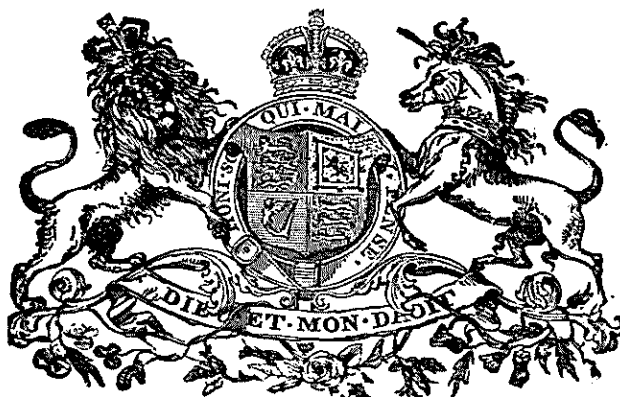


WESTERN AUSTRALIA.



ANNO QUINTO.

EDWARDI SEPTIMI REGIS,

XVIII.

No. 18 of 1905.

AN ACT for the Regulation of Fisheries.

[Assented to 23rd December, 1905.]

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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

- 1.** This Act may be cited as the *Fisheries Act*, 1905, and shall come into operation on the first day of January, one thousand nine hundred and six.

Short title.
- 2.** The Acts mentioned in the First Schedule hereto are hereby repealed.

Repeal.
First Schedule.
- 3.** In this Act, unless the context or subject matter otherwise indicates or requires,—

Interpretation.
See 63 Vict., No. 47,
s. 2.
N.S.W. 1902,
No. 119, s. 3.

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

“Boat license” means a license issued under this Act to use a boat for fishing.

“Close waters” means such waters as by proclamation made under this Act are for the time being closed to fishing.

"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" includes any hedge, weir, stake-net, bag-net, long line or bultow, and any fixed implement or engine for catching or facilitating the catching of fish.

"Inspector" includes the Chief Inspector of Fisheries, and inspectors of fisheries appointed under this Act.

"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.

"Minister" means the responsible Minister of the Crown charged for the time being with the administration of this Act.

"Police officer" includes any constable or officer of police.

"Proclamation" means a proclamation by the Governor published in the *Government Gazette*.

"Prescribed" means prescribed by this Act or any regulations thereunder.

"Regulations" means the regulations made under the authority of this Act.

"Western Australian Waters" include the sea to three miles from high-water mark, and every tidal river, and every estuary or arm of the sea, and the waters of every river, stream, brook, creek, lake, or lagoon, the water whereof, at any time of the year, has access to the sea, and notwithstanding that the land covered by the water is private land alienated by the Crown.

2 Edwd. VII., No.
43, s. 2.

Power to exempt
from Act.
63 Vict., No. 47, s. 7.

4. The Governor may, from time to time, by proclamation, exempt any portion of Western Australia from the operation of this Act, or any of the provisions thereof, and may in like manner revoke such proclamation.

PART II.—ADMINISTRATION.

Appointment of
Inspectors and
other officers.
See 53 Vict.,
No. 4, s. 2.

5. (1.) The Governor may, from time to time, appoint and remove a Chief Inspector of Fisheries, and so many inspectors of fisheries and other officers as may appear to him to be necessary for the effective administration of this Act.

The Chief Inspector of Fisheries and inspectors in office at the commencement of this Act shall be deemed to have been appointed under this Act.

(2.) It shall be the duty of every police officer to aid and assist inspectors in enforcing compliance with the provisions of this Act.

(3.) All police officers shall *ex officio* and within their respective districts be, and have the powers and authorities of, inspectors of fisheries.

6. The Governor may, from time to time, make, alter, and repeal 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—

Regulations.

See N.S.W., 1902.

No. 119, s. 9.

- (a.) Defining the duties of inspectors and other persons upon whom any duty or authority is imposed or conferred by this Act or the regulations;
- (b.) Prescribing the limits in or about the mouth of or within any river, creek, stream, estuary, or other inlet of the sea within which it shall not be lawful for any person to fish by means of any net or fixed engine;
- (c.) Determining the times and seasons at which the taking of any species of fish shall commence and cease, or be permitted or prohibited;
- (d.) Prescribing the mode of testing the length of nets, and the dimensions of the meshes of the nets, and providing for the disposal of forfeited nets;
- (e.) 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;
- (f.) 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;
- (g.) The general regulation of net and line fishing, as well in regard to modes, places, and times of usage as in all other respects;
- (h.) 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;
- (i.) Prescribing fees for general and exclusive licenses to gather or collect from any portion of Western Australian waters any product of the sea exclusive of food fish.
- (j.) Preventing the destruction of fish, and for preventing injury to fishing grounds by deposit of filth, refuse, or other deleterious matters, or by discharges from mining works, saw-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 water-course, whether dry or not, leading into the same ;

