

Ceylon Government Gazette

EXTRAORDINARY.

Published by Authority.

No. 7,443 - WEDNESDAY, JANUARY 28, 1925.

Part I. - General.

Separate paging is given to each Part in order that it may be filed separately.

GOVERNMENT NOTIFICATION.

"THE CEYLON (LEGISLATIVE COUNCIL) ORDER IN COUNCIL, 1923."

The Constituency of the European Electorate (Urban).

NOTICE is hereby given that Sir James Thomson Broom, Merchant, 2, Queen street, Colombo, has been duly elected as Member of the Legislative Council for the above-named constituency.

By His Excellency's command,

Colonial Secretary's Office,
Colombo, January 28, 1925.

CECIL CLEMENTI,
Colonial Secretary.

DRAFT ORDINANCE.

MINUTE.

The following Draft of a proposed Ordinance is published for general information:—

An Ordinance further to amend and to consolidate the Law relating to the Pearl Fisheries of Ceylon.

WHEREAS it is expedient further to amend and to consolidate the law relating to the pearl fisheries of Ceylon: Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows:

Preamble.

CHAPTER I.

Preliminary.

1 This Ordinance may be cited as the Pearl Fisheries Ordinance, No. of 1925.

Short title.

2 In this Ordinance, unless the context otherwise requires—

Interpretation.

"Pearl oyster" means pearl-bearing oysters of all descriptions, and includes the mollusc commonly called the "window pane oyster" or "the Tampalakam pearl oyster," and scientifically known as *Placuna Placenta*, as well as any other pearl-producing molluscs which may be introduced, or laid down, off the coasts of Ceylon, or in the bays, or inland waters of the Island;

“Vessel” includes ships, boats, rafts, canoes, and vessels of every description;

“Pearl bank” means the area specified in the first schedule to this Ordinance and includes the bed of any pearl bank. The said schedule may from time to time be altered by regulation;

“Pearl fishery guard” means all customs officers, police officers, peace officers, the camp superintendent, the inspector of pearl banks, and every person appointed by the camp superintendent, or the inspector of pearl banks, to act as a pearl fishery guard;

“Regulation” means a regulation made by the Governor in Executive Council and published in the “Government Gazette.”

Exclusive right of Crown in pearl fisheries:

3 The exclusive right of fishing for and taking pearl oysters off the coasts of Ceylon and in all bays and inland waters of the Island is vested in the Crown.

CHAPTER II.

Regulation of Pearl Fisheries.

Prohibition of fishing for pearls without a licence..

4 (1) No person shall fish, or dive for, or collect, pearl oysters on, or from, any pearl bank, or use a vessel for any such purpose, unless he holds a licence (in this Ordinance referred to as a pearl fishery licence) authorizing him so to do.

(2) A pearl fishery licence shall be issued in the discretion of and by a Government Agent authorized to issue such licences, and shall be in the appropriate form in the second schedule to this Ordinance. The said second schedule may be altered by regulation.

(3) Any penalty imposed by a pearl fishery licence may be recovered on summary conviction before a police magistrate as well as by any means provided by the licence.

(4) Every person, to whom a pearl fishery licence is issued under this section, shall produce it on the demand of and for the perusal by any pearl fishery guard, and shall observe the terms and conditions contained in the licence.

(5) A licence to collect pearl oysters issued by any Government Agent before the commencement of this Ordinance shall be deemed to be a pearl fishery licence issued under this Ordinance.

(6) All pearl oysters or pearls collected otherwise than under the authority of and in accordance with the terms and conditions contained in a duly issued pearl fishery licence are the property of the Government.

Power to prohibit and regulate fishing for pearls.

5 Regulations may be made regulating the fishing or diving for or collection of pearl oysters under a pearl fishery licence and the use of vessels for such purposes and the forms of and the fees to be charged for pearl fishery licences, and generally for the protection, management, control, development, and improvement of the pearl fisheries off the coasts of Ceylon or in any bay or inland water of the Island.

Restriction on fishing on pearl banks.

6 (1) No person shall on any pearl bank use or have in his possession, power, or control any net, dredge, or fishing line, or fishing tackle.

