

Foyle and Carlingford Fisheries Act 2007

Number 17 of 2007

FOYLE AND CARLINGFORD FISHERIES ACT 2007

ARRANGEMENT OF SECTIONS

PART 1

Preliminary and General

Section

1. Short title.
2. Commencement.
3. Interpretation.

PART 2

Aquaculture

4. Aquaculture.

PART 3

Amendments to the Principal Act

5. Definitions.
6. Functions of Commission.
7. Regulation of fishing.
8. Restrictions on number of licences.
9. Acquisition and development of waters for angling.
10. Permits to fish in Commission's waters.
11. Close seasons and times.
12. Unlicensed fishing, etc.
13. Metrication.
14. Use of nets across rivers.
15. Penalty for Pollution.
16. Use of certain devices to take fish.
17. Fishing by cross lines.
18. Taking fish unlawfully killed or found dead.
19. Taking, etc. spawn, smolts or fry of salmon or trout.
20. Officers of the Commission.
21. River watchers.
22. Seizure and disposal of certain articles.
23. Powers of authorised persons.

24. Warrants to enter certain premises.
25. Apprehension of offenders.
26. Powers of inspection, examination and detention.
27. Penalties for offences.
28. Exemption for Acts done for improvement of fisheries, etc.
29. Forfeiture of boats, equipment etc.
30. Judicial Review.
31. Calculation of time periods.
32. Enforcement of private fishing rights.
33. Miscellaneous amendments to Act of 1952.

PART 4

Miscellaneous Amendments

34. Amendment of Fisheries (Amendment) Act 1997.
35. Amendment of Foreshore Act 1933.

SCHEDULE 1

Provisions to be inserted as Schedule 3A and Schedule 3B to the Act of 1952

SCHEDULE 2

Amendments Relating to Penalties

Acts Referred to

Arbitration Acts 1954 to 1998	
Bankruptcy Act 1988	1988, No. 27
British-Irish Agreement Act 1999	1999, No. 1
Fisheries (Amendment) Act 1997	1997, No. 23
Fisheries Act 1980	1980, No. 1
Foreshore Act 1933	1933, No. 33
Foyle Fisheries (Amendment) Act 1983	1983, No. 2
Foyle Fisheries Act 1952	1952, No. 5



Number 17 of 2007

FOYLE AND CARLINGFORD FISHERIES ACT 2007

AN ACT TO PROVIDE FOR THE AMENDMENT OF THE FOYLE
FISHERIES ACT 1952 AND FOR RELATED MATTERS.

[10th April, 2007]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

Preliminary and General

Short title.

1.— This Act may be cited as the Foyle and Carlingford Fisheries Act 2007.

Commencement.

2.— This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions and in particular the Minister may in any such order under this section specify or delimit a geographical area as respects which this Act or any provision of the Act is to come into operation.

Interpretation.

3.— In this Act—

“ Act of 1952 ” means the Foyle Fisheries Act 1952 ;

“ Act of 1983 ” means the Foyle Fisheries (Amendment) Act 1983 ;

“ Minister ” means the Minister for Communications, Marine and Natural Resources.

PART 2

Aquaculture

Aquaculture.

4.— (1) The Act of 1952 is amended by the insertion of the following Part after Part VI—

“PART VIA

Aquaculture

Aquaculture licences

Aquaculture licences.

53A.— (1) The Commission may, in accordance with the provisions of this Part, grant a licence (‘an aquaculture licence’) to any person authorising the person to engage in aquaculture within any area specified in the licence (the ‘licensed area’).

(2) An aquaculture licence may be granted notwithstanding any public right to fish in the area which, on the granting of the licence, becomes the licensed area.

(3) Subject to subsection (4) the licensed area may include any part of the foreshore or any part of the bed of the sea or an estuary.

(4) An aquaculture licence shall not specify any area—

(a) which forms either part of the foreshore or part of the bed of the

sea or an estuary owned or lawfully occupied by any person, unless the licence is granted to, or with the consent in writing of, the owner or lawful occupier of that part of the foreshore or that part of the bed of the sea or the estuary, or

- (b) which is within the limits of a several fishery, unless the licence is granted to, or with the consent in writing of, the owner or lawful occupier of that fishery.

(5) A person shall not engage in aquaculture in the Foyle Area or the Carlingford Area except under, and in accordance with the conditions of, an aquaculture licence.

(6) A person who contravenes subsection (5) shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both, or
- (b) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 2 years, or to both.

Applications for aquaculture licences.

53B.— (1) An application for an aquaculture licence shall be made to the Commission and shall—

- (a) contain such information and be made in such form and in such manner as may be prescribed,
- (b) be advertised, at the expense of the applicant, in such form and in such manner as may be prescribed, and
- (c) be accompanied by—
 - (i) any consent required by section 53A(4), and
 - (ii) the prescribed fee.

(2) Without prejudice to any other provision of this Part, regulations under subsection (1)(a) may contain provisions similar to the provisions of Directive 85/337/EEC 1 and may, in particular, require the Commission, when considering whether to grant an aquaculture licence, to take account of any information received by, or representations made to, the Commission which relate to the impact of aquaculture on the environment.

(3) The Commission may, by giving notice to the applicant, require him to furnish such further information as may be specified in the notice, within the period so specified, as the Commission may require for the purpose of determining the application.

(4) If a person fails to furnish any information—

(a) required under subsection (1)(a), or

(b) specified in a notice under subsection (3) within the period specified in the notice,

the Commission may refuse to proceed with the application.

Determination of applications for aquaculture licences.

53C.— (1) The Commission shall consider an application for an aquaculture licence and either—

(a) grant the licence, or

(b) refuse to grant the licence.

(2) In determining any application for an aquaculture licence, the Commission shall consider any written representations relating to the application (including any representations made to the Commission which relate to the impact of aquaculture on the environment) which are received by the Commission within the period of 28 days beginning with the date on which the application was last advertised in accordance with section 53B(1)(b).

(3) As soon as practicable after determining an application for an aquaculture licence the Commission shall give—

(a) the applicant, and

(b) each person who made representations considered under subsection (2),

notice of the determination.

(4) Where the Commission grants an aquaculture licence, the Commission shall, in such form and in such manner as may be prescribed, publish a notice stating that the licence has been granted.

