summary of the contents thereof shall be published in one or more newspapers circulating in the police district or districts in which the waters affected by the notification or proclamation are situated.

(5) If any person takes or attempts to take any fish in contravention of any such notification or proclamation such person and every person aiding or assisting him or being in a boat with him during the commission of the offence shall be guilty of an offence against this section and shall be liable to a penalty of not more than five pounds for a first offence, to a penalty of not less than ten pounds and not exceeding twenty pounds for a second offence and to a penalty of not less than twenty pounds or to imprisonment for a term of not less than one month for a third or subsequent offence.

(6) Any person who is in possession of fish which to his knowledge was taken in contravention of any such notification or proclamation, shall be guilty of an offence against this section, and shall be liable to a penalty of not more than five pounds for a first offence, to a penalty of not less than ten pounds and not exceeding twenty pounds for a second offence and to a penalty of not less than twenty pounds or to imprisonment for a term of not less than one month for a third or subsequent offence.

(7) (a) Any person who is found on any waters in a boat containing any net or other implement whatsoever the use of which in such waters is prohibited by any notification or proclamation made under this section or by any notice or proclamation made under any Act repealed by this Act, which notice or proclamation remains in force by the operation of this Act, shall be guilty of an offence and shall be liable to a penalty of not more than five pounds for a first offence, to a penalty of not less than ten pounds and not exceeding twenty pounds for a second offence and to a penalty of not less than twenty pounds or to imprisonment for a term of not less than one month for a third or subsequent offence.

(b)

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(b) It shall be a sufficient defence to a prosecution for an offence against paragraph (a) of this subsection if the person charged proves—

- (i) that a permit in or to the effect of the prescribed form to take the net or other implement through the waters mentioned in the charge to other waters has been issued by an inspector; and
- (ii) that at the time of the commission of the alleged offence such net or implement was on such waters solely for the purpose of being so taken.

Closing  
against net  
fishing of  
Brisbane  
Water and  
part of Port  
Hacking and  
certain  
waters.

**19.** (1) No person shall haul or set any net of any kind whatsoever for the purpose of taking, or which is adapted to take or capable of taking, fish—

- (a) in any of the waters of Brisbane Water or of its tributaries north of a line drawn from Box or Hawk Head to Green Point; or
- (b) in any of the waters of Port Hacking or its tributaries to the westward of a line drawn southerly from the southernmost extremity of Hungry Point to the northernmost extremity of Cabbage Tree or Pulpit Point; or
- (c) in any of the waters of Wagonga River or its tributaries westward of a line drawn north-west across the entrance from the northernmost extremity of Wagonga Head; or
- (d) in any of the waters more particularly described in Schedule A to this Act, or of the tributaries thereto.

(2) Any person who—

- (a) hauls or sets a net in contravention of any of the provisions of subsection one of this section; or
- (b) is found in possession of or takes a net on any of the waters mentioned or referred to in subsection one of this section; or

(c)

(c) is found in a boat which contains a net on any of such waters, No. 53, 1935.

shall for a first offence be liable to a penalty not exceeding ten pounds and for a second offence shall be liable to a penalty of not less than ten pounds and not exceeding twenty pounds and for a third or any subsequent offence to a penalty of not less than twenty pounds or to imprisonment for a term of not less than one month.

(3) It shall be a sufficient defence to a prosecution for an offence against paragraph (b) or paragraph (c) of subsection two of this section if the person charged proves—

- (a) that a permit in or to the effect of the prescribed form to take the net through the waters mentioned or referred to in subsection one of this section to other waters has been issued by an inspector; and
- (b) that at the time of the commission of the alleged offence the net was on such waters solely for the purpose of being so taken.

(4) It shall be a sufficient defence to a prosecution for an offence against any of the provisions of subsection two of this section if the person charged proves—

- (a) that the net which is the subject of the charge—
  - (i) is a dip or scoop net of dimensions and mesh prescribed by the regulations; and
  - (ii) was used solely for the taking of prawns in the waters mentioned or referred to in subsection one of this section; and
  - (iii) was so used only during such period as is specified in the regulations; or
- (b) that the net which is the subject of the charge—
  - (i) was used solely for the taking of prawns in the waters described in Schedule B to this Act; and
  - (ii) is a net of the type and dimensions prescribed for use in such waters or in the part of such waters in which the same was used

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used, and was used only during the period,  
at the times and in the manner prescribed;  
or

- (c) (i) that the net which is the subject of the charge was used in the ocean waters adjacent to the entrance to Lake Illawarra; and
- (ii) that at the time such net was used such ocean waters were entirely separated from the waters of Lake Illawarra by a sand bar, or that a sand bar joining Windang Island with the mainland separated that part of the ocean waters in which the net was used from the waters at the entrance to Lake Illawarra; and
- (iii) that such net is a net which may lawfully be used.

(5) In this section the word "waters" includes all waters, whether the same are subject to or beyond the influence of the tide.

Prohibition  
or restriction  
of landing  
of certain  
fish in New  
South  
Wales.

**20.** (1) The Governor may by proclamation prohibit or restrict either absolutely or during the period or periods specified in such proclamation the bringing into the State or the landing from any boat at any port or place within the State of any live fish, whether such fish were taken in territorial waters or elsewhere.

(2) Any provision inserted in any such proclamation may apply—

- (a) to fish generally or to any specified species of fish or to fish other than fish of a specified species;
- (b) to fish taken from any waters whether territorial waters or otherwise, or to fish taken from any specified part of such waters, or to fish taken from any waters other than those specified.

(3) Any person acting in contravention of any proclamation made under this section shall be liable to a penalty not exceeding twenty pounds.

DIVISION

DIVISION 2.—*Close season for certain fish.*

**21.** (1) Any person who takes from any waters for the purpose of sale during the prescribed period in any year, Murray (or trout) cod, golden perch (yellow belly), silver perch (grunter), Macquarie (mountain) perch, river black fish, fresh-water catfish, or the fresh-water crayfish known as or called the Murrumbidgee crayfish or Murray lobster, shall be guilty of an offence.

Taking of certain fish illegal during prescribed periods.

The regulations may prescribe one period for all such species of fish or different periods for any specified species.

In respect of any species as to which a different period is not prescribed by the regulations, the prescribed period shall be the months of October and November in each year.

(2) Any person who during the prescribed period—

- (a) sells or attempts to sell; or
- (b) offers or exposes for sale; or
- (c) has in his possession for sale; or
- (d) consigns to any person for sale,

any of the fish mentioned in subsection one of this section, or any of the fish of the specified species as the case may be, shall be guilty of an offence.

(3) Any person who at any time —

- (a) sells or attempts to sell; or
- (b) offers or exposes for sale; or
- (c) has in his possession for sale; or
- (d) consigns to any person for sale,

any fish taken from any waters in contravention of subsection one of this section, shall be guilty of an offence.

(4) Any person who commits an offence against this section shall be liable to a penalty not exceeding five pounds for a first offence and to a penalty of not less than five pounds and not exceeding twenty pounds for a second or subsequent offence.

(5)

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(5) It shall be a sufficient defence to a prosecution for an offence against subsection two of this section if the person charged proves that the fish the subject matter of the charge were not taken during the prescribed period or that the fish were taken elsewhere than in New South Wales.

Female  
crayfish.

22. (2) Any person who <sup>during and period as may</sup> ~~in any tidal or inland water~~ be prescribed in the regulations, takes from any waters, or has in his possession, or on his premises or in a boat, or sells or attempts to sell, or offers or exposes or consigns for sale, any female crustacea of the saltwater species known as "crayfish," "lobster," or "crawfish" shall be guilty of an offence.

(2) Any person who at any time has in his possession, or in any pound or enclosure, or sells or attempts to sell, or offers or exposes or consigns for sale, any crustacea taken from any waters in contravention of subsection one of this section shall for every such offence be liable to a penalty not exceeding ten pounds.

(3) It shall be a sufficient defence to a prosecution for an offence against subsection one of this section if the person charged proves that the crustacea the subject matter of the charge were not taken during the period prescribed in such regulations or were taken elsewhere than in New South Wales or the waters adjacent thereto.

DIVISION 3.—*Licensing of fishing boats and fishermen.*

Boats used  
for capture  
of fish must  
be licensed.  
cf. Act No.  
119, 1902,  
s. 14.

23. (1) Every boat used for or in connection with the taking of fish for sale from any territorial waters, whether tidal waters or inland waters, by any method, shall be licensed.

(2) Such license shall be issued upon the prescribed application by such person and in such manner as may be prescribed, and shall be in or to the effect of the prescribed form.

(3) The annual fee for every such license and the manner of the payment thereof shall be as prescribed by the regulations, but such fee shall not exceed one pound.

In

In the regulations, provision may be made for a reduction of the fee in any case in which the license is to remain in force for a less period than one year. No. 58. 1935.

(4) Every such license shall, unless sooner suspended or cancelled, be in force until the thirty-first day of December next after its issue and no longer:

Provided that every such license which shall be issued in the month of December in any year shall be deemed to have been issued on the first day of January next ensuing.

(5) A license under this section may, subject to the regulations, be transferred.

(6) An application for any such license may be granted or refused, and the license may be suspended or cancelled in the circumstances prescribed by the regulations.

(7) Every boat licensed under this section shall have painted legibly thereon in the manner prescribed by the regulations such particulars for identification as may be prescribed by the regulations.

(8) Any person who uses a boat for or in connection with the taking of fish for sale from any territorial waters, whether tidal waters or inland waters, shall, unless the boat is licensed, be liable to a penalty of not less than one pound for a first offence and not less than five pounds for a second or subsequent offence.

**24.** (1) Any person who lands in New South Wales for sale therein any fish taken from waters outside but adjacent to the territorial waters of New South Wales shall, if the boat used for or in connection with such taking is a boat the port of departure and the port of destination of which are in New South Wales and which is not licensed under this section, be liable to a penalty of not less than one pound and not exceeding twenty-five pounds for a first offence and not less than five pounds nor more than fifty pounds for a second or subsequent offence. Fishing in extra-territorial waters.

(2) The regulations may prescribe the form of the license and may make provisions relating to the application for a license, to the granting or refusal thereof and to the

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the issue, terms, conditions, duration, suspension, and cancellation thereof, and the fees to be paid (not exceeding twenty-five pounds per annum in any case) in respect of various classes of such boats either in accordance with the tonnage or the method of fishing or otherwise.

(3) Where a boat is licensed under this section, it may be used for or in connection with the taking of fish for sale from any territorial waters of New South Wales without a separate license under section twenty-three of this Act.

Fishermen  
to be  
licensed.  
cf. Act No.  
119, 1902,  
s. 15.

**25.** (1) Every person who takes or attempts to take fish for sale by any method from any territorial waters, whether tidal waters or inland waters, shall hold a fisherman's license under this section.

(2) Such license shall be issued upon the prescribed application by such person and in such manner as may be prescribed, and shall be in or to the effect of the prescribed form.

(3) A license under this section shall not be transferable.

(4) The annual fee for every such license and the manner of its payment shall be as prescribed by the regulations, but such fee shall not exceed one pound.

In the regulations provision may be made for a reduction of the fee in any case in which the license is to remain in force for a less period than one year.

(5) Every such license shall, unless sooner suspended or cancelled, be in force until the thirty-first day of December next after its issue and no longer:

Provided that every such license which shall be issued in the month of December in any year shall be deemed to have been issued on the first day of January next ensuing.

(6) An application for any such license may be granted or refused, and the license may be suspended or cancelled by the Minister in the circumstances prescribed.

(7) Any person who, without lawful authority, takes or attempts to take fish for sale by any method whatever from any territorial waters, whether tidal waters

waters or inland waters, without first having obtained a fisherman's license, shall be liable to a penalty of not less than one pound for a first offence and not less than five pounds for a second or subsequent offence.

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DIVISION 4—Nets.

**26.** (1) No person shall use a net for the taking of fish from any waters unless—

Certain  
nets to be  
registered.

- (a) the net is registered in pursuance of this section; and
- (b) the net is used in the manner and for the purposes prescribed by the regulations.

Any person who contravenes the provisions of this subsection shall be guilty of an offence, and shall be liable to a penalty not exceeding two pounds.

(2) It shall be a sufficient defence to any prosecution for an offence against subsection one of this section if the person charged proves—

- (a) that the net in question is a dip or scoop net of the prescribed dimensions and mesh and was used solely for the taking of prawns; or
- (b) that the net in question is a landing net of a prescribed type and was not used otherwise than in accordance with the regulations; or
- (c) that the use charged was exempted from the operation of this section by the regulations.

(3) The regulations may prescribe the class or classes of nets which may be registered under this section, the method of registration, the payment of a fee not exceeding ten shillings for any such registration, the conditions under which the registration may be transferred, the purposes for which and the manner in which a registered net shall be used.

**27.** (1) The regulations may regulate or prohibit the taking of fish from any waters by means of nets, and in particular and without limiting the generality of the foregoing power may prescribe the length of net, and the

Regulations  
as to lawful  
nets.

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the size of mesh, which, for the whole or any part of any kind of fishing net, may lawfully be used, and the length of hauling lines which it shall be lawful to attach thereto.

