

PEARLING AND PEARL CULTURE ORDINANCE 1964

25

No. 11 of 1965

An Ordinance to regulate the Employment and
Conduct of Persons engaged in Pearling and Pearl
Culture, and for other purposes

[Reserved 25th March, 1965.]

[Assented to 13th May, 1965.]*

BE it ordained by the Legislative Council for the Northern Territory of Australia, in pursuance of the powers conferred by the *Northern Territory (Administration) Act* 1910-1962, as follows:—

PART I.—PRELIMINARY.

1 This Ordinance may be cited as the *Pearling and Pearl Culture Ordinance* 1964. Short title.

2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.† Commence-
ment.

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

- Part I.—Preliminary (Sections 1-6). Parts.
- Part II.—Administration (Sections 7-8).
- Part III.—Regulation of Pearl Fisheries (Sections 9-16).
- Part IV.—Pearling Agreements (Sections 17-23).
- Part V.—Wages of Pearl Fishers (Sections 24-34).
- Part VI.—Offences by Owners and Persons in Charge of Licensed Vessels (Sections 35-44).
- Part VII.—Offences by Pearl Fishers (Sections 45-54).
- Part VIII.—Pearl Culture (Sections 55-65).
- Part IX.—Research and Development (Section 66).
- Part X.—Miscellaneous (Sections 67-85).

* Assent notified in the *Government Gazette* of the Northern Territory on 17th May, 1965 (see *Gazette* No. 19A, 1965, p. 78A).

† No date had been fixed up to 1st January, 1967.

Repeal

4.—(1.) The Ordinances specified in the Schedule to this Ordinance are repealed.

(2.) Notwithstanding the repeal effected by the last preceding sub-section, a pearling agreement entered into in accordance with the repealed Ordinances and in force at the commencement of this Ordinance, has effect as if entered into under this Ordinance and the provisions of this Ordinance apply so far as they are capable of applying to and in relation to such an agreement.

Definitions.

5.—(1.) In this Ordinance, unless the contrary intention appears—

“cultivate” means husband, improve or grow pearl oysters for the purpose of producing or culturing pearls or for any other purpose and includes the propagation of pearl oysters by natural or artificial means;

“diver” means a person employed under water collecting pearl shell or pearl oysters or tending pearl oysters or equipment used in relation thereto whilst under water;

“diver’s tender” means a person employed in attending to a diver whilst under water;

“inspector” means a person appointed to be a pearling inspector under this Ordinance and includes the Chief Pearling Inspector;

“licensed pearler” means the holder of a licence to search for pearls, pearl shell or pearl oysters in territorial waters;

“licensed vessel” means a vessel in respect of which a licence has been issued and is in force authorizing the use of the vessel in searching for and obtaining pearls, pearl shell or pearl oysters in territorial waters;

“master” means a person other than a pilot who is in charge or command of a vessel;

“owner” includes the person to whom a vessel belongs, an agent of that person and a lessee or charterer of a vessel;

“pearl culture” includes all operations performed in or in relation to the artificial propagation of pearls;

- “pearl fisher” means every person employed for the purpose of pearling or pearl culture on board a vessel and includes the master of a licensed vessel used in pearling or pearl culture;
- “pearl oyster” means an oyster of any species included in the genus *pinctada*;
- “pearl shell” means the shell of a pearl oyster or of trochus or green snail and includes bêche-de-mer;
- “pearling” includes all operations used in relation to the searching for and obtaining of pearl shell or pearl oysters for the purpose of sale or use or for the purpose of pearl culture;
- “pearling agreement” means a written agreement relating to the employment of a pearl fisher;
- “territorial waters” means the sea and the bed of the sea within the territorial limits of the Northern Territory and includes all rivers, lakes and lagoons whether of fresh, salt or brackish water;
- “the Chief Pearling Inspector” means the Chief Pearling Inspector appointed under this Ordinance;
- “the Land and Valuation Review Tribunal” means the Land and Valuation Review Tribunal established by the *Valuation of Land Ordinance 1963*;
- “the Territory” means the Northern Territory of Australia;
- “the Tribunal” means the Land and Valuation Review Tribunal;
- “vessel” includes a ship, boat or floating craft of any description designed for the carriage of persons or goods.

(2.) For the purpose of this Ordinance, a vessel is deemed to be used for pearling or pearl culture—

- (a) if the vessel is used as a place of abode or refuge or for storing provisions for persons employed in pearling or pearl culture;
- (b) if the vessel is used for transporting or as a place for storing pearl shell or pearl oysters;
- (c) if the vessel is used as a place from which persons dive for pearl shell or pearl oysters or is used in the immediate collection of pearl shell or pearl oysters; or
- (d) if the vessel is otherwise used in or for the purpose of pearling or pearl culture.

Application of
this Ordinance.

6. This Ordinance applies within the territorial waters of the Northern Territory and applies within those waters to all persons, including foreigners, and to all vessels, including foreign vessels.

PART II.—ADMINISTRATION.

Appointment
and powers of
inspectors.

7.—(1.) The Administrator may appoint—

- (a) a Chief Pearling Inspector; and
- (b) such other pearling inspectors as may be necessary for the due administration of this Ordinance.

(2.) Subject to the directions of the Administrator, the Chief Pearling Inspector shall administer this Ordinance.

(3.) The Chief Pearling Inspector and an inspector have such powers and duties as are conferred on them by this Ordinance or the regulations.

Delegation.

