

Act No. 119, 1902.

An Act to remodel the law relating to the Fisheries of New South Wales; to substitute for the Commissioners of Fisheries a board to be called the Board of Fisheries for New South Wales; to repeal the various Acts relating to the fisheries and fishing in tidal and inland waters and to fishing-nets and other instruments for the capture of fish, the promotion of oyster culture and the regulation of oyster-fisheries, and to make better provision in relation thereto; to provide for the leasing in certain cases of Crown lands below high-water mark and in inland waters for the establishment of fisheries; for the leasing for oyster culture of Crown lands in or abutting on tidal waters; for regulating the weights or dimensions of marketable fishes, including oysters, crayfish, and prawns; for the improvement of the supply of fish to consumers; the promotion and development of the industry of fishing; and for other purposes connected with or incidental to the matters aforesaid. [29th December, 1902.]

FISHERIES.

BE 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.

1. (1) This Act may be cited as the "Fisheries Act, 1902," and is divided into Parts, as follows:—

PART I.—PRELIMINARY—ss. 1-3.

PART

Short title and
division.

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PART II.—ADMINISTRATION—*ss.* 4-10.

PART III.—NET AND LINE FISHING—*ss.* 11-32.

PART IV.—LEASES OF CROWN LANDS FOR OYSTER CULTURE—*ss.* 33-51.

PART V.—LEGAL PROCEEDINGS AND MISCELLANEOUS PROVISIONS—*ss.* 52-64.

Operation of Act.

(2) The provisions contained in sections three to ten, both inclusive, shall come into force immediately upon the passing of this Act, and all the remaining sections shall come into force on the sixtieth day after such passing.

Repeal.
First Schedule.

2. The Acts mentioned in the First Schedule hereto are hereby repealed, but, except as hereinafter provided, without prejudice to the past operation of, or to any right lawfully acquired, or penalty or forfeiture incurred under, any of the said Acts, or the regulations made thereunder; and the repeal herein enacted shall not operate to rescind, cancel, or repeal any proclamation, notification, or regulation made under the authority of any Act hereby repealed.

Interpretation of terms.

3. In the construction of this Act, and of all regulations made thereunder, the following expressions within inverted commas shall, unless inconsistent with the context, bear the meanings and include the matters and things hereinafter respectively assigned to them, namely:—

“Authorised purpose” means any purpose indicated by the provisions of this Act or the regulations.

“Board” means the Board of Fisheries for New South Wales constituted under this Act.

“Boat” includes every vessel or punt of any description whatsoever.

“Chairman” means the chairman of the board.

“Crown lands” means and includes any foreshore as well as any land under the sea, within the territorial limits, or under any tidal or inland water, or under any river, lake, lagoon, or other water, in New South Wales, the property in which is by law vested in the Crown, or in any trustees for the purposes of public recreation or for any other public purposes, but exclusive of lands held under lease under this Act or under any Act hereby repealed.

“Fish” means and includes all or any of the varieties of marine or fresh water fishes and crustacea or marine animal life.

“Fisherman” means any person licensed under this Act to catch fish.

“Fixed engine” shall include stake-nets, bag-nets, putts, putchers, night-lines, and all fixed implements or engines for catching or for facilitating the catching of fish.

“Gaff”

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- “ Gaff ” shall mean a metal hook fixed to either end of a rod or stake.
- “ Governor ” means the Governor with the advice of the Executive Council.
- “ Hand-line ” means any line intended or used for the purpose of catching fish, to which not more than six fishing-hooks are attached.
- “ Hauling ” includes casting, shooting, fixing, setting, placing, or staking.
- “ High-water mark ” means the mean line between high-water at spring tide and at neap tide.
- “ Inland waters ” means and includes all rivers and creeks for that portion of their watercourse which is beyond the influence of the tides ; also all fresh-water, lakes, lagoons, and ponds.
- “ Inspector ” means and includes inspectors or assistant inspectors of fisheries, and inspectors of fisheries ex officio appointed and created respectively under this Act.
- “ Justice ” means any justice of the peace.
- “ Lease ” means any lease issued under this Act or under any Act hereby repealed.
- “ Leased area ” means any portion of land leased under this Act or under any Act hereby repealed.
- “ Leister ” shall mean an instrument made of metal prongs fixed to either end of a rod or stake.
- “ Lessee ” means any person holding a lease under this Act or under any Act hereby repealed.
- “ Long line or bultow ” means any line intended or used for the purpose of catching fish, to which more than six fishing-hooks are attached.
- “ Oyster ” means any bivalve mollusc of the family *Ostreidæ* which may be in or be introduced into any water.
- “ Prescribed ” means prescribed by this Act or by any regulation or in any lease made thereunder.
- “ Regulations ” means regulations made under the authority of this Act.
- “ Salmon ” shall include all migratory fish of the genus salmon, whether known by the names hereinafter mentioned, that is to say, salmon, grilse, sea-trout, salmon-trout, smolt, parr, or by any other local name.
- “ Spat ” means and includes the spat, brood, or ware of every kind of oyster below a size which may from time to time by regulation be declared to be marketable.
- “ Strokehall or snatch ” shall mean and include any instrument or device, whether used with a rod and line or otherwise, for the purpose of foul-hooking any fish.

“ Tidal

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“Tidal waters”—All waters which ebb and flow over Crown lands or over lands in the possession or under the control of the Crown or the board, within the territorial jurisdiction of the Crown in New South Wales, and every lake and lagoon in the said State ordinarily subject to the influence of the tides (although the communication with the sea may for the time be closed), the soil or bed whereof is the property of the Crown, or is in the possession or under the control of the Crown or the board, together with, in each case, the soil of such Crown lands or lands under the possession or control of the Crown or the board.

“Trout” shall include non-migratory fish of the genus salmon.

PART II.

ADMINISTRATION.

