

MARINE FARMING BILL

EXPLANATORY NOTE

This Bill is a consolidation with amendments of the Marine Farming Act 1968 and the Rock Oyster Farming Act 1964.

The principal changes made by this Bill are as follows:

- (a) In addition to the kinds of marine farming to which the 1968 Act applies, it will also apply to rock oyster farming, which is at present covered by the Rock Oyster Farming Act 1964. Existing leases granted under the last-mentioned Act are preserved.
- (b) The Bill not only enables leases to be granted for the carrying on of marine farming operations as provided in the 1968 Act, but also enables licences of areas of sea and the sea bed to be granted for such purposes.
- (c) As in the case of leases granted under the 1968 Act, licences will be granted for periods of up to 14 years and may contain rights of renewal.
- (d) The granting of a licence to establish and operate a marine farm will enable the licensee to carry on within his licensed area the farming of the species of fish or marine vegetation specified in his licence. The grant of such a licence will not affect the general right of navigation within the licensed area unless part of the licensed area has been declared to be a prohibited navigation area under *clause 26*. Nor will the general right to anchor and moor ships and boats be affected unless the licensee has, with the permission of the controlling authority, declared a part of his licensed area to be a prohibited anchorage in accordance with *clause 26*.
- (e) Harbour boards and local authorities in whom an area of the sea bed is vested may, with the prior consent of the Minister, grant leases or licences under the Bill. They now have the power to grant leases for rock-oyster farming purposes under the present Rock Oyster Farming Act 1964.

As the above changes would involve a great number of amendments to the 1968 Act (nearly every section would require amendment, some several times), this Bill replaces that Act with the necessary amendments incorporated.

Clause 1 relates to the Short Title and commencement. The Act is to come into force on 1 December 1970.

Clause 2 is the interpretation clause. It re-enacts the existing definitions, but extends the definition of "fish" to include oysters and amends the definition of "marine farm" to include licensed areas. It also includes the following new definitions:

“Controlling authority” is defined as the harbour board or local authority in which an area of sea bed is vested, and as the Minister where the area of sea bed is not vested in a harbour board or local authority.

“Licence”, “licensed area”, and “licensee” are defined.

“Prohibited anchorage” is defined as being part of a licensed area declared to be and marked as a prohibited anchorage in accordance with *clause 26*.

“Prohibited navigation area” is defined as being part of a licensed area declared to be and marked as a prohibited navigation area in accordance with *clause 26*.

Leasing and Licensing of Marine Farms

Clauses 3 to 13 re-enact the existing provisions as to the leasing of marine farms, with such amendments as are necessary to enable licences of areas of the sea and the sea bed to be granted for marine farming purposes. The minimum age for lessees and licensees is reduced from 21 years to 18 years.

Registration of Leases and Licences

Clauses 14 to 18 are new provisions requiring a register of leases and licences to be kept at the head office of the Marine Department at Wellington in which all leases and licences and dealings with leases and licences are to be registered. These provisions are in substitution for section 14 of the 1968 Act providing for leases of marine farms to be registered with the District Land Registrar.

Renewal of Leases and Licences and Reoffering of Leased or Licensed Areas

Clauses 19 and 20 re-enact the existing provisions as to the renewal of leases and the preference given to existing lessees where a lease does not give a right of renewal, with such amendments as are necessary to apply them to licences also.

Clauses 21 and 22 re-enact the existing provisions as to reoffering of areas for lease and the valuation of improvements. They do not apply to licences.

Access Ways and Access Strips

Clauses 23 and 24 re-enact the existing provisions as to access ways and access strips to provide access to and from the sea over leased areas. It is unnecessary to extend them to licensed areas, because, except in respect of part of a licensed area declared to be a prohibited navigation area, there are no restrictions as to access over licensed areas.

Safety Requirements

Clause 25 re-enacts the existing provisions as to the marking of the boundaries of leased areas and the provision of lights, beacons, and buoys. It does not apply to licensed areas.

Clause 26 is new. It enables a licensee of a licensed area, with the permission of the controlling authority, to declare a part of his area to be a prohibited anchorage or to be a prohibited navigation area for the purpose of protecting his marine farm or any marine farming activity carried on by him.

Offences

Clauses 29 to 35 re-enact the existing provisions as to offences, with such modifications as are necessary to apply them to licences, licensed areas, and licensees. Instead of different penalties for different offences (some of which are at present a fine of \$200 and some are a fine of \$400), *clause 35* fixes a maximum fine of \$400, except where some other penalty is fixed.

Miscellaneous Provisions

Clauses 36 to 46 re-enact the existing miscellaneous provisions in sections 30 to 40 of the 1968 Act, with such modifications as are necessary to apply them to licences, licensed areas, and licensees. *Clause 44*, relating to regulations, includes some provisions which are at present in section 8 of the Rock Oyster Farming Act 1964.

Clause 47 provides for repeals, savings, and consequential amendments. The clause preserves existing leases granted under the Rock Oyster Farming Act 1968 as if they had been granted under the Bill.

Hon. Mr McCready

MARINE FARMING

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A BILL INTITULED

An Act to consolidate and amend the law relating to the establishment and development in New Zealand waters of an industry for the farming of sea fish, shellfish, oysters, and marine vegetation, the leasing and licensing of marine farms, and the marketing of fish, shellfish, and oysters reared and marine vegetation cultivated in marine farms 5

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows: 10

1. Short Title and commencement—(1) This Act may be cited as the Marine Farming Act 1970.

(2) This Act shall come into force on the 1st day of December 1970.

2. Interpretation—In this Act, unless the context otherwise requires,— 15

“Approved survey monument” means any survey mark the position of which is recorded in the survey records of the Department of Lands and Survey:

“Area” means any part of— 20

(a) The sea bed vertically below an area of the surface of—

(i) The territorial sea of New Zealand as defined by section 3 of the Territorial Sea and Fishing Zone Act 1965; or 25

(ii) The internal waters of New Zealand as defined by section 4 of that Act; or

(b) The foreshore of the coast of New Zealand;— and includes any water at any material time upon or vertically above any such part: 30

“Controlling authority”, in relation to any area, means—

(a) Where the area is vested in a harbour board within the meaning of the Harbours Act 1950 or in a local authority within the meaning of that Act, that board or local authority: 35

(b) Where the area is not vested in any such board or local authority, the Minister:

“Farming”, in relation to any species of fish or marine vegetation, means breeding, cultivating, and rearing of any such fish or the cultivating of any such vegetation, as the case may be; and “to farm” has a corresponding meaning: 40

- 5 “Fish” means any species of fish, shellfish (including oysters), or sponge capable of being farmed commercially in a marine farm; and includes their young or fry or spawn; but does not include any species of salmon or trout:
- “Fishery officer” means an officer appointed under section 4 of the Fisheries Act 1908:
- 10 “Lease” means a lease executed under section 7 of this Act; and, where appropriate, includes a renewed or extended lease:
- “Leased area” means any defined area leased pursuant to this Act:
- 15 “Lessee”, in relation to any leased area, means the person to whom the area has been leased; and includes the executors, administrators, assignees, and successors of the lessee, and, where appropriate, any person to whom the area or any part of the area has been sub-leased:
- 20 “Licence” means a licence issued under section 7 of this Act; and, where appropriate, includes a renewed or extended licence:
- “Licensed area” means any area which is defined in a licence and in which marine farming may be carried on by the licensee:
- 25 “Licensee”, in relation to any licensed area, means a person to whom a licence has been issued for the purpose of authorising him to carry on marine farming in the area; and includes the executors, administrators, assignees, and successors of the licensee:
- 30 “Marine farm” means—
- (a) In relation to a leased area, all that part of the area that is being or has been developed into a farm for the farming of fish or marine vegetation; and includes all structures and rafts used in the area in connection with the farm, and all boundary markings, and all fish or marine vegetation for the time being farmed in the area by the lessee; and
- 35 (b) In relation to any licensed area, all that part of the area in which the licensee is for the time being carrying on the business of farming of fish or marine vegetation in accordance with his licence; and includes all structures and rafts used in the area in connection with the farm, and all fish or marine vegetation for the time being farmed in the area by the licensee:
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“Marine vegetation”, or “vegetation”, means any plant capable of being farmed commercially in a marine farm:

“Minister” means the Minister of Marine:

“Prohibited anchorage” means that part of a licensed area declared to be and marked as a prohibited anchorage in accordance with section 26 of this Act: 5

“Prohibited navigation area” means that part of a licensed area declared to be and marked as a prohibited navigation area in accordance with section 26 of this Act: 10

“Raft” means any floating platform, pontoon, barge, punt, or hulk which is not self-propelled and is moored within a leased area for the purpose of providing buoyant support for the surfaces on which the fish or marine vegetation are cultivated: 15

“Secretary” means the Secretary for Marine appointed under the Shipping and Seamen Act 1952; and includes his deputy:

“Structure” means any platform, pontoon, jetty, building, dam, or trestlework, or any other erection constructed of rocks or other solid material, which has foundations in or on, or which is placed on, the foreshore or seabed within a leased or licensed area. 20

Cf. 1964, No. 61, ss. 2, 5; 1968, No. 145, s. 2 25

Leases and Licences

3. Power to grant leases and licences of areas—(1) The controlling authority (subject, in the case of a controlling authority other than the Minister, to the prior consent of the Minister) may from time to time in accordance with the provisions of this Act grant a lease of any area for a term not exceeding 14 years. Any such lease may contain a right of renewal for one or more terms, at a rent to be determined in the original lease or at a rent to be determined by valuation in accordance with the First Schedule to the Public Bodies Leases Act 1969. 30 35

(2) Without limiting the powers conferred on the controlling authority by subsection (1) of this section, the controlling authority (subject, in the case of a controlling authority other than the Minister, to the prior consent of the Minister) may from time to time grant in accordance with the provisions of this Act a licence to establish and maintain a marine farm, and 40

to carry on the business of marine farming, in the area specified in the licence for a period not exceeding 14 years. Any such licence may contain a right of renewal for one or more periods, at an annual fee to be determined in accordance with the original licence.

(3) No lease or licence may be granted in respect of an area greater than that which the controlling authority considers the applicant can successfully develop as a marine farm within the term of the lease or licence.

10 Cf. 1964, No. 61, s. 3; 1968, No. 145, s. 3

4. Applications for leases and licences—(1) Any person of or over 18 years of age may apply for a lease or licence under this Act. Every such application shall be on a form supplied for the purpose by the Secretary where the Minister is the controlling authority, and by the principal administrative officer of the controlling authority in any other case, and shall be accompanied by a copy of the notice proposed to be advertised under section 5 of this Act.

(2) Every application for a lease or licence of an area shall be made—

(a) Where the Minister is the controlling authority, to the Secretary or to a person authorised by him to receive applications:

(b) Where a harbour board or local authority is the controlling authority, to the principal administrative officer of the controlling authority or to a person authorised by him to receive applications.

(3) Every such application shall be accompanied by—

(a) An application fee of \$100 or such smaller amount as the controlling authority may from time to time determine, either generally or in any specific case:

(b) Such number of copies, not exceeding 5, as the controlling authority requires, of a map, plan, or aerial photograph clearly defining to the satisfaction of the controlling authority the boundaries of the area applied for and its relationship to adjacent land-boundary surveys or approved survey monuments.

(4) The Secretary or, as the case may be, the principal administrative officer of the controlling authority may require the applicant to supply, within such time as the Secretary or, as the case may be, the principal administrative officer specifies, such other information as may be necessary to enable the controlling authority to decide whether or not a lease

or licence should be offered to the applicant. If that other information is not supplied within the time specified, or any extension thereof granted by the Secretary or principal administrative officer, as the case may be, the application shall be deemed to have been withdrawn. 5

(5) Two or more persons may apply for a lease or licence either as joint tenants or as tenants in common.

(6) Where an applicant for a lease or licence withdraws his application, then, unless the controlling authority otherwise directs, the application fee shall be forfeited to the Crown 10 where the Minister is the controlling authority, and to the controlling authority in every other case; but, where the controlling authority declines to lease or licence the area applied for or upholds an objection under section 6 of this Act, the fee shall be refunded to the applicant or, if he so requests, 15 credited to him.

(7) Every applicant for a lease or licence shall, if so required by the Secretary or, as the case may be, the principal administrative officer of the controlling authority, mark and keep marked the area applied for in such manner and for such 20 period as the Secretary or principal administrative officer may specify to the applicant.

Cf. 1964, No. 61, s. 4 (1); 1968, No. 145, s. 4

5. Advertising of applications—(1) After the expiration of 28 days from the receipt of an application for a lease or 25 licence or of such shorter period as the controlling authority determines, but before the application is considered, notice of the application shall be published by the applicant in the manner provided in this section at least twice, with an interval of not less than 7 days between each publication of 30 the notice, in a newspaper circulating in the locality where the area applied for is situated.

(2) Every such notice shall—

- (a) Specify the name and address of the applicant:
- (b) Specify the acreage of the area applied for: 35
- (c) Describe the area applied for so as to enable it to be readily identified without the necessity of reference to the plans or records of any office:
- (d) Indicate the place at which the plans accompanying the application may be seen: 40
- (e) State the species of fish or vegetation proposed to be farmed:
- (f) State the date of first publication of the notice:

(g) Require any person desiring to object to the application, within 2 months of the said first publication, to notify in writing his objection to the controlling authority and to serve a copy of it on the applicant.

5 (3) The applicant shall, not later than the date of the first publication of the notice, send a copy of it by registered post to—

10 (a) The harbour board or local authority (if not the controlling authority) or other person in which any foreshore or foreshore reserve adjoining the area applied for is vested:

15 (b) The proprietor of any land adjoining the area applied for, or, where any such land is a public reserve or a national park, the Minister of Lands and the body administering the reserve (if any) or the board controlling the park, as the case may be.

(4) For the purposes of paragraph (b) of subsection (3) of this section, land shall be deemed to adjoin the area applied for, notwithstanding that the land and the area
20 are separated by any foreshore, foreshore reserve, road, roadway, or road reserve, if the land would adjoin the area but for the existence of the foreshore, foreshore reserve, road, roadway, or road reserve, as the case may be.

25 (5) Any person desiring to object to the application shall, within 2 months after the date of first publication of the notice of application, notify the controlling authority in writing of his objection, together with the grounds on which it is based, and shall also serve a copy of it on the applicant. The applicant may, not later than 28 days after the said period of
30 2 months, make written submissions on the objection to the controlling authority. If the applicant makes any such submissions, he shall, within the said period of 28 days, serve a copy of them on the objector.

35 (6) Where any notice of objection is given, no lease or licence of the area applied for shall be offered until after the objection has been finally disposed of.

(7) Any notice of objection may be withdrawn at any time before the determination of the objection under section 6 of this Act.

40 Cf. 1964, No. 61, s. 4 (2)–(4); 1968, No. 145, s. 5

6. Objections—(1) Where an objection has been made in accordance with section 5 of this Act, the controlling authority shall, before considering the application, decide whether or not the objection should be upheld. If the objection is upheld, the area shall not be leased nor shall any licence be issued in respect of the area pursuant to the application. In making any such decision, the controlling authority shall not be bound to follow any formal procedure, but shall have regard to all submissions made by or on behalf of the objector and the applicant and to the rules of natural justice generally, and shall uphold the objection if the controlling authority is satisfied that the issue of a lease or licence in respect of the area applied for would—

- (a) Interfere unduly with any existing right of navigation:
- (b) Interfere unduly with commercial fishing:
- (c) Interfere unduly with any existing usage of the area for recreational purposes:
- (d) Otherwise be contrary to the public interest.

(2) The Secretary or, as the case may be, the principal administrative officer of the controlling authority shall cause the controlling authority's decision, together with the grounds thereof, to be notified in writing to the objector and to the applicant.