8.—(1.) The Administrator or the Chief Pearling Inspector may, by instrument in writing, delegate to a person or authority all or any of his powers, functions and authorities under this Ordinance (except this power of delegation) in relation to a matter or class of matters or to a part of the Territory or in relation to an area of territorial waters, so that the delegated powers, functions or authorities may be exercised by the delegate with respect to the matter or class of matters or with respect to the part of the Territory or the area of territorial waters specified in the instrument of delegation.

(2.) A delegation under the last preceding sub-section is revocable in writing at will and does not prevent the exercise of a power, function or authority by the Administrator or Chief Pearling Inspector.

PART III.—REGULATION OF PEARL FISHERIES.

Restrictions on
taking pearl
shell and pearl
oysters.

9.—(1.) The Administrator in Council may, by notice published in the *Gazette*—

- (a) prohibit, either at all times or during a period or a time of the year specified in the notice, the taking from territorial waters or from an area of territorial waters of pearl shell or pearl oysters;
- (b) prohibit the taking from territorial waters or from an area of territorial waters of pearl shell or pearl oysters not exceeding a size specified in the notice;

- (c) prohibit the taking from territorial waters, or from an area of territorial waters, of pearl shell or pearl oysters by a method or by equipment specified in the notice;
- (d) prohibit the taking, by any one licensed vessel or by any one licensed pearler during a period or in an area specified in the notice, of pearl shell or pearl oysters in excess of a quantity so specified;
- (e) prohibit the removal of pearl shell or pearl oysters from territorial waters or from an area of territorial waters;
- (f) prohibit the transport of pearl shell or pearl oysters in territorial waters or in an area of territorial waters; or
- (g) prohibit the introduction of pearl shell or pearl oysters—
 - (i) into territorial waters from a source outside territorial waters; or
 - (ii) into an area of territorial waters from a source outside that area of territorial waters.

(2.) A notice under this section may provide for exemptions from the prohibition contained in the notice.

10.—(1.) The Administrator may grant to a person a ~~Licence.~~ licence to search for and obtain pearls, pearl shell or pearl oysters in territorial waters or in an area of territorial waters.

(2.) The Administrator may grant to a person a licence in respect of a vessel authorizing the use of the vessel in searching for and obtaining pearls, pearl shell or pearl oysters in territorial waters or an area of territorial waters.

(3.) A licence authorizing the use of a vessel in searching for and obtaining pearls, pearl shell or pearl oysters extends, subject to the conditions of the licence, to authorizing the use of the vessel for any of the purposes specified in sub-section (2.) of section five of this Ordinance in relation to or arising out of that first-mentioned use.

(4.) The Administrator may grant a licence to or in respect of a diver, trial diver or diver's tender employed in a vessel licensed under sub-section (2.) of this section.

11.—(1.) A licence under the last preceding section may be granted upon application made to the Administrator in a form prescribed or approved by the Administrator. ~~Applications for licences.~~

(2.) The Administrator, in his discretion, may grant or refuse an application for a licence.

(3.) A licence granted under the last preceding section—

(a) is subject to such conditions as are endorsed on the licence; and

(b) remains in force until the next succeeding thirty-first day of January.

Transfer of
licences.

12. The Administrator, in his discretion, on the application of the holder of a licence in respect of a vessel and of another person as the proposed transferee, may transfer the licence to that other person.

Licence fees.

13. Such fees as are prescribed are payable in respect of the grant or transfer of a licence.

Cancellation of
licences.

14. Where the Administrator is satisfied that there has been a contravention of or a failure to comply with a condition of a licence, the Administrator may cancel the licence.

Condition and
equipment of
licensed
vessels.

15. The Administrator shall not grant a licence in respect of a vessel unless he is satisfied that the vessel is in a sound and seaworthy condition and equipped with such fire-fighting, life-saving and navigation equipment as the Administrator thinks necessary or as is prescribed.

Medical
examination of
applicants for
diver's licences,
&c.

16. Where a person makes application for a licence as a diver, diver's tender or trial diver the Administrator may require the person to undergo such medical examination or to produce such evidence of his ability and physical fitness to work as a diver, diver's tender or trial diver as the Administrator thinks necessary or as is prescribed.

PART IV.—PEARLING AGREEMENTS.

Employment of
pearl fishers.

17. A person shall not employ a person in, or for the purpose of, pearling, except under, and in accordance with the terms of, a pearling agreement that complies with and is entered into in accordance with this Ordinance.

Penalty: One hundred pounds.

Pearling
agreement.

18.—(1.) A pearling agreement shall—

(a) be in triplicate and in the prescribed form;

(b) state the period for which it is to operate;

(c) state the capacity in which each pearl fisher who is a party to it is to serve, the rate of wages he is to receive and particulars of any other additional reward to be paid to him for skill, success or special exertion;

(d) show the respective dates upon which each of the parties to the agreement signed it; and

(e) contain such other matters as are prescribed.

(2.) A pearling agreement may provide for the service by a pearl fisher in a particular vessel or in any vessel owned or controlled by his employer.

19.—(1.) A pearling agreement shall be signed by the person entering into it as employer before it is signed by another person. Mode of entering into pearling agreement.

(2.) A person entering into a pearling agreement as a pearl fisher shall sign the agreement in the presence of an inspector, who shall—

(a) read and explain the contents of the agreement to that person before he signs the agreement; and

(b) subject to the next succeeding section, endorse the agreement in the prescribed manner.

(3.) A pearling agreement has no force or effect unless and until it is so endorsed by an inspector.

20. An inspector shall not endorse a pearling agreement under the last preceding section unless he is satisfied that— Inspector to be satisfied as to certain matters before endorsing agreement.