(2) Nothing in this section shall apply to any dredge, net, fishing line, or fishing tackle, the use of which is for the time being permitted by regulation.

Anchoring on a pearl bank.

7 Unless permitted by regulation, no person shall anchor any vessel on a pearl bank except when collecting pearl oysters under the authority of a pearl fishery licence or compelled to do so by necessity, the proof whereof shall lie on him.

Unlawful possession of pearls or pearl oysters.

8 If any pearls or pearl oysters are found in the possession, power, or control of any person on or in the vicinity of a pearl bank in such circumstances that there is reason to suspect that they were not lawfully obtained, then such pearls or pearl oysters shall be forfeited to the Government unless satisfactory evidence is given that they were lawfully obtained, and that person shall be guilty of an offence unless satisfactory evidence is given that he was not personally concerned in the unlawful obtaining thereof and that they were not dishonestly retained in his possession, power, or control with the knowledge that they had been unlawfully obtained.

9 (1) If any vessel is found on a pearl bank anchoring or hovering and not proceeding to her proper destination as wind and weather permit, or is found on or near a pearl bank in circumstances giving rise to reasonable suspicion that she is being or has been or is intended to be used for the unlawful collection of pearl oysters, any pearl fishery guard may enter, seize, and search such vessel, and convey the same to some convenient place in the Island for adjudication.

Seizure and forfeiture of poaching vessels.

(2) As soon as may be after the arrival of a vessel seized under this section, proceedings shall be commenced before a police magistrate against all persons found in the vessel and the owner thereof, if known and in the Island, alleging that the vessel has been used for the unlawful collection of pearl oysters, and in such proceedings, unless satisfactory evidence is given that the vessel had not been and was not intended to be used for the unlawful collection of pearl oysters, the magistrate may impose a fine not exceeding two hundred rupees in respect of each person found in the vessel and declare that the vessel and her gear shall be forfeited to the Crown unless the fine is paid within a time to be specified in the order, and shall also declare all gear appearing to be intended for the collection of pearl oysters and any pearl oysters or pearls found in the vessel to be forfeited to the Crown.

10 If any person contravenes or attempts to contravene or abets the contravention of any provision of this chapter or any regulation made thereunder, he shall be guilty of an offence against this Ordinance, and shall, on conviction by a police magistrate, be liable to a fine not exceeding two hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

Penalty for offences under chapter II.

CHAPTER III.

Pearl Fishery Camps.

11 (1) The Governor in Executive Council may from time to time by notification in the "Government Gazette" declare that a pearl fishery shall be held on any pearl bank between the dates specified therein, and may by the same or other similar notification declare any place to be a pearl fishery camp for the purposes of the pearl fishery, and may appoint any person to be camp superintendent thereof. A notification under this section may be amended from time to time.

Power to declare a pearl fishery camp.

(2) A place declared to be a pearl fishery camp shall be deemed to be a pearl fishery camp within the meaning of this Ordinance for one month before the commencement of, during the continuance of, and for one month after the termination of the fishery for which the camp is established.

12 (1) In any inquiry under section 87 of chapter VII. of the Criminal Procedure Code, 1898 (which relates to security for keeping the peace or for good behaviour), as respects any person domiciled in India found in or attempting or proposing to enter a pearl fishery camp, the evidence of any member of the Indian police force that that person is an habitual robber, housebreaker, or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or is an habitual aider in the concealment or disposal of stolen property, or that he is a dangerous character, shall be sufficient *prima facie* evidence of the fact and shall be admissible in evidence notwithstanding that it is hearsay evidence, if it is based on information obtained by him in the course of his duty and appears to the magistrate to be true.

Prevention of offences under chapter VII. of Criminal Procedure Code.

(2) When any person found in or attempting or proposing to enter a pearl fishery camp and ordered to give security under chapter VII. of the Criminal Procedure Code, 1898, does not give such security on or before the date on which the period for which such security is to be given commences, the court may, if it thinks fit, order that that person shall, instead of being committed to prison, refrain from entering or be removed from the camp, and pending and during removal be kept in the custody of the police.