The Fisheries Board.

4. (1) The duty of protecting, developing, and regulating the fisheries of New South Wales shall be vested in a board, which shall consist of a chairman and nine other members, to be called the “Board of Fisheries for New South Wales.” The board shall by that name be a corporation, with perpetual succession and a common seal, with power to hold real and personal estate, and to sue and be sued, and to take and be the subject of all legal proceedings by such name.

(2) The duties, powers, and authority of the board shall extend to the territorial limits of the said State.

Duties of the board.

(3) The board shall deal with all matters connected with or concerning the better regulation of the fisheries, or any class, group, or portion thereof; the closure or opening of any tidal or inland fisheries; the supervision and protection thereof; the determination of the weight or sizes of marketable fishes; the size of marketable oysters; the dimensions, meshes, and mode of hauling of nets, and the employment of any other implements for the catching of fish; the acclimatisation of fish; the cultivation of fish and oysters; the development of the fishing industry; the exploration of offing grounds suitable for trawling; the improvement and cheapening of the supply of fish to the consumers; the protection of the interests of fishermen, and generally on all matters pertaining to the development and regulation of the fisheries within the territorial limits of New South Wales.

Constitution of board.

5. (1) The chairman of the board shall be appointed by the Governor, and shall hold office for a term of three years, but shall be eligible for reappointment.

(2) The nine other members of the board shall also be appointed by the Governor. Of

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Of such members—

- (a) one shall be a licensed fisherman who has held a licensè for five years;
- (b) one shall be a lessee who has held an oyster lease for five years;
- (c) one shall be appointed by the Governor as representative of the inland fisheries;
- (d) six shall be representatives of the Crown.

Each member of the board provided for in subsections (a), (b), and (c), shall be entitled to be paid at the rate of fifteen shillings per diem for every day on which he attends a meeting of the board, and shall be paid such travelling expenses as may be prescribed. Five members of the board shall constitute a quorum at any such meeting.

(3) The term of office of every such member of the board shall be three years; but any such member shall be eligible for reappointment.

(4) The board may from their own number appoint a deputy chairman, who shall have the same powers as the chairman, during the absence of the chairman through illness or any other cause.

(5) The mode of resigning office as a member of the board, what shall constitute an extraordinary vacancy in the office of such member, and the mode of filling up the same, the places and times of meeting of the board, and all details in furtherance of the provisions of this Part relating to the said board, in respect to the nomination and appointment of members of such board, and the conduct of its business, shall be as prescribed.

6. Every natural born or naturalized subject of His Majesty, but no other person, shall be qualified to be a member of the board. Qualification of representative.

7. It shall be lawful for the Governor, on the recommendation of the board, to appoint such inspectors and other officers as he may think necessary for the purposes of this Act. And every such inspector and other officer shall act under the direction of, and be responsible for the due performance of his duties to, the board. Appointment of inspectors and other officers.

8. (1) The Governor, on the recommendation of the board may appoint any officer of Customs or officer in the Department of Navigation stationed at any coastal port or pilot station, other than Sydney or Newcastle, or any other person residing at any such port or station, or at any other place, to be an assistant inspector of fisheries for such extent of waters as the Governor may place under his supervision. Appointment of assistant inspectors.

(2) Every such assistant inspector shall carry out the directions of the board and shall act in concert with the inspectors, and shall, where necessary, be paid such sum, in addition to his ordinary salary, as the Governor may appoint. Duties of assistant inspectors.

(3)

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Inspectors of
fisheries, ex officio.

(3) Every officer of police of or above the rank of sergeant shall ex officio and within their respective districts be, and have the powers and authorities of, an inspector of fisheries.

Regulations.

9. The Governor may make, revoke, or alter regulations for the purposes of this Act mentioned, and also, in so far as express provision has not been made by this Act, and more particularly for,—

- (a) the conduct of business by the board, and for defining the duties of all officers and other persons upon whom any duty or authority is imposed or conferred under this Act, and the suspending and removing of officers ;
- (b) prescribing the forms and conditions of all licenses, the persons by whom such licenses may be issued, and the mode of payment of license fees
- (c) providing for the due transmission of and accounting for all moneys to the Treasury and Audit Departments respectively
- (d) prescribing the mode of testing the length of nets, and the dimensions of the meshes of nets, and providing for the disposal of forfeited nets
- (e) prescribing, notwithstanding anything contained in this Act or the Second Schedule hereto, the kinds, and the minimum weights or sizes of any species of fish, which may lawfully be caught, sold, consigned, or exposed for sale
- (f) providing for the sale or other disposal of any underweight or undersize fish seized or forfeited under this Act, and of nets found in any waters without an owner or unclaimed
- (g) providing for the hauling or landing of fishing nets in such a manner as to prevent, as far as practicable, the destruction of underweight or undersize fish
- (h) the general regulation of net and line fishing, as well in regard to modes, places, and times of usage as in all other respects
- (i) determining all rights of priority in hauling nets, or dredging for oysters, as between fishermen, or fishermen and dredgermen, or between dredgermen only, netting or dredging on the same ground, and for preserving good order amongst persons engaged in fishing, and in oyster culture, or in any work in connection with the collection of spat
- (j) regulating the removal of oysters from Crown lands, under such limitations as to the number of licensed dredgers or gatherers as the board shall deem fit, or as to the payment of prescribed license fees, and for the seizure and disposal of oysters unlawfully removed from Crown lands or public oyster reserves
- (k) providing for the marking of the boundaries and the periodical inspection of public oyster reserves and leased areas,