(a) the agreement complies with, and has been executed in accordance with, this Ordinance;

(b) each pearl fisher who is a party to the agreement understands, and consents to, the terms of the agreement;

(c) each such pearl fisher is a male person and, if he is to be employed as a diver, a trial diver or a diver's tender, is a person to or in respect of whom a licence has been granted, and is in force, under sub-section (4.) of section ten of the *Pearl Fisheries Act 1952-1953* or under this Ordinance; and

(d) each such pearl fisher has, within the last preceding fourteen days, been examined and certified to be free from any infectious or communicable disease by a medical practitioner employed as a medical officer by the Commonwealth.

Inspector to
retain copy of
agreement.

21. When an inspector has endorsed a pearling agreement in accordance with section nineteen of this Ordinance he shall retain one copy of the agreement and return one copy to the person who has entered into the agreement as employer, and one copy to the person who has entered into the agreement as pearl fisher.

Alterations and
erasures.

22.—(1.) Every erasure, interlineation and alteration existing in a pearling agreement at the time the agreement is endorsed by an inspector shall be initialled by the inspector and by each party to the agreement affected by the erasure, interlineation or alteration, and if not so initialled is of no effect.

(2.) An erasure, interlineation or alteration made in a pearling agreement after its endorsement by an inspector is of no effect unless—

- (a) it is made with the consent of every party to the agreement affected by it; and
- (b) it is initialled by each of those parties and by an inspector.

(3.) An inspector shall not initial an erasure, interlineation or alteration under the last preceding sub-section unless he is satisfied that each pearl fisher affected by it understands it and consents to it.

(4.) A person shall not make any alteration, erasure or interlineation in a pearling agreement except in the presence of an inspector.

Penalty: Fifty pounds.

Inciting pearl
fishers to
commit breach
of agreement,
&c.

23. A person shall not—

- (a) incite a pearl fisher to commit a breach of a pearling agreement to which the pearl fisher is a party; or
- (b) knowing, or having reasonable cause to believe, that a pearl fisher has deserted from, or failed to join, a pearling vessel in which he is required to work under a pearling agreement, harbour or secrete that pearl fisher.

Penalty: One hundred pounds.

PART V.—WAGES OF PEARL FISHERS.

Wages to accrue
from day to
day.

24. Subject to this Ordinance, the wages of a pearl fisher shall be deemed to accrue from day to day.

25.—(1.) Subject to this section, an employer shall, at least once in every month, pay to each pearl fisher employed by him the wages due to the pearl fisher. Payment of wages.

Penalty: One hundred pounds.

(2.) The last preceding sub-section does not apply where the pearl fisher requests in writing that his wages be paid otherwise than in accordance with that sub-section.

(3.) Sub-section one of this section does not apply in respect of a portion of the wages of a pearl fisher, or any additional reward, which, by the terms of the pearling agreement under which he is employed, is to be paid to him at the expiration of the period for which he is employed.

26. An employer shall not deduct an amount from the wages or additional reward payable by him to a pearl fisher except in respect of— Deductions from wages.

- (a) moneys paid to the pearl fisher in advance;
- (b) goods which are shown to the satisfaction of an inspector to have been sold by the employer to the pearl fisher at a fair and reasonable price;
- (c) deductions or forfeitures imposed under the pearling agreement under which the pearl fisher is employed; or
- (d) moneys ordered to be forfeited to the employer by a court in pursuance of this Ordinance.

Penalty: Two hundred pounds.

27.—(1.) Within two days after the expiration of the period for which an employer has employed a pearl fisher under a pearling agreement or the earlier termination of the employment of the pearl fisher, as the case may be, the employer shall, in the presence of an inspector— Payment of wages, &c., on expiration of agreement.

- (a) pay to the pearl fisher all moneys due to him under the pearling agreement; and
- (b) deliver to the pearl fisher a certificate of discharge, in the prescribed form, witnessed by the inspector.

Penalty: One hundred pounds.

(2.) In a prosecution for an offence against the last preceding sub-section, it is a defence if the defendant proves that his failure to comply with the sub-section was caused by—

- (a) circumstances beyond his control; or
- (b) a dispute, based on reasonable grounds, as to the defendant's liability, or the amount of his liability, to the pearl fisher.

Notice of
intention to
pay off.

28. An employer shall not pay off or discharge a pearl fisher unless he has given to an inspector at least twenty-four hours' notice of the date and time when he proposes to pay off or discharge the pearl fisher.

Penalty: Fifty pounds.

Mutual
release.

29.—(1.) Upon the payment or other proper satisfaction of all wages and other moneys due to a pearl fisher and the delivery to him of a certificate of discharge, the employer and the pearl fisher shall sign in the presence of the inspector a mutual release of all claims in respect of the pearling agreement from which the pearl fisher is discharged.

Penalty: Fifty pounds.

(2.) The inspector shall witness the release and retain it.

(3.) A release signed and witnessed in accordance with this section operates as a discharge and settlement of all claims between the parties to the pearling agreement to which it relates.

Payments not
in accordance
with Ordinance.

30. A payment of money by an employer to a pearl fisher does not operate as a payment of wages or additional reward under a pearling agreement unless the payment is made in accordance with this Ordinance.

Pearl fish not
entitled to
wages in
certain cases.

31. A pearl fisher is not entitled to wages or additional reward under a pearling agreement in respect of a period during which—

- (a) he fails, without lawful excuse, to work when required to do so by his employer;
- (b) he is lawfully imprisoned or detained in custody by a police officer; or
- (c) he is unfit to carry out his duties under the agreement by reason of illness or incapacity caused by his own wilful act or default.