- (k.) The carrying of lights by licensed boats engaged in fishing ;
- (l.) Compelling fishermen to mark their boats and prescribing the manner in which they shall be marked ;
- (m.) Appointing places for landing fish. and prohibiting the landing of fish except at an appointed landing place ;
- (n.) Any other matter or thing which shall in any manner relate to fisheries ;
- (o.) Giving effect to the provisions of this Act as to all details whatsoever.

Such regulations may provide for their enforcement by the imposition of a penalty not exceeding in any case the sum of fifty pounds and the forfeiture of nets, lines, implements, or appliances used and fish taken in breach of such regulations, and when published in the *Government Gazette* shall have the 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 is then in session, and if not, then within fourteen days after the commencement of its then next ensuing session.

Right of entry.

See 63 Vict., No. 47,
s. 7.

7. Every inspector shall have the right of entry on all lands whatsoever for the purpose of giving effect to or carrying out any of the provisions of this Act or the regulations.

PART III.—NET AND LINE FISHING.

Proclamation of
close fisheries.

See 63 Vict., No. 47,
s. 7.

N.S.W., 1902,
No. 119, s. 11.

8. (1.) The Governor may by proclamation declare that any Western Australian waters shall be closed against—

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

during any specified time in any year :

Provided that the Governor may, in like manner, rescind or vary any such proclamation.

(2.) If any person shall, in any close fishery closed against fishing generally, during any close period, 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, shall be liable for the first offence to a penalty not exceeding ten pounds, and for any subsequent offence to a penalty of twenty 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 period haul or fix or place any net, or 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.

(3.) Every proclamation made under the Fisheries Act of 1899 declaring any Western Australian waters to be closed waters, in force at the commencement of this Act, shall be deemed to be made under this Act.

9. 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 to declare by proclamation that the whole or any defined portion of any Western Australian waters 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: Provided that the Governor may in like manner rescind or vary any such proclamation.

Proclamation closing waters against use of fishing nets, etc.
N.S.W., 1902, No. 119, s. 12.

10. (1.) If any person shall, in contravention of any proclamation under the last preceding section, haul any net or place any fishing line, or use any fixed engine or other appliance 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 ten pounds, and for any subsequent offence to a penalty of twenty pounds, and every person aiding or assisting in the hauling or otherwise fixing of such net or placing such fishing line, or in the use of any such fixed engine or other appliance, 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 a like penalty.

Penalty for fishing in closed waters.
See N.S.W., 1902, No. 119, s. 13.

(2.) If any person shall be found having in his possession, on close waters, any net, fishing line, fixed engine, or other appliance for catching fish, he shall, unless he can satisfy the justices to the contrary, be deemed to have offended against this section of this Act

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

Boats to be licensed.
See N.S.W., No. 119 of 1902, s. 14.

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

See 63 Vict., No. 47, s. 3.

(3.) The fee for every such license shall be one pound, provided that if any such license is issued after the thirtieth day of June and before the thirty-first day of December in any year, the fee therefor shall be ten shillings.

(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.

(5.) 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."

(6.) Every person using a boat in contravention of this section, and every owner allowing the same to be so used, shall be guilty of an offence against this Act.

Fishermen fishing
for sale to be
licensed.

See N.S.W., 1902,
No. 119, s. 15.

See 63 Vict., No. 47,
s. 4.

12. (1.) Every person who catches or attempts to catch fish for sale by any method, or employs any person, or is employed by any person to catch fish for sale by any method, shall hold a fisherman's license to be issued in the prescribed form.

(2.) If any person shall catch or attempt to catch, or shall employ any person to catch for sale, by any method whatever, any fish 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.

Users of seine nets
to be licensed.

See 63 Vict., No. 47,
s. 4.

13. (1.) It shall be unlawful to use, or assist in the use of, or employ any person to use, a seine net for catching fish for domestic purposes, unless the owner of such net is the holder of a fisherman's license.

(2.) If any person shall catch or attempt to catch, or employ any person to catch any fish by the aid of a seine net contrary to this section, 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.

Form of and fees
for license.

