



## ANALYSIS

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1968, No. 145

**An Act to facilitate the establishment and development in New Zealand waters of an industry for the farming of sea fish and marine vegetation and to provide for leases of marine farms and the marketing of fish reared and vegetation cultivated in marine farms** [18 December 1968]

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

**1. Short Title**—This Act may be cited as the Marine Farming Act 1968.

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

“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—

(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

(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 that is vested in the Crown—

and includes any water at any material time upon or vertically above any such part:

“Farming”, in relation to any species of fish or marine vegetation, includes 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:

“Fish” means any species of fish, shellfish, or sponge capable of being farmed commercially in a marine farm; and includes their young or fry or spawn; but does not include rock oysters as defined in section 2 of the Fisheries Amendment Act 1965 or any species of salmon or trout:

“Fishery officer” means an officer appointed under section 4 of the Fisheries Act 1908:

“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:

“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:

“Marine farm” means any leased 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:

“Marine vegetation”, or “vegetation”, means any plant capable of being farmed commercially in a marine farm:

“Minister” means the Minister of Marine:

“Raft” means any non-self-propelled floating platform, pontoon, barge, punt, or hulk used within a leased area for the purpose of providing buoyant support for the surfaces on which the fish or marine vegetation are cultivated:

“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 area.

### *Leasing of Marine Farms*

**3. Power to lease areas—**(1) The Minister may from time to time lease in accordance with the provisions of this Act any area for a term not exceeding fourteen 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 provisions of the First Schedule to the Public Bodies' Leases Act 1908.

(2) No leased area shall be more than five acres, but this subsection shall not be construed to prevent a person from leasing more than one such area at any one time.

**4. Applications for leases—**(1) Any person over twenty-one years of age may apply for a lease under this Act. Every such application shall be on a form supplied by the Secretary for the purpose.

(2) Every application for a lease of an area shall be made to the Secretary or to a person authorised by him to receive applications.

(3) Every such application shall be accompanied by—

(a) A deposit of one hundred dollars or such smaller amount as the Minister may from time to time, either generally or in any specific case, determine:

(b) Five copies of a map, plan, or aerial photograph clearly defining to the satisfaction of the Minister the boundaries of the area applied for and its relationship to adjacent land-boundary surveys or approved survey monuments.

(4) The Secretary may require the applicant to supply such other information as may be necessary to enable the Minister to decide whether or not a lease should be offered to the applicant.

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

(6) Where an applicant for a lease withdraws his application, the deposit shall be forfeited to the Crown; but where the Minister declines to lease the area applied for or upholds an objection under section 6 of this Act, the deposit shall be refunded to the applicant or, if he so requests, credited to him.

(7) Subject to the provisions of section 16 of this Act, where more than one application is received in respect of the same area, the Minister shall determine which applicant is to be preferred.

(8) Every such applicant shall, if so required by the Secretary, mark and keep marked the area applied for in such manner and for such period as the Secretary may specify to the applicant.

**5. Advertising of applications—**(1) Before any such application is considered, notice of the application shall be published in the manner provided in this section at least twice, with an interval of not less than seven days between each publication of 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) 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:

(c) Indicate the place at which the plans accompanying the application may be seen:

- (d) State the species of fish or vegetation proposed to be farmed:
  - (e) State the date of first publication of the notice:
  - (f) Require any person desiring to object to the application, within twenty-eight days of the said first publication, to notify in writing his objection to the Minister and to serve a copy of it on the applicant.
- (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—
- (a) The harbour board or local authority or other person in which any foreshore or foreshore reserve contiguous with the area applied for is vested:
  - (b) The proprietor of any land contiguous with the area applied for or contiguous with any foreshore or foreshore reserve adjoining any such area or contiguous with any road adjoining any such area, foreshore, or foreshore reserve, 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) Any person desiring to object to the application shall, within twenty-eight days after the date of first publication of the notice of application, notify the Minister 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 within seven days of being notified of the objection make written submissions on the objection to the Minister. If the applicant makes any such submissions, he shall serve a copy of them within the said period of seven days on the objector.
- (5) Where any notice of objection is given, no lease of the area applied for shall be offered until after the objection has been finally disposed of.
- (6) Any notice of objection may be withdrawn at any time before the determination of the objection under section 6 of this Act.