Termination of
agreement.

32. An employer shall not terminate the employment of a pearl fisher except—

- (a) in accordance with the pearling agreement under which the pearl fisher is employed; or
- (b) with the consent of the pearl fisher.

Penalty: One hundred pounds.

Default by
employer in
payment of
wages.

33.—(1.) Subject to the next succeeding sub-section, where an employer fails to pay, in accordance with this Ordinance, the full amount of the wages or of any additional reward due to a pearl fisher under a pearling agreement, the pearl fisher's wages continue to accrue from day to day until the whole of the moneys due to him have been so paid.

(2.) The last preceding sub-section does not apply where the delay in payment is caused by—

- (a) an act or default of the pearl fisher;
- (b) a dispute, based on reasonable grounds, as to the employer's liability, or the amount of the employer's liability, to the pearl fisher; or
- (c) any other cause that does not arise from the wrongful act or default of the employer.

34. Where any provision of a pearling agreement is inconsistent with any provision of an award made under the *Conciliation and Arbitration Act 1904-1961* and in force in the Northern Territory, the latter provision shall prevail, and the former provision shall, to the extent of the inconsistency, be invalid.

Award conditions shall prevail over agreements.

PART VI.—OFFENCES BY OWNERS AND PERSONS IN CHARGE OF LICENSED VESSELS.

35. The owner of a licensed vessel or, if the owner of the licensed vessel is not at the time within the Territory, the master of the licensed vessel shall, at least twenty-four hours before the vessel departs from a port in the Territory, cause notice in writing of the intended departure of the vessel and of the names of the master and the person who is second in charge of the vessel to be given to an inspector.

Notification of persons in charge of pearling vessel.

Penalty: One hundred pounds.

36. The person who is in charge of a licensed vessel when it departs from a port in the Territory shall not, without reasonable excuse, render up control of the vessel to another person before the vessel has completed its voyage.

Person in charge not to hand over control to another person.

Penalty: Fifty pounds.

37. The person in charge of a licensed vessel shall not allow a passenger to be taken to sea in the vessel unless he has the written permission of an inspector to do so.

Passengers not to be carried without permission.

Penalty: Fifty pounds.

38. The person in charge of a licensed vessel shall not take the vessel to sea unless—

Requirements before vessel taken to sea.

(a) he has a certificate signed by an inspector certifying that—

- (i) the vessel is seaworthy;
- (ii) the vessel carries such provisions, cooking utensils and facilities for cooking, and such articles of protection against heat

or cold, as the inspector considers necessary for the purposes of the voyage about to be commenced; and
(iii) the vessel is equipped to the satisfaction of the inspector with canvas awnings and with ventilators or wind sails;

(b) the vessel is equipped with such life-saving appliances and other safety gear as are prescribed; and

(c) the vessel carries a medical kit of a type approved by the Director of Health.

Penalty: One hundred pounds or imprisonment for six months.

Diving gear to
be examined.

39.—(1.) A person shall not use, or permit to be used, in connexion with diving in pearling operations, any diving gear unless—

(a) it has been submitted to an inspector for examination and testing within the last preceding period of nine months; and

(b) the inspector has certified that it is in a satisfactory condition.

Penalty: One hundred pounds or imprisonment for six months.

(2.) A person shall not use, or permit to be used, in connexion with diving in pearling operations, any diving gear which he knows is unsafe or has reasonable grounds to believe to be unsafe.

Penalty: One hundred pounds or imprisonment for six months.

(3.) In this section “diving gear” means diving dress, air pumps, air tubes or other gear used in connexion with diving.

Vessel not to be
taken to sea,
&c., if pearl
fisher has
infectious
disease.

40. The person in charge of a licensed vessel shall not take the vessel to sea, or, being at sea, remain at sea, if he knows, or has reasonable cause to believe, that he, or any other person in the vessel, is suffering from an infectious or communicable disease.

Penalty: One hundred pounds.

Infected pearl
fisher not to
handle food.

41. The person in charge of a licensed vessel who, while the vessel is at sea, knows or has reasonable cause to believe that a person in the vessel is suffering from an infectious or communicable disease shall take reasonable measures to prevent that person from handling food intended for the consumption of other persons in the vessel.

Penalty: Fifty pounds.

42.—(1.) The person in charge of a licensed vessel shall, as soon as practicable after the vessel has returned to port, submit to the Chief Pearling Inspector a report in writing of any accident or illness that occurred while the vessel was at sea. Accidents to be reported.

Penalty: Fifty pounds.

(2.) In the last preceding sub-section, “accident” means an accident involving a member of the crew, the vessel, the vessel’s gear, or the diving gear, or a part of the vessel’s gear or of the diving gear.

(3.) The person in charge of a licensed vessel shall not re-employ or continue to employ a pearl fisher as a diver, diver’s tender or a trial diver who has been incapacitated by accident or illness, unless a medical practitioner employed as a medical officer of the Commonwealth certifies that the pearl fisher, diver, diver’s tender or trial diver, is physically fit to return to employment as a diver, diver’s tender or trial diver, as the case may be.

Penalty: Fifty pounds.

43.—(1.) An employer shall not, except with the written consent of the Chief Pearling Inspector— Employment of indentured labourers.

- (a) employ an indentured labourer in work on shore; or
- (b) permit such a labourer in his employment to do work on shore for him.

Penalty: Two hundred pounds.

(2.) The Chief Pearling Inspector shall not consent to an indentured labourer being employed on shore except in respect of such work on behalf of the employer as is ordinarily connected with the overhaul and maintenance of pearling vessels and the gear and equipment ordinarily carried in pearling vessels.