Cf. 1964, No. 61, s. 4 (5)–(7); 1968, No. 145, s. 6

7. Grant of leases and licences—(1) Where no notice of objection has been given in accordance with section 5 of this Act within the period prescribed in that section, or where any such notice has been given and the objection has not been decided in favour of the objector or has been withdrawn, the controlling authority shall consider the application and, subject to the provisions of this Act, may, if he or it thinks fit, offer to the applicant a lease or licence in respect of all or any part of the area.

(2) Subject to subsection (1) of this section and to section 20 of this Act, where more than one application is received in respect of the same area, the controlling authority shall determine which applicant is to be preferred.

(3) Every such determination may, in the discretion of the controlling authority, be by lot, or by having regard to the financial or other circumstances of the applicant, or to the likelihood of the applicant being able successfully to develop a marine farm, and the determination of the controlling authority shall be final.

(4) On acceptance of any offer made under subsection (1) of this section, or on the acceptance of any offer pursuant to section 21 of this Act, as the case may be, the controlling authority and the applicant shall execute a lease or licence, as the case may be, of the area offered in accordance with the requirements of this Act, and any regulations made under this Act, relating to leases or licences.

(5) For every lease or licence there shall be paid by the applicant such fee for its preparation as may be determined by the controlling authority and such fee for its registration as may be determined by the Minister.

(6) Every lease or licence shall be prepared in triplicate by the controlling authority, and shall be dated as of the date of its execution.

(7) If any applicant who has been offered a lease or licence fails to execute it within 1 month after being required by written notice to do so, the controlling authority may declare the right of the applicant to a lease or licence to be terminated; and thereupon the amount of his application fee shall, unless the controlling authority otherwise determines, be deemed to be forfeited to the Crown where the Minister is the controlling authority, and to the controlling authority in any other case.

Cf. 1968, No. 145, s. 7

8. Lease or licence may include conditions and covenants relating to certain matters—Every lease or licence may contain conditions, covenants, or provisions—

(a) Providing for the terms under which the rent, or the annual licence fee, as the case may be, determined in accordance with section 9 of this Act, is to be paid to the controlling authority:

(b) Requiring the lessee or licensee to farm in the leased or licensed area such species of fish or marine vegetation as may be specified in the lease or licence:

(c) Providing for the lessee or licensee to enter into a bond of such amount as may be specified in the lease or licence for the removal of structures and rafts from the leased or licensed area on the termination of the lease or licence:

(d) Requiring the lessee or licensee to carry on the business of marine farming in the leased or licensed area for his sole use and benefit:

(e) Providing for terms, not inconsistent with this Act, on which the lease or licence may be renewed:

- (f) Providing for the forfeiture, without payment of compensation, of the lease or licence on the grounds that the lessee or licensee—
- (i) Cannot be found or has abandoned the area comprised in his lease or the rights specified in his licence, as the case may be, or has died and no personal representative has claimed the leased or licensed area within 12 months after the death; or 5
 - (ii) Has not made attempts to the satisfaction of the controlling authority to establish in the leased or licensed area a marine farm for the farming of the species of fish or marine vegetation specified in the lease or licence within 2 years of the execution of the lease or licence, or within such other period as may be prescribed therein: 10
- (g) Provide for the forfeiture, subject to the payment of compensation, of the lease or licence as to the whole or part of the area comprised therein on the grounds that the area or part is required for any public purpose: 15
- (h) Requiring the lessee or licensee, as the case may be, to comply with the provisions of this Act and of any regulations made under this Act and with any requirements lawfully made pursuant to any such provision: 20
- (i) Subject to the requirements of this Act, providing for such other matters as may be agreed on between the parties to the lease or licence or as may be necessary for the operation of a marine farm. 25

Cf. 1968, No. 145, s. 8 30

9. Rent and licence fees—(1) Subject to this Act and to any regulations under this Act, the rent payable under any new lease shall be determined by the controlling authority.

(2) Subject to this Act, the annual licence fee payable in respect of a licence shall be determined by the controlling authority. 35

(3) In determining the amount of rent payable in respect of any lease, the value of improvements made by the lessee or any former lessee shall not be taken into account.

(4) Rent in respect of a lease and licence fees payable in respect of a licence shall be paid to the Secretary or, as the case may be, the principal administrative officer of the controlling authority in accordance with the provisions contained in the lease or licence. 40

(5) Where a lease or licence is terminated during its currency otherwise than as a result of non-compliance with or contravention of this Act or the lease or licence, the lessee or licensee shall be liable only for payment of that proportion of the rent or licence fees which relates to the period up to the date of termination, and shall be entitled to a refund of any rent or licence fees paid by him in respect of any period subsequent to the date of termination.

(6) Where the Minister has made an order under section 39 of this Act and the disease, infection, or contamination giving rise to the order was not due to the fault of the lessee or licensee, or where the production of fish or marine vegetation farmed in the leased or licensed area has in the opinion of the controlling authority been reduced as a result of flood, storm, disease, contamination through no fault of the lessee or licensee, or other natural disaster, the controlling authority may release the lessee or licensee from payment of the whole or part of the rent or licence fees for the period of reduced production or for the period of 3 years, whichever is the shorter.

(7) Where any lessee is at any time in arrear with the payment of the rent due under his lease or any licensee is in arrear with the payment of the annual licence fee due under his licence, he shall not remove any of the fish or marine vegetation farmed in the leased or licensed area, as the case may be, except with the written consent of the controlling authority, until the amount overdue has been paid.

Cf. 1964, No. 61, s. 5 (1); 1968, No. 145, s. 9

10. Property and other rights conferred on the lessee or licensee—(1) Every lease of an area under this Act shall vest in the lessee, his executors, administrators, assignees, and successors—

(a) A leasehold estate for the term specified in the lease; and
(b) Subject to the provisions of the lease and of this Act and of any other enactment or rule of law, the exclusive right during the currency of the lease to farm within the leased area the species of fish or marine vegetation specified in the lease.

(2) The lessee shall have no right, title, or claim to any minerals (being minerals within the meaning of the Land Act 1948) in or under the leased area. All such minerals are reserved to the Crown.

(3) Every licence issued in respect of an area under this Act shall vest in the licensee, his executors, administrators, assignees, and successors, subject to the provisions of the licence and of this Act and of any other enactment or rule of law, the exclusive right during the currency of the licence to farm within the licensed area the species of fish or marine vegetation specified in the licence. 5

Cf. 1968, No. 145, s. 10

11. Restrictions on assignment and subletting—(1) A lessee or licensee shall not assign, sublet, or part with the possession of the whole or any part of his leased or licensed area without the prior consent in writing of the controlling authority. 10

(2) The provisions of section 110 of the Property Law Act 1952 shall apply in respect of subsection (1) of this section as if the subsection were a covenant, condition, or agreement contained in the lease or licence against assigning, subletting, or parting with possession of the leased or licensed area. 15

Cf. 1968, No. 145, s. 11

12. Variation, etc., of lease or licence—(1) Subject to this Act, the parties to a lease may from time to time, by instrument in a form provided or approved for the purpose by the Secretary, vary any of the conditions, covenants, or agreements of the lease. 20

(2) At any time before the expiration of any lease, the controlling authority (subject, in the case of a controlling authority other than the Minister, to the prior consent of the Minister) may, notwithstanding that the lease may not contain a right of renewal, grant an extension of the term of the lease, by memorandum in writing in a form provided for the purpose by the Secretary, for any period not exceeding 14 years on the same conditions, covenants, and provisions as the existing lease or on such varied conditions, covenants, or provisions, not inconsistent with the requirements of this Act or any regulations made under this Act, as may be agreed between the controlling authority and the lessee: 25 30 35

Provided that no such extension shall have any effect unless it is registered in accordance with section 14 of this Act before the expiration of the lease.

(3) Subject to this Act, the parties to a licence may from time to time, by memorandum in writing, in a form provided for the purpose by the Secretary, vary any of the conditions, covenants, or agreements contained in the licence. 40

(4) At any time before the expiration of any licence, the controlling authority (subject, in the case of a controlling authority other than the Minister, to the prior consent of the Minister) may, notwithstanding that the licence may not
5 contain a right of renewal, grant an extension of the period of the licence by memorandum in writing, in a form provided for the purpose by the Secretary, for any period not exceeding 14 years on the same conditions, covenants, and provisions as the existing licence, or on such varied conditions,
10 covenants, or provisions as the existing licence, or on such varied conditions, covenants, or provisions, not inconsistent with the requirements of this Act or any regulations made under this Act, as may be agreed between the controlling authority and the licensee:

15 Provided that no such extension shall have any effect unless it is registered in accordance with section 14 of this Act before the expiration of the licence.