(2) Any provision in any such regulation may apply—

- (a) to waters generally or to any specified waters or part thereof, or to waters other than those specified;
- (b) to fish generally or to any specified species of fish, or to fish other than fish of a specified species;
- (c) to nets generally, or to nets of a specified type, form, dimensions, description, size of mesh, or length of hauling line, or to nets other than nets of a specified type, form, dimensions, description, size of mesh, or length of hauling line;
- (d) to all methods of using a net for the taking of fish, or to any specified method, or to methods other than a specified method.

No restriction as to the length or depth of a net used for the taking of fish in territorial ocean waters or on sea beaches shall be prescribed by such regulations.

(3) If any person contravenes the provisions of any such regulation, he shall be deemed to be using an unlawful net, and shall for a first offence be liable to a penalty not exceeding five pounds, and for a subsequent offence to a penalty of not less than five pounds and not exceeding twenty pounds.

(4) Any person who aids or assists in the commission of any such offence, or is in the same boat as the offender at the time of the commission of any such offence, shall be liable to the like penalties.

(5) It shall be a sufficient defence to a prosecution under this section if the person charged proves—

- (a) that the net which is the subject of the charge was, at the time of the commission of the alleged offence, being used solely for the purposes of investigation or experiment, or for taking specimens for scientific purposes; and

(b)

- (b) that the net was being used in pursuance of a permit for such use issued by the Minister under this section and was used in the manner and in accordance with the conditions prescribed by the permit or by the regulations.

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(6) The Minister may, upon application made in the manner prescribed, issue a permit—

- (a) for the use of any net for the purpose of investigation and experiment; or
- (b) for the use of a bona fide naturalist's net for the purpose of catching specimens for scientific purposes.

The permit may prescribe conditions as to the manner in which and the places at which such net may be used.

The permit shall be in writing and shall remain in force for the period specified therein.

**28.** Any person who drags or draws ashore any net containing fish in such a way or to such a distance from the water as to prevent undersize fish from escaping through the meshes or by the wings of the net into the water, or to allow such undersize fish to remain on the shore, shall for a first offence be liable to a penalty not exceeding five pounds and for a second or subsequent offence shall be liable to a penalty of not less than five pounds and not exceeding twenty pounds.

Method of dragging or drawing nets.  
Act No. 119, 1902, s. 21.

**29.** (1) Any person who sets any net, netting, brush-wood, or other substance or material across or within any bay, inlet, river, or creek, or across or around any flat, in tidal or inland waters, in such manner that fish enclosed thereby are or may be blocked and left stranded or that immature fish may be destroyed, shall, for a first offence be liable to a penalty not exceeding five pounds and for a second or subsequent offence shall be liable to a penalty of not less than five pounds and not exceeding twenty pounds.

Waters not to be stalled.

(2) Any person who sets or uses in any inland waters any trap, structure, or device made wholly or partly of wire-netting, and with wings so attached as to impede or prevent or block the free passage of fish on one or both sides of the trap, structure, or device, shall for every such offence be liable to a penalty not exceeding ten pounds.

**30.**

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Wilful  
damage to  
nets by  
certain  
means.

**30.** (1) Any person who in any tidal or inland water negligently, wilfully, or maliciously propels, steers, or drives any boat so as to damage a fishing net which is being used in such waters, shall for every such offence be liable to a penalty not exceeding ten pounds.

(2) Any person who in any tidal or inland water wilfully or maliciously drives or places any stake, log, stone, or other thing whatsoever likely to damage a fishing net if dragged over or against it, shall for every such offence be liable to a penalty not exceeding ten pounds.

(3) Where a fishing net while being lawfully used is damaged by reason of any act done in contravention of this section, the justices may, in addition to imposing a penalty for the offence against this section, order the person convicted of such offence to pay such amount by way of compensation to the owner of the net as they may think fit.

Set or  
unattended  
nets  
obstructing  
hauling  
ground may  
be removed.

**31.** Any fisherman may for the purpose of hauling a net on to any recognised hauling ground, remove any unattended net which has been so set as to obstruct such hauling and such fisherman shall not, if he exercises reasonable care in the removal of the net, be liable for any damage to the net occasioned by such removal.

Placing  
obstruction  
on recog-  
nised  
hauling  
ground.  
cf. Act No.  
119, 1902,  
s. 25 (2).

**32.** Any person who places or moors any boat or buoy, or places any stake, post, or thing on any recognised hauling ground so as to obstruct the hauling and landing of a fishing net by any fisherman, and who on being requested by such fisherman to remove or discontinue such obstruction, refuses or neglects to do so without reasonable or lawful excuse, shall for every such offence be liable to a penalty not exceeding ten pounds.

DIVISION 5.—*Prohibited methods of taking fish.*

Dynamite  
and  
explosive  
substances.

**33.** (1) Any person who uses dynamite or other explosive substance with intent thereby to take or destroy fish in any tidal or inland waters, shall for every such offence be liable to a penalty of not less than ten pounds and not exceeding fifty pounds.

(2)

(2) Any person who explodes any dynamite or other explosive substance in any tidal or inland waters, shall for every such offence be liable to a penalty not exceeding fifty pounds.

(3) If any person is found in possession of or has in a boat any dynamite or other explosive substance immediately after an explosion has occurred, it shall be presumed in the absence of evidence to the contrary, that he caused the explosion.

(4) If any person is found in possession of or has in a boat fish injured or destroyed by or in consequence of an explosion of dynamite or other explosive substance, it shall be presumed in the absence of evidence to the contrary—

- (a) that he caused the explosion; and
- (b) that he caused the explosion with intent to take or destroy fish.

(5) (a) It shall be a sufficient defence to any prosecution for an offence against subsection two of this section if the person charged proves that the acts constituting the alleged offence were done—

- (i) in pursuance of a permit issued by the Minister; and
- (ii) in the manner and in accordance with the terms and conditions prescribed by the permit or by the regulations.

(b) The regulations may prescribe the manner of issuing such permits, the form of the permit, the fee to be paid therefor, and the conditions to be observed by the holder of any permit, and may provide for the suspension and cancellation of permits.

(c) A permit may extend to—

- (i) explosives generally or to a particular explosive specified in the permit;
- (ii) tidal and inland waters generally or to the particular tidal or inland waters or part thereof specified in the permit.

(d) A permit shall, unless sooner cancelled or suspended remain in force until the expiration of the period specified therein and no longer.

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Poisonous  
materials,  
chemicals,  
and waste  
products.

**34.** (1) Any person who puts any poison, lime, or noxious material in any tidal or inland waters with intent thereby to take or destroy any fish, shall for every such offence be liable to a penalty of not less than ten pounds and not exceeding fifty pounds.

(2) Any person who causes or knowingly permits to flow, or puts or knowingly permits to be put into any tidal or inland waters, any liquid or solid matter injurious to fish, or the spawning grounds, spawn, or food of fish, shall for every such offence be liable to a penalty not exceeding fifty pounds, and where the offence is a continuing one to a penalty not exceeding five pounds for each day during which the offence continues.

DIVISION 6.—*Consignment and sale of fish.*

Consignment of  
Murray cod,  
etc., ungutted  
and ungilled.

**35.** Any person who consigns for the purpose of sale Murray (or trout) cod, golden perch (yellow belly), or freshwater catfish, the gills and gut of which have not been previously removed, shall be guilty of an offence against this Act.

Gutting  
of fish.

**36.** (1) The regulations may provide that fish shall, after a date to be specified in such regulations, be gutted before being consigned, forwarded or offered or exposed for sale or before being landed in New South Wales for sale from any boat engaged in fishing in ocean waters.

(2) Any regulations made under this section may apply—

- (a) to fish generally, or to any specified species of fish, or to all fish other than fish of a specified species;
  - (b) to waters generally, or to any specified waters, or to waters other than those specified;
  - (c) to the whole of the year, or to any specified part of the year, or to the whole of the year other than a specified part;
  - (d) to all fish of specified species, or to fish of such species beyond a specified weight or size, or to fish of all species beyond a specified weight or size;
- (c)

(e) to all boats engaged in fishing in ocean waters or to any specified classes of such boats, or to all such boats other than boats of specified classes, and such classes may be specified in relation to the tonnage or the method of fishing or otherwise.

(3) Any person who contravenes any provision of any regulation made with respect to any of the matters referred to in this section shall be guilty of an offence.

(4) (a) No fish, after being offered or exposed for sale, shall be removed to any ice-house, cold-storage or refrigerating chamber, unless such fish shall have been previously gutted.

(b) Any person who contravenes the provisions of this subsection shall be liable for a first offence to a penalty not exceeding five pounds and for a second or any subsequent offence to a penalty of not less than five pounds and not exceeding twenty pounds.

(5) For the purposes of this section "fish" shall mean all or any of the varieties of estuarine, marine and freshwater fishes.

**37.** Any person who fails to comply with any regulations relating to the packing, icing, or handling of fish consigned or to be consigned for sale, shall be guilty of an offence. Packing  
of fish.

If a fisherman is convicted of an offence against this section, in addition to any penalty imposed upon him, his license as a fisherman may be suspended or cancelled by the Minister, and such a conviction shall be a sufficient ground for the refusal of a license.

**38.** (1) Every person consigning fish for sale shall set out distinctly on labels securely attached to the container the christian name, surname, and address of the owner of such fish, together with the name of the place from which they are consigned. Containers  
shall be  
properly  
labelled.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence, and shall be liable to a penalty not exceeding one pound.

(3) Where a fisherman is convicted of a second or subsequent offence against this section his license may be suspended by the Minister for a period not exceeding one month.

(4)

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(4) Such suspension shall be in addition to any penalty imposed on him in respect of the offence.

Standard  
containers.

**39.** (1) The Governor may by regulations require that any or all species of fish consigned for sale shall, after a date to be specified in the regulations, but not earlier than three months after the publication thereof, be packed in containers of the dimensions and description prescribed in such regulations.

(2) Any person who fails to comply with the requirements of any regulation made under this section shall be guilty of an offence.

Licensing of  
fish agents  
and salesmen

**40.** (1) No person other than the original owner shall sell fish in any fish market established by the Municipal Council of Sydney under Part XIII of the Sydney Corporation Act, 1932-1934, as amended by subsequent Acts, or provided and controlled by the council of a municipality or shire, unless he holds a license under this section to act as a fish agent or salesman.

(2) Applications for licenses under this section shall be made to the Minister.

(3) The regulations may—

- (a) prescribe the manner in which applications for a license under this section shall be made;
- (b) prescribe the forms of the respective licenses and the terms and conditions to be included in the respective licenses;
- (c) prescribe the fees to be charged in respect of such licenses but so as not to exceed—
  - (i) in the case of a fish agent's license—the sum of twenty pounds per annum;
  - (ii) in the case of a salesman's license—the sum of two pounds per annum;
- (d) prescribe the conditions upon which licenses under this section may be transferred and may prescribe different conditions for each class of license;
- (e) provide that a license to act as a fish agent shall not be issued unless the applicant has deposited with the Minister such guarantee or bond for the proper conduct of his business as such as may be prescribed.

(4)

(4) A license under this section to act as a salesman shall not be issued to any person other than an employee of a person licensed under this section to act as a fish agent.

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(5) The Minister may refuse any application for a license under this section.

The Minister may cancel any license issued under this section if the terms and conditions thereof are not observed and performed by the licensee. Upon cancellation all fees paid in respect of the license shall be forfeited.

41. The Sydney Corporation Act, 1932-1934, as amended by subsequent Acts, is amended—

Amendment of Act No. 58, 1932.

(a) (i) by omitting from section one hundred and ninety-two the definition of the expression "The Fisheries Acts";

Sec. 192.

(ii) by inserting in the same section after the definition of "fish" the following new definition:—

"Original owner" in relation to fish means the person by whom or by whose servants any fish are taken from any waters, and includes the first owner of any imported fish after the landing of such fish in New South Wales.

(iii) by inserting in the same section after the definition of "sell" the following new definition:—

"Wholesale" includes any sale of fish (other than oysters, prawns, lobsters, or crayfish and crabs) in a quantity exceeding thirty pounds in weight; any sale of oysters in a quantity exceeding one bushel; any sale of lobsters or crayfish in a quantity exceeding one half-dozen; any sale of crabs in a quantity exceeding one dozen; and any sale of prawns in a quantity exceeding ten pounds; but shall

**Fisheries and Oyster Farms Act.****No. 58, 1935.**

shall not include any sale of a single fish of a weight exceeding thirty pounds.