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- areas, for vesting any such reserves in local trustees, and for the protection and regulation of all boundary beacons, buoys, or other marks ;
- (l) the allotment or sale of young or foreshore oysters on public oyster reserves and Crown lands to the holders of leased areas
 - (m) determining the size of marketable oysters, and for preventing the taking, consigning, selling, or exposing for sale of unmarketable oysters or oysters not in a condition fit for food
 - (n) disposing of or selling oysters seized or forfeited under this Act
 - (o) the protection and regulation of public oyster reserves and of oysters on Crown lands, and for the limitation and regulation of dredging for oysters by divers on such Crown lands
 - (p) compelling lessees to place and maintain a sufficient stock of oysters on their areas, and to cultivate such leases, and to return all spat and undersized oysters and oysters not in a condition fit for food, together with all dead shell, cultch, and substances dredged up from beds in such a manner as may be most beneficial for the preservation of such beds
 - (q) 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
 - (r) prescribing the terms and conditions under which leases for oyster culture and transfers thereof may be granted
 - (s) 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 discharges from mining works, saw-mills, paper-mills, gas-works, 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
 - (t) preventing lessees 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
 - (u) compelling lessees and fishermen to mark their boats, and prescribing the manner in which they shall be marked
 - (v) the times, seasons, and places at which the taking of trout or salmon shall commence and cease, or be prohibited or permitted
 - (w) any other matter or thing which shall in any manner relate to fisheries or oyster fisheries
 - (x) giving effect to the provisions of this Act as to all details whatsoever.

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It shall be lawful in any such regulations to provide for their enforcement by the imposition of a penalty not exceeding in any case the sum of fifty pounds. And all such regulations shall, on publication in the Gazette, have the full force of law, and a copy thereof shall be laid before the Legislative Council and Legislative Assembly, within fourteen days after the making thereof, if Parliament be then in session, and if not, then within fourteen days after the commencement of its then next ensuing session.

Right of entry.

10. For the purpose of giving effect to or carrying out any regulation made under the authority of the next preceding section, every inspector and every officer duly authorised in that behalf by the board, shall have a right of entry on all lands whatsoever for purposes of inspection or survey, or of erecting and maintaining beacons or other marks for or in connection with the boundaries of leased areas or public oyster reserves.

PART III.

NET AND LINE FISHING.

Notification of close fisheries.

11. (1) The board may, by notice in the Gazette from time to time, declare that any specified tidal or inland water or portion thereof shall be closed against—

- (a) the taking of any species of trout or salmon by any means whatever;
- (b) fishing generally, and by any method of capture;
- (c) the use of fishing-nets and fishing-lines, or of either of such methods of catching fish,

during any specified time in any year: Provided that the board may, in like manner, rescind or vary any such notice.

(2) All water so specified shall be termed "close fisheries," and the months during which the same are so declared to be closed, "close months."

(3) If any person shall, in any close fishery closed against fishing generally, during any close month, haul any net or fix or place or use any line, implement, weir, or other structure or thing whatsoever, for the purpose of catching, taking, or enclosing fish, or in such manner that fish might be caught, taken, or enclosed thereby, or is in possession of fish taken from such close fishery, such person and every person aiding or assisting him, or being in any boat with him during the commission of the offence, shall be liable to a penalty not exceeding fifteen pounds. And the like penalty shall be incurred by any person who, in any close fishery closed against the use of fishing-nets, shall during any close month haul or fix or place any net, or who,

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who, in any close fishery closed against the use of fishing-lines, shall use any fishing-line for the purpose of catching, taking, or enclosing fish, or in such manner that fish might be caught, taken, or enclosed thereby.

12. For the more effectual conservation of the fish supply, and for the protection of the spawning and feeding grounds for immature fish, it shall be lawful for the Governor from time to time, when so advised by the board, to declare by proclamation to be published in the Gazette, and by notice published in some newspaper circulating in the police district nearest to the water mentioned in such notice, that the whole or any defined portion of any tidal or inland water shall be closed against the use of fishing-nets and fishing-lines, or of either of such methods of catching fish, for such term as the Governor shall think fit. Any such proclamation and notice may at any time be rescinded or varied by a proclamation and notice published as aforesaid.

Proclamation closing waters against use of fishing-nets, &c.

13. If any person shall in contravention of any proclamation under the next preceding section, haul any net or place any fishing-line for the purpose of taking or capturing fish, or by which fish may be taken or captured within the limits of the waters or area defined or described in such proclamation, such person shall be liable for the first offence to a penalty not exceeding fifteen pounds and for the second or any subsequent offence to a penalty not exceeding twenty pounds, and every person aiding or assisting in the hauling or otherwise fixing of such net or placing such fishing-line, or being in any boat from which any net or fishing-line shall be hauled or placed in contravention of any such proclamation shall be liable to like penalties. Any inspector may, with or without warrant, apprehend and take before one or more justices any person found offending against the provisions of this section, to be dealt with as hereinafter provided.

Penalty for fishing in closed waters.

14. (1) Every boat used, or intended to be used, for catching fish for sale, by any method whatever, any of the varieties of fish shall be licensed.

Net boats to be licensed.

(2) Any person who so uses such a boat which has not been licensed shall be liable to a penalty not exceeding two pounds.

(3) Such license shall be issued in a form to be prescribed by the regulations.

(4) The fee for every such license shall be five shillings provided that if any such license shall be issued after the month of June and before the month of December in any year the fee therefor shall be two shillings and sixpence; and such fees shall be paid to the Colonial Treasurer, or to some officer authorised by him to receive license fees under this Act.

(5) Every such license shall be in force from the day on which the same shall be issued until the thirty-first day of December then next ensuing and no longer;

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Provided that every such license which shall be issued in the month of December in any year shall be in force until the thirty-first day of December of the year then next ensuing.

(6) Every boat licensed under this section shall have painted in legible figures of such size and description, and in such conspicuous place as may be prescribed, the registration number of such boat under letters "L.F.B.," which shall be understood to mean "licensed fishing-boat."

Fishermen to be licensed.