**6. Objections—**(1) Where an objection has been made in accordance with section 5 of this Act, the Minister 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. In making any such decision, the Minister 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 he is satisfied that the leasing of the area applied for would—

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

(2) The Secretary shall cause the Minister's decision, together with the grounds therefor, to be notified in writing to the objector and to the applicant.

**7. Execution of leases—**(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, the Minister shall consider the application and, subject to the provisions of this Act, may, if he thinks fit, offer to the applicant a lease of all or any part of the area.

(2) On acceptance of any such offer, or on the acceptance of any offer pursuant to section 17 of this Act, as the case may be, the Minister and the applicant shall execute a lease of the area offered in accordance with the requirements of this Act, and any regulations made under this Act, relating to leases.

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

(4) Every lease shall be prepared in triplicate by the lessor, and shall be dated as of the date of its execution.

(5) If any applicant who has been offered a lease fails to execute it within one month after being required by written notice to do so, the Minister may declare the right of the applicant to a lease to be terminated; and thereupon the amount of his deposit shall, unless the Minister otherwise determines, be deemed to be forfeited to the Crown.

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

- (a) Providing for the terms under which the rent determined in accordance with section 9 of this Act is to be paid to the lessor:
- (b) Requiring the lessee to farm there such species of fish or marine vegetation as may be specified in the lease:

- (c) Providing for the lessee to enter into a bond of such amount as may be specified in the lease for the removal of structures and rafts from the leased area on termination of the lease:
- (d) Requiring the lessee to use the leased area for his sole use and benefit:
- (e) Providing for terms, not inconsistent with this Act, on which the lease may be renewed:
- (f) Providing for the forfeiture of the lease on the grounds that the lessee—
  - (i) Cannot be found or has abandoned the area comprised in his lease, or has died and no personal representative has claimed the leased area within six months after the death; or
  - (ii) Has not made reasonable attempts to establish in the leased area a marine farm for the farming of the species of fish or marine vegetation specified in the lease within two years of the execution of the lease or within such other period as may be prescribed therein:
- (g) Requiring the lessee to comply with the provisions of this Act and of any regulations made under this Act and with any requirement lawfully made pursuant to any such provision:
- (h) Subject to the requirements of this Act, providing for such other matters as may be agreed upon between the parties to the lease or as may be necessary for the operation of a marine farm.

**9. Rent**—(1) Subject to the provisions of this Act, the rent payable under any new lease shall be determined by the Minister.

(2) 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.

(3) Rent in respect of a lease shall be paid to the Secretary in accordance with the provisions contained in the lease.

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

(5) Where the Minister has made an order under section 33 of this Act and the disease, infection, or contamination giving rise to the order was not due to the fault of the lessee, or where the production of fish or marine vegetation farmed in the leased area has in the opinion of the Minister been reduced as a result of flood, storm, disease, contamination through no fault of the lessee, or other natural disaster, the Minister may release the lessee from payment of rent for the period of reduced production or for the period of three years, whichever is the shorter.

(6) Where any lessee is at any time in arrear with rent in respect of the area leased by him, he shall not remove any of the fish or marine vegetation farmed in the area, except with the written consent of the Minister, until the overdue rent has been paid.

#### 10. Property and other rights conferred on the lessee—

(1) Every registered 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 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.

#### 11. Restrictions on assignment and subletting—

(1) A lessee shall not assign, sublet, or part with the possession of the whole or any part of his leased area without the prior consent in writing of the Minister.

(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 against assigning, subletting, or parting with possession of the leased area.

#### 12. Variation, etc., of lease—

(1) Subject to the provisions of this Act, the parties to a lease may from time to time by instrument in the form prescribed by the Land Transfer Act

1952, vary any of the conditions, covenants, or agreements of the lease.

(2) At any time before the expiration of any lease, the Minister may, notwithstanding that the lease may not contain a right of renewal, grant an extension of the term of the lease in the form prescribed by the Land Transfer Act 1952 for any period not exceeding fourteen 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 Minister and the lessee:

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.

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

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

(3) On the occurrence of any such breach, the Minister may, subject to the provisions of this Act, forfeit the lease without action, and may, subject to the provisions of sections 117 to 119 of the Property Law Act 1952, thereupon re-enter and recover possession of the leased area.