(3) If any person with respect to whom such an order is made subsequently enters the pearl fishery camp, he shall, on conviction by a police magistrate, be liable to imprisonment of either description for any period not exceeding six months.

Prohibition of the import of pearls into a camp.

13 (1) No person shall, without the permit of the camp superintendent, bring into a pearl fishery camp, or into the vicinity of a pearl fishery camp with a view to its being brought into the camp, or have in his possession in a pearl fishery camp, any artificial pearl or any pearl not being a pearl the product of a pearl oyster lawfully taken from a pearl bank at and during the continuance of the pearl fishery for which the camp is established.

(2) For the purposes of enforcing the provisions of this section every pearl fishery guard shall have all the powers of search, seizure, and detention possessed by customs officers for the prevention and detection of smuggling.

(3) All pearls seized under the foregoing power or otherwise coming into the hands of a pearl fishery guard and suspected to have been dealt with in contravention of the provisions of this section shall, as soon as possible, be brought before a police magistrate, who, if he considers that an offence was or was intended to be committed in respect of the pearls, may, in his discretion, either in addition to or without inflicting any other punishment, declare them to be forfeited to the Government, or he may order them to be detained by the police until the end of the pearl fishery. But so that neither the police nor the Government shall incur any liability for any loss or damage which may happen to any such pearl.

(4) In all proceedings under this Ordinance, the burden of proving that any pearl is the product of a pearl oyster lawfully taken from a pearl bank at and during the continuance of the pearl fishery for which the camp was established shall lie on the person alleging the same.

Power to make regulations for administration of a pearl fishery camp.

14 Regulations may be made for preserving order, preventing the theft of pearls, accidents, fire, and disease, and regulating food prices within a pearl fishery camp, and as to any other matter or thing whatsoever, whether similar to those before enumerated or not, which the Governor in Executive Council considers necessary or convenient for the proper administration of a pearl fishery camp.

Penalty for offences under chapter III.

15 Any person who contravenes or attempts to contravene or abets the contravention of any provision of this chapter or any regulation made thereunder shall be guilty of an offence against this Ordinance, and, on conviction by a police magistrate, shall be liable to a fine not exceeding one hundred rupees.

CHAPTER IV.

Supplementary.

Offences to be cognizable and bailable.

16 For the purposes of the Criminal Procedure Code, 1898, every offence against this Ordinance shall be deemed to be cognizable and bailable.

Reward to informers.

17 It shall be lawful for any police magistrate before whom any person shall be convicted of any offence under this Ordinance to direct a portion of the fine actually recovered and realized, not exceeding one-half, to be paid to the informer.

Saving of powers of customs officers.

18 Nothing in this Ordinance shall affect any power conferred on customs officers by Ordinance No. 17 of 1869.

Power to seize articles liable to forfeiture.

19 Any pearls and pearl oysters appearing to be liable to forfeiture under this Ordinance may be seized by any pearl fishery guard and, when seized, shall be conveyed to the nearest police station and there detained until the court having jurisdiction in the matter has determined how the same are to be dealt with.

Regulations to be laid before Legislative Council.

20 All regulations shall, as soon as conveniently may be, be laid before the Legislative Council, and may, at any of the next following three meetings be rescinded by resolution of the Legislative Council, but without prejudice to anything already done thereunder, and if not so rescinded shall be deemed to be valid.