15. (1) Every person catching or attempting to catch fish for sale by any method in or upon any tidal or inland waters shall hold a license, to be issued in the prescribed form.

(2) The fee for such license shall be five shillings, provided that if any such license shall be issued after the month of June, and before the month of December in any year the fee therefor shall be two shillings and sixpence, and such fees shall be paid to some one of the persons specified in section fourteen hereof as entitled to receive license fees.

(3) Every such license shall be in force from the day on which the same shall be issued until the thirty-first day of December then next ensuing and no longer:

Provided that every such license which shall be issued in the month of December in any year shall be in force until the thirty-first day of December of the year then next ensuing.

(4) If any person, without lawful authority shall catch or attempt to catch, for sale, by any method whatever, any fish in any such waters without having first obtained such license, or shall on demand of any inspector fail to produce such license, he shall be liable for every such offence to a penalty not exceeding forty shillings.

Persons to furnish returns of fish.

16. All persons selling or exposing for sale fish or oysters at any fish market shall, if so requested, furnish in writing to the board a weekly statement of all fish and oysters consigned to or received by them, and shall state the quantity of each species of fish and the waters they were captured in. Any person failing to furnish such statement every week shall be liable to a penalty not exceeding two pounds.

Other persons to supply returns.

17. All persons other than those specified in the preceding section who receive fish for sale from fishermen, or from the waters they are taken from, and do not sell them through a fish market, shall, if so requested, comply with the requirements of the preceding section, and shall be liable to a similar penalty if such requirements are not complied with.

What nets shall be lawful.

18. The Governor may, from time to time, by proclamation in the Gazette declare what length and depth of net and size of mesh for the whole or any part of a fishing net shall, when used or intended to

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to be used in any specified water or waters for catching any specified kind or kinds of fish, be a lawful net, and also the lengths of hauling lines which it shall be lawful to attach thereto.

19. Nothing in the next preceding section shall apply to bona fide naturalist's nets or dredges, or other implements used for the purpose of catching specimens for scientific purposes, provided that the person so fishing is the holder of a permit issued by the board.

Exemption of nets, &c., used for scientific purposes.

20. If any person shall, for the purpose of catching fish, use any net of a length or depth greater, or having meshes smaller than such as are specified by the board, or than have, in and for any particular water, or for catching any specified kinds of fish, been declared lawful by proclamation, such person shall be deemed to be using an unlawful net, and shall, for the first offence, be liable to a penalty not exceeding five pounds, and for a subsequent offence to a penalty not exceeding twenty pounds. And every person aiding or assisting in the use of such unlawful net, or being in the same boat as the offender at the time of the commission of any such offence as aforesaid, shall be liable to the like penalties.

Penalties for using unlawful nets.

21. It shall be unlawful to drag or to draw ashore any net containing fish in such a way or to such a distance from the water as to prevent underweight or undersize fish from escaping through the meshes or by the wings of the net into the water, or to allow such undersized or underweight fish to remain on the shore, and any person offending against this section shall for every such offence be liable to a penalty not exceeding two pounds.

Method of dragging or drawing nets.

22. The setting of any net, netting, brushwood, or other substance across or within any bay, inlet, river, or creek, or across or around any flat, in tidal or inland waters, in such a manner that fish enclosed thereby are, or may be left, stranded, or that immature fish may be destroyed thereby, is hereby declared to be an offence under this Act.

Waters not to be stalled.

It shall be unlawful to place, set, or use in inland waters any trap or device enclosed with wire or wire netting with wings so attached as to impede the free passage of fish on either side of the trap or device, and any person found offending against this section shall be liable to a penalty not exceeding two pounds, and such trap or device and wings shall be forfeited.

23. (1) If any person shall without lawful authority have in his possession, or on his premises, or in his boat, or shall sell or consign for sale, any fish of any of the species mentioned in the Second Schedule hereto of a less weight or size than that set opposite the name of such fish in such Schedule, or prescribed by any regulation, he shall be liable to a penalty not exceeding two pounds for the first offence, and for the second or any subsequent offence to a penalty not exceeding five pounds.

Penalties for having underweight or undersize fish in possession.
Second Schedule.

(2) All such underweight and undersize fish, shall be forfeited and be disposed of in accordance with the regulations.

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(3) Any inspector may seize any fish which are liable to forfeiture under this section, and take the same before any justice, or any officer or person authorised by the board in that behalf who, upon test thereof, shall declare whether or not such fish are under weight or under size, and if he declare them to be so, shall order them to be forfeited and to be disposed of in accordance with the regulations.

(4) The provisions of this section shall not apply to any curator of a museum or zoological collector holding a permit from the board, or to a member of the board, or any inspector, or to any aboriginal taking or being in possession of fish for his own consumption.

(5) If any person shall at any time either sell, or cause to be sold, or shall offer or expose for sale, or shall have in his possession or control for purposes of sale any fish known as or called the "Crayfish" of a size less than that prescribed in the Second Schedule, or any female of such fish of whatsoever size having eggs or spawn attached beneath its body, or which has been captured with eggs or spawn so attached, he shall, upon conviction, forfeit and pay for every such offence a penalty or sum not exceeding five pounds.

Dynamite, &c., not to be used.

24. (1) It shall not be lawful by the explosion of dynamite or any explosive substance, or by means of any poisonous or noxious thing, to destroy or take fish in any tidal or inland waters. And if any person shall explode any dynamite or any explosive substance in or under such waters, or place or cause to flow thereinto any poisonous or noxious thing, such person and all other persons assisting or being at the time in company of such person shall for every such offence be severally liable to a penalty not exceeding forty pounds and not less than ten pounds. But nothing herein contained shall apply to any person duly authorised by the persons and in the manner to be prescribed by the regulations to explode torpedoes or dynamite in any such waters.