(5) Upon the registration of a memorandum of extension of a lease or licence, the estate of the lessee or licensee there-
20 under shall be deemed to be subject to all encumbrances, liens, and interests to which the lease or licence is subject at the time of the registration of the memorandum of extension.

(6) If a lease or licence affected by a memorandum of variation is at the time of the registration of the memorandum
25 subject to any registered mortgage or other charge of any kind, the memorandum shall not be binding on the mortgagee or, as the case may be, the person entitled to the benefit of the charge, unless he has consented thereto in writing on the memorandum.

30 Cf. 1968, No. 145, s. 12

13. Surrender and forfeiture of leases and licences—(1) The controlling authority may at any time accept a surrender of any lease or licence as to the whole or any part of the leased or licensed area.

35 (2) There shall be included or, if not included, implied in every lease or licence a proviso or stipulation that the lease or licence shall be liable to forfeiture if, during its currency, the lessee or licensee, as the case may be, is in breach of any condition, covenant, or agreement in the lease or licence.

40 (3) On the occurrence of any such breach, the controlling authority may, subject to this Act, forfeit the lease or licence without action, and may thereupon re-enter and recover possession of the leased or licensed area, subject, in the case of a lease, to sections 117 to 119 of the Property Law Act 1952.

45 Cf. 1964, No. 61, s. 6; 1968, No. 145, s. 13

Registration of Leases and Licences

14. Registers of leases and licences to be kept by Marine Department—(1) The Secretary shall cause to be kept at the head office of the Marine Department at Wellington a register of leases and a register of licences, in which there shall be entered particulars of leases and licences in force. The Secretary shall also cause a register of lessees and licensees to be kept. Those registers shall include particulars of leases in force at the commencement of this Act granted under the Rock Oyster Farming Act 1964 or the Marine Farming Act 1968.

(2) Subject to the requirements of this Act relating to dealings with any lease or licence, any instrument or notice of any kind which, if the lease or licence were a lease registered under the Land Transfer Act 1952, would be registrable against a lease under that Act by virtue of that Act or any other Act shall be registrable in the head office of the Marine Department at Wellington against any lease or licence registered pursuant to subsection (1) of this section, and, except as otherwise provided by regulations under this Act, may so be registered in the manner provided by the Land Transfer Act 1952 for the registration of instruments or notices registrable against leases under that Act with such modifications as the Secretary from time to time considers necessary.

(3) As soon as may be after the issue by any harbour board or local authority of any lease or licence, the principal administrative officer of the Board or authority shall cause the lease or licence to be sent to the Secretary for registration pursuant to subsection (1) of this section.

(4) Every entry made on any lease or licence in respect of any instrument or notice duly registered against that lease or licence under subsection (2) of this section shall, if purporting to be duly made and signed, be received in all Courts as evidence of the particulars therein set forth, and, against the person originally named in the lease or licence and all persons claiming through or under or in trust for him, shall, until it is lawfully cancelled, be conclusive evidence that any person named in the entry, instrument, or notice is seised or possessed of the estate or interest which purports to be vested in him as registered owner by virtue of that entry and of the instrument or notice in respect of which it is made.

(5) Every instrument of transfer, sublease, mortgage, or other dealing (other than a notice) registered under subsection (2) of this section shall have the effect of a deed duly executed by the parties signing it.

5 (6) There shall be paid to the Secretary for the registration of any lease or licence or other instrument pursuant to this section the fee prescribed by regulations under this Act.

(7) All dealings with or under any such lease or licence in contravention of the provisions of this Act or any other Act 10 shall be void; and the Secretary shall not register any dealing with or in respect of a lease or licence until he is satisfied that the said provisions have been complied with.

(8) The registers kept under this section shall, during the ordinary hours of business, be open to inspection by the public; 15 and a certified copy of any instrument registered in the register of leases and licences shall, on payment of such fee as is prescribed by regulations under this Act, be given to any person requiring it.

(9) No notice of any trust, whether expressed, implied, or 20 constructive, shall be entered in the registers, and neither the controlling authority nor the Secretary shall be affected by any such notice.

(10) Where any person becomes entitled by assignment, transmission, or operation of law to a lease or licence or to a 25 share in a lease or licence, or becomes entitled to any other interest in any lease or licence, he shall apply to the Secretary for registration of his interest in the register of leases and licences and register of lessees and licensees.

(11) Where application for registration is made under this 30 section, the Secretary shall, on proof that the applicant is entitled to the interest to which the application relates, register him as proprietor of the interest.

(12) No assignment of any lease or licence, or any interest in any such lease or licence, shall have any effect until it is 35 registered in the register of leases and licences kept pursuant to this section.

(13) Every instrument presented for registration under this section shall be registered in the order of time in which it is presented for that purpose. Instruments registered with 40 respect to or affecting the same estate or interest shall, notwithstanding any express, implied, or constructive notice, be entitled to priority the one over the other according to the date of registration, and not according to the date of each instrument itself.

(14) The Secretary shall not register any document liable to stamp duty unless it purports to have been duly stamped, but no registration shall be invalidated by reason of any error in this respect.

Cf. 1964, No. 61, s. 7; 1968, No. 145, s. 14

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15. Persons jointly registered to be joint tenants—Any two or more persons named in any lease or licence as lessees or licensees, or in any instrument as transferees, mortgagees, or proprietors of any estate or interest in any lease or licence, shall, unless the contrary is expressed, be deemed to be entitled as joint tenants with right of survivorship, and every such lease or licence or instrument, when registered, shall take effect accordingly. 10

16. Correction of registers—(1) Where a mistake exists in either of the registers kept under section 14 of this Act, or in any instrument issued under this Act, by reason of an error or omission on the part of any officer of the Marine Department or of any harbour board or local authority, the Secretary shall, in accordance with the provisions of this section, correct the mistake, and for that purpose may require the production of any such instrument. 15 20

(2) Where the Secretary proposes to make any such correction as aforesaid, he shall give notice of the proposal to the persons (if any) who appear to him to be concerned, and shall give them an opportunity to be heard before making the correction. 25

(3) Where a mistake exists in either of the registers kept under section 14 of this Act, or in any lease or licence or application for a lease or licence, or in any other instrument or document, by reason of an error or omission on the part of the lessee or licensee or of the applicant for the lease or licence or of any other person concerned, a correction may be made in accordance with the provisions of this section on a request in writing by any person interested and payment of the prescribed fee (if any). If it appears to the Secretary that the correction would materially alter the meaning or scope of the instrument or document to which the request relates and ought not to be made without notice to persons likely to be affected thereby, he shall require notice of the nature of the proposed correction to be advertised at least twice at intervals not exceeding 7 days in a newspaper or newspapers circulating in the locality where the area leased or licensed is situated. 30 35 40

(4) Within 3 months after the last publication of any such advertisement, any person interested may give notice to the Secretary of opposition to the request, and where any notice of opposition is given the Secretary shall give notice of it to
5 the person by whom the request was made, and shall give him and the opponent an opportunity to be heard before he decides the case.

17. Evidence of entries, etc.—(1) A certificate sealed with the seal of the Marine Department and purporting to be
10 signed by the Secretary certifying that any entry which he is authorised by or under this Act to make has or has not been made, or that any other thing has or has not been done, shall, in the absence of proof to the contrary, be evidence of the matters so certified.

15 (2) A copy of any entry in either of the registers kept under section 14 of this Act or of any lease or licence or any other instrument or document issued or registered under this Act, or an extract from any such register or document, sealed with the seal of the Marine Department and purporting to be
20 certified by the Secretary, shall be admitted in evidence without further proof and without production of the original.