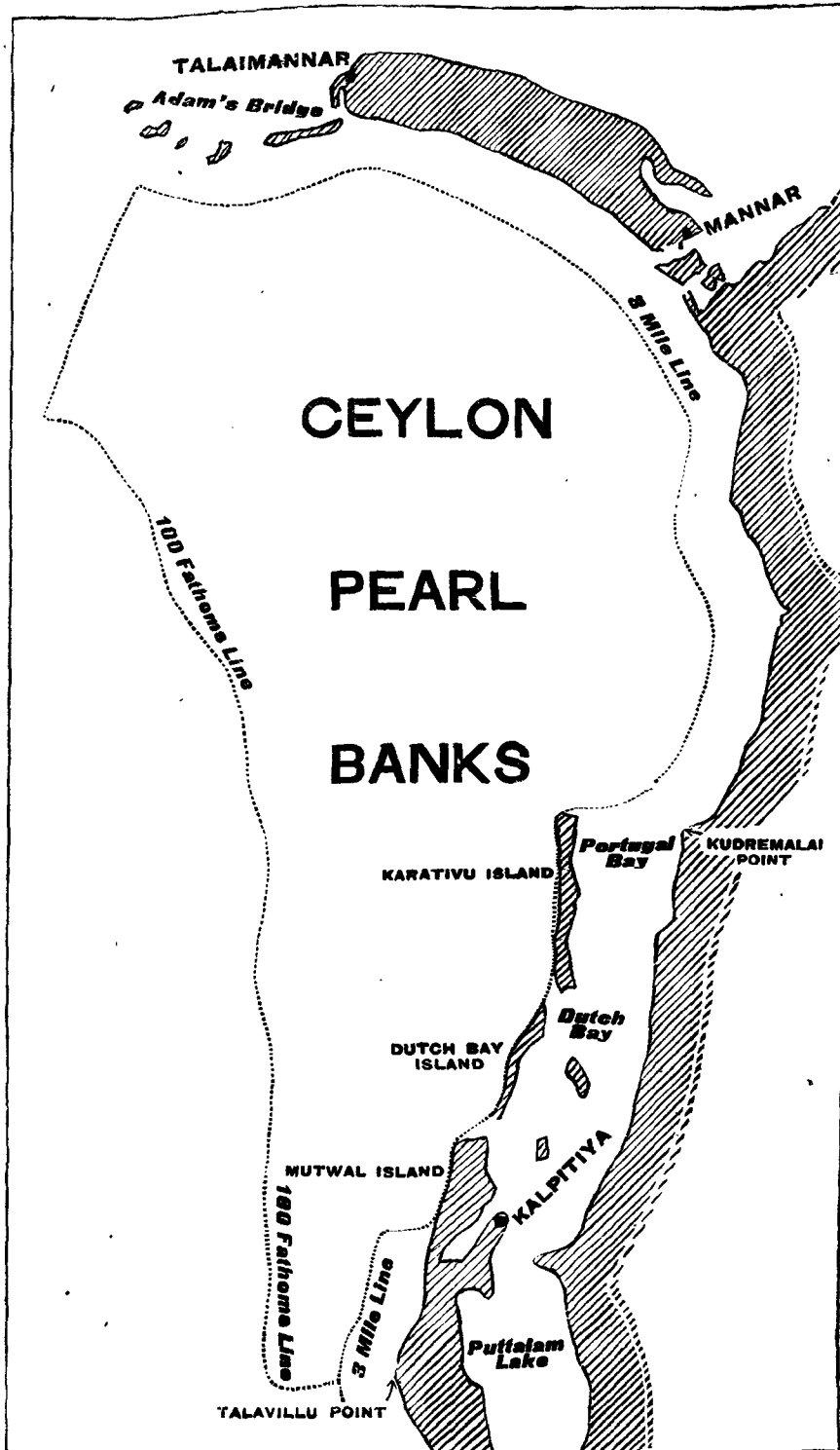
Repeal.

21 The enactments specified in the third schedule are hereby repealed.

FIRST SCHEDULE.

All that area of water enclosed on the plan delineated below by a dotted line in part marked "3 mile line" and in part marked "100 fathoms line."

Plan above referred to.

**SECOND SCHEDULE.****Forms of Pearl Fishery Licences.**

THE PEARL FISHERIES ORDINANCE, 1925.

Licence to use a Boat for collecting Pearl Oysters.

(Not transferable.)

Under the above-mentioned Ordinance — (name of licensee)
of boat No. — is hereby licensed to use the said boat for collect-
ing pearl oysters.

The maximum number of persons to be carried in the boat
shall not exceed —.

This licence to remain in force until —.

Government Agent's Office,

—, Ceylon,

—, 192—.

Government Agent for the
Northern Province.

Note.—This licence is issued subject to the conditions inscribed on the
back hereof.