(2) If any person is found in possession of, or has in his boat, any dynamite or other explosive substance immediately after such explosion it shall be prima facie evidence that such person caused such explosion.

Penalty for damaging lawful nets by placing obstacles on hauling ground.

25. (1) If in any tidal water any person shall wilfully or maliciously drive or place any stake, log, stone, or other thing whatsoever, likely to damage a fishing-net if dragged over or against it, or within the reach of a fishing-net of lawful depth, and if any damage shall be sustained by any lawful fishing-net through coming into contact with such stake, log, stone, or thing, such person shall be liable to a penalty not exceeding ten pounds, and in addition shall pay such compensation to the owner of such net as may be awarded by the adjudicating justices.

(2) Any person who shall place or moor a boat in such a position as to obstruct any fisherman from hauling a lawful net to shore,

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shore, on any recognised hauling ground, and who, on being requested by such fisherman to remove or discontinue such obstruction, shall without reasonable or lawful excuse refuse or neglect so to do, shall be guilty of an offence under this Act.

26. Every person who shall be found using a fishing-net or long line or bultow in any prohibited water shall, on demand, give his true name and residence to any inspector or justice, or to any owner or occupier of land bordering such water, or over which it ebbs and flows. And if any such person shall refuse or neglect to comply with such demand, or shall give a false or fictitious name or residence, he shall be liable to a penalty not exceeding ten pounds.

Netters, &c., to give name and residence when demanded, &c.

27. Notwithstanding anything in this Act, it shall not be lawful for any person to cast, set, or place any net of any kind whatsoever in any of the waters of Brisbane Water or its tributaries north of a line drawn from Box or Hawk Head to Green Point, for the purpose of catching, or adapted to catch, or capable of catching fish, and whether within the waters of such inlet or its tributaries subject to or beyond the influence of the tide. Any person who casts, sets, or places any such net contrary to the provisions of this Act, or is found in possession of a net on such waters shall incur a penalty not exceeding ten pounds for the first offence, and for a second or subsequent offence a penalty not exceeding twenty pounds, and every such net, and all lines, leads, corks, and gear connected therewith shall be liable to be forfeited to His Majesty upon conviction of the offender.

Net-fishing in Brisbane Water.

Penalty.

SALMON AND TROUT FISHERIES.

28. No person shall buy, sell, or expose for sale, or have in his possession any salmon or trout during any period in which the taking of salmon or trout is prohibited, and any person acting in contravention of this section, shall forfeit any fish so bought, sold, or exposed for sale or in his possession, and shall incur a penalty not exceeding two pounds, but this section shall not apply to any person buying, selling, or exposing for sale, or having in his possession salmon cured, pickled, or dried.

Penalty for buying, selling, &c., salmon or trout during prohibited periods.

29. No person shall catch or attempt to catch salmon or trout except by rod and line in any inland waters, and any person catching or attempting to catch salmon or trout by any other means, shall incur a penalty not exceeding two pounds for each offence, and shall forfeit all salmon or trout caught in contravention of this section, and all nets or other instruments used or placed for catching such salmon or trout.

Penalty for catching salmon or trout other than by rod or line.

30. No person shall do the following things or any of them, that is to say,—

Penalty for doing certain things for the purpose of catching salmon or trout.

- (1) Use any light for the purpose of catching salmon or trout.
- (2)

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- (2) Use any spear, leister, gaff, strokehall, snatch, or other like instrument for catching salmon or trout.
- (3) Have in his possession a light or any of the foregoing instruments under such circumstances as to satisfy the Court before whom he is tried, that he intended at the time to catch salmon or trout by means thereof, and any person acting in contravention of this section shall incur a penalty not exceeding five pounds, and shall forfeit any instrument used by him or found in his possession in contravention of this section; but this section shall not apply to any person using a gaff or hand net as an auxiliary to angling with a rod and line.

Penalty for buying, selling, &c., or having in his possession, any salmon or trout roe.

31. No person shall buy, sell, or expose for sale, or have in his possession, any salmon or trout roe, and any person acting in contravention of this section shall incur a penalty not exceeding two pounds, and shall forfeit all roe found in his possession, but this section shall not apply to any person who uses or has in his possession roe for artificial propagation or other scientific purposes, or gives any reason satisfactory to the court by whom he is tried for having the same in his possession.

No fixed engine shall be placed or used for catching salmon or trout.

32. No fixed engine of any description shall be placed or used for catching salmon or trout in any inland or tidal waters; and any engine placed or used in contravention of this section may be taken possession of or destroyed; and any engine so placed or used, and any salmon or trout taken by such engine, shall be forfeited, and in addition thereto the owner of any engine placed or used in contravention of this section shall for each day of so placing or using the same incur a penalty not exceeding ten pounds; and for the purposes of this section a net that is secured by anchors or otherwise temporarily fixed to the soil shall be deemed to be a fixed engine.

Penalty for doing certain things.

It shall be unlawful for any person to do any of the following things:—

- (1) wilfully take or attempt to take any unclean or unseasonable salmon or trout, or the young of salmon or trout;
- (2) buy, sell, or expose for sale, or have in his possession any unclean or unseasonable salmon or trout, or the young of salmon or trout;
- (3) place any device or implement in any river for the purpose of obstructing the passage of salmon or trout;
- (4) wilfully destroy any spawning bed, or any bank or shallow on which the spawn of salmon or trout may be deposited;
- (5) wilfully disturb or attempt to catch salmon or trout when spawning, or when on or near their spawning beds, and any person acting in contravention of this section shall be liable to a penalty of five pounds, and all nets, rods, lines, devices, and

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and instruments used in committing any of the above offences shall be forfeited. But nothing herein contained shall apply to any person who may have obtained such young of salmon or trout, or salmon or trout when spawning, or when on or near their spawning beds for artificial propagation, or other scientific purposes.

PART IV.