(5) Where the Commission grants an aquaculture licence, the licence—

(a) shall, if no appeal is brought under section 53P, take effect on the expiration of 28 days from the date on which the Commission, in accordance with subsection (4), last published a notice stating that the application has been granted,

(b) shall, if an appeal is brought under section 53P, take effect—

(i) if and so far as the licence is confirmed on appeal, from the

date on which the appeal is determined,

- (ii) if the appeal is withdrawn, on the date of the withdrawal of the appeal.

Form and conditions of aquaculture licences.

53D.— (1) An aquaculture licence shall define the position and limits of the licensed area by reference to a map or chart, either with or without descriptive matter (which, in the case of any discrepancy with the map or chart, shall prevail except in so far as may otherwise be provided by the licence).

(2) Where any consent mentioned in section 53A(4) was given subject to any conditions or limitations, the licence shall be subject to such conditions or limitations and such fact shall be stated in the licence.

(3) An aquaculture licence may contain such other conditions as the Commission shall determine.

(4) Without prejudice to the generality of subsection (3), conditions contained in an aquaculture licence may relate to any of the following:

- (a) operational practices;
- (b) monitoring and protection of the health of fish, aquatic invertebrate animals or aquatic plants and the reporting of incidences of disease and the presence of parasites;
- (c) monitoring and inspection of the activities carried on pursuant to the licence;
- (d) the type of ropes, trestles, fish cages or other equipment or structures which may be located within the licensed area;
- (e) the marking, by buoys or otherwise, of the limits of the licensed area or any part of it, or the location of ropes, trestles, fish cages or any structures within the licensed area;
- (f) the keeping of records by the holder of the licence;
- (g) the making of returns and the giving of other information to the Commission in relation to activities in the licensed area;
- (h) the protection of the environment (including the man-made environment of heritage value) and the control of discharges from the licensed area;
- (i) appropriate environmental, water quality and biological monitoring and, in particular, the provision of samples or of facilities for taking samples, in the licensed area;

(j) in relation to the farming and culture of fish—

- (i) the amount of feed inputs,
- (ii) annual or seasonal limits on stock inputs and outputs and the amount of stock in the licensed area or any part of it,
- (iii) the disposal of dead fish,
- (iv) measures for preventing the escape of fish and arrangements for reporting any such escape,
- (v) the movement of fish within, and in to or out of, the licensed area;

(k) the payment of any prescribed fee in relation to the licence.

(5) An aquaculture licence may, in so far as it is expedient for the purpose of giving effect to any conditions attached to it, exempt—

- (a) the holder of the aquaculture licence and any person acting under his directions, and
- (b) a person who acquires fish of any kind taken in accordance with such conditions,

from the restrictions imposed by section 35 or regulations made under section 13(gg) in so far as those restrictions apply to fish of that kind.

Duration of aquaculture licences.

53E.— (1) Subject to subsections (2) and (3), an aquaculture licence—

- (a) shall in the first instance be limited to a period specified by the Commission in writing, being a period of not less than 10 years and not exceeding 20 years, and
- (b) on the expiration of that period shall, on the Commission being satisfied that reasonable progress has been, and is likely to continue to be, made in developing the licensed site, be renewed for a further period specified by the Commission in writing, not exceeding 20 years, and
- (c) on the expiration of that period, on the Commission's being satisfied as aforesaid, may be further renewed from time to time for such period specified by the Commission in writing but not, on any occasion, for a period exceeding 20 years.

(2) Where an aquaculture licence has been granted—

(a) to the occupier (not being the owner) of a several fishery or of any land included in the licensed area, or

(b) to any person with the consent of such an occupier,

and the owner of the several fishery or land did not consent in writing to the grant of the licence, the licence shall remain in force only during the continuance in occupation of that occupier.

(3) Where an aquaculture licence is granted with the consent in writing of any owner or occupier and a period is specified in the consent, the licence shall remain in force only for that period.

Effect of aquaculture licence.

53F.— (1) An aquaculture licence shall confer on the holder of the licence the exclusive right, in the licensed area, to deposit, introduce, propagate, dredge, harvest and take any fish, aquatic invertebrate animal or aquatic plant which is farmed or cultivated in accordance with the licence.

(2) An aquaculture licence shall not—

(a) except for the purpose of the farming or cultivation of fish, animals or plants of a kind specified in the licence, affect any right in or over the foreshore or the bed of the sea or any estuary, or any right of several fishery,

(b) for any purpose, affect any such right of any person which he enjoys under a local or personal Act or under Charter, letters patent, prescription or immemorial usage, without the consent of that person.

(3) Notwithstanding anything contained in this Act or any regulations made under this Act, the holder of an aquaculture licence and any person acting under his directions may, subject to the conditions contained in the licence, do anything authorised by the licence or anything that is necessary or expedient for doing anything authorised by the licence.

(4) The ownership of any fish, aquatic invertebrate animal or aquatic plant the farming or cultivation of which is authorised by an aquaculture licence and which is farmed or cultivated in accordance with that licence vests in the holder of the licence and his executors, administrators or assigns.

(5) Subject to section 53K, an aquaculture licence is not transferable by the holder, but the Commission may transfer it to another person in accordance with section 53L.

(6) Except as permitted by or under this Act, if a person, by trespass, fishing or otherwise, interferes with anything done or being done pursuant to an aquaculture licence and the interference is carried on without the permission of the holder of the licence, then, notwithstanding the existence of any public right to fish, the person so interfering shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both, or
- (b) on conviction on indictment, to a fine not exceeding €25,000 or to imprisonment for a term not exceeding 2 years, or to both.

Variation of aquaculture licences by Commission.

53G.— (1) Subject to subsection (2), the Commission may, on its own initiative, vary an aquaculture licence (but not so as to extend the licensed area) if it considers that it is in the public interest to do so.

(2) An aquaculture licence shall not be varied so as to affect any conditions or limitations subject to which a consent under section 53A(4) was given, or any period mentioned in such a consent, otherwise than with the consent in writing of the person or authority who gave the consent or his or its successor in title.

(3) Where the Commission proposes to vary an aquaculture licence under this section, the Commission shall—

- (a) give to the holder of the licence at least 28 days notice of its proposal to do so and of the grounds upon which the variation is proposed to be made, and
- (b) advertise, in such form and in such manner as may be prescribed, notice of its proposal to vary the licence.

(4) Before varying the licence the Commission shall consider any written representations which are received by the Commission within the period of 28 days from—

- (a) the date on which the Commission gave notice to the holder of the licence of the proposed variation, or
- (b) the date on which the notice of the proposal to vary the licence was last advertised in accordance with subsection (3)(b),

whichever is the later.