- Sec. 195 (1).** (b) by omitting from subsection one of section one hundred and ninety-five the words "the Fisheries Acts and the regulations made" and by inserting in lieu thereof the words "the Fisheries and Oyster Farms Act, 1935, and the regulations for the time being in force";
- Sec. 196.** (c) (i) by omitting from subsection two of section one hundred and ninety-six the words "unless the fish has previously been sold by auction in one of the markets referred to in subsection one of this section," and by inserting in lieu thereof the words "save in one of the markets referred to in subsection one of this section unless such fish has previously been sold in one of such markets";
- (ii) by omitting from the same subsection the words "so sold by auction" and by inserting in lieu thereof the words "so sold";
- Sec. 198.** (d) by omitting from section one hundred and ninety-eight the words "under the regulations made under the Fisheries Acts, and for the time being in force, to sell fish by auction in any market established by the council, shall be entitled so to do" and by inserting in lieu thereof the words "under the Fisheries and Oyster Farms Act, 1935, or the regulations for the time being in force thereunder, to sell fish in any market established by the council shall be entitled to sell fish by auction or otherwise in any such market";
- Sec. 192.** (e) by omitting from subsection one of section one hundred and forty-nine the words "Fisheries Acts" and by inserting in lieu thereof the words "Fisheries and Oyster Farms Act, 1935."

DIVISION

## DIVISION 7.—Returns.

No. 58, 1935.

**42.** (1) The Minister may, from time to time, by notice published in the Gazette and in one or more newspapers circulating in the locality in which the operations are carried on, require persons engaged in the operations referred to in subsection two of this section, to furnish returns in or to the effect of the prescribed form as to the catch, sales, output, or business of such persons.

(2) The operations in respect of which a return may be required under this section shall be—

- (a) the cultivation of oysters;
- (b) the taking of fish for sale;
- (c) the sale of fish at any market or at any establishment at which fish is sold which has not passed through a market;
- (d) the preserving, curing, smoking, drying, or salting of fish;
- (e) the canning or bottling of fish or of any fish product intended for human consumption;
- (f) the preparation of fertilisers from fish or of any fish product or by-product not intended for human consumption;
- (g) the carriage of fish or oysters by sea or land.

(3) A notice under this section may require that a return shall be furnished by all persons engaged in the operations referred to in subsection two of this section, or in such of those operations as are specified in the notice, or by any specified class of such persons, or by all such persons other than persons of a specified class.

(4) The notice may require returns to be furnished at such periods as may be specified therein, and may require that separate particulars shall be furnished as to the weight, quantity, value, or price of any one or more varieties or species of fish specified in the notice or as to the locality in which any fish or any one or more varieties or species of fish specified in the notice were taken.

(5)

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(5) Any person who neglects or fails to furnish a return in accordance with this section, or who furnishes any false information in any such return shall be guilty of an offence.

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PART IV.

TROUT AND SALMON.

DIVISION 1.—*Acclimatisation districts.*

Acclimatisa-  
tion  
districts.

**43.** The Governor may, from time to time, by proclamation published in the Gazette, declare that any specified area within the boundaries of which trout fry, or young or mature salmon or trout, have been or are being liberated, placed or transplanted, shall be an acclimatisation district for the purposes of this Part of this Act.

Any such proclamation shall define the boundaries of the area thereby declared to be an acclimatisation district.

Such definition or any definition pursuant to section forty-four may be by reference to county, parish or portion boundaries or to roads or natural features.

The Governor may, from time to time, by a further proclamation published in the Gazette, revoke or amend any such proclamation.

DIVISION 2.—*Acclimatisation societies.*

Registration  
of acclima-  
tisation  
societies.  
cf. N.Z. Act  
1908, No. 6,  
s. 51.

**44.** (1) Any society consisting of not less than ten members (in this Part of this Act referred to as an acclimatisation society) the objects of which as set out in the rules are wholly or mainly the hatching, rearing, distribution, or protection of salmon or trout, may, subject to any regulations made under this Part of this Act, apply to the Governor for registration by depositing in the office of the Minister a copy of its rules signed by the chairman of the society and countersigned by three of the members thereof, together with a statement showing the number of members of the society and indicating the area in respect of which the society desires to be registered.

Such

Such area may comprise the whole of or any part of an acclimatisation district.

No. 53, 1935.

The rules shall provide for the nomination of a person who may be served with notices to the society and his address, and for the communication to the Minister of any change of such person or of his address.

(2) If the Governor is satisfied that the rules deposited are not repugnant to this Act or to any regulation made thereunder, and that the society is qualified to apply for registration under this section, he may by writing under his hand grant the application for registration either without amendment or with such amendment of the area indicated therein as to him seems fit.

(3) As soon as is practicable after the grant of registration, a notification of the registration shall, together with the name or description of the area in respect of which the registration was granted, be published in the Gazette, and the date of such publication shall be deemed to be the date of registration.

(4) No amendment of the rules of an acclimatisation society shall have any force or effect, unless application for the registration of the amendment has been made and granted in like manner.

(5) Upon registration under this section an acclimatisation society shall become a body corporate by the name or title stated in the rules, and shall have perpetual succession and a common seal, and in its corporate name may hold and dispose of real and personal property, and may sue and be sued, and may recover any moneys due to the body corporate, whether by a member thereof or not.

(6) Not more than one acclimatisation society shall be registered in respect of the same area.

(7) (a) The Governor may at any time, upon application by any acclimatisation society, by notification in the Gazette, increase, reduce or alter in any way the area in respect of which such society is registered.

(b) The Governor may in like manner, notwithstanding that no such application may have been made, reduce or alter the area in respect of which any acclimatisation

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acclimatisation society is registered, after having given such notice to such society as may be prescribed by the regulations.

(c) Every such notification shall define the area as increased, reduced or altered in pursuance of this subsection, and the area as so increased, reduced or altered shall be deemed to be the area in respect of which the society is registered.

Property  
in certain  
trout.

**45.** For the purposes of this Part of this Act the property in all salmon or trout in or upon the area in respect of which any acclimatisation society is registered or in or upon any lands appropriated or resumed for the establishment of salmon or trout hatcheries or breeding ponds the control and management of which have been transferred to any such society, shall be deemed to be vested in such society.

Acclimatisa-  
tion society  
may provide  
camping  
grounds, etc.

**46.** A registered acclimatisation society may, with the approval of the Governor, expend any moneys received under this Part of this Act or the regulations made in relation to any of the matters referred to therein in the purchase of land within the area in respect of which it has been registered for camping grounds for anglers and in the erection thereon or on any lands, the control and management of which are vested in the society, of necessary buildings for the accommodation of anglers, and in otherwise providing for their convenience.

Accounts.  
cf. N.Z. Act,  
1908, No. 6,  
ss. 52, 53.

**47.** (1) Every duly registered acclimatisation society shall on or before the thirty-first day of May in each year furnish to the Colonial Treasurer a full statement of its accounts, showing in detail the several receipts and items of expenditure of the society up to the thirtieth day of April next preceding.

Such statement shall be accompanied by a balance-sheet duly audited, and shall be published once at least in a newspaper circulating within the area in respect of which the society is registered.

(2) If any society makes default for the space of three months in forwarding such statement and balance-sheet in manner aforesaid, or fails to publish the same as directed in subsection one of this section, such society shall not thereafter be entitled to receive, nor shall the

Colonial

Colonial Treasurer thereafter pay to such society during such default, any moneys received in respect of fees or fines under this Act. No. 58, 1935.  
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**48.** (1) If any registered acclimatisation society fails to comply with the requirements of section forty-seven of this Act, or contravenes or fails to comply with any other provision of this Part of this Act, or of the regulations made in respect of any of the matters referred to in such Part, the Governor may by notification in the Gazette cancel the registration of the society. Cancellation  
of registra-  
tion.

(2) (a) If it appears from the report of an inspector or other officer that any registered acclimatisation society is not taking proper steps to carry out, within the area in respect of which it is registered, such of its objects as stated in its rules as relate to the hatching, rearing, distribution or protection of salmon or trout, the Minister may by notice served by post upon the person nominated pursuant to the rules to be served with notices to the society, require the society to show cause why its registration should not be cancelled.

(b) If no representations are made by the society within one month after the service of such notice the Minister may recommend the Colonial Treasurer to withhold payment of any moneys received in respect of fees and fines under this Act, and which by or under this Act are payable to the society, and the Colonial Treasurer may withhold payment of the same accordingly.

(c) If after consideration of the representations (if any) made by the society the Minister is satisfied that the society has for a period of three months or upwards failed to take proper steps to carry out such objects, he may recommend the Governor to cancel the registration of the society, and the Governor may cancel the same accordingly by notification in the Gazette.

(3) Where the registration of an acclimatisation society is cancelled under this section—

(a) the Colonial Treasurer shall cease to pay to the society any moneys received in respect of fees and fines under this Act;

(b)

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- (b) the property in any salmon or trout which by or under this Act is vested in the society shall be divested from the society and shall vest in His Majesty;
- (c) the property in any land purchased by the society out of moneys received under this Part of this Act and any buildings or other improvements erected on any lands out of such moneys, shall be divested from the society and shall vest in the Minister;
- (d) any moneys received by the society under this Part of this Act, and held by the society at the date upon which its registration is so cancelled shall be paid to and may be recovered by the Minister;
- (e) the society shall cease to have the control and management of any lands, the control and management of which was at the date upon which its registration was cancelled, vested in the society;
- (f) the society may be wound up as an unregistered company in accordance with the provisions of the Companies Act, 1899, or any Act replacing the same.

DIVISION 3.—*Trout hatcheries.*

**Trout  
hatcheries.**

**49.** (1) Where in the opinion of the Governor it is necessary or desirable in the public interest to acquire any land for the establishment of salmon or trout hatcheries or breeding ponds, he may authorise the appropriation or resumption of the land.

(2) Thereupon the Minister for Public Works may appropriate or resume the land by Gazette notification under Division 1 of Part V of the Public Works Act, 1912, and compensation for such appropriation or resumption shall be ascertained and paid accordingly.

(3) Not more than twenty acres of land shall be so appropriated or resumed for any one hatchery.

(4)

(4) For the purposes of the Public Works Act, 1912, such appropriation or resumption shall be deemed to be for the purpose of carrying out an authorised work within the meaning of that Act.

(5) The Governor may from time to time by notification published in the Gazette, set apart any streams, waters, or springs for the purpose of the breeding or hatching of salmon or trout.

The regulations made under this Part may make provision for the control and management and the regulation or prohibition of the use of any streams, waters, or springs so set apart.

(6) Where lands appropriated or resumed under this section are situated within an acclimatisation district, the control and management of such lands may, with the approval of the Governor, subject to the regulations, be transferred to any acclimatisation society which has been registered in respect of an area which includes or is adjacent to such lands, upon such terms and conditions as the Governor may impose, or as may be prescribed.

DIVISION 4.—*Close season for trout.*

**50.** (1) Notwithstanding anything contained in this Act the close season for trout throughout the State of New South Wales shall commence on the first day of May, and shall end on the thirtieth day of September, both days inclusive, in every year.

Close season  
for trout.

(2) The Governor may by notification published in the Gazette extend, reduce or otherwise alter the close season for trout either generally or in any part of New South Wales specified in the notification, or in any part of New South Wales other than a part specified in such notification.

(3) Any person who takes or attempts to take trout from any waters by any means whatsoever, or who has in his possession or on his premises, or who sells or attempts to sell, or offers or exposes or consigns for sale any trout during the close season shall be guilty of an offence and shall be liable upon summary conviction to a penalty of not less than two pounds and not exceeding fifty pounds.

DIVISION 5.—*Licenses.*

Licenses  
to fish for  
salmon or  
trout.

**51.** (1) No person, other than the holder of a license issued under this section, shall take, or attempt to take, any salmon or trout from any of the waters of New South Wales.

(2) (a) Licenses issued under this section shall remain in force only during one open season for salmon or trout, or during such part of one open season as may be specified in the license.

(b) Such license may apply to all the waters of the State where salmon or trout may lawfully be taken, or to all of such waters other than specified waters, or to specified waters only.

(3) (a) The regulations shall prescribe the fees which shall be charged for licenses issued under this section.

(b) Such fees may vary according to the term of the license, the waters to which it is applicable, and whether the person licensed is a male or female, and has, or has not, attained the age of eighteen years.

(4) A license issued under this section shall be termed a "license to take salmon or trout."

(5) Any person who takes, or attempts to take, any salmon or trout in contravention of the provisions of subsection one of this section shall be liable to a penalty of not less than two pounds nor more than ten pounds.

(6) Notwithstanding the foregoing provisions of this section, any person who is in occupation of any land under any tenure may during any open season take salmon or trout from waters upon such land without license or payment of fee, but subject to the observance of all the other provisions of this Part of this Act and the regulations made in relation to any of the matters referred to therein and of any notification or proclamation made under this Act.

DIVISION

**Fisheries and Oyster Farms Act.**

643

**DIVISION 6.—Offences.**

**No. 58, 1935.**

**52.** Any person who sells or lets the right to fish for salmon or trout in any waters shall be guilty of an offence. Letting right to fish.

**53.** (1) Any person who takes or attempts to take salmon or trout from any inland waters otherwise than by means of a rod held in the hand and line shall be guilty of an offence. Taking of salmon and trout.

(2) It shall not be an offence against this section for a person to use a gaff or hand net as an auxiliary to the taking of salmon or trout by means of a rod held in the hand and line.

**54.** Any person who uses any light for the purpose of taking salmon or trout shall be guilty of an offence. Use of light prohibited.

**55.** Any person who buys, sells or exposes or consigns for sale any trout, or who without reasonable excuse (the proof of which shall lie upon him) buys, sells or exposes or consigns for sale, or has in his possession any salmon or trout roe shall be guilty of an offence. Salmon or trout roe. cf. Act No. 119, 1902, s. 31.