18. Loss or destruction of lease or licence—Where the Secretary is satisfied that a registered lease or licence has been
25 lost or destroyed or cannot be produced, he may at any time, on application made to him for the purpose and the production of such evidence as he may require and on payment of the prescribed fee (if any), issue a certified copy of the lease or licence, and every such certified copy signed by him and sealed with the seal of the Marine Department shall be
30 received in evidence for all purposes for which the original lease or licence might be put in evidence.

Renewal of Leases and Licences and Re-offering of Leased and Licensed Areas

19. Special provisions relating to the renewal of leases and
35 **licences**—(1) Where any lease or licence which is renewable is held by two or more lessees or licensees as tenants in common or joint tenants and any one or more of those lessees or licensees elects not to accept a renewed term of the lease or licence or fails to execute the lease or licence for a
40 renewed term within the time limited in that behalf, that election or failure, as the case may be, shall in no way affect

the rights of the other tenants in common or joint tenants, and they shall be entitled to a new lease or licence for the same term, subject to the same covenants and conditions as the first-mentioned lease or licence, including a right of renewal, as tenants in common or joint tenants or, as the case may be, as sole tenant to the exclusion of the one or ones who elected not to accept a renewed term or who failed to execute a lease or licence as aforesaid. 5

(2) If the controlling authority refuses to grant a new lease or licence pursuant to subsection (1) of this section, all the provisions of sections 120 and 121 of the Property Law Act 1952, so far as they are applicable, shall apply in respect of the lease or licence containing the right of renewal as if the lessee or licensee desiring the new term were a lessee entitled to call for the new lease as a renewal of an existing lease on similar terms. 10 15

(3) Where any lease or licence granted by the controlling authority in respect of any leased or licensed area (not being a new lease or licence granted under subsection (1) of this section) is in renewal of any prior lease or licence of the area, then, on the renewal lease or licence being registered with the Secretary, all the provisions of section 117 of the Land Transfer Act 1952, so far as they are applicable and with the necessary modifications, shall apply to that lease or licence as if it were a lease registered under that Act and as if the references in that section to the Registrar were references to the Secretary. 20 25

Cf. 1964, No. 61, s. 5 (2); 1968, No. 145, s. 15

20. Preference rights—(1) Where a lease or licence does not contain a right of renewal, the lessee or licensee, or, where two or more persons are lessees or licensees as tenants in common or joint tenants, any one or more of them, shall, on the expiration of the lease or licence, if he has complied with the provisions of this Act and with the conditions, covenants, and other provisions of the lease or licence, and if he has made an application to the controlling authority for a new lease or licence in accordance with section 4 of this Act, have a right to be offered a new lease or licence of the area in preference to any other person who may have applied for a lease or licence of the area. 30 35 40

(2) The right of preference shall arise only where the lessee or licensee has made an application for a new lease or licence at least 3 months before the expiration of his lease or licence. Where any such application is made, the provisions of sections 5 and 6 of this Act shall not apply.

(3) Nothing in this section shall be construed to make it obligatory on the controlling authority to grant a new lease or licence of the area.

Cf. 1968, No. 145, s. 16

21. Re-offering of area for lease—(1) Where any lease is surrendered, forfeited, or, being a renewable lease, is not renewed, or, in the case of a person having a right of preference, the right of preference is not exercised in accordance with section 20 of this Act, or for any other reason an area previously leased becomes available for leasing, the controlling authority may offer by public tender, or by public auction, or by public application and ballot, a lease of the area in accordance with the requirements of this Act relating to leases. The provisions of sections 4, 5, and 6 of this Act shall not apply in respect of an area so offered.

(2) It shall be a condition of any such tender, auction, or ballot that the successful tenderer, bidder, or applicant shall, in addition to the payment of rent and other charges (if any), pay to the Secretary where the Minister is the controlling authority, and to the controlling authority in any other case, the value determined in accordance with section 22 of this Act of any improvements carried out under any previous lease and of any stock kept in the leased area. This subsection shall not apply in any case where the successful tenderer, bidder, or applicant is the person who leased the area under the previous lease.

(3) If the person who leased the area under the previous lease is not the successful tenderer, bidder, or applicant, the Secretary where the Minister is the controlling authority, and the controlling authority in any other case, shall pay to that person when it is received the value of the improvements and stock determined in accordance with the said section 22.

Cf. 1968, No. 145, s. 17

22. Valuation of improvements—(1) Where the lease of an area expires or is otherwise terminated and the area is subsequently leased to a person other than the outgoing lessee, the valuation of the improvements and stock (if any) shall be such as may be agreed on between the outgoing and incoming lessee. 5

(2) Where no such agreement can be reached, the matter shall be settled by arbitration in accordance with section 36 of this Act.

Cf. 1968, No. 145, s. 18

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Access Ways and Access Strips

23. Access ways—(1) The lessee of a leased area or the owner or occupier (including the licensee of a licensed area) of any land or area adjoining or in the vicinity of a leased area may apply in writing to the controlling authority to determine an access way over any part of the leased area to the adjoining land or area or the land or area in the vicinity of the leased area, as the case may be. 15

(2) After serving notice of any such application on the owner or occupier or on the lessee, as the case may be, the controlling authority may, if he or it thinks fit, determine an access way over any specified part of the leased area to the adjoining land or to the land or area in the vicinity of the leased area, as the case may be. 20

(3) In determining an access way under this section the controlling authority may impose such conditions on the lessee, and direct him to do such work for facilitating access, as the controlling authority thinks reasonable. 25

(4) On any such access way being so determined, it may be used as an access way to the land or area adjoining the leased area or to the land or area in the vicinity of the leased area, as the case may be. 30

(5) Every determination made under this section shall, if the access way to which it relates is defined to the satisfaction of the Secretary, be registrable against the lease. 35

(6) Every person (not being the lessee or his employees or visitors) commits an offence, and is liable to a fine not exceeding \$20, who uses the leased area for access otherwise than by the access way:

Provided that it shall be a defence in any proceedings for an offence against this subsection if the Court is satisfied that any of the conditions imposed on or directions given to the lessee under this section have not been complied with. 40

under this section, pending the removal, to the satisfaction of the controlling authority, of any structures, rafts, or any other hazards to navigation for the time being erected, placed, anchored, or moored in the area formerly leased by the aforesaid person or by any person under any previous lease. 5

(5) Every lessee commits an offence who, without reasonable excuse,—

(a) Fails to mark or keep marked the boundary of his leased area in accordance with subsection (1) of this section; or 10

(b) Fails to exhibit and keep lit between sunset and sunrise any light required to be provided in accordance with subsection (2) of this section.

(6) Every person to whom subsection (4) of this section relates commits an offence who, without reasonable excuse, fails to exhibit and keep lit any light in accordance with that subsection. 15

Cf. 1968, No. 145, s. 21

26. Prohibited anchorages and prohibited navigation areas in licensed areas—(1) Where for the purpose of protecting his marine farm, or any marine farming activity carried on by him, a licensee desires— 20

(a) To prohibit the anchoring or mooring of ships or boats in any specified part of his licensed area; or

(b) To prohibit the navigation of ships or boats in any specified part of his licensed area,— 25

he shall apply in writing to the Secretary where the Minister is the controlling authority, and to the controlling authority in any other case, for permission to declare the part so specified to be a prohibited anchorage or, as the case may be, a prohibited navigation area. 30

(2) If the Secretary or the controlling authority, as the case may be, grants the permission applied for, the licensee shall, by notice published at least twice in a newspaper circulating in the locality in which his licensed area is situated, declare that the specified part is a prohibited anchorage or, as the case may be, a prohibited navigation area, and shall then cause the part to be marked and kept marked by means of such signs, beacons, buoys, or marks as may be indicated to him by the Secretary or the controlling authority when granting permission as aforesaid. 40

(3) If at any time the Secretary or the controlling authority, as the case may be, considers that it is not in the public interest for any such part of a licensed area to remain a prohibited anchorage or, as the case may be, a prohibited navigation area, the Secretary or the controlling authority shall, by notice in writing to the licensee, declare that the part is no longer a prohibited anchorage or, as the case may be, a prohibited navigation area, whereupon the licensee shall remove all signs, beacons, buoys, and marks erected to mark the prohibited anchorage or prohibited navigation area. If any such licensee fails to remove any such sign, beacon, buoy, or mark, any person may, on being directed to do so by the Secretary or the principal administrative officer of the controlling authority, remove the sign, beacon, buoy, or mark, as the case may be. Every notice under this subsection shall include a statement of the Secretary's or principal administrative officer's reasons for his declaration.