(5) Where the Commission varies a licence under this section the Commission shall serve a notice of the variation on the holder of the licence and the notice shall specify—

- (a) the variation of the licence which the Commission has decided to make, and
- (b) the date or dates on which the variation is to take effect.

(6) Where the Commission varies a licence under this section, the Commission

shall, in such form and in such manner as may be prescribed, publish a notice stating that the licence has been varied.

(7) The Commission shall be liable to pay compensation to the holder of an aquaculture licence in respect of any loss or damage sustained by him as a result of any action taken by the Commission in relation to an aquaculture licence by virtue of subsection (1) and any dispute as to a person's entitlement to such compensation or as to the amount of it shall be referred to and determined by the Appeals Board.

Variation of aquaculture licences; applications by holder of licence.

53H.— (1) Subject to subsection (2), the holder of an aquaculture licence may, at any time after the expiration of 2 years from the granting of the licence, apply to the Commission, in such manner as may be prescribed, for the variation of the licence specified in the application.

(2) An aquaculture licence shall not be varied so as to affect any conditions or limitations subject to which a consent under section 53A(4) was given, or any period mentioned in such a consent, otherwise than with the consent in writing of the person or authority who gave the consent or his or its successor in title.

(3) Where an application is made under subsection (1) for the variation of a licence (otherwise than solely by reducing the licensed area) sections 53A(3) and (4), 53B and 53C shall apply as they apply to the grant, or an application for the grant, of an aquaculture licence.

Revocation of aquaculture licences.

53I.— (1) The Commission may revoke an aquaculture licence if it is satisfied that the holder of the licence has not engaged in aquaculture in the licensed area for a continuous period of 2 years.

(2) The Commission may revoke an aquaculture licence if—

(a) it is satisfied that there has been a breach of a condition specified in the licence, or

(b) it considers that it is in the public interest to do so.

(3) Where the Commission proposes to revoke an aquaculture licence, the Commission shall give the holder of the licence at least 28 days notice of—

(a) its intention to do so, and

(b) the grounds upon which the revocation is proposed to be made,

and before revoking the licence the Commission shall consider any representations made by the holder of the licence before the expiration of the notice.

(4) Where the Commission revokes an aquaculture licence the Commission shall

give notice of the revocation to the person whose licence has been revoked, and the notice shall inform that person of his right of appeal under section 53P, and of the time within which the appeal may be brought.

(5) The revocation of an aquaculture licence in accordance with this section shall not take effect until—

(a) the expiry of the time allowed for making an appeal under section 53P, or

(b) if an appeal is made under section 53P—

(i) if in so far as the revocation of the licence is confirmed on appeal, the date on which the appeal is determined, or

(ii) if the appeal is withdrawn, on the date of the withdrawal of the appeal,

whichever is the later.

(6) The Commission shall be liable to pay compensation to a person who was the holder of an aquaculture licence in respect of any loss or damage sustained by that person as a result of any action taken by the Commission by virtue of subsection (2)(b) and any dispute as to a person's entitlement to such compensation or as to the amount of it shall be referred to and determined by the Appeals Board.

Surrender of aquaculture licences.

53J.— (1) An aquaculture licence may, in accordance with subsections (2) to (5), be surrendered by its holder to the Commission if the Commission accepts the surrender.

(2) The holder of an aquaculture licence who wishes to surrender it shall make an application for that purpose to the Commission on a form provided by the Commission for the purpose, giving such information and accompanied by such documentation as the Commission reasonably requires and accompanied by the fee payable in accordance with section 53N.

(3) On receiving an application for the surrender of an aquaculture licence the Commission—

(a) shall inspect the licensed area, and

(b) may require the holder of the aquaculture licence to—

(i) provide the Commission with further information,

(ii) carry out such works to the licensed area as the Commission may specify in writing.

(4) Where the surrender of a licence is accepted by the Commission under this section the Commission shall issue a certificate (a ‘certificate of completion’) to the applicant and, on the issue of that certificate, the aquaculture licence shall cease to have effect.

(5) If within the period of 3 months from the date on which the Commission receives an application to surrender a licence, or within such longer period as the Commission and the applicant may at any time agree in writing, the Commission has neither issued a certificate of completion nor given notice to the applicant that the Commission has refused the application, the Commission shall be deemed to have refused the application.

Vesting of aquaculture licences on death or bankruptcy of holder.

53K.— (1) On the death of the holder of an aquaculture licence, the licence shall be regarded as property forming part of the deceased’s personal estate, whether or not it would be so regarded apart from this subsection, and shall accordingly vest in his personal representative.

(2) If the holder of an aquaculture licence is adjudicated bankrupt, the licence shall be regarded for the purposes of the Bankruptcy Act 1988 as property forming part of the bankrupt’s estate, whether or not it would be so regarded apart from this subsection, and shall accordingly vest as such in the Official Assignee.

(3) A person in whom an aquaculture licence vests under this section shall become the holder of the aquaculture licence, in place of the prior holder, from the date of the vesting.

(4) Where an aquaculture licence vests in any person under this section, that person shall give notice of that fact to the Commission not later than the end of the period of 90 days, or such longer period as may be agreed with the Commission, beginning with the date of the vesting.

Transfer, etc. of aquaculture licences.

53L.— (1) An aquaculture licence may be transferred to another person in accordance with the following provisions of this section.

(2) Where the holder of an aquaculture licence desires that the licence be transferred to another person (‘the proposed transferee’) the aquaculture licence holder and the proposed transferee shall jointly make an application to the Commission for a transfer of the licence.

(3) An application under subsection (2) for the transfer of an aquaculture licence shall be made on a form provided by the Commission for the purpose, accompanied by—

(a) such information as the Commission may reasonably require,

(b) where the aquaculture licence has been granted subject to the consent of the owner or lawful occupier of the foreshore, bed of the sea, estuary or any fishery, the consent in writing of that

owner or lawful occupier, as the case may be, to the proposed transfer of the licence,

(c) the fee payable pursuant to section 53N, and

(d) the licence.

(4) If the Commission is not satisfied that the licence should be transferred to the proposed transferee, it shall give notice of its refusal to transfer the licence to the holder of the aquaculture licence and the proposed transferee.

(5) If, on an application under subsection (2), the Commission is satisfied that the licence should be transferred to the proposed transferee, the Commission shall effect a transfer of the aquaculture licence to the proposed transferee.

(6) The Commission shall effect a transfer of an aquaculture licence under subsection (5) by causing the licence to be endorsed with the name and other particulars of the proposed transferee as the holder of the licence from such date specified in the endorsement as may be agreed with the applicants.