**56.** Any person who—

- (a) wilfully takes or attempts to take from any waters any spent salmon or trout, or the young of salmon or trout or any salmon or trout bearing the markings known as “parr” marks; Penalty for doing certain things. cf *Ibid* s. 32
- (b) buys, sells, or exposes, or consigns for sale, or has in his possession or in his boat any spent salmon or trout, or the young of salmon or trout, or any salmon or trout bearing the markings known as “parr” marks, or any salmon or trout taken in contravention of this Act;
- (c) places any engine, device, or implement in any inland waters for the purpose of obstructing the passage of salmon or trout;
- (d) wilfully destroys any spawning bed, or any bank or shallow on which the spawn of salmon or trout may be deposited;
- (e) wilfully disturbs or attempts to take salmon or trout when spawning, or when on or near their spawning beds,

shall be guilty of an offence and shall be liable to a penalty not exceeding fifty pounds.

**DIVISION**

**Regulations.** **57.** The Governor may make regulations not inconsistent with this Part of this Act prescribing all matters which by this Part of this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying this Part of this Act into effect; and in particular, but without limiting the generality of the foregoing power, the Governor may make regulations—

- (a) providing for the manner in which applications shall be made for licenses to take salmon or trout, the form and manner of issue of such licenses, the places at which and the persons by whom such licenses shall be issued, the fees which shall be paid therefor, and the circumstances in which a license may be refused, suspended or cancelled;
- (b) providing for the payment to any registered acclimatisation society of any penalties or license fees or part thereof to be used for the purpose of the hatching, rearing, distribution, or protection of salmon or trout or for any other purpose authorised by or under this Part;
- (c) providing for the establishment, management, and control of salmon or trout hatcheries and breeding ponds;
- (d) providing for the preservation and propagation of young salmon or trout, salmon or trout fry, and spawn;
- (e) prescribing and imposing conditions and restrictions upon the taking of salmon or trout;
- (f) prescribing the maximum catch or bag limit of salmon or trout which may be taken by any one person on any one day;
- (g) prohibiting the doing of any act which is likely to be detrimental to salmon or trout or salmon or trout fishing or likely to pollute any waters.

## PART V.

## OYSTERS, OYSTER FARMS, AND LEASED AREAS.

58. (1) Any person may apply to the Minister for a lease of an oyster farm under this Part. Applications  
for leases.

(2) Upon receipt of any such application the Minister shall if the land applied for appears to be available for lease, publish in the Gazette and in a newspaper printed and circulating in the district in which the area is situated a notice of the receipt of the same and shall in and by such notice limit a time within which objections to the granting of a lease may be lodged.

(3) The following provisions shall apply where the application is for a lease of Crown lands or for a new lease of a leased area:—

- (a) the area applied for shall be sufficiently indicated in the application;
- (b) the inspector for the district within which such area is situated shall—
  - (i) measure the area and mark the boundaries thereof;
  - (ii) assess the rental value of the area so measured and marked;
  - (iii) forward to the Minister particulars of the area and of the value so assessed;
- (c) upon receipt of such particulars the Minister shall—
  - (i) cause a plan of the area to be prepared and recorded;
  - (ii) subject to section fifty-nine of this Act determine the rental value of the area;
  - (iii) classify the area.

(4) The following provisions shall apply where the application is for a lease for a renewed term:—

- (a) the area applied for shall be sufficiently indicated in the application;
- (b) the inspector for the district within which the area is situated shall—
  - (i) assess the rental value of the area;
  - (ii) if so instructed, remeasure the area;
  - (iii)

No. 58, 1935.

(iii) forward to the Minister particulars of the value so assessed and in any case where he has been instructed to re-measure the area of the measurement of the area;

(c) upon receipt of such particulars the Minister shall, subject to section fifty-nine of this Act, determine the rental value of the area.

(5) Areas may be classified, pursuant to this section as "special lands," "average lands" or "inferior lands."

(6) In any case where the area is classified as "special lands" the application shall, subject to section sixty-one of this Act, be refused and the area notified as available for lease by public auction or public tender in accordance with the provisions of the said section.

Rentals.

**59.** (1) The rental of every lease of land which has a frontage to high-water mark or to a breakwater, training-wall, guide-bank or retaining wall shall be determined for each one hundred yards of such frontage.

The rental of every lease of land which has no such frontage shall be determined for each acre of the land in the lease.

(2) The rental of every lease shall, subject to this section, be determined by the Minister.

(3) If the applicant for a lease is dissatisfied with the determination of the Minister he may apply to the Minister to refer the matter to the local land board.

(4) Upon receipt of any such application the Minister shall or of his own motion may refer to the local land board the determination of the rental of any lease.

(5) The local land board shall have jurisdiction to hear and determine any reference under this section, and for that purpose shall have and may exercise the like powers and authorities which it has or may exercise in any matter arising under the Crown Lands Consolidation Act, 1913.

Any such determination of the local land board shall be final and conclusive.

(6).

(6) The provisions of this section shall extend to the determination of the rental of a lease for a renewed term of any land subject to a lease existing at the commencement of this Act or granted under this Act, where in any such case the conditions of the lease provide that the rental of the lease for the renewed term shall be determined by the Minister after revaluation of the lands comprised in the lease.

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**60.** (1) All leases under this Part shall be granted by the Minister.

Leases.

Every such lease shall be in the prescribed form and shall contain the prescribed covenants and conditions.

(2) The regulations may prescribe different forms for and different covenants and conditions to be included in leases of land of each of the classes into which lands may be classified under this Part.

(3) Where the land in any lease has a frontage to high-water mark or to a breakwater, training wall, guide-bank, or retaining wall, the boundaries of such land shall not extend beyond a distance of one hundred yards from high-water mark or from such breakwater, training-wall, guide-bank or retaining wall, nor beyond the middle line of the stream or inlet, whichever is the shorter distance.

(4) No lease granted under this Part shall include a recognised hauling ground.

**61.** (1) The Minister may offer, by public auction or public tender, the lease of any area which has been classified as special lands for any term not exceeding fifteen years at the rental determined in accordance with this Part, and subject to the covenants and conditions prescribed for inclusion in a lease of lands so classified.

Leases of special lands.

(2) Where a lease of any such area has been granted, the Minister, on the application of the lessee made during the last year but one of the term of the lease, shall, if he is satisfied that the lessee has substantially observed and performed the covenants and conditions of the lease, grant a further lease for a like term, at a rental to be determined in accordance with this Act, subject to the prescribed covenants and conditions.

(3)

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(3) The provisions of subsection two of this section shall not be construed to give the lessee a right to more than one such further lease.

Leases of average lands.

**62.** (1) The Minister may lease any area which has been classified as average lands for any term not exceeding fifteen years, at the rental determined in accordance with this Part and subject to the covenants and conditions prescribed for inclusion in a lease of lands so classified.

(2) Where a lease of any such area has been granted, the Minister, on the application of the lessee made during the last year but one of the term of the lease, shall, if he is satisfied that the lessee has substantially observed and performed the covenants and conditions of the lease, grant a further lease for a like term at a rental to be determined in accordance with this Part, subject to the prescribed covenants and conditions.

(3) The provisions of subsection two of this section shall not be construed to give the lessee a right to more than one such further lease.

Leases of inferior lands.

**63.** (1) The Minister may lease any area which has been classified as inferior lands for any term not exceeding ten years, at the rental determined in accordance with the provisions of this Part and subject to the covenants and conditions prescribed for inclusion in a lease of lands so classified.

(2) No oysters shall be taken from any area leased under this section, during the first year of the term of the lease except with the written approval of the Minister.

(3) Any area leased under this section may be reclassified as average lands during the last year of the term of the lease.

(4) The Minister, on the application of the lessee made during the last year of the term of any lease granted under this section, shall, if he is satisfied that the lessee has substantially observed and performed the covenants and conditions of the lease, grant a further lease at a rental to be determined in accordance with this Part for a term of ten years when the classification of the area is not altered, or for a term of fifteen years when the area

is

is reclassified as average lands, and subject in either case to the prescribed covenants and conditions which may be applicable.

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(5) The provisions of subsection four of this section shall not be construed to give the lessee a right to more than one such further lease.

**64.** (1) Any person who proves to the satisfaction of the Minister that he has discovered a natural oyster-bed shall have a prior right to a lease of the area of Crown lands upon which such bed is situated under section sixty-two or section sixty-three of this Act.

Natural  
oyster-  
beds.

(2) No such prior right shall apply in any case where the area is classified as special lands.

**65.** (1) No preferent right under this section shall arise in respect of any area which is classified as special lands.

Preferent  
rights.

(2) (a) The lessee of any leased area who has, in the opinion of the Minister, substantially observed and performed the covenants and conditions of the lease, shall have a preferent right to a lease of such area.

Such preferent right shall arise—

- (i) where the lessee of any lease existing at the commencement of this Act has not made application in accordance with the conditions of the lease for a renewal thereof—upon the expiration of the lease;
- (ii) where the lessee has not made application under section sixty-two or section sixty-three of this Act for a lease for a further term—upon the expiration of the lease;
- (iii) where the lessee has made such an application—upon the expiration of the renewal of the lease or of the lease for the further term.

(b) The preferent right conferred by this subsection shall be a right, as against any other applicant, to a lease of the area under section sixty-two of this Act, where the area is classified as average lands, or under section sixty-three of this Act, where the area is classified as inferior lands.

(c)

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(c) The preferent right conferred by this subsection shall lapse unless application for the lease is made not later than thirty days after the date upon which such preferent right arose.

(3) (a) The lessee of any leased area having a frontage to high water mark who has, in the opinion of the Minister substantially observed and performed the covenants and conditions of the lease, shall have a preferent right to a lease of an area of Crown lands adjoining the off-shore boundary of the leased area.

(b) The preferent right conferred by this subsection shall be a right, as against any other applicant, to a lease of such area under section sixty-two of this Act where the area is classified as average lands or under section sixty-three of this Act where the area is classified as inferior lands.

(c) The preferent right conferred by this subsection shall lapse if application for a lease of the area is made by any other person, and the person entitled to such preferent right does not make application for a lease of the area within the time limited by the Minister for lodging objections to the granting of a lease upon such firstmentioned application.

(d) The preferent right conferred by this subsection shall be postponed to any preferent right conferred by subsection two of this section and to the rights conferred by subsection two of section sixty-two and subsection four of section sixty-three of this Act.

(4) (a) An applicant for a lease who is not at the time of such application a lessee, or who, in the opinion of the Minister, has not a sufficient area of land under lease to enable him to engage profitably in oyster culture, shall have a preferent right to a lease of the area indicated in his application.

(b) The preferent right conferred by this subsection shall be a right, as against any other applicant who already has, in the opinion of the Minister a sufficient area of land under lease to enable him to profitably engage in oyster culture, to a lease of such area under  
section

section sixty-two of this Act where such area is classified as average lands or under section sixty-three of this Act where such area is classified as inferior lands. No. 58, 1935.

(c) The preferent right conferred by this subsection shall be postponed to any preferent right conferred by subsection two or subsection three of this section, and to the rights conferred by subsection two of section sixty-two and subsection four of section sixty-three of this Act.

(5) Nothing in this section shall be construed to make it obligatory on the Minister to grant a lease of any area.

**66.** (1) The property in all improvements on leased areas shall, where the term of the lease expires or is otherwise determined under this Part, vest in the Crown. Improvements on expired leases.

(2) Where the term of any such lease has expired and the land comprised therein is classified as average lands or inferior lands and the lessee under such expired lease has made application for a lease of the area—

- (a) the value of the improvements shall not be taken into account in assessing the rental to be paid by such lessee under the new lease;
- (b) such lessee shall not be required to pay for such improvements as a condition of the granting to him of the new lease.

(3) Where the term of any such lease has expired and the land comprised therein is classified as special lands—

- (a) the Minister shall cause the improvements to be valued, and shall notify the lessee under the expired lease as to the value thereof;
- (b) if the lessee is dissatisfied with the value so notified to him, he may require the Minister to refer the matter to the local land board for determination;
- (c) the local land board shall have jurisdiction to hear and determine any such reference, and for that purpose shall have and may exercise the like powers which it has or may exercise in any matter arising under the Crown Lands Consolidation Act, 1913;

(d)

No. 58, 1935.

- (d) the determination of the local land board on any such reference shall be final and conclusive;
- (e) it shall be a condition of any public auction or public tender at which a lease of such area is offered that the successful bidder or tenderer shall pay, in addition to the rental and any premium offered, the value of such improvements as determined under this subsection;
- (f) if the successful bidder or tenderer is the lessee under the expired lease, the Minister shall waive payment of the value of the improvements as so determined;
- (g) if the successful bidder or tenderer is not the lessee under the expired lease the Minister shall pay to such lessee the value of the improvements as so determined when received from such successful bidder or tenderer.

Property  
and rights  
conferred  
by lease.  
Act No. 119,  
1932, s. 35.