(3.) In this section, “indentured labourer” means a person employed for the purposes of pearling, being a person who holds an entry permit under section six of the *Migration Act 1958* authorizing his entry into Australia for the purpose of being so employed.

44. The person in charge of a pearling vessel shall not, without lawful justification, assault a pearl fisher employed in the vessel. Assaulting a pearl fisher.

Penalty: Fifty pounds or imprisonment for three months.

PART VII.—OFFENCES BY PEARL FISHERS.

45.—(1.) A pearl fisher shall not desert from the licensed vessel in which he is employed under a pearling agreement. Desertion.

Penalty: Fifty pounds or imprisonment for three months.

(2.) The court before which a pearl fisher is convicted of an offence against the last preceding sub-section may, in addition to imposing a penalty under that sub-section, order that an amount not exceeding Fifty pounds be forfeited by the pearl fisher to the employer out of such wages as have accrued, or may accrue, to the pearl fisher.

Absence from
duty.

46. A pearl fisher shall not, without reasonable excuse, absent himself from duty or from the place where he is required to carry out a duty without the permission of his employer.

Penalty: Fifty pounds or imprisonment for three months.

Failure to
join vessel.

47.—(1.) A pearl fisher shall not, without reasonable excuse, refuse or fail—

(a) to join the licensed vessel in which he is required to work under a pearling agreement; or

(b) to proceed to sea in that vessel.

Penalty: Fifty pounds or imprisonment for three months.

(2.) The court before which a pearl fisher is convicted of an offence against the last preceding sub-section may, in addition to imposing a penalty under that sub-section, order that an amount not exceeding Fifty pounds be forfeited by the pearl fisher to the employer out of such wages as have accrued, or may accrue, to the pearl fisher.

Disobedience
and
insubordination.

48. A pearl fisher shall not, when at sea in a licensed vessel—

(a) wilfully disobey or fail to carry out a lawful command given to him by a person having authority to give the command; or

(b) be insubordinate to a person in authority over him.

Penalty: Fifty pounds or imprisonment for three months.

Assault by
pearl fisher.

49. A pearl fisher shall not, without lawful justification, assault the person in charge of the licensed vessel in which he is employed.

Penalty: Fifty pounds or imprisonment for three months.

Impeding
navigation.

50. A pearl fisher shall not—

(a) wilfully impede the navigation of a licensed vessel or the progress of its voyage; or

(b) wilfully impede the pearling operations on board a licensed vessel.

Penalty: One hundred pounds or imprisonment for six months.

51. A pearl fisher shall not conspire with another member of the crew of a licensed vessel— Conspiracy to do certain acts.

- (a) to disobey a lawful command at sea;
- (b) to neglect duty at sea;
- (c) to impede the navigation of the vessel or the progress of its voyage; or
- (d) to impede the pearling operations in the vessel.

Penalty: Imprisonment for one year.

52. A pearl fisher shall not wilfully damage a licensed vessel or its cargo, stores, equipment or fittings. Wilful damage.

Penalty: One hundred pounds or imprisonment for six months.

53. A pearl fisher employed in a licensed vessel who, by wilful breach of duty or by wilful neglect of duty, or by reason of being under the influence of intoxicating liquor or of a drug (not being a drug that was taken or administered, with the approval of the person in charge of the vessel, for medicinal purposes)— Acts endangering vessel or safety.

- (a) does an act which causes, or is likely to cause, the loss or destruction of, or damage to, the vessel or its cargo;
- (b) does an act which endangers, or is likely to endanger, the life or safety of a person belonging to, or on board the vessel;
- (c) fails to do an act the failure to do which causes, or is likely to cause, the loss of, destruction of, or damage to, the vessel or its cargo; or
- (d) fails to do an act the failure to do which endangers, or is likely to endanger, the life or safety of a person belonging to, or on board, the vessel,

is guilty of an offence punishable, on conviction, by a fine not exceeding One hundred pounds or imprisonment for a period not exceeding six months.

54. A pearl fisher shall not, except for the purpose of, and in pursuance of, his duties, take, use, remove, damage, destroy or otherwise disturb any part of— Interference with cargo or stores.

- (a) the cargo in a licensed vessel; or
- (b) the stores, equipment or fittings in a licensed vessel,

without the authority of the person in charge of the vessel.

Penalty: One hundred pounds or imprisonment for six months.

PART VIII.—PEARL CULTURE.

Definition.

55. In this Part—

“leased water” means an area of territorial waters the subject of a lease granted under this Part.

Pearl culture
leases.

56.—(1.) Subject to this Ordinance the Administrator may grant to a person a lease of an area of territorial waters not exceeding three square miles in extent for a period not exceeding fifteen years to take, cultivate and propagate pearls and pearl oysters.

(2.) A lease granted under this section—

- (a) is subject to such covenants, terms and conditions as the Administrator thinks fit;
- (b) grants to the lessee and his successors in title, but subject to the covenants, terms and conditions of the lease, the exclusive right to take, cultivate and propagate pearls and pearl oysters in and under the area of territorial waters in respect of which it is granted;
- (c) does not grant to the lessee any right to the possession of the surface of the sea within the boundaries of the lease;
- (d) confers on the lessee the exclusive right to the possession of the sea-bed within the boundaries of the lease; and
- (e) may be renewed for a period not exceeding fifteen years and for a further period not exceeding fifteen years.

Granting of
lease to be
notified.

57. When a lease is granted under this Part a notice setting out the term of the lease and describing the area of the leased water shall be published in the *Gazette* and a newspaper circulating in the Port of Darwin.