(7) Nothing in this section shall affect the liability of the holder of an aquaculture licence for any failure by him, before any transfer under subsection (5) took effect, to comply with any condition of that licence.

Register of licences.

53M.— (1) The Commission shall, in such manner as may be prescribed, maintain a register containing prescribed particulars of, or relating to, aquaculture licences.

(2) Without prejudice to the generality of subsection (1), a register under this section may be maintained in electronic form.

(3) The Commission shall—

(a) ensure that the contents of a register maintained under this section are available, at all reasonable times, for inspection (including, where practicable, inspection by electronic means, by the public) free of charge, and

(b) afford members of the public reasonable facilities for obtaining from the Commission, on payment of reasonable charges, copies of entries in the register.

(4) A register maintained under this section shall be conclusive evidence as to the terms of any aquaculture licence, or any condition to which such a licence is subject, as that licence, or that condition, as the case may be, has effect for the time being.

Fees in respect of applications for aquaculture licences, etc.

53N.— (1) The Commission may in such manner as may be prescribed, provide for the payment to the Commission of fees in relation to—

- (a) applications for aquaculture licences under section 53B,
- (b) the subsistence of an aquaculture licence,
- (c) applications for the variation of an aquaculture licence under section 53H,
- (d) applications for the surrender of an aquaculture licence under section 53J,
- (e) applications for the transfer of an aquaculture licence under section 53L.

(2) Regulations under subsection (1) may provide for the refund (in whole or in part) of fees in prescribed circumstances.

Foyle and Carlingford Aquaculture Licensing Appeals Board.

53O.— (1) There is hereby established a body to be known as the Foyle and Carlingford Aquaculture Licensing Appeals Board ('the Appeals Board').

(2) The Appeals Board shall consist of 8 members to be appointed by the Council.

(3) At least one of the members of the Appeals Board shall be a solicitor or barrister qualified to practise in any part of the Foyle Area or the Carlingford Area.

(4) In appointing the other members of the Appeals Board, the Council shall—

- (a) have regard to the desirability of having as members of the Appeals Board persons with knowledge and experience of fisheries, aquaculture, financial matters or environmental protection, and
- (b) to the extent practicable, endeavour to ensure that there is an equitable balance between men and women in the composition of the Appeals Board.

(5) The Council shall appoint a Chairperson from among the members of the Appeals Board.

(6) The Minister may make regulations providing for the payment to the Appeals Board of fees in relation to appeals under section 53P.

(7) The Minister may make grants to the Appeals Board out of moneys appropriated by Act of the Oireachtas.

(8) Such grants shall be of such amounts and be made on such terms and conditions as the Minister may determine.

(9) Schedule 3A shall have effect in relation to the Appeals Board.

Appeals from decisions with respect to aquaculture licences.

53P.— (1) A person aggrieved by a decision of the Commission—

- (a) to grant or to refuse to grant an aquaculture licence,
- (b) to specify any condition in an aquaculture licence,
- (c) to vary an aquaculture licence under section 53G,
- (d) to vary or to refuse to vary an aquaculture licence under section 53H,
- (e) to revoke an aquaculture licence under section 53I,
- (f) to refuse to transfer an aquaculture licence under section 53L,
- (g) to refuse to accept the surrender of an aquaculture licence under section 53J,

may appeal to the Appeals Board.

(2) An appeal to the Appeals Board shall be made by sending a notice of appeal to the Appeals Board so that it is received by the Appeals Board—

- (a) in the case of a decision of the Commission to grant an aquaculture licence or specify any condition in an aquaculture licence, not later than 28 days after the date on which notice to grant the licence was last published in accordance with section 53C(4),
- (b) in the case of a decision by the Commission to vary an aquaculture licence under section 53G or 53H, not later than 28 days after the date on which notice of the decision to vary the licence was last published in accordance with section 53G(6),
- (c) in the case of a decision of the Commission—
 - (i) to refuse to grant an aquaculture licence,
 - (ii) to refuse to vary an aquaculture licence under section 53H,
 - (iii) to revoke an aquaculture licence under section 53I, or

(iv) to refuse to transfer an aquaculture licence under section 53L,

not later than 28 days after the date on which notice of the disputed decision was received by the person aggrieved,

(d) in the case of a decision (or deemed decision) of the Commission to refuse to accept the surrender of an aquaculture licence under section 53J, not later than 28 days after the date on which in accordance with subsection (5) of that section, notice of the refusal was given to the applicant or, as the case may be, the Commission was deemed to have refused the application.

(3) The Appeals Board may—

(a) confirm or set aside the decision which is the subject of the appeal, or any part of it,

(b) substitute its decision on the matter for that of the Commission.

(4) Where, on an appeal under subsection (1), the Appeals Board determines that the decision of the Commission should be altered, the Commission shall give effect to that determination and shall publish in such manner and such form as may be prescribed, notice of the determination.

(5) Schedule 3B shall have effect with respect to appeals under subsection (1).

(6) The Minister may make regulations providing for such additional, incidental, consequential or supplemental procedural matters in respect of appeals to the Appeals Board as appear to the Minister to be necessary or expedient.

(7) Without prejudice to the generality of subsection (6), regulations under that subsection may make provision—

(a) in relation to the class or classes of persons who may be heard at an oral hearing,

(b) for the manner of the notification of the determination of an appeal, and

(c) the availability for inspection by the public of documents or extracts from documents relating to appeals, the period of such availability, and the purchase by the public of copies of such documents or extracts from such documents.

Reasons to be given for decisions.

53Q.— Where—

- (a) the Commission gives any decision—
 - (i) to grant or refuse to grant an aquaculture licence,
 - (ii) to specify any condition in an aquaculture licence,
 - (iii) to vary an aquaculture licence under section 53G,
 - (iv) to vary or refuse to vary an aquaculture licence under section 53H,
 - (v) to revoke an aquaculture licence under section 53I,
 - (vi) to refuse to transfer an aquaculture licence under section 53L, or
- (b) the Commission gives any decision, or is deemed to give any decision, to refuse to accept the surrender of an aquaculture licence under section 53J, or
- (c) the Appeals Board gives a decision in relation to a dispute referred to it under section 53G(7) or 53I(6) or determines an Appeal under section 53P,

it shall be the duty of the Commission or, as the case may be, the Appeals Board, to state the reasons for the decision or determination.

Recapture of escaped stock.