LEASES OF CROWN LANDS FOR OYSTER CULTURE.

33. The Governor may, on the recommendation of the board, ^{Governor may lease Crown lands for oyster culture.} lease Crown lands for oyster culture for any term not exceeding fifteen years of any specified area, at a yearly rental not exceeding one pound per one hundred lineal yards, provided that no area shall be leased which shall be less than five hundred yards to any person who is not already an oyster lessee; and on the application of the lessee during the last year but one of the currency of any such lease, the Governor may, on the like recommendation and with the like approval, renew the term for a like period at the same rental, and with such limitations in other respects as he may approve.

34. The Governor may, on the recommendation of the board, ^{Lease for oyster culture.} offer by auction or tender the lease for any term not exceeding ten years, of any specified area of Crown land for oyster culture, at a rental calculated on the area of such Crown land so offered for lease, or at a rental, as prescribed by regulation or fixed in any particular case by the board; and on the application of the lessee during the last year but one of the currency of any such lease the Governor may, on the like recommendation, renew the term for a like period, but subject to such conditions of rent and such limitations in other respects as he may approve:

Provided that the purchaser of the lease of any area under this Act shall, upon payment of the rent therefor for the first year, be deemed to be in actual and absolute possession of such area for all purposes of this Act, notwithstanding that the deed of lease shall not have been issued; and such purchaser, or any inspector, may seize any oysters removed therefrom without lawful authority; and any person who shall be found unlawfully dredging, taking, or attempting to take oysters in or from such area shall be liable to a penalty not exceeding twenty-five pounds, and all oysters found at the time in possession of such person shall be deemed to have been unlawfully taken by him, and may be forthwith returned. ^{Rights pending issue of leases.}

35. Every lease issued under the two next preceding sections ^{Property and rights conferred by lease.} shall vest in the lessee, his executors, administrators, and assigns, all oysters

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oysters within the area leased, and the exclusive right, during the currency of the lease or any renewal thereof, 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 or authorised officer to enter upon such area.

Abutting land not included in lease.

36. Occupation under any such lease 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.

Leased area how described.

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

Surrender of lease.

38. The Governor may, on the recommendation of the board, accept a surrender of any such lease, after the second year of its currency, in any case where it shall appear, to the satisfaction of the board, that oyster culture cannot be carried on upon the leased area with any reasonable hope of success, or where, for any other reason, the board shall report in favour of such surrender.

Reclamation rights under Crown Lands Acts preserved.

39. Every leased area shall be subject to all reclamation rights conferred by the Crown Lands Act of 1884, or any Act amending the same, and to such conditions, provisions, and limitations as may from time to time be prescribed by the regulations or approved by the Governor, and subject to the right of the Crown to carry out public works upon the area or its immediate vicinity without compensation.

Resumption of leases under Acts hereby repealed.

40. The Governor may, on the recommendation of the board, resume wholly or in part any area a lease whereof has been granted under any of the Acts hereby repealed, but subject to the payment by the Crown to the lessee thereof of compensation for the loss of such area or part thereof: Provided that should the lessee of any area so resumed be dissatisfied with the amount of compensation offered to him he shall have the right to require the matter of compensation to be determined by arbitration pursuant to the Act fifty-fifth Victoria number thirty-two, and the award thereunder shall be conclusive on all parties:

Provided that the Crown shall not be liable to pay compensation for the resumption of any lease that has been issued with a provision relieving the Government from liability for any damage or injury that might be done to the area leased or to the oysters thereon, by the carrying out of public works.

Lessees in arrear with rent not to take oysters or be granted further areas.

41. Any lessee who shall at any time be in arrear with the rent on any one or more leased areas shall not be entitled to take oysters from any such area, or 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.

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42. If it shall appear to the board that any lessee has not within a period of one year from the date of his lease taken proper measures to carry out the conditions of his lease, and cultivate the area leased, they may recommend the Governor to cancel the lease. And the Governor shall have power to cancel the same accordingly by notification in the Gazette, and upon the publication of such notification all rights and privileges granted by such lease, and the unexpired term thereof, shall cease and determine :

Board may recommend cancellation of lease in certain cases.

Provided always that before making any such recommendation the board shall cause a notice in writing, stating their intention to make such recommendation, to be served on the lessee, or in case the lessee cannot be found, shall cause such notice to be inserted at least three times in a newspaper circulating in the police district nearest to the area leased, and also to be published once in the Gazette :

Provided further that no such recommendation shall be made until after the expiration of one month from the service or publication of such notice as aforesaid.

43. Upon receipt of a report from any inspector that a leased area is being so stripped of oysters or otherwise mismanaged by the lessee thereof that the production of oysters thereon has been 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 board may, by notice served or published as aforesaid, prohibit the further dredging of, or removal of oysters from such leased area, and may by the same or a like notice call upon the lessee to show cause why the lease of such area should not be cancelled. And the Governor may, on the recommendation of the board, by notification in the Gazette, cancel the lease of any such area, and upon the publication of such notification all rights and privileges granted by such lease, and the unexpired term thereof, shall cease and determine :

Cancellation for mismanagement.

Provided that no such recommendation shall be made until the expiration of one month from the service or publication of such last-mentioned notice.

44. Whenever the board shall, upon the report of any inspector, or by their own inspection, be satisfied that the whole or any part of an oyster-bearing area, whether under lease or not, 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 thereon are in such a condition as to be not fit for consumption as food, they may recommend the Governor to prohibit the taking of oysters from such area, and thereupon the Governor may, by notification in the Gazette, prohibit, for any term not exceeding three years the taking of oysters from such area.

When natural oyster-bearing areas may be closed.