Property in
pearls, &c.,
conferred by
lease.

58. Where a lease is granted under this Part of leased water, all pearls, pearl oysters and pearl shell in or under the area in respect of which the lease is granted are the property of the lessee and shall be deemed to be in the actual possession of the lessee.

Surrender r.

59. A lease under this Part may be surrendered by the lessee upon payment of all rent due under the lease.

60.—(1.) If the Administrator is satisfied that any lessee has failed to comply with any covenant or condition of a lease, the Administrator may, by writing, give notice to the lessee of the breach and require him to furnish, within such time as is specified in the notice, an explanation of the reasons why he has not complied with the covenant or condition. Breach of covenants.

(2.) If the Administrator, after considering any explanation furnished, is satisfied with the explanation, he may waive the breach and may direct that the covenant or condition be complied with within such time as he appoints.

(3.) If an explanation is not furnished, or if the Administrator is not satisfied with the explanation furnished, he may—

(a) give notice in writing to the lessee to comply with the covenant or condition within such time as is specified in the notice; or

(b) if he considers that the non-compliance has been wilful and that the lessee has made no real effort to comply with the covenants and conditions of his lease, by notice in the *Gazette*, forfeit the lease.

(4.) The Administrator may, at any time if he sees fit, by notice in the *Gazette*, waive a forfeiture and reinstate a lease and the lessee in his former estate as lessee.

61.—(1.) Where the Administrator gives to a lessee notice of the forfeiture of a lease under this Part, the lessee may, within twenty-eight days after receipt of the notice, or within such extended period as the Administrator allows, send by post to, or lodge with, the Administrator at his office an objection to the forfeiture specifying the grounds of objection. Objections to proposed forfeiture.

(2.) The Administrator shall, within twenty-eight days after receiving an objection, consider the objection and may disallow it or allow it in whole or in part and shall forthwith give to the objector notice of his decision upon the objection.

62.—(1.) An objector who is dissatisfied with a decision of the Administrator to disallow an objection to the forfeiture of a lease under this Ordinance may, within twenty-eight days after receipt of the notice of the decision, by writing, request the Administrator to refer the decision to the Land and Valuation Review Tribunal for review. Application for review of decision to disallow objection to proposed forfeiture.

(2.) Upon receipt of the request, the Administrator shall forthwith refer the decision to the Tribunal.

(3.) Upon such a reference, the objector is limited to the grounds stated in the objection.

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Powers of
Tribunal.

63.—(1.) Where the Tribunal reviews a decision of the Administrator to disallow an objection to the forfeiture of a lease under this Part, it may confirm or annul the notice forfeiting the lease to which the decision relates.

(2.) Sections twenty-seven to twenty-nine (inclusive) and section thirty-one of the *Valuation of Land Ordinance 1963* apply to and in relation to a reference to the Tribunal under this Part and the decision of the Tribunal upon that reference in like manner as they apply to and in relation to a reference to the Tribunal under that Ordinance and the decision of the Tribunal upon that last-mentioned reference.

(3.) For the purposes of section twenty-eight of the *Valuation of Land Ordinance 1963* in its application to a reference to the Tribunal under this Part the person requesting the reference and the Administrator are parties to the reference.

Notice of
forfeitures of
leases.

64.—(1.) Where—

- (a) the Administrator gives a notice under this Part forfeiting a lease and the person entitled to object does not, within twenty-eight days after receipt of the notice, object to the forfeiture of the lease;
- (b) the Administrator gives, under section sixty of this Ordinance, notice of his decision to disallow an objection to the forfeiture of a lease under this Part and the objector does not, within twenty-eight days after receipt of the notice, request the Administrator to refer the decision to the Tribunal for review; or
- (c) upon the review of a decision to disallow an objection to the forfeiture of a lease under this Ordinance, the Tribunal confirms the notice forfeiting the lease,

the Administrator may cause notice of the forfeiture to be published in the *Gazette*.

(2.) The forfeiture of a lease under this Ordinance is not effective until a notice of the forfeiture is published in the *Gazette* of the Northern Territory in pursuance of the last preceding sub-section.

(3.) A notice published in the *Gazette* of the Northern Territory in pursuance of sub-section (1.) of this section—

- (a) has the same effect as a re-entry and recovery of possession by, or on behalf of, the Crown; and
- (b) is conclusive evidence that the lease to which the notice relates has been forfeited.

(4.) The Administrator shall forward to the Registrar-General for the Northern Territory a copy of each notice of the forfeiture of a lease published in the *Gazette* of the Northern Territory in pursuance of sub-section (1.) of this section.

(5.) The receipt of a copy of a notice of the forfeiture of a lease forwarded to him under the last preceding sub-section is sufficient proof of the forfeiture to the Registrar-General, and he shall, immediately upon receipt of the notice, call in the copy of the lease for cancellation.

65. A person, not being the lessee or a person authorized by the lessee, shall not, without lawful excuse—

Offences in
relation to
leased water.

- (a) take any pearl, pearl oyster or pearl shell from leased water;
- (b) interfere with, disturb or damage any pearl oyster or pearl shell or any rafts or equipment in or under the leased water;
- (c) place in or take into any leased water any thing, apparatus or substance which is likely to damage or harm any pearl oyster, pearl shell or any equipment lawfully in or under any leased water;
- (d) transfer or move from any water into any leased water any pearl oyster or pearl shell affected with disease; or
- (e) enter or be in any leased water except for the purpose of navigation or through stress of weather.

Penalty: Two hundred pounds or imprisonment for twelve months.

PART IX.—RESEARCH AND DEVELOPMENT.