Conditions referred to.

1. On the issue of this licence the licensee shall deposit with the Government Agent, Northern Province, the sum of Rs. 100 as security for carrying out the conditions of this licence, and shall pay a fee equivalent to Rs. 5 per ton or part of a ton on the registered tonnage of his boat for the issue of the licence.

2. The licensee and/or his tindal shall obey all orders received from officers in charge of Government vessels in regard to towage and in regard to taking up a proper position for being taken in tow, and shall facilitate the work of such officers in every way possible. The tindal and each member of the boat's crew shall wear an armlet or badge to be provided by the Government Agent and returned to him at the expiration of the licence.

3. If instructions are received that the boat shall be towed, it shall not be sailed or rowed or paddled instead of being towed.

4. The fishery number placed by orders of the Government Agent on the boat shall not be defaced or concealed from view, and shall always be kept in a legible state.

5. Fishing shall not take place beyond the lines of flag buoys put down on the orders of the Inspector of Pearl Banks to mark the limits of the fishing ground, and fishing shall take place only where white flag buoys shall have been laid down to indicate the centres round which fishing shall take place.

6. Should the licensee and/or his tindal be declared by the Government Agent, or by the Inspector of Pearl Banks, or by the Koddu Superintendent to have infringed or broken any of these conditions, the licensee shall pay such sum of money by way of a penalty as the Government Agent or the Koddu Superintendent shall deem adequate and authorize. For the first infringement or breach of any condition the penalty shall not exceed Rs. 30, or, in lieu of such penalty, the boat may be suspended from fishing for two days; for a second or subsequent infringement or breach of any condition the penalty shall not exceed Rs. 50, or, in lieu of such penalty, the boat may be suspended from fishing for such time as the Government Agent may consider fitting. Any of the said sums may be deducted from the deposit made by the licensee, or may be recovered by due process of law.

I, —, hereby accept the licence on the above conditions, and hereby agree to perform and observe the same.

At —, 192—.

Signature of the Licensee.

THE PEARL FISHERIES ORDINANCE, 1925.

For Arab Divers.

Licence to Dive for Pearl Oysters.

(Not transferable.)

Under the above-mentioned Ordinance — (name of licensee) of boat No. — is hereby licensed to dive from the said boat for pearl oysters.

This licence to remain in force until —.

Government Agent's Office,
—, Ceylon,
—, 192—.

Government Agent for the
Northern Province.

Note.—This licence is issued subject to the conditions inscribed on the back hereof.

Conditions referred to.

1. On the issue of this licence the licensee will be required to deposit with the Government Agent, Northern Province, £1 (Rs. 15) as security for carrying out the conditions of this licence.

2. The licensee shall wear conspicuously a numbered badge during the continuance of the fishery, and shall produce it whenever required by any public officer.

3. The licensee shall not carry any knife or cutting instrument in the boat in which he is engaged, and shall be subject to be searched at any time whilst in the boat or in the koddus by any public officer.

4. The licensee shall not cut open any oyster fished, but shall deliver the whole catch intact to the officer of the Ceylon Government appointed to receive it.

5. The licensee shall not commence diving till the signal to commence fishing is given from the mark vessel by the hoisting of the fishing flag and the blowing of the whistle. He shall not dive anywhere except in the area marked by buoys as directed by the Inspector of Pearl Banks. He shall cease diving immediately the signal to cease fishing is given by the hauling down of the fishing flag and the blowing of the whistle.

6. The licensee shall collect and place in bags supplied to him by the Government of Ceylon all the oysters fished by him, and shall permit any officer acting under the orders of the Inspector of Pearl Banks to close and seal each or any bag as soon as it is full or immediately upon the signal to cease fishing being given.

7. The licensee shall obey all orders for the good conduct of the fishery issued by the Government Agent, the Inspector of Pearl Banks, or by the Koddu Superintendent.