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If any person shall without lawful authority, at any time during the period mentioned in such notification, take or attempt to take oysters from any area described in such notification, such person shall incur a penalty not exceeding twenty pounds. And all oysters and the bags and packages containing them found in the possession of any person so offending may be seized, and upon conviction of the offender shall be forfeited to His Majesty. And the Governor may, in like manner, rescind, wholly or in part, any such notification: Provided always that when on areas under lease for oyster culture such reduction has, in the opinion of the board, resulted from natural causes only, such as floods or disease, the Governor may release the lessees of such areas from payment of rent for the period of such suspension.

The provisions of this and the two preceding sections shall apply to every lease issued under the Act forty-eight Victoria number six.

Portions of Crown lands may be exempt from leasing, or be declared public oyster reserves.

45. The Governor 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 recommendation of the board, may in like manner cancel any such notification wholly or in part.

Penalty for unlawful dredging or taking of oysters.

46. All oysters on every 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; and 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, and shall be seized, and, on his conviction, be forfeited to the use of His Majesty.

Persons may take oysters for their own consumption.

47. Nothing in this Act shall render liable to a penalty any person who takes oysters from any public oyster reserve, or any Crown land, for his own personal consumption on the spot, provided that if such oysters shall be in a spawning condition, or shall have spat attached to them, it shall be lawful for any inspector to prohibit the taking of oysters from any such public oyster reserve or Crown land; and every person who shall take oysters therefrom shall be liable to a penalty of not more than five pounds.

Protection of leased areas.

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

- (1) To take or in any way disturb or interfere with any oysters upon any leased area without the consent of the lessee.
- (2) To cut or lop or remove mangroves or any timber from any leased area.
- (3)

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- (3) To deposit upon or remove from any leased area any stone, ballast, rubbish, or substance, or to dredge or drag upon any leased area with any implement, unless by direction or authority of the board, or the proper officer of the Department of Harbours and Rivers, or the Navigation Department.
- (4) 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 not exceeding five pounds, and for the second offence to a penalty not exceeding ten pounds, and for the third and any subsequent offence to a penalty not exceeding twenty pounds; and 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. And in case of any lawful act under subsection three reasonable compensation shall be made therefor, subject however to the provisions of section thirty-nine of this Act. Penalties.

49. Every 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. Penalty on burning live oysters for lime.

50. (1) Every person selling oysters whether wholesale or by retail shall take out an annual license. Licensing of oyster dealers.

(2) Such license shall be issued in a form to be prescribed by the regulations.

(3) The fee for every such license shall be twenty shillings, provided that if any such license shall be issued after the month of June and before the month of December in any year, the fee therefor shall be ten shillings; and such fees shall be paid to the Colonial Treasurer or to some officer authorised by him to receive license fees under this Act.

(4) Every such license shall be in force from the day on which the same shall be issued until the thirty-first day of December then next ensuing and no longer:

Provided that every such license which shall be issued in the month of December in any year shall be in force until the thirty-first day of December of the year then next ensuing.

(5) Every such license shall entitle the holder thereof to sell and dispose of oysters on any premises specified in such license, and from any cart, stand, basket, or other receptacle.

(6) Every person who shall so deal in or sell oysters without holding a license under this section shall be liable to a penalty not exceeding ten pounds.

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(7) Every person who holds such a license shall, on the demand of an inspector, produce the same for inspection.

Any holder of such a license, who, on the demand being made by an inspector, refuses to produce his license, shall be liable to a penalty not exceeding two pounds.

Inspector may enter premises and boats and seize unmarketable oysters.

51. Any inspector may enter any fish market, premises, place, or dwelling, or go on board any boat, and seize and take away any unmarketable oysters, or any parcel, box, or bag of oysters in which unmarketable oysters or oysters diseased or out of condition may be found: Provided always that the board may, in their discretion, order the restoration to the owner thereof of any or all of the oysters so seized.

PART V.

LEGAL PROCEEDINGS AND MISCELLANEOUS PROVISIONS.

Recovery of penalties and forfeitures.

52. All penalties and forfeitures imposed or incurred by or under this Act, or by or under any regulation, may be recovered and enforced before a police or stipendiary magistrate or any two justices in petty sessions:

Appeal.

Provided that any person aggrieved by any conviction or order given or made under this section may appeal therefrom in the manner provided by the Justices Act of 1902.

Persons who may take proceedings.

53. All proceedings in respect of any such penalties or forfeitures may be taken by and in the name of any inspector, or assistant inspector, or by and in the name of any person specially authorised in that behalf by the board.

Exemption to be proved by person pleading same.

54. In all cases where the defendant or person charged with any offence under this Act shall plead any of the exemptions therein contained, the proof thereof shall be upon such defendant or person charged.

Imprisonment may be imposed in lieu of pecuniary penalty.

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

General penalty.

56. Every person committing any act hereinbefore declared to be an "offence under this Act," or committing a breach of this Act or of any regulation, whether by wilful act or by refusal or neglect to act or otherwise, shall, when no specific penalty has been provided for such offence, be liable to a penalty not exceeding ten pounds, and to the forfeitures prescribed by section twenty-three hereof: Provided always that, for the purposes of this section, the word fish shall, where necessary, be deemed to include oysters and the spat of oysters.

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57. All rents and fees due and payable under this Act may be sued for and recovered by and in the name of the board on behalf of the Crown. Recovery of rents and fees.

58. The production of any of the undermentioned documents, writings, or publications shall be conclusive evidence in all Courts as to the several matters contained therein, and in the case of a lease or license, that the same was duly issued, namely:— What instrument, &c., to be evidence.

- (1) A receipt under the common seal of the board, and showing that the rent on any lease has been paid into the Colonial Treasury.
- (2) A lease signed by the Governor or a copy thereof under the common seal of the board.
- (3) Any license or a copy thereof issued in pursuance of this Act or the regulations, and in each case under the common seal of the board.
- (4) A copy of the Gazette containing any notice, regulation, or proclamation purporting to be made under this Act.