**67.** Every lease of an oyster farm shall vest in the lessee, his executors, administrators, and assigns all oysters within the area leased, and the exclusive right during the currency of the lease of laying and planting oysters on and of dredging and taking oysters from the area leased, but subject always to the several provisions of this Act and of any regulations and the right of any inspector to enter upon such area.

Oysters not  
to be taken  
between  
sunset and  
sunrise.

**68.** (1) The lessee of a leased area shall not nor shall his agents or servants, remove oysters from such leased area during the hours between sunset and sunrise.

Any person acting in contravention of this section shall be guilty of an offence and shall be liable to a penalty of not less than ten pounds.

(2) Any person who between the hours of sunset and sunrise is found on any tidal water in a boat containing oysters, other than a boat engaged in overseas, interstate or coastwise carrying trade, shall be deemed to be in possession of oysters unlawfully obtained.

Subletting  
prohibited.

**69.** No person shall sublet the whole or any portion of an oyster farm without the consent in writing of the Minister.

**70.** Occupation under a lease of an oyster farm shall not give any right to the lessee to occupy or to use any portion of Crown lands abutting on but not included in his lease, except for such purposes and during such times as may be prescribed.

No. 58, 1935.

Abutting Crown lands not included in lease.

cf. Act No. 119, 1902, s. 36.

**71.** (1) No person shall erect or cause to be erected on any leased area any bathing enclosure, boatshed, slip, jetty, staging, pontoon, or other structure except under the conditions and in the manner prescribed.

Erection of structures.

(2) All oysters attached to any bathing enclosure, boatshed, slip, jetty, staging, pontoon or other structure erected on any leased area shall be the property of the lessee of such leased area.

**72.** Any area leased under this Part may be described in the lease by reference to posts, stakes, buoys, marks, connections, or natural features showing the limits of such leased area or oyster farm in a manner sufficient to allow of their identification.

Leased area or farm—how described.  
cf. *Ibid.* s. 37.

**73.** The Minister may accept a surrender of any lease of a leased area or part thereof after the second year of its currency in any case where it shall appear to him that oyster culture cannot be carried on upon the area with any reasonable hope of success, or where for any other reason he considers such surrender should be accepted.

Surrender of leases.  
cf. *Ibid.* s. 38.

**74.** (1) The lessee of a leased area or the owner or occupier of any land adjoining such area may apply in the prescribed manner to the Minister to determine a way of access to such adjoining land over a part of the foreshore comprised in such area.

Way of access may be determined by Minister.  
cf. *Ibid.* s. 38A.

The Minister, after serving notice of any such application on the owner or occupier, or on the lessee, as the case may be, may, if he thinks fit, determine a way of access as aforesaid, and may, in such determination, prescribe what notice thereof shall be given; and may further impose such conditions on the lessee, and direct him to do such work for facilitating access by such way as he thinks reasonable.

(2) The Minister may also, without any such application, after giving notice to the lessee and the owner of the adjoining land, make any determination and impose any conditions and give any directions as aforesaid.

(3)

No. 58, 1925.

(3) On such way being so determined, it may be used as a way of access to the land adjoining such area, and any person who uses the foreshore for access as aforesaid otherwise than by the said way shall be liable to a penalty not exceeding ten pounds:

Provided that it shall be a defence to any proceeding for such penalty if it is proved that the notice thereof prescribed by the Minister has not been given, or that the conditions imposed on or directions given to the lessee under this section have not been complied with.

Reclama-  
tion rights  
under Crown  
Lands Acts  
preserved.  
cf. Act No.  
119, 1902,  
s. 39.

**75.** Every area leased under this Part shall be subject to all reclamation rights conferred by the Crown Lands Consolidation Act, 1913, or any Act amending the same, and subject to the right of the Crown to carry out public works upon the area or in its immediate vicinity without being liable to pay or the lessee being entitled to claim any compensation therefor.

Power to  
withdraw.

**76.** (1) The Minister may, by notice in the Gazette, withdraw from lease the whole or any part of the land comprised in any leased area in any case in which in his opinion such land is required for any public purpose.

Upon publication in the Gazette of such notice the lessee shall be entitled to compensation as hereinafter provided.

(2) The amount of compensation payable under this section shall be such amount as may be fixed by agreement made between the Minister and the lessee, and in default of agreement shall be determined by the local land board, and shall be based upon the unimproved value for purposes of oyster farming of the interest of the lessee in the land comprised in the lease or the part of such land so withdrawn as the case may be, together with the cost of removal of the oysters and of such improvements as are not the subject of any agreement under this section, and any loss which the lessee may have suffered through their compulsory removal.

(3) Within six months from the date of the publication in the Gazette of such notice, or such longer period as the Minister may approve, the lessee shall remove all improvements from the land so withdrawn, unless by agreement with the Minister some or all the improvements

are

are allowed to remain on such land. During such period he may also remove all oysters growing on such area, but shall pay rent at the rate fixed by the lease. No. 53, 1935.

In any case in which it is agreed that improvements shall be allowed to remain on the withdrawn land the value thereof shall be included in the amount of compensation.

(4) Where part only of the land comprised in a lease of a leased area is withdrawn, the lessee shall be further entitled to compensation for damage caused to the residue of the oyster farm by severance.

(5) The local land board shall have jurisdiction to hear and determine any matter arising under this section, and for that purpose shall have and may exercise the like powers and authorities which it has and may exercise in respect of a matter arising under the Crown Lands Consolidation Act, 1913.

(6) Any person dissatisfied with a determination of the local land board under this section may appeal therefrom to the Land and Valuation Court in the manner and subject to the conditions (including conditions as to payment of fees and deposit of security for costs) prescribed by rules of court of that court, and that court shall have jurisdiction to hear and determine the appeal, and its decision thereon shall be final.

(7) The provisions of this section shall not apply to any lease of an oyster farm in which a special condition is inserted providing that the whole or any part of the leased area may be withdrawn for any public purpose from the lease without compensation.

(8) Any compensation payable under this section shall be paid out of moneys provided by Parliament.

**77.** Any lessee who shall at any time be in arrear with the rent on any one or more leased areas shall not take oysters from any such area save with the written consent of the Minister, nor shall he be entitled to lease a further area until such overdue rent shall have been paid, and such lease shall be liable to forfeiture if the rent is not paid within the time prescribed.

Lessees in arrear with rent not to take oysters or be granted further areas. cf. Act No. 119, 1902, s. 41.

No. 58, 1935.

Power of  
Minister  
to cancel  
leases in  
certain  
cases.

**78.** (1) Upon receipt of a report from an inspector that the lessee of any leased area has not, within a period of one year from the commencement of his lease, taken proper measures to carry out the conditions of his lease and cultivate the leased area, the Minister may, by notice served or published as provided in subsection two of this section, call upon the lessee to show cause why the lease of such leased area should not be cancelled.

(2) Every such notice shall be in writing and shall be served upon the lessee, or in case the lessee cannot be found, shall be published once in the Gazette and three times at least in a newspaper circulating in the locality in which the leased area is situated.

(3) Upon the expiration of one month from the date of service of the notice or of the last publication thereof as the case may be, the Minister may, after consideration of the representations (if any) made by the lessee, by notification in the Gazette cancel the lease.

(4) Upon the publication of such notification all rights and privileges granted by the lease and the unexpired term thereof shall cease and determine.

Cancellation  
for misman-  
agement.  
cf. Act No.  
119, 1902,  
s. 43.

**79.** (1) Upon receipt of a report from any inspector that any leased area is being so overstocked or stripped of oysters or otherwise mismanaged by the lessee that the production of oysters thereon has been prejudicially affected or so reduced as to threaten its partial or total destruction as an oyster-bearing area, or that proper steps for cultivation have not, after the first year, been taken, the Minister may, by notice served or published, as provided in subsection two of section seventy-eight of this Act, require the lessee of the leased area to take such action as may be specified in the notice with a view to remedying the position and may, by the same or a like notice, call upon the lessee to show cause why the lease of such leased area should not be cancelled.

(2) Upon the expiration of one month from the date of service of such last-mentioned notice or of the last publication thereof, as the case may be, the Minister may, after consideration of the representations (if any) made by the lessee, by notification in the Gazette, cancel the lease of such area.

(3)

(3) Upon the publication of such notification all rights and privileges granted by the lease and the unexpired term thereof, shall cease and determine. No. 58, 1935.

**80.** Whenever the Minister shall upon the report of any inspector, or by his own inspection, be satisfied that the whole or any part of any leased area has by over-dredging or from any other cause been reduced to such a state that the taking of oysters therefrom ought to be suspended, or that the oysters are in such a condition as to be not fit for consumption as food, he may by notification in the Gazette prohibit the taking of oysters from such area. When leased areas may be closed. cf. Act No. 119, 1902, s. 44.

If any person shall without lawful authority, at any time after the publication of any such notification, and while the same remains in force, take or attempt to take oysters from any area described in such notification, such person shall incur a penalty not exceeding twenty pounds.

The Minister may, by a like notification, rescind, wholly or in part, any such notification.

Where on any leased area such reduction has in the opinion of the Minister resulted from natural causes only, such as flood or disease, the Minister may release the lessee of such area from payment of rent for the period of such suspension, or for a period of three successive years, whichever is the shorter.

**81.** (1) It shall be the duty of every lessee of a leased area to take such steps as may be necessary to keep the leased area free from disease. Leased areas to be kept free from disease.

(2) When any leased area is affected with disease, the Minister or an inspector may, by notice in writing, require the lessee to take such steps as are specified in the notice within the time specified therein, to rid the leased area of disease.

(3) Any lessee who fails to take the steps specified in any such notice within the time specified therein, shall be guilty of an offence and shall be liable to a penalty of not less than ten pounds.

(4)

No. 58, 1935.

(4) In this section "disease" means any condition of oysters which causes mortality amongst them or which renders their consumption as food undesirable in the interests of public health, and includes infestation with marine worms, borers or other pests.

When Crown lands or public oyster reserves may be closed.

**82.** (1) The Minister may declare by notification in the Gazette that any leased area or any area of Crown lands or any public oyster reserve is infected or likely to be infected by sewage matter or other contamination, or from any other cause, to such an extent as to render the oysters thereon unfit for human consumption and dangerous to human life, and may by such notification prohibit the taking of oysters therefrom for any purpose whatsoever during the period specified in the notification.

Where such notification refers to a leased area, the Minister may release the lessee from payment of rent for the period specified in the notification.

(2) If the Minister is of the opinion that the pollution of any leased area by sewage matter or any other contamination is likely to continue indefinitely, he may, by notice in the Gazette, cancel the lease of such area, and upon the publication of such notice, all rights and privileges granted by the lease, and the unexpired term thereof shall cease and determine.

(3) Any person, who shall at any time take oysters from any area in contravention of any notice issued in pursuance of subsection one of this section, shall be liable for a first offence to a penalty of not less than five pounds, nor more than fifty pounds, and for a subsequent offence to imprisonment for a term not exceeding six months.

Portions of Crown land may be exempt from leasing or be declared public oyster reserves. of Act No. 119, 1902, s. 45.

**83.** The Governor, on the recommendation of the Minister, may, by notification in the Gazette, declare any Crown land to be a public oyster reserve, and to be exempt from any power of leasing conferred by this Act, and on the like recommendation may in like manner cancel any such notification wholly or in part.

84.

**84.** All oysters on a public oyster reserve, or on Crown lands, or on any area from which the taking of oysters shall be prohibited under this Act, and all oysters taken therefrom without lawful authority, shall be the property of His Majesty.

No. 53, 1935.

Oysters on certain lands to be property of Crown. cf. Act No. 119, 1902, s. 46.

If any person without lawful authority shall dredge for or otherwise take any oysters from any such reserve, Crown lands, or area, or shall be found dredging for or taking or attempting to take oysters within the limits of any such reserve, Crown lands, or area, he shall be liable to a penalty not exceeding twenty pounds, and all oysters found in his possession shall be deemed to be oysters unlawfully taken by him.

**85.** (1) Nothing in this Act shall render liable to a penalty any person who takes oysters from any public oyster reserve or any Crown land (other than an area or reserve from which the taking of oysters has been prohibited) for his own personal consumption in the immediate vicinity of the place where they have been gathered.

Persons may take oysters from reserves and Crown lands for their own consumption cf. *Ibid.* s. 47.

(2) Any inspector may by notice under his hand posted upon any such public oyster reserve or Crown land prohibit for the period specified in the notice the taking of oysters from such reserve or Crown land if such oysters shall be in a spawning condition or shall have spat attached to them.

Every person who shall take oysters therefrom in contravention of any such prohibition shall be liable to a penalty of not more than five pounds.

**86.** It shall not be lawful for any person other than the lessee, his agents or servants, to do any of the following acts, namely:—

Protection of leased areas. cf. *Ibid.* s. 48.

- (a) to take, remove, or in any way disturb or interfere with any oysters or any stone, stick, stake, or other material whatsoever used in the cultivation of oysters upon any leased area without the consent of the lessee;
- (b) to cut or lop or remove mangroves or any timber from any leased area;

(c)

No. 58, 1935.