8. All the divers working in each boat shall on landing bring their catches directly into the koddu and deposit them in the compartment of the koddu allotted by the Koddu Superintendent. The catches shall be divided by them into heaps of three. One-third share shall be selected by the Koddu Superintendent or his representative and shall be given back to the divers. The other two-thirds shall be retained by the Koddu Superintendent on behalf of the Crown. Failure on the part of the divers to comply with this rule will entail forfeiture of licences to dive, but each diver's deposit or the balance of his deposit shall be returned to him.

9. Should the licensee be declared by the Government Agent, or by the Inspector of Pearl Banks, or by the Koddu Superintendent to have infringed or broken any of the said conditions, the licensee shall pay such sum of money by way of penalty as the Government Agent or the Koddu Superintendent shall deem adequate and authorize. For the first infringement or breach of any condition, the penalty shall not exceed Rs. 5; for the second infringement or breach of any condition, the penalty shall not exceed Rs. 10; and for the third or any subsequent infringement or breach of any condition, it shall be lawful for the Government Agent, in addition to imposing a fine of Rs. 10 to confiscate the one-third share of oysters earned by the licensee for that day, or to cancel his licence to dive. Any of the said sums may be deducted from the deposit made by the licensee.

I, —, hereby accept the licence on the above conditions, and hereby agree to perform and observe the same.

At —, 192—.

Signature of Licensee.

THE PEARL FISHERIES ORDINANCE, 1925.

Non-Arab Divers.

Licence to Dive for Pearl Oysters.

(Not transferable.)

Under the above-mentioned Ordinance — (name of licensee) of boat No. — is hereby licensed to dive from the said boat for pearl oysters.

This licence to remain in force until —.

Government Agent's Office,

—, Ceylon,

—, 192—.

Government Agent for the
Northern Province.

Note.—This licence is issued subject to the conditions inscribed on the back hereof.

Conditions referred to.

1. The licensee shall wear conspicuously a numbered badge during the continuance of the fishery, and shall produce it whenever required by any public officer.

2. The licensee shall not carry any knife or cutting instrument in the boat in which he is engaged, and shall be subject to be searched at any time whilst in the boat or in the koddus by any public officer.

3. The licensee shall not cut open any oyster fished, but shall deliver the whole catch intact to the officers of the Ceylon Government appointed to receive it.

4. The licensee shall not commence diving till the signal to commence fishing is given from the mark vessel by the hoisting of the fishing flag and the blowing of the whistle. He shall not dive anywhere except in the area marked by buoys as directed by the Inspector of Pearl Banks. He shall cease diving immediately the signal to cease fishing is given by the hauling down of the fishing flag and the blowing of the whistle.

5. The licensee shall collect and place in bags supplied to him by the Government of Ceylon all the oysters fished by him, and shall permit any officer acting under the orders of the Inspector of Pearl Banks to close and seal each or any bags as soon as it is full or immediately upon the signal to cease fishing being given.

6. The licensee shall obey all orders for the good conduct of the fishery issued by the Government Agent, the Inspector of Pearl Banks, or by the Koddu Superintendent.

7. All the divers working in each boat shall on landing bring their catches directly into the koddu and deposit them in the compartment of the koddu allotted by the Koddu Superintendent. The catches shall be divided by them into heaps of three. One-third share shall be selected by the Koddu Superintendent or his representative and shall be given back to the divers. The other two-thirds shall be retained by the Koddu Superintendent on behalf of the Crown. Failure on the part of the divers to comply with this rule will entail forfeiture of licences to dive.

8. Should the licensee be declared by the Government Agent, or by the Inspector of Pearl Banks, or by the Koddu Superintendent to have infringed or broken any of the said conditions, the licensee shall pay such sum of money by way of penalty as the Government Agent or the Koddu Superintendent shall deem adequate and authorize. For the first infringement or breach of any conditions, the penalty shall not exceed Rs. 5; for the second infringement or breach of any condition, the penalty shall not exceed Rs. 10; and for a third or any subsequent infringement or breach of any condition, it shall be lawful for the Government Agent, in addition to imposing a fine of Rs. 10 to confiscate the one-third share of oysters earned by the licensee for that day or to cancel his licence to dive.

I, —, hereby accept the licence on the above conditions, and hereby agree to perform and observe the same.

At —, 192—.