**14. Registration of leases—**(1) After a lease has been executed in accordance with section 7 of this Act, it shall be lodged by the Secretary with the District Land Registrar of the land registration district in which the leased area is situated or, where the leased area is outside such district, of the district nearest to the area or the greater portion of the area; and, except as provided in subsection (2) of this section, the Registrar shall register the lease in the register of leases kept in the Land Registry Office under the provisions of subsection (1) of section 83 of the Land Act 1948.

(2) In the case of a lease that is capable of registration under and complies with the requirements of the Land Transfer Act 1952, the lease shall be registered under that Act in like manner as a lease registered pursuant to section 82 of the Land Act 1948; and all the provisions of that section, so far

as they are applicable and with the necessary modifications, shall apply to the lease as if it were a lease to which that section applies.

(3) Subject to the requirements of this Act relating to dealings with any lease, any instrument or notice of any kind which is registrable against a lease under the Land Transfer Act 1952 by virtue of that Act or any other Act shall be registrable in the Land Registry Office against any lease registered pursuant to subsection (1) of this section, and may be so registered in the manner prescribed by the Act by virtue of which it is registrable.

(4) Every such instrument or notice shall,—

(a) In the case of an instrument or notice of any kind which is registrable against a lease under the Land Transfer Act 1952 by virtue of that Act, be in the form prescribed by that Act; and

(b) In the case of an instrument or notice of any kind which is registrable against a lease under the Land Transfer Act 1952 by virtue of any other Act, be in the form prescribed by that other Act.

(5) Every entry made on any lease in respect of any instrument or notice duly registered against that lease under subsection (3) 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 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.

(6) Every instrument of transfer, sublease, mortgage, or other dealing (other than a notice) registered under subsection (3) of this section shall have the effect of a deed duly executed by the parties signing it.

(7) There shall be paid to the District Land Registrar for the registration of any lease or other instrument pursuant to this section the same fee as that prescribed by regulations in force under the Land Transfer Act 1952 in respect of the corresponding instrument under that Act.

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

*Renewal of Leases and Re-offering of Leased Areas*

**15. Special provisions relating to the renewal of leases—**

(1) Where any lease which is renewable is held by two or more lessees as tenants in common or joint tenants and any one or more of those lessees elects not to accept a renewed term of the lease or fails to execute the lease for a renewed term or a memorandum of extension 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 term as tenants in common or joint tenants in like manner as if they had been the only lessees under the first-mentioned lease to the exclusion of the one or ones who elected not to accept a renewed term or who failed to execute a lease or an extension of lease as aforesaid.

(2) If the Minister refuses to grant a new term 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 containing the right of renewal as if the lessee desiring the new term were a lessee entitled to call for the new lease as a renewal of an existing lease on similar terms.

(3) Where any lease granted by the Minister in respect of any leased area is in renewal of any prior lease of the area, on the renewal lease being registered with the District Land Registrar, 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.

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

(2) The right of preference shall arise only where the lessee has made an application for a new lease at least three months before the expiration of his lease. 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 Minister to grant a new lease of the area.

**17. 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 16 of this Act, or for any other reason an area previously leased becomes available for leasing, the Minister 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 the value determined in accordance with section 18 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 shall pay to that person when it is received the value of the improvements and stock determined in accordance with the said section 18.

**18. 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.

(2) Where no such agreement can be reached, the matter shall be settled by arbitration in accordance with section 30 of this Act.

#### *Access Ways and Access Strips*

**19. Access ways—**(1) The lessee of a leased area or the owner or occupier of any land or area adjoining or in the vicinity of the leased area may apply in writing to the Minister 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.

(2) After serving notice of any such application on the owner or occupier, or on the lessee, as the case may be, the Minister may, if he 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.

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

(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.

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

(6) Every person (not being the lessee or his employees or visitors) commits an offence, and is liable to a fine not exceeding twenty dollars, 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.

(7) Nothing in this section shall affect the right under the general law of the lessee of a leased area to grant an easement of right of way over any part of the area.

**20. Access strips, etc.**—(1) Where it is proposed to lease more than one area in the same locality or where it is proposed to lease any area which is subject to an existing lease, the Minister may require an access strip, for the purpose of enabling members of the public (whether by means of boats or otherwise) to pass and repass along the strip, to be left so that no two leased areas are at any point less than thirty-three feet apart.

(2) If any lease contains a provision that any person or class of persons shall have access through the leased area or any part of it, the lessee shall permit all such persons, at such time or at all times as may be specified in the lease, to pass and repass through the leased area or the part of it specified in the lease.