66. Subject to the directions of the Minister, the Administrator may engage in—

Powers of
Administrator.

- (a) investigation and research into the cultivation and propagation of pearls and pearl oysters, trochus, bêche-de-mer or green snail;
- (b) projects directed to the development of a pearling or pearl culture industry; and
- (c) investigation of markets for and the marketing of pearls or pearl shell.

PART X.—MISCELLANEOUS.

**Powers of
inspectors.****67. An inspector may—**

- (a) board or enter upon a vessel in territorial waters or a vessel which he has reason to believe has been used, is being used, or is intended to be used, for pearling or pearl culture in territorial waters, and search for equipment used or capable of being used for pearling or pearl culture;
- (b) examine any equipment found in any place, being equipment which he has reason to believe has been used, is being used, or is intended to be used, for pearling or pearl culture in territorial waters;
- (c) seize, take, detain or remove and secure any vessel, raft, mooring, basket or other apparatus, pearl shell, trochus, bêche-de-mer or green snail which he has reason to believe has been taken or used or is being used, in contravention of this Ordinance;
- (d) without warrant, arrest a person whom he has reason to believe has committed an offence against this Ordinance;
- (e) require a master or other person in charge of a vessel which the inspector has reason to believe has been used, is being used or is intended to be used in contravention of this Ordinance to bring the vessel to a place in the Territory specified by the inspector and to remain in control of the vessel at that place until an inspector permits him to depart from that place;
- (f) bring a vessel which the inspector has reason to believe has been used or is being used in contravention of this Ordinance to a place in the Territory and remain in control of that vessel pending the taking of proceedings in respect of that contravention;
- (g) require the master or other person in charge of a vessel required to be licensed under this Ordinance to produce the licence for the vessel and take copies of, or extracts from, the licence;
- (h) require the master or other person in charge of a vessel required to be licensed under this Ordinance to give information concerning the vessel and the crew and any person on board the vessel;

- (i) require a person who is on board a vessel required to be licensed under this Ordinance, or is engaged in pearling in territorial waters, or whom he reasonably suspects of having committed an offence against this Ordinance to state his name and place of abode;
- (j) require a person engaged in pearling in territorial waters to state whether he is the holder of a licence under this Ordinance;
- (k) sell any pearl shell seized by him under this Ordinance;
- (l) call to his aid any member of the Police Force where he has reasonable cause to apprehend any obstruction in the exercise of his duties;
- (m) make such examinations and inquiries as may be necessary to ascertain whether the provisions of this Ordinance have been or are being complied with in respect of the cultivation and propagation of pearls and pearl oysters, and the persons or vessels employed in connexion therewith;
- (n) at any time search and examine any bag, basket, vehicle or other receptacle for holding or carrying pearl shell and, for that purpose, require the owner or person in charge thereof to open such bag, basket, vehicle or other receptacle, as the case may be, and expose its contents to view;
- (o) between sunrise and sunset enter any premises and search for any pearl shell, or pearl oysters, which may have been taken, had in possession, or sold contrary in any respect to this Ordinance, and seize, take away, detain, and secure the same;
- (p) at all times and seasons without let or hindrance enter upon any lease which has been granted under this Ordinance; and
- (q) employ assistants in and about the exercise of any of his powers under this section and, where necessary, use force, whether by breaking open doors or otherwise.

68. Where an inspector has reason to believe that the provisions of this Ordinance or the regulations have not been complied with in relation to a licensed vessel, he may, by notice in

Prohibition on
taking vessel
to sea.

writing served on the person in charge of the vessel, prohibit that person to take the vessel to sea until those provisions have been complied with.

Appeal against
notice.

69.—(1.) The owner or person in charge of a pearling vessel in relation to which a notice under the last preceding section has been served may, in the prescribed manner, appeal against the prohibition contained in the notice to a Local Court of Full Jurisdiction.

(2.) The court may, on the hearing of the appeal, confirm, vary or cancel the prohibition contained in the notice the subject of the appeal.

Obstruction of
inspector.

70.—(1.) A person shall not—

- (a) assault, resist or obstruct an inspector in the exercise of his powers or in the discharge of his duties under this Ordinance;
- (b) fail to comply with a lawful requisition of an inspector;
- (c) when required by or under this Ordinance to furnish any assistance or to furnish any information to an inspector, fail to furnish to an inspector the assistance or information so required;
- (d) fail, without reasonable excuse the proof whereof shall be upon him, to produce any licence, which he is required under this Ordinance by an inspector to produce, or fail to allow an inspector to take a copy of or extract from any such licence;
- (e) directly or indirectly prevent any person from appearing before, or being questioned by, an inspector; or
- (f) use any threat or any abusive or insulting language to any inspector or to any other person with respect to any inspection or examination or questioning.

Penalty: One hundred pounds.

(2.) In this section “inspector” includes any person acting under lawful authority under or pursuant to this Ordinance.

Use of vessel
prohibited.

71. A person shall not use a vessel in searching for, obtaining or transporting of pearl shell or pearl oysters, unless there is in force under this Ordinance a licence authorizing the use of the vessel for the searching or obtaining of pearl shell.

Penalty: Five hundred pounds.

72. A person who is in charge of a vessel at the time when it is being used in the searching for, obtaining or transporting of pearl shell or pearl oysters and the owner and charterer (if any) at that time shall be deemed for the purposes of the last preceding section to so use the vessel. Certain persons deemed to use vessel.