Signature of Licensee.

THIRD SCHEDULE.

(Repeals.)

Regulation No. 3 of 1811 intituled "For the Protection of His Majesty's Pearl Banks of Ceylon."

Ordinance No. 18 of 1843 intituled "To declare illegal the Possession of certain Nets and Instruments within certain limits."

Ordinance No. 8 of 1906 intituled "An Ordinance to confirm an Agreement for a Lease of Pearl Fisheries on the Coast of Ceylon and to authorize the Crown Agents for the Colonies to execute such Lease on behalf of the Government of Ceylon."

The Pearl Fishery Ordinance, 1906.

The Pearl Fisheries (Arbitration) Ordinance, 1907.

By His Excellency's command,

Colonial Secretary's Office,
Colombo, January 21, 1925.

CECIL CLEMENTI,
Colonial Secretary.

Statement of Objects and Reasons.

THE primary object of this Bill is to confer on the Government the necessary powers for the proper administration of the pearl fishery camp, which will shortly be established. The opportunity has, however, been taken to revise and consolidate the whole law relating to pearl fisheries, which is at present to be found in no fewer than five Ordinances.

2. The definition of the term "pearl oyster" in section 2 and the wording of section 3 reproduce sections 2 and 3 of Ordinance No. 17 of 1906. Section 4 replaces section 4 of Ordinance No. 17 of 1906. But the collection of pearl oysters without a licence is now definitely prohibited instead of requiring to be prohibited by regulation. Section 5 is based on section 8 of Ordinance No. 17 of 1906.

3. Section 6, which prohibits the use and possession of fishing nets and tackle on the pearl banks, corresponds to section 1 of Ordinance No. 18 of 1843. The new section applies only to the possession of nets on a pearl bank, whereas the old Ordinance prohibited the possession of nets on land at any place within twelve miles of Talaivillu or Talaimannar. On the other hand, the prohibition has now been definitely extended to line fishing, which under the old Ordinance was only inferentially prohibited by the prohibition of anchoring in Regulation No. 3 of 1811. It is hoped to remove the restriction on fishing on pearl banks when the pearl oysters have disappeared.

4. Section 7, prohibiting the anchoring of vessels on a pearl bank, is adopted from Regulation No. 3 of 1811.

5. The powers of seizure and forfeiture of poaching vessels contained in section 9 reproduce Regulation No. 3 of 1811 in a greatly modified form. Under the old law the forfeiture was absolute. Under the new law the forfeiture only takes effect on failure to pay the fine imposed by the magistrate.

6. The provisions of section 8 are based on Ordinance No. 17 of 1906—section 5 (2)—which penalized the possession of pearl oysters under such circumstances that there was reason to suspect that they were not lawfully obtained.

7. Section 17, which authorizes the granting of rewards to informers, is a reproduction of section 7 of Ordinance No. 17 of 1906.

8. The power to seize articles liable to forfeiture under section 19 is taken over from section 6 of Ordinance No. 17 of 1906.

9. The more important new features in the Bill are contained in chapter III., which authorizes the establishment of a pearl fishery camp.

10. Section 13 prohibits the import of artificial or culture pearls into a camp during a fishery. This is considered a necessary provision to prevent fraud and to prevent suspicion being cast on the genuineness of pearls sold at the camp.

11. In the 1905 camp a gang of decoits from India successfully effected a robbery of pearls valued at Rs. 30,000. In order to prevent a repetition of such an occurrence, it is proposed to institute proceedings against all known dangerous criminals attending the camp to compel them to give security for their good behaviour under chapter VII. of the Criminal Procedure Code. Section 12 will facilitate such proceedings in the case of Indians as to whose record it would be impossible to obtain first-hand evidence. Members of the Indian Police Force will attend the camp.

12. Section 14 gives wide powers to enable regulations to be made for the proper administration of the fishery camp. These powers include the power to regulate food prices within the area of the camp. All such regulations have to be laid before the Legislative Council in terms of section 20.

Attorney-General's Chambers,
Colombo, January 9, 1925.

L. H. ELPHINSTONE,
Attorney-General.