53R.— (1) The Commission may take such action as it considers necessary to recapture stock which has escaped from a licensed area.

(2) The Commission may, notwithstanding any other provision of this Act, authorise—

- (a) the holder of an aquaculture licence, or
- (b) a person other than the holder of an aquaculture licence,

to take such action as is specified in the authorisation to recapture stock which has escaped from a licensed area.

(3) An authorisation referred to in subsection (2) may be granted subject to such conditions, if any, as the Commission considers necessary or expedient.

(4) The reasonable costs of—

- (a) any action taken by the Commission under subsection (1),

(b) a person taking action in pursuance of an authorisation under subsection (2),

may be recovered in a court of competent jurisdiction from the holder of the aquaculture licence whose stock has escaped as a debt due and payable to the person who incurred the costs.

Offences of making false or misleading statements or false entries.

53S.— (1) A person who, for the purpose of obtaining for himself or for another any grant of an aquaculture licence, any variation of an aquaculture licence or any transfer of an aquaculture licence, makes a statement which he knows to be false or misleading in a material particular, or recklessly makes any statement which is false or misleading in a material particular, shall be guilty of an offence.

(2) A person who intentionally makes a false entry in any record required to be kept by virtue of an aquaculture licence shall be guilty of an offence.

(3) A person guilty of an offence under subsection (1) or (2) shall be liable—

(a) on summary conviction, to a fine not exceeding €5,000, or

(b) on conviction on indictment, to a fine not exceeding €25,000 or to imprisonment for a term not exceeding 2 years, or to both.

Inquiries and Inspections.

53T.— (1) Without prejudice to section 82, the Commission may, with respect to any licensed area, make such inquiries and examination by an officer of the Commission (within the meaning of section 54) or otherwise, and require from the holder of an aquaculture licence to which the licensed area relates such information as the Commission considers necessary or proper, and the holder of the aquaculture licence shall afford all facilities for such inquiries and examination, and give such information, accordingly.

(2) Without prejudice to any provision of Part VII, for the purpose of an examination under subsection (1) an officer authorised in writing in that behalf by the Commission, on producing his authority if so required, may at any reasonable time—

(a) enter any licensed area, and

(b) examine that area and all fish, buildings, structures, rafts, trays, devices and other things found there, and

(c) obtain, take away and dispose of samples (which shall be marked, labelled or otherwise made capable of identification) of any fish, animal or plant or of any water or other substance, found there,

and the holder of an aquaculture licence shall afford to such an officer facilities

for the exercise by him of any right conferred by this subsection.

(3) Nothing in this section shall be construed as authorising any person to enter

(a) any enclosed garden,

(b) any dwelling house or the curtilage thereof.

Regulations.

53U.— (1) Regulations made under this Part by the Commission, shall be subject to the approval of the Council.

(2) As soon as practicable after making any regulations under this Part, the Commission or, as the case may be, the Minister, shall publish in at least two newspapers circulating in the Foyle Area and the Carlingford Area a notice—

(a) stating that the regulations have been made and giving a general description of their content,

(b) specifying a place at which, and the hours between which, a copy of the regulations may be inspected.

(3) Regulations made under this Part by the Commission or by the Minister, may contain such supplementary, incidental and transitional provision as the Commission or, as the case may be, the Minister, thinks necessary or appropriate.

(4) The Minister shall cause every regulation made under this Part by the Commission or the Minister to be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either House, within the next twenty-one days on which that House has sat after the regulation has been laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Provisions in respect of certain existing licences.

53V.— (1) This section applies to an aquaculture licence which—

(a) is granted under the Fisheries (Amendment) Act 1997 ,

(b) (i) is in force immediately before the day on which this Part comes into operation as respects the Louth Area, or

(ii) is the subject of an application to which section 53W(2) refers,

and

(c) authorises the doing of any act in the Louth Area,

but nothing in this section affects the operation of such a licence in relation to any area other than the Louth Area.

(2) Subject to section 53W(2), a licence to which this section applies shall, in so far as it authorises the doing of any act in the Louth Area, have effect on and after the day on which section 53A comes into operation as respects the Louth Area or from which the licence authorises the doing of any act, whichever as respects the licence concerned is the later, as if granted by the Commission under section 53A.

Provisions in respect of certain applications.

53W.— (1) Where an application under section 10 of the Fisheries (Amendment) Act 1997 for an aquaculture licence relating to the Louth Area has been received by the Minister before the commencement of section 53A as respects the area to be licensed and has not been determined by the Minister before such commencement, the application shall, on such commencement, be deemed to be an application for an aquaculture licence under this Act.

(2) Where the Minister determines an application under section 10 of the Fisheries (Amendment) Act 1997 relating to the Louth Area prior to the coming into operation of section 53A as respects the area to which the application relates, and the time for making an appeal under Part III of the Fisheries (Amendment) Act 1997 in relation to such a decision of the Minister has not expired at the date of such coming into operation of section 53A then any appeal from that decision of the Minister shall be brought under Part III of the Fisheries (Amendment) Act 1997 .

(3) Subject to subsection (4), the provisions of this Act and any regulations made under this Act relating to aquaculture licences shall apply and have effect in relation to applications to which subsection (1) applies as if the application were made on the commencement of this section.

(4) Where, before the commencement of this section, public notice has been given in relation to an application to which subsection (1) applies and interested persons or bodies have been afforded an opportunity to make submissions or observations in relation to the application, the requirements of the regulations in relation to the giving of notice of an application for an aquaculture licence or the making of submissions or observations in relation to such an application shall not apply to that application.

(5) Where the Commission is satisfied that sufficient information has been provided for the Commission to decide an application to which subsection (1) applies in accordance with the provisions of this Act, the requirements of the regulations in relation to the information which is required in respect of an application for an aquaculture licence shall not apply to that application.

Interpretation.

53X.— (1) In this Part—

‘ Appeals Board ’ means the Foyle and Carlingford Aquaculture Licensing

Appeals Board established by section 53O(1);

‘ aquaculture ’ means the farming or cultivation of any fish, aquatic invertebrate animal or aquatic plant, including any aquatic form of food suitable for the nutrition of fish;

‘ aquaculture licence ’ means an aquaculture licence applied for or granted under this Part;

‘ licensed area ’ means the area specified in an aquaculture licence;

‘ notice ’ means a notice in writing;

‘ notice of appeal ’ means an appeal under section 53P;

‘ prescribed ’ means prescribed by regulations;

‘ regulations ’ (except in sections 53O(6) and 53P(6)) means regulations made by the Commission under this Part;

‘ the Act of 1952 ’ means the Foyle Fisheries Act 1952 ;

‘ vary ’, in relation to the conditions of an aquaculture licence, means adding to them or varying or rescinding any of them, and ‘ variation ’ shall be construed accordingly.