14. (1.) Every fisherman's license shall be issued in a form to be prescribed by the regulations.

(2.) The fee for every such license shall be ten shillings, provided that if any such license is issued after the thirtieth day of June and before the thirty-first day of December in any year, the fee therefor shall be five shillings.

(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.

Granting of licenses
discretionary.

15. The granting or refusal of a boat license or fisherman's license shall be in the discretion of the officer appointed to issue licenses:

But if any person shall think himself aggrieved by the refusal of a license, he may appeal to the Minister, who may, if he thinks fit, direct the license to be issued.

Persons to furnish
returns of fish.
N.S.W., 1902,
No. 119, s. 16.

16. (1.) All persons selling or exposing for sale fish at any fish market shall, if so required, furnish in writing to the Chief Inspector of Fisheries a weekly statement of all fish 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.

(2.) All persons other than those specified in the preceding subsection 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 subsection, and shall be liable to a similar penalty if such requirements are not complied with.

Other persons to supply returns.

N.S.W., 1902,
No. 119, s. 17.

17. The Governor may, from time to time, by proclamation in the *Government 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 be used in any specified water or waters, or 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.

What nets shall be lawful.

N.S.W., 1902,
No. 119, s. 18.

18. Nothing in the last preceding section shall apply to *bonâ fide* naturalists' 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 Minister.

Exemptions of nets etc., used for scientific purposes.

N.S.W., 1902,
No. 119, s. 19.

19. (1.) 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 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 of twenty pounds.

Penalties for using unlawful nets.

N.S.W., 1902,
No. 119, s. 20.

(2.) Every person aiding or assisting in the use of such unlawful net shall be liable to the like penalties.

20. It shall be unlawful to drag or draw ashore, or into any boat, 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 underweight or undersize fish to remain on the shore, or in any boat.

Method of dredging or drawing nets.

N.S.W., 1902,
No. 119, s. 21.

21. 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.

N.S.W., 1902,
No. 119, s. 22.

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

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.

Penalty for having underweight or undersize fish in possession.

Schedule II.

N.S.W., 1902, No. 119, s. 23.

See 53 Vict., No. 4, s. 3.

22. (1.) If any person shall, without lawful authority, have in his possession, or on his premises, or in any boat, or shall sell or consign for sale any fish of any of the species mentioned in the Second Schedule, of a less weight or size than that set opposite to the name of such fish in such Schedule, he shall be liable to a penalty not exceeding two pounds for the first offence, and for any subsequent offence to a penalty of five pounds; and all such fish and all other fish contained in any boat or in any basket or other receptacle for fish containing more of such fish than one-twentieth in number of the whole number of fish contained in such boat, basket, or receptacle shall be forfeited, and any inspector may seize the same.

(2.) The provisions of this section shall not apply to any curator of a museum or zoological collector holding a permit from the Minister, or to any inspector.

(3.) 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 of 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 not exceeding five pounds.

Governor may amend Schedule II.

53 Vict., No. 4, s. 4.

23. It shall be lawful for the Governor from time to time to amend the Second Schedule to this Act—

(1.) By altering the weight set against the name of any species of fish contained in the said Schedule.

(2.) By adding to the said Schedule the names of any other species of fish, setting against the name of any such other species of fish the weight under which it shall not be lawful to take such fish.

(3.) By omitting from the said Schedule the name and weight of any species of fish therein mentioned.

Such amended Schedule shall be published in the *Government Gazette*, and, after such publication, shall have full force and effect as if the same had been enacted herein as so amended from time to time.

Dynamite, etc., not to be used.

N.S.W., 1902, No. 119, s. 24.

See 43 Vict., No. 2, s. 2.

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 Western Australian 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 fifty 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.

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.

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

N.S.W., 1902,
No. 119, s. 25.

(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, 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, etc., to give name and residence when demanded.

N.S.W., 1902,
No. 119, s. 26.

PART IV.—MISCELLANEOUS.

27. (1.) It shall be lawful for the Minister 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 to take steps for the discovery of fishing grounds suitable for trawling off the sea-coast.

Minister may institute experiments.

N.S.W., 1902,
No. 119, s. 63.

(2.) For the purposes of this section the Governor may, by notification in the *Government Gazette*, declare any Crown land to be reserved for experiments in the culture and propagation of fish.

Rewards for destruction of certain birds.