- (c) to deposit upon any leased area any stone, ballast, rubbish, or substance, or to dredge, dig or drag upon any leased area with any implement unless by direction or authority of the lessee, or the Minister or some duly authorised officer in the service or employment of the State;
- (d) to place upon any leased area any implement or thing likely to injure oysters except for a lawful purpose of navigation or anchorage.

Every person who does any act in contravention of this section shall be liable for the first offence to a penalty of not less than five pounds and not exceeding twenty pounds, and for the second and every subsequent offence to imprisonment for a term of not less than two months.

Every such person shall be liable to make compensation to the lessee for all damage sustained by such lessee by reason of the unlawful act of such person, and in default of payment the same may be recovered by the lessee in any court of competent jurisdiction.

Protection  
of training  
walls, etc.

**87.** (1) Notwithstanding anything contained in this Part, it shall not be lawful for the lessee of any oyster farm which includes a breakwater, training wall, guide-bank or retaining wall to remove, displace, disturb or damage in any way the stones of which such breakwater, wall or bank is composed, nor to take or remove any oysters from any such breakwater, training-wall, guide-bank or retaining wall other than oysters growing on the outside of the exterior stones.

(2) No person shall remove, displace, disturb or damage any stones of any breakwater, training wall, guide-bank or retaining wall the property in which is vested in the Crown or in any person or corporation representing the Crown.

(3) The Minister may by notice in the Gazette prohibit the taking of oysters from any Crown lands which include a breakwater, training-wall, guide-bank or retaining wall.

(4) Any person acting in contravention of any of the provisions of subsections one and two or of any notice issued in pursuance of subsection three of this section shall be liable to a penalty of not less than

two

two pounds nor more than twenty pounds, and shall be liable in addition to pay compensation for any damage done to the wall by his act. No. 58, 1935.

(5) If the lessee of any oyster farm which includes a breakwater, training-wall, guide-bank or retaining wall be convicted of an offence in respect of such area under subsection one of this section it shall be lawful for the Minister to cancel the lease of such oyster farm.

(6) The lessee of any oyster farm shall be responsible for any damage done during the term of his lease to any breakwater, training-wall, guide-bank or retaining wall within his oyster farm other than damage caused by natural agencies.

The cost of repairs rendered necessary by any damage for which a lessee is held responsible under this section may be recovered by the Minister as a debt in any court of competent jurisdiction.

**88.** The regulations may—

- (a) regulate or prohibit the cutting of any mangrove or other timber growing below high-water mark on any Crown lands for the purpose of oyster culture, either generally or in any specified area of Crown lands, or in areas of Crown lands other than specified areas;
- (b) prescribe the persons who may cut such mangrove or other timber below high-water mark, the manner and times of cutting, and the form of permit authorising any person to cut and remove same, or any other matter or thing relating thereto.

Persons may cut mangrove below high-water mark under authority.

**89.** If any lessee shall be convicted of stealing oysters from any leased area or of unlawfully receiving oysters stolen from a leased area the Minister may cancel any lease held by such lessee by notification published in the Gazette.

Penalty for oyster stealing by lessee. cf. Act No. 119, 1902, s. 42.

Upon publication of such notification all rights and privileges granted by the lease and the unexpired term thereof shall cease and determine.

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Licensing  
of oyster  
vendors.cf. Act No.  
119, 1902,  
s. 50.

**90.** (1) No person shall sell oysters whether wholesale or by retail unless he is the holder of a license under this section:

Provided that the lessee of any leased area may sell oysters taken from any area of which he is the lessee without being the holder of a license under this section.

(2) The regulations may prescribe—

- (a) the manner in which a license may be obtained;
- (b) the period for which a license shall be current;
- (c) the conditions under which a license may be transferred;
- (d) the fees payable in respect of a license or of the transfer of a license;
- (e) the circumstances under which a license may be refused, suspended or cancelled.

(3) A license under this section shall entitle the holder thereof to sell oysters during the period for which the license is current on any premises specified in the license, and from any cart, stand, basket or other receptacle.

(4) Any person who sells oysters in contravention of this section shall be liable upon conviction to a penalty not exceeding ten pounds.

(5) Any person who is the holder of a license under this section shall, on demand of an inspector, produce the same for inspection.

Any such person who, on the demand being made by an inspector, neglects or refuses to produce his license shall be liable upon conviction to a penalty not exceeding two pounds.

## PART VI.

## GENERAL AND SUPPLEMENTAL.

**91.** All rents and fees due and payable under this Act may be sued for and recovered by and in the name of the Minister on behalf of the Crown.

Recovery of rents and fees. *cf.* Act No. 119, 1902, s. 57.

**92.** All offences against this Act, and all penalties and forfeitures incurred thereunder or imposed thereby, and the liability to forfeiture of any article or thing may (except as in this Act otherwise provided) be prosecuted, determined, recovered, and enforced before and by a stipendiary or police magistrate, or any two justices, in the mode prescribed by the Justices Act, 1902.

Prosecutions. *cf.* *Ibid.* s. 52.

**93.** All penalties incurred under or imposed by this Act shall be in addition to any forfeiture.

Penalties in addition to forfeiture.

**94.** All engines, nets, and other articles used by, or in possession of any person, and all fish taken, bought, sold, offered, consigned, or exposed for sale by, or in the possession of any person contrary to the provisions of this Act, shall be forfeited to the use of His Majesty.

Certain nets, fish, etc., to be forfeited.

**95.** Where the commission of any offence against this Act involves a forfeiture of any articles, the conviction of any person for such offence shall have effect as a condemnation of such articles, without the necessity of any complaint being laid for such condemnation.

Conviction to operate as a condemnation.

**96.** Where any article has been seized as forfeited, and no proceedings have been taken within fourteen days after such seizure against any person for the offence in respect of which such forfeiture was incurred, the inspector seizing shall forthwith, after the expiration of such fourteen days, give notice in writing of such seizure to the owner of such article (unless such owner was present at the seizure, or is not known, or is not in the State, in any of which cases no notice shall be necessary) either by delivering the notice to him personally, or by letter addressed to him and transmitted by post to, or delivered at, his last known place of abode or business; and such article shall be deemed to be condemned, and may be sold or otherwise disposed of in the prescribed manner after the expiration of a period of one month from the date of the seizure unless such owner shall, within that period, give

Procedure where no prosecution for offence.

No. 58, 1935.

give notice in writing to the Minister that he disputes the forfeiture, whereupon proceedings shall be taken against such owner for condemnation of such article.

Justices may  
condemn  
goods liable  
to forfeiture

**97.** When any complaint shall have been laid before a justice against any person for the forfeiture of any articles seized under this Act, such justice is hereby required to summon such person to appear before a stipendiary or police magistrate or any two justices; and upon his appearance or default to appear, due service of such summons being proved, such magistrate or justices may proceed to the examination of the matter, and on proof that the articles are liable to forfeiture may condemn the same.

Disposal of  
perishable  
articles.

**98.** If any article, seized under this Act as forfeited, shall be fish, or shall be of a perishable nature, the same may be forthwith sold by the inspector seizing the same, and the proceeds thereof retained to abide the result of any proceedings that may be taken in respect of such forfeiture.

Seized  
articles  
may be  
delivered on  
security.

**99.** The Minister may authorise any articles seized to be delivered to the person disputing the forfeiture thereof on his giving security to pay their value in case of their condemnation.

Evidence of  
condemna-  
tion or  
forfeiture.

**100.** Condemnation under this Act of any articles by any magistrate or justices, or as the result of any conviction by such magistrate or justices, may be proved in any court of justice, or before any competent tribunal, by production of a certificate of such condemnation purporting to be signed by the magistrate or justices, or an examined copy of the record of such conviction, certified by the clerk of petty sessions.

All fish, etc.,  
condemned to  
become the  
property of  
His Majesty.

**101.** Subject to this Act, all fish, nets, engines, and other articles condemned or liable to be sold under the provisions of this Act shall become the property of His Majesty, and shall be sold or disposed of in such manner as may be prescribed and the proceeds of such sale and disposal shall be paid to the Consolidated Revenue Fund.

Reasonable  
cause for  
seizure a bar  
to action.

**102.** No person shall be liable for any seizure under this Act for which there shall have been reasonable cause.

**103.**

**103.** (1) Any person who—

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- (a) fails to facilitate by all reasonable means the boarding of any boat by any inspector or other person authorised under this Act to so board; or
- (b) refuses to allow any search to be made which is authorised by or under this Act; or
- (c) refuses or neglects to produce any license, permit or other authority when lawfully required by an inspector so to do; or
- (d) refuses to give to any inspector any information lawfully demanded of him by such inspector, or refuses to state his name or place of abode to any inspector when lawfully required by such inspector so to do, or states a false name or place of abode to such inspector or uses abusive language to any inspector,

Penalties for certain offences.

shall for every such offence be liable to a penalty not exceeding ten pounds.

(2) Any person who assaults, resists or obstructs, or encourages any other person to assault, resist or obstruct any inspector or other person in the execution of the powers or authorities conferred on him by this Act shall for every such offence be liable to a penalty of not less than ten pounds and not exceeding fifty pounds or to imprisonment for a term not exceeding six months, and the adjudicating magistrate or justices may, in addition to any such penalty, order a sum of money sufficient to cover any damage or injury sustained by the person so assaulted, resisted or obstructed to be paid by the offender to such person, which sum shall be recoverable by and in the name of such person in the same manner as a penalty under this Act may be recovered.

(3) Any person who shall impersonate an inspector shall be guilty of an offence and shall be liable to a penalty not exceeding twenty pounds.

**104.** The master or person in charge of every boat required by this Act to be licensed shall have on board such boat the license issued under this Act in respect of

Master of boat to have license on board.

of

No. 58, 1935.

of such boat; and if he makes default without reasonable cause (the proof whereof shall lie on him) he shall for every such offence be liable to a penalty not exceeding five pounds.

Accidental taking of fish.

**105.** When any person is lawfully fishing, and accidentally takes any fish the taking of which is prohibited by or under this Act, he shall not be liable to any penalty in respect of such taking if he immediately returns the fish to the water with the least possible injury.

General penalty. cf. Act No. 119, 1902, s. 56.

**106.** (1) Every person committing any act which by this Act is declared to be an offence, or committing a breach of this Act, or of any regulation, proclamation, notification, or prohibition made thereunder, whether by wilful act or by refusal or neglect to act or otherwise, shall, where no specific penalty has been provided for such offence, be liable to a penalty not exceeding ten pounds.

Offence by body corporate.

(2) Where any act which by this Act is declared to be an offence and which is committed by a body corporate is proved to have been committed with the consent or approval of, or to have been facilitated by any neglect on the part of, any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly.

Onus of proof.

**107.** (1) In all judicial proceedings the onus of proving the illegality of any seizure, or that the inspector or person seizing was not authorised to seize, shall lie upon the person setting up such claim of illegality.

(2) In any proceedings taken against any person for any contravention of this Act the onus of proving the existence of any license, permit, registration, or authority required to be held by such person, or that such person was exempted from any penalty or forfeiture, shall lie upon the defendant.

Notice of action.

**108.** No action shall be brought against any person for anything done in pursuance of this Act unless notice  
in

in writing of such action, and the cause thereof, is given to the defendant one month at least before the commencement of the action.

No. 58, 1935.

**109.** (1) The Minister may direct that any articles or things whatsoever seized under this Act be delivered to the owner thereof, whether condemnation shall have taken place or not, on such terms and conditions (if any) as the Minister shall think fit.

Minister may restore seizure.

(2) Any person who contravenes or fails to comply with any such term or condition shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding fifty pounds.

**110.** It shall be lawful for any stipendiary or police magistrate, or for any justices before whom any proceedings may be taken in respect of any offence against the provisions of this Act for which a pecuniary penalty only is imposed, to impose in lieu of any such pecuniary penalty a term of imprisonment not exceeding ninety days.

Imprisonment in lieu of penalty.  
cf. Act No. 119, 1902, s. 55.

**111.** (1) The Minister may from time to time sell oysters or spat from Crown lands, training walls, or public oyster reserves to any lessee under such conditions as he may see fit.

Sale of oysters to lessees or hospitals, etc.

(2) The Minister may from time to time donate any oysters or fish, including oysters or fish seized or forfeited under this Act, and oysters taken from Crown lands, training walls, or public oyster reserves, to any hospital or public institution.

Any oysters or fish donated to a hospital or public institution under this subsection, and not required for consumption therein, may be sold by a responsible officer of such hospital or institution and the proceeds thereof applied towards the maintenance of such hospital or institution. Such officer shall not be required to take out any license.

**112.** Any person who takes from any waters or has in his possession or on his premises or in a boat, or sells or attempts to sell, or offers or exposes or consigns for sale any soft shelled crayfish, shall for every such offence be liable to a penalty not exceeding ten pounds.

Soft shelled crayfish.

**113.**

## No. 58, 1935.

Persons unlawfully in possession of oysters.  
cf. Act No. 14, 1910, s. 22.

**113.** Any person, who on being charged before a justice with having oysters in his possession which may reasonably be suspected of being stolen or unlawfully obtained, does not give an account to the satisfaction of such justice how he came by the same, shall be liable to a penalty of not less than five pounds and not exceeding twenty pounds.