(2) In this Part, ‘ fish ’ (when used without qualification) means—

(a) freshwater fish of any kind,

(b) salmon and other fish of a kind that migrates to and from the sea,

(c) eels and elvers,

(d) sea-fish,

(e) shell-fish,

(f) the spawn, fry, spat and brood of any fish,

(g) any part of any fish.

(3) In subsection (2)(a), ‘ freshwater fish ’ means any fish living in freshwater, other than a kind of fish that migrates to and from the sea.”.

(2) The matter set out in *Schedule 1* shall be inserted after the Third Schedule to the Act of 1952 as Schedule 3A and Schedule 3B to that Act.

PART 3

Amendments to the Principal Act

Definitions.

5.— Section 2 of the Act of 1952 is amended—

(a) in subsection (1)—

(i) for the definition of “ ‘the Commission’ ” substitute“ ‘the Commission’ means the Foyle, Carlingford and Irish Lights Commission being the Body referred to in section 32 of the British-Irish Agreement Act 1999 ;”,

(ii) in the definition of “ ‘prescribed’ ” to insert after“ ‘prescribed’ ” “except in Part VIA,”,

(iii) for the definition of “‘river’” there shall be substituted—

“ ‘ river ’ includes a branch of a river and any stream, lake, estuary or watercourse;”,

(iv) for the definition of “‘waters’” there shall be substituted—

“ ‘ waters ’ includes any river or part of the sea;”,

(v) at the appropriate place there shall be inserted the following definition—

“ ‘ several fishery ’ means any fishery lawfully possessed and enjoyed as such under any title whatsoever, being a good and valid title at law, exclusively of the public by any person or persons whether in navigable waters or in waters not navigable, and whether the soil covered by such waters is vested in such person or persons or in any other person;”,

(b) for subsection (2) there shall be substituted—

“(2) In this Act, except in Part VIA, ‘ fish ’ (when used without any qualification) means—

(a) freshwater fish of any kind,

(b) salmon and other fish of a kind that migrates to and from the sea,

(c) sea bass and tope,

(d) eels and elvers,

(e) mussels,

(f) oysters,

(g) the spawn, fry, spat and brood of any kind of fish mentioned in paragraphs (a) to (f),

(h) any part of any kind of fish mentioned in paragraphs (a) to (f).

(3) In subsection (2)(a), ‘ freshwater fish ’ means any fish living in freshwater, other than a kind of fish that migrates to and from the sea.

(4) In this Act, any reference to a river includes a reference to the channel or bed of a river which is for the time being dry.”.

Functions of
Commission.

6.— (1) Section 11 of the Act of 1952 is amended—

(a) in subsection (2)—

(i) in paragraph (b) by the substitution of “generally, and” for “generally.”, and

(ii) by the insertion after paragraph (b) of the following paragraph:

“(c) such other functions as are conferred on the Commission by or under this Act or any other statutory provision.”,

and

(b) by the insertion after subsection (2) of the following subsection:

“(2A) Without prejudice to the generality of subsection (2), the Commission may, for the purposes of its functions under that subsection—

(a) provide education or training courses or facilities for training or instruction,

(b) co-operate with other bodies having functions similar to those of the Commission,

(c) carry out such research as it considers necessary,

(d) make charges for facilities, amenities and services provided by the Commission.”.

(2) The Third Schedule to the Act of 1952 is amended by the deletion in paragraph (2)(1)(c) of the words “for the government, management, maintenance or improvement of the fisheries of the Foyle Area”.

Regulation of
fishing.

7.— Section 13 of the Act of 1952 is amended—

(a) in subsection (1), after paragraph (g), there shall be inserted the following paragraph:

“(gg) the regulation or prohibition of the sale of any species of fish caught by rod and line,”,

(b) in subsection (2) by the insertion, after “licence” of “, tag”,

(c) by the insertion after subsection (2) of the following subsections:

“(2A) Regulations made by virtue of subsection (2) may—

(a) provide for charging concessionary fees in such cases as may be prescribed,

(b) provide for exemption from payment of the prescribed fees in such cases as may be prescribed.

(2B) Regulations made by the Commission under this section may—

(a) require tags issued by the Commission to be attached to the carcasses of fish,

(b) require applications for fishing licences to be accompanied by a photograph of the applicant and particulars of the applicant’s date of birth,

(c) prescribe the form of, and conditions attaching to, fishing licences issued by the Commission,

(d) provide that a fishing licence to fish with a rod and line or hand line shall not be transferable, and

(e) regulate the transfer of other fishing licences.”,

(d) by the substitution of the following subsections for subsection (3):

“(3) As soon as practicable after it makes any regulations under this section

the Commission shall publish a notice in the *Iris Oifigiúil* and in at least two newspapers circulating in the Foyle Area and the Carlingford Area—

(a) stating that the regulations have been made and giving a general description of their content, and

(b) specifying a place at which, and the hours between which, a copy of the regulations may be inspected.

(3A) Regulations made by the Commission under this section may contain such supplementary, incidental and transitional provisions as the Commission thinks necessary or appropriate.”.

Restrictions on number of licences.

8.— The Act of 1952 is amended by the substitution for section 14 of the following section:

“Restrictions on number of licences.

14.— (1) The number of fishing licences which may be issued by the Commission in any year for fishing with fishing engines of any kind (other than rod and line) in—

(a) the tidal waters of the Foyle Area, or

(b) the tidal waters of the Carlingford Area, or

(c) any prescribed part of those waters,

shall not exceed such number as may be prescribed in relation to those waters or that part.

(2) If the number of applications duly made for licences in any year exceeds the maximum number prescribed by virtue of this section, the licences shall be allocated in such manner as may be prescribed.”.

Acquisition and development of waters for angling.

9.— The Act of 1952 is amended by the insertion after section 14 (inserted by *section 8* of this Act) of the following section:

“Acquisition and development of waters for angling.

14A.— (1) The Commission may, for the purpose of developing or improving facilities for angling, acquire by agreement—

(a) fishing rights in any waters in the Foyle Area or the Carlingford Area,

(b) any estate in land by virtue of which such rights are exercisable,

- (c) any estate in any other land which the Commission is satisfied it is expedient to acquire for the safeguarding or the full enjoyment or exploitation of those rights.