(4) No prohibited anchorage or prohibited navigation area shall be deemed to be such unless it is for the time being marked in accordance with subsection (2) of this section.

(5) Every licensee commits an offence who, without reasonable excuse,—

(a) Fails to mark or keep marked a prohibited anchorage or prohibited navigation area in accordance with subsection (2) of this section; or

(b) Fails to remove any sign, beacon, buoy, or mark in accordance with subsection (3) of this section.

(6) Every person (not being the licensee or a person acting with his authority) commits an offence who, without reasonable excuse,—

(a) Anchors any ship or boat in any prohibited anchorage the boundaries of which are marked in accordance with this section; or

(b) Navigates any ship or boat in any prohibited navigation area the boundaries of which are marked in accordance with this section.

27. Requirements relating to structures—(1) Where a structure is erected and is for the time being maintained in a leased or licensed area, the lessee or licensee shall at all times during the continuance of the lease or licence, and for such period after the expiration, forfeiture, or surrender of the lease or licence as may be required by the controlling authority by notice in writing, ensure that—

(a) The structure is maintained in good order and repair:

- (b) Such number of day beacons, lights, and fog signals as may be required by the controlling authority are kept on board the structure:
- (c) The required day beacons are maintained in a good state of repair and are exhibited between sunrise and sunset in such manner as may be specified by the controlling authority: 5
- (d) The required lights are maintained in working order and are exhibited between sunset and sunrise in such manner as may be specified by the controlling authority and are kept lit: 10
- (e) The required fog signals are maintained in working order and are operated under such conditions as may be specified by the controlling authority:
- (f) Such life-saving equipment and such number of distress signals as may be required by the controlling authority are kept on the structure. 15

(2) Before commencing to erect any structure in a leased or licensed area, not being an area leased for rock-oyster farming purposes, the lessee or licensee shall deposit pursuant to section 178 of the Harbours Act 1950 at the head office of the Marine Department at Wellington a plan in duplicate of the proposed work. On the deposit of any such plan as aforesaid, all the provisions of the said section 178, so far as they are applicable and with the necessary modifications, shall apply in respect of the structure. 20 25

(3) Where any lessee or licensee, or any person employed by him, designs or constructs a structure in the area leased or licensed by the lessee or licensee, the lessee or licensee or person shall ensure that the structure is constructed so as to withstand the action of tides, the stress of weather, storms, or, where appropriate, flooding, or any other occurrence which might reasonably be expected to result in the structure or any part of it breaking adrift and causing a hazard to navigation. If any such structure does not comply with this subsection, the Minister may, at the expense of the lessee or licensee, take such steps and proceedings and employ such persons as may be necessary to remove the structure and restore the site of the structure to its former condition. 30 35

(4) On the expiration of a lease or licence, the controlling authority may require the lessee or licensee under that lease or licence to remove any structure erected in the leased or licensed area. 40

(5) If the lessee or licensee fails to comply with any requirement made under subsection (4) of this section, the controlling authority may, at the expense of the lessee or licensee, take such steps and proceedings and employ such persons as may
5 be necessary to remove the structure and restore the area, so far as is practicable, to the condition as it existed before the commencement of the lease or licence. Any such structure may be sold or disposed of in such manner as the controlling authority may direct, but if the structure is sold any surplus
10 money, after providing for the expense of the removal and sale of the structure, shall be paid to the lessee or licensee or to such other person as may legally be entitled to the money.

Cf. 1968, No. 145, s. 22

28. Requirements relating to rafts—(1) Where any lessee
15 or licensee maintains within his leased or licensed area any raft, he shall at all times ensure that—

- (a) The raft is securely anchored or moored to the satisfaction of the controlling authority, and the anchors or moorings are maintained in a good state of repair:
- 20 (b) The raft is kept in good repair and is maintained in a seaworthy condition:
- (c) The raft will not break adrift and cause a hazard to navigation:
- (d) Such signals, lights, and fog signals as may be required
25 by the controlling authority are kept on board the raft:
- (e) The required signals are maintained in a good state of repair and are exhibited between sunrise and sunset in such manner as may be specified by the controlling authority:
- 30 (f) The required lights are maintained in working order and are exhibited between sunset and sunrise in such manner as may be specified by the controlling authority and are kept lit:
- 35 (g) The required fog signals are maintained in working order and are operated under such conditions as may be specified by the controlling authority:
- (h) Such life-saving equipment and such number of distress
40 signals as may be required by the controlling authority are kept on board the raft.

(2) Before placing any raft in a leased or licensed area, the lessee or licensee, as the case may be, shall deposit pursuant to section 178 of the Harbours Act 1950 at the head office of

the Marine Department in Wellington a plan in duplicate of the raft or proposed raft. Every such plan shall be accompanied by the certificate of a person who is, in the opinion of the Secretary, competent to give a certificate in respect of the raft, certifying that the raft will satisfy the requirements of subsection (3) of this section. On the deposit of any such plan as aforesaid, all the provisions of the said section 178, so far as they are applicable and with the necessary modifications, shall apply in respect of the raft. 5

(3) Where any lessee or licensee places a raft in the area leased or licensed by him, he shall ensure that the raft and its moorings are constructed so as to withstand the stress of the weather or action of the tide or any other occurrence which might reasonably be expected to result in the raft or any part of it breaking adrift and causing a hazard to navigation. If any such raft or moorings do not comply with this subsection, the controlling authority may, at the expense of the lessee or licensee, as the case may be, take such steps and proceedings and employ such persons as may be necessary to remove the raft from the area. 10 15 20

(4) On the expiration of a lease or licence, the controlling authority may require the lessee or licensee under that lease or licence to remove any raft maintained in the leased or licensed area.

(5) If the lessee or licensee fails to comply with any provision of this section or any requirement made under subsection (4) of this section, the controlling authority may, at the expense of the lessee or licensee, take such steps and proceedings and employ such persons as may be necessary to remove the raft from the area. Any such raft may be sold or disposed of in such manner as the controlling authority may direct, but if the raft is sold any surplus money, after providing for the expense of removal and sale of the raft, shall be paid to the lessee or licensee or to such other person as may legally be entitled to the money. 25 30 35

(6) Every lessee or licensee commits an offence who, without reasonable excuse, fails to comply with any provision of this section, or of any requirement under subsection (4) of this section.

Cf. 1968, No. 145, s. 23

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Offences

29. Removal or destruction of marks—Every person commits an offence who, without lawful authority, wilfully removes, destroys, damages, or interferes with—

- (a) Any beacon, buoy, or mark which is used to indicate the boundary of any leased area or any prohibited anchorage or prohibited navigation area; or
- 5 (b) Any light provided in respect of any such beacon, buoy, or mark; or
- (c) Any day beacon, signal, light, or fog signal required to be kept on any structure or raft pursuant to section 27 or section 28 of this Act.

Cf. 1968, No. 145, s. 24

10 **30. Removing diseased or contaminated fish or vegetation—**
Every person commits an offence who, without the prior consent in writing of the controlling authority,—

- 15 (a) Removes diseased or contaminated fish or marine vegetation from one leased area to another leased area or to a licensed area or from one licensed area to another licensed area or to a leased area; or
- (b) Having removed diseased or contaminated fish or marine vegetation from any leased or licensed area, places or casts the fish or vegetation into any tidal water outside the area.