Persons unlawfully in possession of fish.

**114.** Any person, who on being charged before a justice with having fish in his possession which may reasonably be suspected of being taken in contravention of this Act does not give an account to the satisfaction of such justice how he came to be in possession of the same, shall be liable to a penalty of not less than five pounds and not exceeding twenty pounds.

Penalty for burning live oysters for lime.  
cf. Act No. 119, 1902, s. 49.

**115.** Any person who shall gather or burn live oysters for the purpose of converting their shells into lime, whether he be the holder of a leased area or not, shall for every such offence be liable to a penalty not exceeding fifty pounds.

Undersize fish.  
cf. *Ibid.* s. 23 (1).

**116.** Any person who has in his possession, or on his premises, or in his boat any undersize fish, or who sells or offers, consigns, or exposes for sale, or attempts to sell any undersize fish, shall be liable for a first offence to a penalty of not less than two pounds, and for any subsequent offence to a penalty of not less than five pounds.

Fishways to be provided in the construction of dams, weirs, etc.

**117.** The Minister may, by order in writing, require any person who constructs or erects or causes to be constructed or erected over or upon any tidal or inland river or creek, or over any flowing water, any dam, weir or reservoir to carry out within the time specified in the order, such works as may be specified in the order to enable the upward passage of fish through or over the dam, weir or reservoir.

Any person who fails to comply with an order under this section shall be guilty of an offence and shall be liable to a penalty not exceeding twenty pounds.

Where a person fails to comply with an order under this section the Minister may cause the work specified to be carried out, and may recover the cost thereof from the person to whom the order was addressed.

**118.** (1) Where the Minister considers that the posts and cultivation on any area, the lease whereof has expired or been otherwise terminated, should be removed, he may, by notice in writing addressed to the person who was the last lessee of such area, require such person to remove such posts and cultivation within a time to be specified in the notice; and in any such case the property in such posts and cultivation shall revert in such person.

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Power to require removal of posts and cultivation.

(2) The notice may be served by post and may be given at any time within three months after the termination of the lease.

(3) If any such person fails to comply with the requirements of any such notice within the time specified the Minister may cause the posts and cultivation to be removed from the area, and may sell the same by public auction or otherwise, or, if no sale can be so effected, dispose of the same in the prescribed manner.

(4) Any moneys arising from the sale may be applied in or towards payment of the costs and expenses of the sale, and of the removal, and any balance remaining unpaid and the costs and expenses of any disposal of the posts and cultivation may be recovered in any court of competent jurisdiction by the Minister from the person who was the lessee.

**119.** An appeal shall lie against a refusal to issue a license or against any suspension or cancellation of a license.

Appeals in relation to licenses.

Such appeal may be taken by the applicant or licensee, as the case may be, to a court of quarter sessions in the manner provided in Part V of the Justices Act, 1902, and the provisions of that Act relating to appeals to a court of quarter sessions shall, mutatis mutandis, apply to any appeal under this section.

## PART VII.

## REGULATIONS.

Regulations. **120.** (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying this Act into effect.

(2) Without limiting the generality of the power conferred by subsection one of this section the Governor may make regulations—

- (a) defining the duties of inspectors and other persons upon whom any duty or authority is imposed or conferred by or under this Act;
- (b) prescribing the forms and conditions of all licenses, the persons by whom such licenses may be issued, the fees to be paid, and the mode of payment; and providing for the observance of the conditions of such licenses and the circumstances under which any such license may be cancelled;
- (c) prescribing the mode of testing or determining the length of nets and of hauling lines, and of the dimensions of the meshes of nets;
- (d) prescribing the fee to be paid for any permit, authority, consent, registration, or approval made, issued, or given under this Act or the regulations;
- (e) providing for the sale or other disposal of any fish, net, engine, or other thing seized or forfeited and condemned under this Act, and of nets found in any waters without an owner or unclaimed;
- (f) regulating and prescribing methods to be adopted in hauling, setting, or landing any fishing nets, fish traps, or other implements or engines;
- (g) regulating net and line fishing, as well in regard to modes, places, and times of usage as in all other respects;

(h)

- (h) regulating and controlling the collection of worm and other fish bait; No. 58, 1935.
- (i) regulating rights of priority as between fishermen or oyster farmers, or between fishermen and oyster farmers in the hauling and setting of nets, or dredging for oysters, or in the cultivating, collecting, or gathering of oysters, or in netting or dredging, cultivating or gathering on the same ground, or for the preservation of good order amongst persons engaged in fishing by any method of capture or in oystering, or in any work in connection with the cultivation or the gathering of oysters or spat;
- (j) preventing fishermen from creating a nuisance by way of noise in any manner not essential to the effective conduct of their business as fishermen;
- (k) regulating or prohibiting fishing in the navigable part of any river, bay, harbour, or channel through which vessels enter or depart, or which requires to be kept open or unobstructed for ferry or steamer traffic;
- (l) regulating the collection and removal of oysters, whelks, or mussels or the dead shell thereof, or the spat of oysters, from Crown lands and training-walls, limiting the number of authorised collectors or gatherers, either generally or in particular cases, or in all cases other than particular cases prescribing the price per bag or other method of purchase, and providing for the seizure and disposal of oysters, whelks, or mussels, or the dead shell thereof unlawfully removed from Crown lands or public oyster reserves whether in the possession of any collector or not;
- (m) providing for the marking of the boundaries and the periodical inspection of public oyster reserves and leased areas, and for the protection and regulation of all boundary pegs, posts, beacons, buoys, or other marks;

(n)

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- (n) regulating the sale of young or foreshore whelks, or mussels or the dead shell thereof;
- (o) prescribing the minimum size or weight of marketable oysters, and for preventing the taking, consigning, selling, or exposing or offering for sale of unmarketable oysters or oysters not in a condition fit for food;
- (p) providing for the protection and regulation of public oyster reserves, and for the vesting of such reserves in trustees and providing for the protection of oysters and spat on Crown lands, and for the limitation and regulation of collecting, gathering, and dredging for oysters on such reserves and Crown lands;
- (q) requiring the lessee of any leased area to place and maintain on his leased area stones, logs, sticks, stakes, and other material for catching spat, and providing for the cultivation of oysters on leased areas and for the return to the place of taking or other suitable spot, of all spat and undersize oysters, and oysters not in a fit condition for food, together with all dead shell, cultch, and substances collected, gathered, or dredged up from beds in such a manner as may be most beneficial for the preservation of such beds;
- (r) enforcing payment of rent or moneys overdue in respect of leased areas or of areas in respect of which application for a lease has been made;
- (s) prescribing the terms and conditions under which transfers of leases may be granted;
- (t) preventing the destruction of oysters or fish, and for preventing injury to fishing or oyster grounds by deposit of filth, refuse, or other deleterious matters, or by chemical or other discharges from mining works, sawmills, paper mills, gasworks, or other manufactories or boiling-down or wool-washing establishments, and for prohibiting such matters from being deposited in tidal or inland waters or into any watercourse whether dry or not leading into the same;
- (u)

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- (u) preventing lessees of leased areas and other persons from disposing of cultch or any dredged refuse so as to impede the access by water to Crown or private land abutting on leased areas;
- (v) prescribing the particulars for identification which shall be painted on licensed fishing boats;
- (w) providing for the method and means of consigning or conveying any fish or oysters to any destination for the purpose of sale;
- (x) providing for the method of sale of fish in all markets established by the Municipal Council of Sydney under Part XIII of the Sydney Corporation Act, 1932-1934, as amended by subsequent Acts, or provided and controlled by the council of a municipality or shire, or in any specified markets so established or so provided and controlled or in all markets so established or so provided and controlled other than those specified;
- (y) providing for the prohibition of objectionable methods of buying or selling or of attempting to buy or sell any fish in any market;
- (z) prescribing the powers, authorities, duties, and functions of inspectors which may be exercised and performed by members of vigilance committees;
- (aa) providing for the conditions under which private fresh-water fish hatcheries may be established and maintained, and for the species of fish which may be propagated therein;
- (bb) regulating and prescribing methods to be followed for developing fisheries or any class group or portion thereof;
- (cc) regulating and prescribing the closure or opening of any tidal or inland fisheries and providing for the supervision and protection thereof;
- (dd) prescribing the dimensions, meshes, and method of use of any nets, and regulating or prohibiting the use of any other implements or engines for the taking of fish;

x

(ee)

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- (cc) regulating the hatching and acclimatisation of fish, and the cultivation of fish and oysters;
- (ff) controlling and regulating methods of trawling within territorial waters;
- (gg) controlling and regulating the sale and distribution of fish and the licensing of establishments where fish is sold by wholesale other than fish-markets to which section forty of this Act applies;
- (hh) regulating the icing, packing, handling, and storage of fish for sale, and regulating or prohibiting the repacking of fish intended for sale;
- (ii) providing for the inspection of fish intended for sale, and requiring the use of standard containers for fish intended for sale;
- (jj) providing for the protection of the interests of lessees and oyster farmers and of persons engaged in fishing;
- (kk) providing for the licensing of persons engaged in gathering kelp and seaweeds for commercial purposes and regulating the times, manner, and places of such gathering;
- (ll) exempting specified persons from the observance of all or any of the provisions of this Act relating to the taking of fish in cases where fish is required for hospital patients or sick persons, and a supply of fresh fish is not otherwise obtainable;
- (mm) defining the method of determining priority in applications for leases of oyster farms in any case not specifically provided for in this Act;
- (nn) regulating the use of fish-traps in tidal waters and providing for the licensing of such traps;
- (oo) providing for the payment of fees for the inspection of live fish imported into New South Wales;

(pp)

- (pp) providing for the granting of yearly occupancies for the erection of fish-pens in tidal waters,
- (qq) regulating the kind of bait which may be used for the capture of salmon or trout or any other species of fish;
- (rr) providing generally for all matters pertaining to the development and regulation of fisheries and oyster farms;
- (ss) regulating the making of references or applications to local land boards under this Act and the fees to be paid in respect thereof.

(3) The regulations may amend Schedule C to this Act by omitting therefrom the name of any fish and by adding thereto the name of any fish, together with the length which is to be set opposite the name of any fish so added; and also by altering the length set opposite the name of any fish for the time being included in such Schedule. Schedule C as so amended shall be deemed to be Schedule C to this Act.

- 121.** (1) Any regulation made under this Act may—
- (a) impose a penalty for any breach thereof, and also distinct penalties in case of successive breaches thereof, but no such penalty shall exceed fifty pounds;
  - (b) impose also a daily penalty for any continuing breach thereof not exceeding five pounds per day;
  - (c) fix a minimum as well as a maximum penalty.

Penalties and application of regulations.

- (2) Any provision inserted in any regulation made under this Act may apply—
- (a) to all waters or to any specified waters, or to waters other than those specified;
  - (b) to fish generally, or to fish of any specified species, or to fish other than those specified;
  - (c) to the taking of fish generally, or to the taking of fish of any specified species, or of fish other than those specified;

(d)

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- (d) to all methods of taking fish or to specified methods only, or to methods other than those specified;
- (e) to the whole of the State, or to any specified portion thereof.

(3) A regulation may authorise any matter or thing to be from time to time determined, applied, or regulated, by the Governor or the Minister or by an inspector or other officer authorised in that behalf by the regulations either generally or for any class of cases or in any particular case.

(4) All regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication, or from a later date to be specified in the regulations;
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(5) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sittings days after such regulations have been laid before such House, disallowing such regulations or any part thereof, such regulations or part shall thereupon cease to have effect.

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**SCHEDULES.**

**SCHEDULES.****SCHEDULE A.****Sec. 19.****NARRABEEN LAKE.**

County of Cumberland. The whole of the waters of Narrabeen Lake and its tributaries including Deep Creek, Middle Creek, South Creek, and Mullet Creek together with their affluents and tributaries.

**WALLIS LAKE.**

County of Gloucester, parishes of Tuncurry and Forster at Wallis Lake. The whole of the tidal waters within the following boundaries: Commencing at the entrance to Wallis Lake at the eastern extremity of the northern breakwater and bounded thence by that breakwater and a part of the foreshores of the village of Tuncurry generally southerly to the prolongation of the western side of Wharf-street; thence by a line bearing approximately south 59 degrees west to the north-eastern corner of Oyster Lease 14,067; thence by a line bearing approximately south 12 degrees east to the north-western corner of Oyster Lease 14,911 and by a line bearing approximately south 25 degrees east across the water to the south-western corner of Oyster Lease No. 16,404 on Godwin Island; thence by the northern foreshore of that island north-easterly to its most northern point; thence by a line bearing north 60 degrees east to the foreshore of the village of Forster at the prolongation of the southern boundary of section 27; thence by that foreshore generally northerly to the southern breakwater, by that breakwater north-easterly to its eastern extremity and by a line across the entrance to the point of commencement.

**LAKE MACQUARIE.**

County of Northumberland. The whole of the waters of Lake Macquarie Entrance, together with all its bays and inlets (including Black Ned's Bay) upwards from a line joining the outer extremities of the breakwaters to the junction of the waters of the said entrance with the waters of Lake Macquarie; and also the whole of the waters of Lake Macquarie, together with all its inlets, bays, creeks and tributaries lying on the northern side of a line drawn from the southernmost extremity of Wangi Wangi Point to the northernmost extremity of Galgabba or Stony Point.