(2) Where fishing rights in respect of any waters have been acquired by the Commission under subsection (1)(a), the Commission may do all such things as are necessary or expedient—

- (a) for the proper development of those waters, and of any land acquired under subsection (1)(b) or (c), for angling, or
- (b) for the provision of facilities or amenities for persons authorised by the Commission to enter such land.”.

Permits to fish in Commission’s waters.

10.— The Act of 1952 is amended by the insertion after section 14A (inserted by section 9 of this Act) of the following section:

“Permits to fish in Commission’s waters.

14B.— (1) Where the Commission owns or manages the fishing rights in any waters—

- (a) the Commission may issue permits, or make arrangements for their issue through agents, authorising the holder of such a permit to use a rod and line in the waters to which the permit relates, and
- (b) may, subject to subsection (2), charge for the issue of such permits such sums as may be prescribed.

(2) The Commission may under subsection (1)(a) issue complimentary permits to such persons as may be prescribed in such circumstances as may be prescribed and nothing in this Act shall require such persons to make any payment in respect of such a permit.

(3) A permit issued under subsection (1)(a) shall be granted for such period, and subject to such conditions, as may be specified in the permit.

(4) Where a permit is issued under subsection (1)(a) in relation to any waters, any person who—

- (a) without obtaining such a permit, uses a rod and line in those waters,
- (b) contravenes any condition to which a permit is subject,
- (c) uses or, with intent to deceive, presents a permit for any time, date, period, place or purpose other than that for which that permit is valid,

(d) uses or presents, as being a permit of which he is the holder, a permit issued in the name of any other person, or

(e) uses or presents a permit that has been to his knowledge either in any manner altered (otherwise than by a person duly authorised by the Commission) or fraudulently counterfeited,

shall be guilty of an offence against this Act.”.

Close seasons and times.

11.— (1) The Act of 1952 is amended in section 28 by the insertion, after subsection (4) of the following subsections:

“(5) Different periods may be prescribed under this section in respect of different kinds of fish and, where a period is so prescribed for a particular kind of fish, references in this Act to the annual close season, the annual close season for angling or the weekly close time shall, as the case may require, be construed in relation to that kind of fish as references to the period so prescribed.

(6) Regulations may provide that this section and sections 29 and 30 shall not apply to fish of a prescribed kind.”.

(2) The Act of 1952 is amended in sections 29 and 30 after the words “salmon or trout” wherever those words occur there shall be inserted the words “or any other fish of a kind prescribed for the purposes of this section”.

(3) The Act of 1952 is amended in section 34 for the words “annual close season or weekly close time” there shall be substituted the words “annual close season for salmon or trout or weekly close time for salmon or trout”.

(4) The Act of 1952 is amended in section 35 by the deletion of subsection (4).

Unlicensed fishing, etc.

12.— At the beginning of Part VI of the Act of 1952 there shall be inserted—

“Unlicensed fishing, etc.

Prohibition of unlicensed fishing.

35A.— (1) A person shall not fish for, take or kill salmon, or such other kinds of fish as may be prescribed for the purposes of this section except—

(a) under the authority of a fishing licence, and

(b) in accordance with the terms and conditions of that licence and of any regulations relating to it.

(2) A person shall not have in his possession, in or near any fishing place, any

fishing engine for the taking or killing of salmon, or such other kinds of fish as may be prescribed for the purposes of this section which is erected or in fishing order, unless there is in force a fishing licence by virtue of which he is authorised to use that fishing engine at that place.

(3) A person who acts, or causes or permits another person to act, in contravention of subsection (1) or (2) shall be guilty of an offence against this Act.

(4) If any person using at any place a fishing engine for which a fishing licence is required under this Act, or having such a fishing engine erected or in fishing order in his possession in or near any fishing place, fails on demand to produce to an authorised person a fishing licence by virtue of which he is authorised to use that fishing engine at that place, he shall be guilty of an offence against this Act and liable on summary conviction to a fine not exceeding €2,500.

(5) A person who—

- (a) uses, or, with intent to deceive, presents a fishing licence for any time, date, period, place or purpose other than that for which that licence is valid, or
- (b) uses or presents, as being a fishing licence of which he is the holder, a fishing licence issued in the name of any other person, or
- (c) uses or presents a fishing licence that has been to his knowledge either in any manner altered (otherwise than by a person duly authorised by the Commission) or fraudulently counterfeited,

shall be guilty of an offence against this Act.

(6) In a prosecution relating to an offence under this section by reason of a contravention of subsection (1) it shall be sufficient—

- (a) where the contravention consists only of the use or possession of a rod and line or hand line, to describe the offence as ‘unlicensed angling contrary to section 35A of the Foyle Fisheries Act 1952’, and
- (b) in any other case, to describe the offence as ‘fishing by unlicensed means contrary to section 35A of the Foyle Fisheries Act 1952’.

(7) In this section and in section 35B ‘fishing licence’ means—

- (a) a licence issued by the Commission under regulations made by the Commission under this Act, or
- (b) a licence corresponding to a licence mentioned in paragraph (a) and issued by a body approved for the purpose of this paragraph by the Council.

(8) This section is subject to section 35B.

Exceptions, defences, etc. in relation to offences under section 35A.

35B.— (1) Subsections (1) and (2) of section 35A do not apply in relation to anything which a person is expressly empowered to do under any provision made by or under this Act or any other statutory provision.

(2) Nothing in section 35A applies to a person—

(a) who fishes lawfully by rod and line in a production pond at a licensed area (within the meaning of section 53X), or

(b) who has for that purpose in his possession a rod or line at or near a licensed area.

(3) In subsection (2) ‘production pond’ means a pond—

(a) used for the artificial propagation and culture of fish, and

(b) designated by the Commission for the purposes of this subsection as a production pond in an aquaculture licence.

(4) Where a person is charged under section 35A with an offence which consists of taking fish which he is not licensed to take, it shall be a good defence for him to prove that—

(a) at the time when that fish was taken, he was engaged in lawfully fishing for another kind of fish, and

(b) that the first-mentioned fish was taken unintentionally and, immediately upon being taken, was returned to the water without any avoidable injury.

(5) Where a person is charged under section 35A with an offence which consists of—

(a) having a fishing engine in his possession as mentioned in subsection (2) of that section, or

(b) a failure to produce a fishing licence for a fishing engine in any of the circumstances referred to in subsection (4) of that section,

it shall be a good defence for him to prove that he had the fishing engine in his possession as manufacturer or seller thereof and not for the purpose of using it.