63 Vict., No. 47, s. 7.

28. Notwithstanding anything contained in the Game Act, 1892, the Governor may declare a scale of rewards, and the conditions for the payment thereof, for the destruction of cormorants, pelicans, and such other birds as by proclamation may be declared hostile to fish life.

No food fish to be taken for manure.

53 Vict., No. 4, s. 7.

29. No person shall capture any species of fish mentioned in the Second Schedule for the purposes of manure, and any person offending against this section shall be liable to a penalty not exceeding twenty pounds.

Exclusive licenses.

30. (1.) The Governor may grant to any person or persons, on such terms and conditions as to the Governor may seem fit, a license to the exclusion of all other persons to collect and gather, for any term not exceeding fourteen years, from any portion of the coastal waters of the State, any product of the sea not being food fish.

(2.) During the currency of any license granted under this section it shall be unlawful for any person except the licensee, his servants or agents, or other persons acting with his authority, to collect or gather any product of the sea for which such license shall have been granted within the portion of the coastal waters to which such license extends.

Power to arrest offenders.

31. Any inspector may, with or without warrant, arrest any person who offends against any of the provisions of this Act or the regulations.

Any such person who escapes or attempts to escape from an inspector before or after arrest shall be guilty of an offence against this Act.

Inspector may search for nets.
63 Vict., No. 47,
s. 6.

32. An inspector appointed under this Act, or any police officer, may at any time go on board any boat or into or upon any house, tent, or other premises to inspect fish, and to search for, seize, and take away any net used or about to be used in breach of this Act or the regulations.

Search for and seizure of fish.
See N.S.W., 1902,
No. 119, s. 60.

33. All fish of which the taking possession is prohibited by this Act or the regulations may be searched for, seized, and forfeited 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.

Burden of showing that fish were not caught for sale to be on accused.
63 Vict., No. 47,
s. 9.

34. In any prosecution for an offence against this Act or the regulations in which it is material to show that the accused person was engaged in catching fish for sale, proof that such person in fact caught fish shall be *prima facie* evidence that such person caught

the fish for sale, and the burden of showing that the fish were not caught for sale shall rest on the accused person.

35. 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 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 in the same manner as a penalty under this Act may be recovered.

Assaulting, etc., inspectors and others in execution of their duty.

N.S.W., 1902,
No. 119, s. 59.

36. 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 is provided for such offence, be liable to a penalty not exceeding twenty pounds.

General penalty.
N.S.W., 1902,
No. 119, s. 56.

37. Every person guilty of an offence against this Act or the regulations shall be liable, on conviction, to forfeit to His Majesty any boat, net, or implement used in breach of this Act or the regulations, and the justices before whom any such person is convicted may order the same to be forfeited or destroyed, or otherwise dealt with.

Boat, nets, etc., of offender may be forfeited.

38. All penalties and forfeitures imposed or incurred by or under this Act, or by or under any regulation, may be recovered and enforced summarily before any two justices of the peace in petty sessions.

Recovering of penalties and forfeitures.

N.S.W., 1902,
No. 119, s. 52.

39. All proceedings in respect of any such penalties or forfeitures may be taken by and in the name of the Chief Inspector of Fisheries or any inspector of fisheries, or by and in the name of any person authorised in that behalf by the Chief Inspector of Fisheries.

Persons who may take proceedings.

N.S.W., 1902,
No. 119, s. 53.

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

Exemptions to be proved by person pleading same.

N.S.W., 1902,
No. 119, s. 54.

41. The 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, may impose in lieu of any such pecuniary penalty a term of imprisonment not exceeding thirty days.

Imprisonment in lieu of pecuniary penalty.

N.S.W., 1902,
No. 119, s. 55.

License may be
suspended or
cancelled in certain
cases.

63 Vict., No. 47, s. 10.

42. Where a person holding a license under this Act has twice within a period of six months, been convicted of an offence against this Act, he shall be liable, in addition to any other punishment, to the suspension or cancellation of his license at the discretion of the Minister.

Act not to apply to
aborigines.

63 Vict., No. 47, s. 11.

43. This Act shall not apply to fish obtained for food by the aboriginal inhabitants of the State in their accustomed manner, otherwise than by means of any weir or hedge.

Annual report.

44. The Chief Inspector of Fisheries shall, as soon as possible after the thirty-first day of December in every year, report to the Minister as to the state of the fisheries of the State, and such report shall be laid before both Houses of Parliament.

Incorporation of
ss. of Schedule 2
to Interpretation
Act.

45. The sections lettered G and H of the Interpretation Act, 1898, shall be incorporated with this Act.