**TUGGERAH LAKE AND OCEAN WATERS ADJOINING.**

County of Northumberland. The tidal waters of that part of Tuggerah Lake, its channel entrance and the adjacent ocean waters included within the following boundaries: Commencing on the line of high-water mark at the southern extremity of Karagai, the headland on the northern side of the aforesaid channel entrance, and bounded

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bounded thence by the high-water mark of the eastern shore of that channel entrance bearing generally northerly to Tuggerah Lake and by the high-water mark of part of the eastern shore of that lake bearing generally northerly and north-easterly to a point distant 10 chains south-westerly from the north-west corner of E. H. Hargraves' portion No. 39 of 22 acres in the parish of Wallarah; thence by lines bearing north 78 degrees west 970 yards and north 35 degrees west 890 yards, respectively, into the waters of Tuggerah Lake aforesaid; thence by a line bearing approximately south 30 degrees west about 3,000 yards; thence by lines bearing south 89 degrees east 690 yards and south 44 degrees east 1,205 yards respectively to a point on the high-water mark of the eastern shore of the aforesaid lake distant 40 chains southerly from the northern extremity of Taylor's Point; thence by the high-water mark of part of the eastern shore of the aforesaid lake to that extremity of that point; thence by the high-water mark of the south-western shore of the channel entrance aforesaid bearing generally south-easterly to the junction of that shore with the shore of the South Pacific Ocean; thence by a line bearing south 45 degrees east 22 chains into the waters of that ocean; thence by a line bearing northerly to a point due east of and distant 22 chains from the point of commencement; and thence by a line to that point.

## LAKE ILLAWARRA AND OCEAN WATERS ADJOINING.

County of Camden. The whole of the waters of that part of Lake Illawarra, the entrance thereto, and the adjacent ocean waters comprised within the following boundaries: Commencing at a peg marked broad-arrow over E on the southern shore of Lake Illawarra at the eastern point of entrance to Forster's Creek, and bounded thence by the southern shore of the said lake, by the south-western shore of the entrance thereto and by the line of mean high-water mark of the ocean beach to a point being the intersection of a line drawn from the Trigonometrical Station on Windang Island to the junction of the Oak Flats and Shellharbour roads; thence by a line to that Trigonometrical Station; and thence by a line to the sand spit at the northern point of entrance to the aforesaid lake at its intersection with a line drawn from the Trigonometrical Station aforesaid to the southern corner of portion 44 of 52 acres in the parish of Wollongong; thence by the north-eastern shore of the said entrance and the eastern shore of the said lake to the north-western corner of portion 44 aforesaid; thence by lines bearing north 68 degrees 30 minutes west 485½ yards south 48 degrees 57 minutes west 191 yards and south 11 degrees 30 minutes west 785 yards, respectively, to a post marked broad-arrow over FD on the north-western shore of Bevan's Island; thence by that shore of that island bearing generally south south-westerly, in all about 255 yards to a point marked broad-arrow over FD at the westernmost extremity of the said island, and thence by a line bearing approximately south 25 degrees west about 618 yards to the point of commencement.

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### SCHEDULE B.

Sec. 19 (5)  
(b).

#### LAKE MACQUARIE.

County of Northumberland. The whole of the waters of that part of Lake Macquarie described in Schedule A to this Act with the exception of the waters of Lake Macquarie Entrance and Black Ned's Bay and that part of the waters of Lake Macquarie comprised within the following boundaries: Commencing at a point on the eastern shore of the said lake distant 50 chains southerly from the southern point of junction of the waters of the aforesaid entrance with those of the said lake and bounded thence on the south by a line drawn west 40 chains; thence on the west by a line drawn northerly to a point 40 chains west of the western extremity of Marks Point; thence on the north by a line to that extremity of that point and by the northern shore of Swan Bay; and thence on the east by the eastern and southern shores of that bay the waters of the aforesaid entrance and a part of the eastern shore of the said lake to the point of commencement.

#### TUGGERAH LAKE AND OCEAN WATERS ADJOINING.

County of Northumberland. The whole of the tidal waters of the channel entrance to Tuggerah Lake lying on the seaward side of a line drawn from an iron peg in a rock on the south-western shore of the aforesaid channel entrance bearing south 67 degrees 30 minutes east 56 lineal yards from the easternmost corner of lot No. 5 of a private subdivision of portion 91 of the parish of Tuggerah (which lot is the land comprised in Certificates of Title volume 4415 folios 156, 157 and 158) north-easterly to the lighthouse at Bungaree Norah, and also the whole of the ocean waters adjacent to the entrance of Tuggerah Lake described in Schedule A to this Act.

#### LAKE ILLAWARRA AND OCEAN WATERS ADJOINING.

County of Camden. The whole of the waters of that part of the channel entrance to Lake Illawarra within a distance of 50 yards measured rectangularly on the lake side of a line drawn across the said channel entrance and being the prolongation of the outer shore of the (for the time being) more westerly point of entrance from the ocean to the said channel entrance and also the whole of the waters of the said channel entrance lying on the ocean side of such line and the whole of the ocean waters adjacent to the entrance of the said lake described in Schedule A to this Act.

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Secs. 4 (2),  
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## SCHEDULE C.

Showing the minimum lawful lengths for fishes and crustacea.

## (1) FISHES—MARINE OR FLUVIO-MARINE.

Common Name.	Species.	Length.
Sergeant Baker ... ..	<i>Latropiscis milesii</i> ... ..	ins. 10
Slender Long-tom ... ..	<i>Lewinichthys ferox</i> ... ..	12
Stout Long-tom ... ..	<i>Lhotskia macleayana</i> ... ..	12
Sea Garfish ... ..	<i>Reporhamphus australis</i> ... ..	8½
River Garfish ... ..	<i>Reporhamphus regularis</i> ... ..	7½
Short-beaked Garfish ... ..	<i>Arrhamphus sclerolepis</i> ... ..	7½
Sea Mullet (including Hard-gut and "Bully").	<i>Mugil dobula</i> ... ..	12
Flat-tail (or Fantail) Mullet ... ..	<i>Liza argentea</i> ... ..	9
Sand Mullet (Tallegalane or "Lano").	<i>Myxus elongatus</i> ... ..	9
Silver Mullet (Silver Flat) ... ..	<i>Mugil georgii</i> ... ..	8
Yellow-eye Mullet ... ..	<i>Agonostomus forsteri</i> ... ..	9
Short-finned Pike ... ..	<i>Sphyræna novaehollandiæ</i> ... ..	9
Striped Pike ... ..	<i>Sphyræna obtusata</i> ... ..	9
Blackfish ... ..	<i>Girella tricuspidata</i> ... ..	10
Rock Blackfish ... ..	<i>Girellipiscis elevatus</i> ... ..	9
Estuary Perch ... ..	<i>Percalates colonorum</i> ... ..	9
Black Rock Cod ... ..	<i>Epinephelus damelii</i> ... ..	13
Long-finned Pike ... ..	<i>Dinolestes lewini</i> ... ..	9
Sand Whiting ... ..	<i>Sillago ciliata</i> ... ..	9½
Trumpeter Whiting ... ..	<i>Sillago maculata</i> ... ..	8
School (Red-spotted) Whiting	<i>Sillago bassensis</i> ... ..	8
Spotted Whiting ... ..	<i>Sillaginodes punctatus</i> ... ..	9½
Jewfish ... ..	<i>Sciaena antarctica</i> ... ..	15
Teraglin ... ..	<i>Zeluco atelodus</i> ... ..	13
Australian Salmon or "Buck" (including so-called "Salmon- trout" or "Newfish").	<i>Arripis trutta</i> ... ..	9
Red Morwong or Sea Carp ... ..	<i>Cheilodactylus fuscus</i> ... ..	9
Snapper (including "Cockneys," Red Bream, and Squire).	<i>Chrysophrys guttulatus</i> ... ..	9
Black Bream ... ..	<i>Roughleyia australis</i> ... ..	9
Tarwhine ... ..	<i>Roughleyia tarwhine</i> ... ..	8
Butter Fish ... ..	<i>Scatophagus multifasciatus</i> ... ..	7
Blue Groper ... ..	<i>Achoerodus gouldii</i> ... ..	12
Red or Brown Groper ... ..	<i>Achoerodus badius</i> ... ..	12
Kingfish ... ..	<i>Regificola grandis</i> ... ..	14
Trevally ... ..	<i>Usacaranx nobilis</i> ... ..	9
Nannygai ... ..	<i>Trachichthodes affinis</i> ... ..	10

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SCHEDULE C—continued.

Showing the minimum lawful lengths for fishes and crustacea.

(1) FISHES—MARINE OR FLUVIO-MARINE—continued.

Common Name.	Species.	Length.
		ins.
Tailer ... ..	<i>Pomatomus pedica</i> ... ..	9
Common Mackerel ... ..	<i>Scomber australasicus</i> ... ..	6
Horse Mackerel ... ..	<i>Sarda australis</i> ... ..	9
Large-toothed Flounder ... ..	<i>Pseudorhombus arsius</i> ... ..	9
Small-toothed Flounder ... ..	<i>Pseudorhombus multimaculatus</i> .	9
Long-snouted Flounder ... ..	<i>Ammotretis rostratus</i> ... ..	3
Black Sole ... ..	<i>Symaptura nigra</i> ... ..	8
Red Rock Cod ... ..	<i>Ruboralga jacksoniensis</i> ... ..	9
Sand Flathead ... ..	<i>Trudis caeruleopunctatus</i> ... ..	13
Common or Dusky Flathead ... ..	<i>Planiprora fusca</i> ... ..	13
Tiger Flathead ... ..	<i>Neoplatycephalus macrodon</i> ... ..	13
Long-spined (Spiky) Flathead	<i>Longitrudis longispinis</i> ... ..	9
Kumu (Red) Gurnard ... ..	<i>Currupiscis volucer</i> ... ..	8
Sharp-beaked Gurnard ... ..	<i>Pterygotrigla polyommata</i> ... ..	9

(2) FISHES—FRESH WATER.

Common Name.	Species.	Length.
		ins.
Freshwater Herring ... ..	<i>Potamalosa richmondia</i> ... ..	5
Bony Bream or Hair-backed Herring.	<i>Nematalosa crebi</i> ... ..	6
Freshwater Catfish ... ..	<i>Tandanus tandanus</i> ... ..	8
Australian Grayling ... ..	<i>Prototroctes maraena</i> ... ..	9
Freshwater Mullet ("Streamer" or "Pink-eye").	<i>Trachystoma petardi</i> ... ..	9
Australian Bass (Eastern "Freshwater" Perch).	<i>Percalates novemaculeatus</i> ... ..	9
Golden Perch or Yellow-belly ..	<i>Plectroplites macquariensis</i> ... ..	9
Macquarie (or Mountain) Perch	<i>Macquaria australasica</i> ... ..	8
Murray or Trout Cod ... ..	<i>Maccullochella macquariensis</i> ...	15
Silver Perch ("Grunter") ... ..	<i>Terapon bidyanus</i> ... ..	8
River Blackfish ("Slippery")...	<i>Gadopsis marmoratus</i> ... ..	7
Brown Trout ... ..	<i>Salmo fario</i> ... ..	12
Salmon Trout ... ..	<i>Salmo eriox</i> ... ..	10

SCHEDULE

SCHEDULE C—*continued.*

Showing the minimum lawful lengths for fishes and crustacea.

(2) FISHES—FRESH WATER—*continued.*

Common Name.	Species.	Length.
Rainbow Trout ... ..	<i>Salmo irideus</i> ... ..	ins. 12
Brook Charr (American Brook Trout).	<i>Salvelinus fontinalis</i> ... ..	10
Long-finned or Spotted Eel ...	<i>Anguilla reinhardtii</i> ... ..	12
Short-finned or Unspotted Eel..	<i>Anguilla australis</i> ... ..	12

NOTE AS TO MEASUREMENT.—All fishes (excepting Garfish) are measured overall; that is, from the point of the snout to the end of the tail. Garfish are measured from the tip of the upper jaw to the end of the upper half of the tail.

## (3) CRUSTACEA.

Common Name.	Species.	Length.
Marine—		ins.
Common Crayfish ... ..	<i>Jasus verreauxi</i> ... ..	10
Southern Crayfish... ..	<i>Jasus lalandii</i> ... ..	10
School Prawn, raw or cooked.	<i>Penaeopsis macleayi</i> ... ..	3½
King Prawn, raw or cooked.	<i>Peneus plebejus</i> ... ..	3½
Tiger Prawn, raw or cooked.	<i>Peneus esculentus</i> ... ..	3½
Freshwater—		
Murrumbidgee Crayfish (Murray River Lobster, Fresh Water Crayfish).	<i>Astacopsis serratus</i> ... ..	8

NOTE AS TO MEASUREMENT.—Marine and Fresh Water Crayfish are measured along the body from the rostrum (or beak) to the tip of the tail. Prawns are measured along the body from the base of the eye to the tip of the tail.