### *Safety Requirements*

**21. Boundaries to be marked**—(1) The lessee of every leased area shall mark and at all times keep marked, by means of such beacons, buoys, or marks as may be indicated to him by the Minister, the boundaries of the area and of any access way determined under section 19 of this Act:

Provided that the Minister may exempt the lessee from the requirements of this subsection in respect of any boundary satisfactorily indicated by means of a natural geographical feature.

(2) The Minister, or any person authorised by him, may, by notice in writing, require the lessee to provide and maintain such light or lights as he may indicate in the notice in respect of every such beacon, buoy, or mark.

(3) Every lessee required pursuant to this section to provide any light shall at all times between sunset and sunrise exhibit and keep lit the required lights.

(4) Notwithstanding that his lease has expired or has been forfeited or surrendered, the person who was the lessee under that lease shall, if the Minister so requires by notice in writing given to the person, continue to exhibit and keep lit between sunset and sunrise the light or lights required under this section, pending the removal, to the satisfaction of the Minister, 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) Every lessee commits an offence, and is liable to a fine not exceeding two hundred dollars, who, without reasonable excuse,—

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

(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, and is liable to a fine not exceeding two hundred dollars, who, without reasonable excuse, fails to exhibit and keep lit any light in accordance with that subsection.

**22. Requirements relating to structures**—(1) Where a structure is erected and is for the time being maintained in a

leased area, the lessee shall at all times during the continuance of the lease, and for such period after the expiration, forfeiture, or surrender of the lease as may be required by the Minister 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 Minister 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 Minister:
- (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 Minister and are kept lit:
- (e) The required fog signals are maintained in working order and are operated under such conditions as may be specified by the Minister:
- (f) Such life-saving equipment and such number of distress signals as may be required by the Minister are kept on the structure.

(2) Before commencing to erect any structure in a leased area, the lessee shall deposit pursuant to section 178 of the Harbours Act 1950 at the head office of the Marine Department a plan in duplicate of the proposed work. Every such plan shall be accompanied by a certificate of a registered engineer certifying that the structure when completed 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 structure.

(3) Where any lessee, or any person employed by him, designs or constructs a structure in the area leased by the lessee, the lessee 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, 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.

(4) On the expiration of a lease, the Minister may require the lessee under that lease to remove any structure erected in the leased area.

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

**23. Requirements relating to rafts—**(1) Where any lessee maintains within his leased area any raft, he shall at all times ensure that—

- (a) The raft is securely anchored or moored to the satisfaction of the Minister, and the anchors or moorings are maintained in a good state of repair:
- (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 by the Minister 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 Minister:
- (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 Minister and are kept lit:
- (g) The required fog signals are maintained in working order and are operated under such conditions as may be specified by the Minister:
- (h) Such life-saving equipment and such number of distress signals as may be required by the Minister are kept on board the raft.

(2) On the expiration of a lease, the Minister may require the lessee under that lease to remove any raft maintained in the leased area.

(3) If the lessee fails to comply with any requirement made under subsection (2) of this section, the Minister may, at the

expense of the lessee, 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 Minister 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 to such other person as may legally be entitled to the money.

### *Offences*

**24. Removal or destruction of marks**—Every person commits an offence and is liable to a fine not exceeding two hundred dollars 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
- (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 raft or structure pursuant to section 22 or section 23 of this Act.

**25. Removing diseased or contaminated fish or vegetation**—Every person commits an offence, and is liable to a fine not exceeding two hundred dollars, who, without the prior consent in writing of the Minister,—

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

**26. Injury or damage to marine farms**—(1) Every person (not being the lessee 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 five hundred dollars, who wilfully—

- (a) Takes, removes, or disturbs, or interferes with—
  - (i) Any fish or marine vegetation being farmed in a leased area; or
  - (ii) Any raft, structure, or implement used by the lessee in connection with the farming of fish or marine vegetation in his leased area; or
- (b) Dredges, digs, or drags a leased area with any implement; or

(c) Does any other act which causes damage to any marine farm established in a leased area.

(2) Every person commits an offence, and is liable on summary conviction to a fine not exceeding two hundred dollars, who wilfully and without lawful authority—

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

(b) Uses in a leased 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 who has sustained damage as a result of the act of the convicted person.

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

(5) Notwithstanding the provisions of subsection (1) and subsection (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.