73. A person shall not—

- (a) engage in pearling as a diver, diver's tender or trial diver; or
 - (b) employ a person as a diver, diver's tender or trial diver,
- Offences in relation to divers.

unless the person so engaged or employed is the holder of a licence under this Ordinance.

Penalty: One hundred pounds.

74. A person shall not engage for employment or employ—

- (a) any other person who is under the age of sixteen to work in a vessel engaged in pearling or pearl culture; or
 - (b) any other person who is under the age of eighteen as a diver, diver's tender or trial diver.
- Employment of young persons.

Penalty: One hundred pounds.

75.—(1.) The holder of a licence in respect of a vessel authorizing the use of that vessel in pearling and the holder of a licence to search for and obtain pearl shell shall furnish such returns in such forms and containing such information as are prescribed or as the Administrator directs. Returns.

(2.) A person required to furnish a return under the last preceding sub-section shall not—

- (a) fail to duly furnish a return; or
- (b) furnish a return which is false or misleading in a particular.

Penalty: One hundred pounds.

76. A right, immunity, duty or liability conferred or imposed by this Ordinance, unless the contrary intention appears, is in addition to and does not derogate from a right arising by operation of any law other than this Ordinance. Ordinance not to derogate from other rights.

77. Where an act or omission is an offence against a provision of this Ordinance and also gives rise to a civil right or duty it is not necessary that proceedings for the prosecution of the offence be taken before proceedings are taken to enforce that civil right or duty. Prosecution not necessary before civil proceedings taken.

Penalties in
addition to
forfeiture.

• 78. All penalties provided by this Ordinance are in addition to forfeiture.

Judicial
notice.

79. Judicial notice shall be taken of the signature of the Chief Pearling Inspector and of an inspector and of the fact that he has been duly appointed to be the Chief Pearling Inspector or an inspector as the case may be.

Presumption of
execution.

80. In the absence of evidence to the contrary a pearling agreement or a mutual release endorsed or signed by an inspector is deemed to have been duly executed.

Summary
prosecution.

81. An offence against this Ordinance may be prosecuted in a court of summary jurisdiction constituted under the *Justices Ordinance 1928-1961*.

Averments.

82.—(1.) In a prosecution for an offence against a provision of this Ordinance, an averment of the prosecutor contained in the information or complaint is evidence of the matter averred.

(2.) This section applies to a matter so averred although—

(a) evidence in support or rebuttal of the matter averred or any other matter is given; or

(b) the matter averred is a mixed question of law and fact, but where the matter averred is a mixed question of law and fact, the averment is evidence of the fact only.

(3.) Evidence given in support or rebuttal of the matter so averred shall be considered on its merits and the credibility and probative value of that evidence shall be neither increased nor diminished by reason of this section.

(4.) This section does not apply to an averment of the intent of the defendant.

(5.) This section does not lessen or affect any burden of proof otherwise falling upon the defendant.

Restrictions on
use of
averments.

83.—(1.) An averment shall not be made under the last preceding section unless the Crown Law Officer is satisfied that the averment is reasonably necessary for the administration of justice and will not impose hardship upon, or occasion injustice to, the defendant, and certifies to that effect on the paper containing the averment.

(2.) An averment is not evidence for the purposes of the last preceding section unless a copy of the paper containing the averment has been served on the defendant in the same manner as the process requiring his attendance before the court.

(3.) Service of the copy of the paper containing the averment may be proved in the same manner as the service of the process requiring the attendance of the defendant before the court.

(4.) Upon the hearing of an information or complaint in respect of an offence against a provision of this Ordinance, the court may, if the amendments can be made without hardship or injustice to the defendant, allow such amendments to be made in the writing containing an averment as appear to the court to be necessary or desirable to enable the real question in dispute to be determined.

(5.) Where the court considers that a defendant has been misled by the form of an averment, it may refuse to allow an amendment of the averment or may adjourn the hearing of the case for such period as it thinks fit.

(6.) Upon an adjournment under the last preceding subsection, the court may make such order as to the costs of the adjournment as it thinks fit.

84. The Administrator may, in his absolute discretion, remit, wholly or in part, the fees payable under this Ordinance in respect of the licensing of a vessel as a licensed vessel where the vessel is owned and operated by— Remission of fees.

- (a) aboriginal natives of Australia;
- (b) a co-operative trading society the members of which are aboriginals; or
- (c) a religious or missionary body or organization which operates the vessel with aboriginal labour.

85. The Administrator in Council may make regulations not inconsistent with this Ordinance prescribing all matters which by this Ordinance are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance and in particular prescribing matters for or in relation to— Regulations.

- (a) the forms to be used and the fees to be paid in connexion with the issue of licences and leases under this Ordinance;

- (b) the imposition of penalties not exceeding Twenty pounds for an offence against the regulations;
- (c) the minimum size of pearl shell or pearl oysters which may be taken;
- (d) the conditions as to seaworthiness of vessels licensed under this Ordinance and the nature and extent of fire-fighting, navigational, life-saving or operating equipment and the nature and quantity of medical stores to be carried in such vessels;
- (e) the method of marking or identifying vessels licensed under this Ordinance;
- (f) the regulation of priority of rights as between pearl fishers licensed under this Ordinance;
- (g) the methods of marking or identifying leases granted under this Ordinance;
- (h) the forms of returns to be provided under this Ordinance or the regulations and the manner and times at which such returns shall be furnished;
- (i) the furnishing of returns of information for statistical purposes; and
- (j) standards of safety in diving and of diving gear in connexion with or used in connexion with pearling.

THE SCHEDULE.

Section 4.

Pearling Ordinance 1956.
Pearling Ordinance 1958.
Pearling Ordinance 1961.