20 Cf. 1968, No. 145, s. 25

31. Injury or damage to marine farms—(1) Every person (not being the lessee or licensee or a person acting with his authority or pursuant to any power conferred on him by any enactment) commits an offence, and is liable to a fine not exceeding \$500, who wilfully—

- 25 (a) Takes, removes, or disturbs, or interferes with—
 - (i) Any fish or marine vegetation being farmed in a leased or licensed area; or
 - 30 (ii) Any raft, structure, or implement used by the lessee or licensee in connection with the farming of fish or marine vegetation in his leased or licensed area; or
- 35 (b) Dredges, digs, or drags a leased area or prohibited anchorage with any implement; or
- (c) Does any other act which causes damage to any marine farm established in a leased or licensed area.

(2) Every person commits an offence who wilfully and without lawful authority—

- 40 (a) Deposits in a leased area or prohibited anchorage any stone, ballast, rubbish, or other deleterious matter; or

(b) Uses in a leased or licensed area any explosive or any toxic gas or any toxic, poisonous, or narcotic substance.

(3) Any person convicted of an offence under this section shall, in addition to any penalty for which he may be liable for the offence, be liable to pay compensation to any lessee or licensee who has sustained damage as a result of the act of the convicted person. 5

(4) The compensation shall be assessed by the convicting Court, and shall be recoverable in like manner as a fine. 10

(5) Notwithstanding the provisions of subsections (1) and (2) of this section, it shall be a defence to an information laid for an offence against this section if the act to which the information relates was caused by a person acting with the sole object of saving his life or that of some other person or of saving his ship or boat or the ship or boat of some other person. 15

Cf. 1968, No. 145, s. 26

32. Obstructing lessee or licensee from farming his leased or licensed area—Every person commits an offence who obstructs, hinders, or prevents the lessee or licensee or any person employed by him or acting under his authority from farming or lawfully taking farmed fish or farmed vegetation from the leased or licensed area. 20

Cf. 1968, No. 145, s. 27 25

33. Offences punishable on summary conviction—Every offence against this Act shall be punishable on summary conviction.

Cf. 1968, No. 145, s. 28

34. Time within which information to be laid—Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information in respect of an offence against this Act may be laid at any time within 12 months from the time when the matter of the information arose. 30

Cf. 1968, No. 145, s. 29 35

35. General penalty for offences—Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable to a fine not exceeding \$400.

Cf. 1968, No. 145, ss. 21 (5), (6), 24, 25, 26 (2), 27 40

Miscellaneous Provisions

36. Submissions to arbitration—(1) Where in any lease or licence or by this Act it is provided that any dispute or matter is to be determined by arbitration, the arbitration shall, 5 subject to any express stipulation contained in the lease or licence and to the provisions of this section, be conducted by arbitrators appointed by the parties to the dispute or concerned in the matter, as the case may be. Each such party shall appoint one arbitrator, and the arbitrators so appointed shall 10 appoint an umpire.

(2) Where either party to the arbitration fails to appoint an arbitrator within 21 days after being requested to do so by the other party, the arbitrator appointed by the other party shall alone conduct the arbitration, and his decision shall 15 be binding on both parties.

(3) If the arbitrators fail to agree upon the matter referred to them within 28 days of it having been referred to them, the matter shall be determined by the umpire to be appointed by the arbitrators, and the decision of the umpire shall be 20 binding on both the parties.

(4) Each party to an arbitration shall pay the costs, charges, and expenses of the arbitrator appointed by him. The costs, charges, and expenses of the umpire shall be borne equally between the parties.

(5) Every arbitration under this section shall be carried out in the manner prescribed by the Arbitration Act 1908, and the provisions of that Act shall, subject to this section, extend and apply to any such arbitration and to the arbitrators and the umpire.

30 Cf. 1968, No. 145, s. 30

37. Liability in civil proceedings—(1) Every leased or licensed area shall be deemed to be “premises” for the purposes of the Occupiers’ Liability Act 1962, and every lessee or licensee shall be an occupier for the purposes of that Act.

(2) If any person enters any leased area or navigates any ship or boat in a prohibited navigation area in such circumstances that he would, but for this subsection, be a trespasser and the boundaries of the area are not marked in accordance with the requirements of section 25 or, as the case may be, 40 section 26 of this Act, he shall be deemed not to be trespassing in the area, and, for the purposes of the Occupiers’ Liability Act 1962, shall be deemed to be a visitor.

(3) Where any lessee or licensee is in breach of any duty imposed on him by or pursuant to this Act, or any regulation made under this Act, and any person dies or suffers physical injury or damage to his property as a result of the breach, nothing in this Act shall be construed to prevent the recovery of damages for breach of statutory duty in respect of the death, physical injury, or damage, as the case may be. 5

(4) In any action brought against any person by the lessee or licensee of an area for damages in tort in respect of the area or anything in the area, it shall be a good defence to the action if the person proves that, because of a storm or other emergency beyond his control, it was necessary to trespass in the area for the sole object of saving his life or that of some other person, or of saving his ship or boat or the ship or boat of some other person, and that he took all reasonable precautions to avoid damage to the lessee's or licensee's property. 10 15

Cf. 1968, No. 145, s. 31

38. Inspection of leased or licensed areas—(1) Any fishery officer, or any officer in the employment of the Crown authorised by the Secretary, may from time to time— 20

(a) Enter and inspect any leased or licensed area for the purpose of ensuring that the provisions of this Act are being complied with or are not being contravened: 25

(b) Enter and inspect any leased or licensed area of which the Minister is the controlling authority for the purpose of ensuring that the provisions of the lease or licence are being complied with or are not being contravened. 30

(2) Any person authorised by the controlling authority of any leased or licensed area of which the Minister is not the controlling authority may from time to time enter and inspect the leased or licensed area for the purpose of ensuring that the provisions of this Act and of the lease or licence are being complied with or are not being contravened. 35

(3) Every person commits an offence who—

(a) Assaults, resists, or obstructs any person exercising the power of entry and inspection conferred on him by subsection (1) or subsection (2) of this section; or 40

(b) Uses threatening language or behaves in a threatening manner towards any such person, while he is exercising the said power of entry and inspection; or

- (c) Fails to comply with the lawful requirement of the Minister or the Secretary or any such person as aforesaid.

Cf. 1968, No. 145, s. 32

5 **39. Closing orders**—(1) If at any time the Minister is
satisfied, on reasonable grounds, that the whole or any part
of a leased or licensed area used in the farming of fish or
marine vegetation is diseased, infected by marine pests, or
contaminated or likely to be contaminated by sewage or other
10 cause to such an extent as to render fish or marine vegetation
(whether farmed or otherwise) in the area unfit for human
consumption or dangerous to human life or to such an extent
that the farming of fish or marine vegetation in the area is
likely to be prejudiced, he may, by notice in writing to the
15 lessee or licensee, declare the area to be diseased, infected by
marine pests, or contaminated or likely to be contaminated as
aforesaid, and order that no fish or marine vegetation be
removed from the area while the notice remains in force
or that fish may be removed from the area only under such
20 conditions as he may specify in the notice.

(2) Any such order may require the lessee or licensee to take specified steps for—

- (a) The purification or treatment of fish or marine vegetation farmed in the leased or licensed area:
- 25 (b) The eradication from the leased or licensed area of the disease, pests, or cause of the contamination, as the case may be:
- (c) The destruction of diseased or contaminated fish or marine vegetation in the leased or licensed area.

30 (3) The Minister may, by a like notice, rescind wholly or in part any order given pursuant to this section, or he may vary any such notice.

(4) Every lessee or licensee commits an offence, and is liable to a fine not exceeding \$500, who fails to comply with any
35 order given under this section.

Cf. 1968, No. 145, s. 33

40. Minister may require lessee or licensee to supply survey information—For the purpose of enabling a leased or licensed area to be charted, the lessee or licensee shall, if required at
40 any time during the currency of the lease or licence to do so, supply to the Minister such survey information relating to the area as may be specified by the Minister.