**27. Obstructing lessee from farming his leased area—**Every person commits an offence, and is liable to a fine not exceeding two hundred dollars, who obstructs, hinders, or prevents the lessee or any person employed by him or acting under his authority from farming or lawfully taking farmed fish or farmed vegetation from the leased area.

**28. Offences punishable on summary conviction, etc.—**Every offence against this Act shall be punishable on summary conviction.

**29. 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 twelve months from the time when the matter of the information arose.

#### *Miscellaneous Provisions*

**30. Submissions to arbitration—**(1) Where in any lease or by this Act it is provided that any dispute or matter is to be determined by arbitration, the arbitration shall, subject to any express stipulation contained in the lease, 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 appoint an umpire.

(2) Where either party to the arbitration fails to appoint an arbitrator within twenty-one 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 be binding on both parties.

(3) If the arbitrators fail to agree upon the matter referred to them within twenty-eight 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 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 the provisions of this section, extend and apply to any such arbitration and to the arbitrators and the umpire.

**31. Liability in civil proceedings—**(1) Every leased area shall be deemed to be "premises" for the purposes of the Occupiers' Liability Act 1962 and every lessee shall be an occupier for the purposes of that Act.

(2) If any person enters any leased 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 21 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 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.

(4) In any action brought against any person by the lessee 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 property.

**32. Inspection of leased areas—**(1) Any fishery officer, or any officer of the Marine Department authorised by the Secretary, may from time to time enter and inspect any leased area for the purposes of ensuring that the provisions of this Act and of the lease are being complied with or are not being contravened, as the case may be.

(2) Every person commits an offence, and is liable to a fine not exceeding two hundred dollars, who—

- (a) Assaults, resists, or obstructs any officer exercising the power of entry and inspection conferred on him by subsection (1) of this section; or
- (b) Uses threatening language or behaves in a threatening manner towards any such officer, 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 officer.

**33. Closing orders—**(1) If at any time the Minister is satisfied, on reasonable grounds, that the whole or any part of a leased 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 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 lessee, 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 conditions as he may specify in the notice.

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

- (a) The purification or treatment of fish or marine vegetation farmed in the leased area:

(b) The eradication from the leased 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 area.

(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 commits an offence, and is liable to a fine not exceeding five hundred dollars, who fails to comply with any order given under this section.

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

**35. Protection of harbour works**—(1) No lease of any area situated within a harbour shall confer on the lessee 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.

(2) If any lessee, 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, he 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.

**36. 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).

(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.

(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.

(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.

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

- (a) By causing it to be delivered to that person; or
- (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 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 by him.

(2) If two or more persons have leased an area 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 letter would have been delivered in the ordinary course of post.

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

(5) Service in accordance with this section shall be valid and effective notwithstanding that there may be no personal representative acting in respect of a deceased lessee and notwithstanding that the notice or document may not be addressed to the lessee by name.

**38. Regulations**—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Providing for the management and control of leased areas:
- (b) Regulating the stocking of leased areas with fish or marine plants as the case may require:
- (c) Regulating the removal, sale, marketing, or export of fish or marine vegetation farmed in leased areas:
- (d) Providing for the Minister to prescribe steps to be taken by any lessee to keep his leased area free from disease, infection by marine pests, and contamination by sewage or other cause:
- (e) Regulating the removal and disposal of waste matter from leased areas:
- (f) Prohibiting or regulating the opening, gutting, bottling, or packing of fish in leased areas:
- (g) Requiring lessees to keep records of fish or marine vegetation farmed in leased areas and of any such fish or vegetation sold or marketed, and authorising the Minister or any of his officers to inspect any such records:
- (h) Providing for the recovery from lessees of the cost of carrying out inspections of any rafts or structures:
- (i) Prescribing offences for breaches of any such regulations, and prescribing fines, not exceeding one thousand dollars, in respect of any such offence:
- (j) 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.

**39. Application of Fisheries Act to leased areas**—(1) Nothing in the Fisheries Act 1908, or in any regulations made under that Act, shall apply in respect of fish of the species specified in a lease and either bred by the lessee

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 the lessee, or any employee or agent of the lessee, to take, be in possession of, or sell other fish (including rock oysters) for the time being occurring or existing in the lessee's leased area, except in accordance with the said Fisheries Act and regulations.

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

**40. 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 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 to this Act and in respect of any dealing with any such lease.

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This Act is administered in the Marine Department.

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