59. Any person who shall assault, resist, or obstruct, or encourage any other person to assault, resist, or obstruct, or shall use abusive language to any inspector, or other person whomsoever in the execution of his duty or authority under this Act shall be liable to a penalty not exceeding ten 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. Assaulting, &c., inspectors and others in execution of their duty.

60. All fish and oysters of which the taking possession, exposure for sale, consignment or purchase for sale is prohibited by this Act may be searched for, seized, condemned, and dealt with, according to law by any inspector or by any person holding the written authority of any justice, or any search warrant under the hand and seal of any justice, or by any person authorised by any regulation. Search for and seizure of fish.

61. Any person convicted a second time of an offence against any of the provisions of Part IV of this Act shall be liable to be disqualified from leasing any area for oyster culture. Disqualifications of twice-convicted persons.

62. (1) Any net used in contravention of subsection three of section eleven, or of sections thirteen, twenty, or twenty-two, shall, on conviction by any court under this Act of the person so using it, be liable to forfeiture. Forfeiture of nets illegally used.

(2) Where, in the opinion of an inspector, a net has been or is being used in contravention of any of the said sections, such inspector may seize the net, and, upon conviction of the offender under any such sections, such net may be forfeited at the discretion of the court. Inspector may seize such nets.

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Disposal of nets
forfeited.

(3) Any net forfeited under this section may be destroyed or otherwise disposed of in such manner as the court by whom the same was forfeited may direct.

Board to institute
experiments, &c.

63. (1) It shall be lawful for the board from time to time to direct the institution and carrying out of experiments in methods of catching fish, and in the culture and propagation of fish and oysters, and to take steps for the discovery of fishing grounds and oyster beds and of grounds suitable for trawling off the sea coast. For the purposes of this section the Governor may by notification in the Gazette declare any Crown land to be reserved for experiments in the culture and propagation of fish or oysters. Crown land so reserved shall, for the purposes of this Act, be deemed to be a leased area, and to be vested in the board, who shall have and exercise over it all the powers and authorities which by this Act are conferred on a lessee.

(2) The Governor by proclamation in the Gazette may grant to the board the right to establish a fishery in or over such Crown lands, or in or over any private lands with the consent of the owner or lessee (if any), on such terms and conditions as they may think fit, and in like manner may alter and rescind such grant.

(3) The grant of a right to establish a fishery shall have the effect of vesting in the board the exclusive right during the continuance thereof,—

of stocking such area with fish, oysters, whelks, cockles, mussels, and any other varieties of crustaceans or molluscs, and of taking therefrom any such fish and their shells ;

of vesting the property (at law or Equity) in any such fish and molluscs, while the same are within the limits of such area, in such board, any rule of law to the contrary notwithstanding ;

of vesting in such board the right to the influx and efflux of the tide into and over the aforesaid area by cutting the trench or passage through, or laying one or more pipes under the shore ; also, the right to construct a sluice so as to permit the tide to ebb and flow into and from such area ;

of vesting in such board the right to sell or otherwise dispose of fish and molluscs from such area, provided that the proceeds of any sale of such fish or molluscs is paid into the Consolidated Revenue.

Report by
Board.

64. The Board shall as soon as possible after the thirty-first day of December in every year report to the Governor as to the state of the fisheries of the State, and such report shall be laid before both Houses of Parliament.

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FIRST SCHEDULE.

Sec. 2.

No. of Act.	Title of Act.
44 Vic. No. 26 ...	An Act to provide for the development and regulation of the Fisheries of the Colony.
46 Vic. No. 25 ...	An Act to amend the Fisheries Act, 1881.
48 Vic. No. 6 ...	An Act for the amendment of the Fisheries Act, 1881, the promotion of Oyster Culture, and the regulation of Oyster Fisheries.
51 Vic. No. 26 ...	An Act for the better preservation of Fish in Inland Waters.
55 Vic. No. 15 ...	An Act to prevent the use of certain Fishing-nets, known as Sunk Nets, and to make other provision subsidiary thereto.
58 Vic. No. 4 ...	An Act to amend the Fisheries Act of 1881 in certain respects.

SECOND SCHEDULE.

Secs. 9 and 22.

Lawful weights and sizes for fish.

Description of Fish.	Weight avoirdupois or size.
<i>Marine fishes.</i>	
Red Bream	6 ounces.
Bream (Black)	6 "
Tarwhine	7 "
Blackfish	6 "
Rock Cod (Black or Red)	6 "
Gurnet	4 "
Flathead	5 "
Sea Mullet	6 "
Other varieties	6 "
Whiting	6 "
Flounder... ..	4 "
Sole	4 "
Pike	4 "
Trevally	4 "
Garfish	2 "
Long Tom	5 "
Teraglin	12 "
Salmon	6 "
Groper	12 "
Kingfish	16 "
Nannygui	4 "
John Dory	8 "
Jewfish	16 "
Pigfish	8 "
Carp	6 "
Pilehard	2 "
Herrings	2 "
Sergeant Baker	4 "
Moorwhong	16 "
Eels	8 "

Act No. 1, 1903.

*Parliamentary Elections (Amendment).*SECOND SCHEDULE—*continued.**Lawful weights and sizes for fish—continued.*

Description of Fish.	Weight avoirdupois or size.
<i>Fresh-water fishes.</i>	
Cod (or Murray Cod)	1½ lb.
Perch (of kinds)	8 ounces.
Carp	6 "
Tench	6 "
Bream (of kinds)	6 "
Catfish	6 "
Trout (of kinds)	12 "
<i>Lawful lengths for Crustacea, measured along the body from the eye to the tip of the tail.</i>	
Crayfish (Salt-water) from eye to tip of tail... ..	10 inches.
Prawns do do	1½ "
Murray River Lobster (Fresh-water)... ..	8 "