Cf. 1968, No. 145, s. 34

41. Protection of harbour works—(1) No lease or licence of any area situated within a harbour (as defined in the Harbours Act 1950) shall confer on the lessee or licensee any right to remove, displace, disturb, or damage in any way any installation, plant, equipment, or device for the improvement, protection, management, or utilisation of the harbour, or, except as expressly provided for in this Act, to contravene or fail to comply with any provision of the Harbours Act 1950 or any regulations or bylaws made under that Act. 5

(2) If any lessee or licensee, or any person acting under his authority, acts in contravention of subsection (1) of this section and damage to any installation, plant, equipment, or device as aforesaid arises therefrom, the lessee or licensee shall, in addition to any penalty to which he may be liable for any offence against the Harbours Act 1950 or any other enactment, be liable to pay compensation to the harbour board, or, where the powers and duties of a harbour board are vested in a local authority or the Governor-General, to the local authority or the Crown, as the case may be, for any damage arising from his act to any such installation, plant, equipment, or device. 15 20

Cf. 1968, No. 145, s. 35

42. Delegation of Minister's powers—(1) The Minister may from time to time, by writing under his hand, delegate to the Secretary all or any of the powers exercisable by him under this Act (except this power of delegation). 25

(2) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Minister.

(3) Any such delegation may be made subject to such restrictions and conditions as the Minister thinks fit, and may be made either generally or in relation to any particular case. 30

(4) Every such delegation shall, unless and until revoked, continue in force according to its tenor. In the event of the Minister by whom any such delegation has been made ceasing to hold office, it shall continue to have effect as if made by the person for the time being holding office as Minister, and, in the event of the Secretary to whom any such delegation has been made ceasing to hold office, it shall continue to have effect as if made to the person for the time being holding office as Secretary, or, if there is no Secretary in office, to the person for the time being authorised to exercise the powers of the Secretary. 35 40

(5) The fact that the Secretary or any person acting for the Secretary exercises any power of the Minister shall, in the absence of proof to the contrary, be sufficient evidence that he has been authorised to do so by a delegation under this section.

5 Cf. 1968, No. 145, s. 36

43. Service of notices—(1) Any notice or other document to be given to or served on any lessee or licensee for the purposes of this Act may be given or served—

- (a) By causing it to be delivered to that person; or
- 10 (b) By causing it to be left at his usual or last known place of residence or business or at the address stated by him in any application or other document under this Act; or
- (c) By causing it to be sent by registered letter addressed
- 15 to him at that place of residence or business; or
- (d) By causing it to be affixed in a conspicuous place to any structure or raft within the area leased or licensed by him.

(2) If two or more persons have leased or licensed an area

20 as joint tenants or as tenants in common, service on any of those persons shall be deemed to be service on all of them.

(3) Where any notice or document is sent to any person by registered letter as aforesaid, the notice or document shall be deemed to have been given or served at the time when the

25 letter would have been delivered in the ordinary course of post.

(4) If at any time any lessee or licensee changes his place of residence or business to one that is different from that given in the application for his lease or licence, he shall immediately

30 give notice in writing of the change to the Secretary where the Minister is the controlling authority and to the controlling authority in any other case.

(5) Service in accordance with this section shall be valid and effective notwithstanding that there may be no personal

35 representative acting in respect of a deceased lessee or licensee and notwithstanding that the notice or document may not be addressed to the lessee or licensee by name.

Cf. 1968, No. 145, s. 37

44. Regulations—(1) The Governor-General may from

40 time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing methods of assessing the rental or licence fees payable under leases or licences, and requiring lessees or licensees to pay royalties to the controlling authority in respect of fish or marine vegetation harvested from leased or licensed areas: 5
- (b) Providing for the management and control of leased or licensed areas:
- (c) Regulating the stocking of leased or licensed areas with fish or marine plants, as the case may require:
- (d) Regulating the removal, sale, marketing, or export of fish or marine vegetation farmed in leased or licensed areas: 10
- (e) Providing for the Minister to prescribe steps to be taken by any lessee or licensee to keep his leased or licensed area free from disease, infection by marine pests, and contamination by sewage or other cause: 15
- (f) Regulating the removal and disposal of waste matter from leased or licensed areas:
- (g) Prohibiting or regulating the opening, gutting, bottling, or packing of fish in leased or licensed areas: 20
- (h) Requiring lessees and licensees to keep records of fish or marine vegetation farmed in leased or licensed areas and of any such fish or vegetation sold or marketed, and authorising the Minister or any of his officers and officers of any other controlling authority to inspect any such records: 25
- (i) Providing for the recovery from lessees and licensees of the cost of carrying out inspections of any rafts or structures:
- (j) Providing for the grant and revocation of special licences to lessees and licensees to take fish in its natural state from any place within or outside their leased or licensed areas: 30
- (k) Prescribing offences for breaches of any such regulations, and prescribing fines, not exceeding \$400, in respect of any such offence: 35
- (l) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

(2) Any regulations made under this section may make different provision in respect of different areas and in respect of different species of fish or marine vegetation, and in respect of different leased areas and different licensed areas.

5 Cf. 1964, No. 61, s. 8; 1965, No. 109, s. 2; 1968, No. 145, s. 38

45. Application of Fisheries Act to leased and licensed areas—

(1) Nothing in the Fisheries Act 1908, or in any regulations made under that Act, shall apply in respect of
10 fish of the species specified in a lease or licence and either bred by the lessee or licensee or purchased by him from the Crown or acquired by him with the authority of the Minister; but nothing in this Act shall be construed so as to authorise
15 the lessee or licensee, or any employee or agent of the lessee or licensee, to take, be in possession of, or sell other fish for the time being occurring or existing in the lessee's leased area or the licensee's licensed area, as the case may be, except in accordance with the said Fisheries Act and regulations or in accordance with regulations made under this Act.

20 (2) For the purposes of subsection (1) of this section, fish (other than fish lawfully farmed by the lessee or licensee) shall not be deemed to be in the possession of the lessee or licensee by reason only of the fact that they occur or exist in the lessee's leased area or licensee's licensed area, as the case
25 may be, in their natural living state.

46. Other Acts not affected—(1) Except as expressly provided, nothing in this Act, and nothing done pursuant to this Act, shall derogate from the provisions of the Public Works Act 1928, the Land Act 1948, the Harbours Act 1950, the
30 Shipping and Seamen Act 1952, the National Parks Act 1952, or the Reserves and Domains Act 1953, or any other Act.

(2) Subject to the provisions of this Act, all the provisions of the Property Law Act 1952, so far as they are applicable, shall apply in respect of any lease entered into pursuant
35 to this Act and in respect of any dealing with any such lease.

Cf. 1968, No. 145, s. 40

47. Repeals, savings, and consequential amendments—

(1) The following enactments are hereby repealed:

(a) The Rock Oyster Farming Act 1964:

(b) The Rock Oyster Farming Amendment Act 1965:

(c) Paragraph (e) of subsection (1) and subsection (2) of section 14 of the Fisheries Amendment Act 1965:

(d) The Marine Farming Act 1968.

(2) All leases under the Rock Oyster Farming Act 1964 in force at the commencement of this Act shall continue in force as if they had been granted under this Act, and all the provisions of this Act, so far as they are applicable, shall apply to the leases under, and the areas comprised in, those leases.

(3) All regulations made under the Rock Oyster Farming Act 1964 and in force at the commencement of this Act, so far as they are consistent with this Act, shall continue in force in respect of leases granted under the said Rock Oyster Farming Act and in respect of the lessees, and the areas to which those leases relate, as if the regulations had been made under this Act.

(4) Every application for a lease under the Rock Oyster Farming Act 1964 which is pending at the commencement of this Act shall be dealt with as if the Rock Oyster Farming Act 1964 had continued in force, but any lease granted pursuant to the application shall have effect as if it had been granted under this Act.

(5) Section 2 of the Fisheries Amendment Act 1965 is hereby amended by repealing the definition of the term "oyster farm" in subsection (1), and substituting the following definition:

"'Oyster farm' means a marine farm within the meaning of section 2 of the Marine Farming Act 1970 for the farming of rock oysters; and includes an oyster farm within the meaning of section 2 of the Rock Oyster Farming Act 1964 the lease of which continued in force under section 47 of the Marine Farming Act 1970:".

(6) Section 219 of the Crimes Act 1961 (as amended by section 9 (2) of the Rock Oyster Farming Act 1964) is hereby further amended by omitting the words "oyster farms", and substituting the words "marine farms".