(6) A person shall not be prosecuted for an offence under section 35A consisting of failure to produce a fishing licence for a fishing engine in any of the circumstances referred to in subsection (4) of that section if upon demand being

made by an authorised person for the production of a fishing licence under that subsection, the first mentioned person—

- (a) then and there gives to the authorised person his name and address and any evidence of his identity then available and also gives a reasonable explanation of his failure to produce the fishing licence at that time, and
- (b) within 5 days thereafter, and in accordance with any reasonable requirement then communicated to him by the authorised person, produces to the authorised person or to any other person designated by him—
 - (i) a fishing licence authorising him to use the fishing engine at that place and time, and
 - (ii) evidence of his identity.”.

Metrication.

13.— (1) In section 38(1) of the Act of 1952—

- (a) for the words “one and three-quarter inches” there shall be substituted “4.5 centimetres”, and
- (b) for the words “seven inches” there shall be substituted “18 centimetres”.

(2) In section 39(1) for the words “half a mile” (where they twice occur) there shall be substituted “805 metres”.

Use of nets across rivers.

14.— Section 39 of the Act of 1952 is amended by substituting for subsection (2) the following:

“(2) If a person—

- (a) shoots, draws or stretches a net across the mouth or across any other part of a river, and
- (b) fails to leave open a channel which is—
 - (i) at least one-quarter of the width of the mouth of the river or, as the case may be, of that other part of the river, and
 - (ii) of sufficient depth and width to facilitate the passage of salmon in that river,

he shall be guilty of an offence against this Act.”.

Penalty for Pollution.

15.— The Act of 1952 is amended by inserting after section 41 the following section:

“Penalty for Pollution.

42.— (1) Subject to subsection (2), if any person causes or knowingly permits any deleterious matter to enter any river he shall be guilty of an offence against this Act and shall be liable—

(a) on summary conviction, to a fine not exceeding €5,000,

(b) on conviction on indictment, to a fine not exceeding €20,000 or to imprisonment for a term not exceeding 2 years, or to both.

(2) Nothing in subsection (1) shall operate to penalise the discharge by any person of any dye stuff or other trade effluent which he proves is not in a state harmful to fish or other live animals.

(3) Where a person (in this section referred to as ‘the person convicted’) has been convicted of an offence under subsection (1), the Commission—

(a) after consulting the owner of the fishing rights in the waters affected by the pollution, or

(b) without such consultation if the Commission, upon making reasonable enquiries, is unable to ascertain the name and address of the owner,

may—

(i) carry out such reinstatement of the waters as is reasonable in the circumstances, and

(ii) recover the cost thereof from the person convicted.

(4) Any question as to—

(a) the reasonableness of any reinstatement to be undertaken under paragraph (i) of subsection (3), or

(b) the costs to be recoverable under paragraph (ii) of that subsection,

may be referred to arbitration under and in accordance with the provisions of the Arbitration Acts 1954 to 1998.

(5) Nothing in this section shall affect any right of the owner of fishing rights in the waters affected by the pollution to bring civil proceedings against the person convicted; but in assessing damages in any such proceedings the court shall take into account the value of any reinstatement carried out by the Commission under subsection (3).

(6) Subsection (5) applies in relation to any such right vested in the Commission.”.

Use of certain devices to take fish.

16.— Section 43 of the Act of 1952 is amended—

(a) by substituting for subsection (1) the following subsection:

“(1) If, for the purpose of taking or facilitating the taking of any fish, any person uses or has in his possession or control, in any river or on or near the banks thereof—

(a) any light or fire, or

(b) any electrical or acoustical apparatus of any kind,

he shall be guilty of an offence against this Act.”,

(b) in subsection (3) by the deletion of “gaff or” in paragraphs (a) and (b),

(c) by the insertion after subsection (3) of the following subsection:

“(3A) If any person throws, releases or discharges any missile or other object into any water for the purpose of taking or killing, or facilitating the taking or killing, of any fish, he shall be guilty of an offence against this Act.”,

and

(d) by the insertion after subsection (4) of the following subsection:

“(5) In this section—

‘ gaff ’ means a hooked instrument (with or without a barb) used to penetrate the gills or body of a fish; and

‘ otter ’ means an otter lath or jack, and includes any instrument, whether used with a handline, or as an auxiliary to a rod and line, or otherwise for the purpose of running out lures, artificial or otherwise.”.

Fishing by cross lines.

17.— Section 44 of the Act of 1952 shall be renumbered as subsection (1) of that section and after that subsection there shall be inserted the following subsection:

“(2) In subsection (1) ‘cross lines’ means fishing lines—

(a) reaching from one position to another across water and fixed or held at each of their ends, and

(b) having attached to them one or more baited hooks or lures,

artificial or otherwise.”.

Taking fish
unlawfully killed or
found dead.

18.— Section 46 of the Act of 1952 is amended—

(a) in subsection (2)—

(i) in paragraph (d) for “sanitary officer” there shall be substituted “person acting under the authority of a local authority, or”,

(ii) by the insertion after paragraph (d) of the following paragraph:

“(e) a private river watcher appointed to protect the waters in question.”,

(b) by the insertion after subsection (2) of the following subsection:

“(3) Where a person mentioned in subsection (2)(a), (c), (d) or (e) removes fish from a river as mentioned in subsection (1) or causes fish to be so removed, he shall inform the Commission of that fact as soon as is practicable.”.

Taking, etc. spawn,
smolts or fry of
salmon or trout.

19.— Section 47 of the Act of 1952 shall be renumbered as subsection (1) of that section and after that subsection there shall be inserted the following subsection:

“(2) It shall be a defence for a person charged with an offence under subsection (1)(a) in relation to the spawn of any salmon or trout to prove—

(a) that the spawn had been produced—

(i) at a place specified in an aquaculture licence under the Fisheries (Amendment) Act 1997, or

(ii) in a licensed area (within the meaning of section 53X), or

(b) that he believed on reasonable grounds that it had been so produced.

(3) If any person removes any material from the bed of the freshwater portion of any river in the Merville Area or the Louth Area—

(a) without the consent of the Commission under subsection (4), or

(b) otherwise than in accordance with the conditions of a consent granted by the Commission under subsection (4),

he shall be guilty of an offence against this Act.

(4) The Commission may, on the application of any person, grant its consent to the removal of material from the bed of the freshwater portion of a river on such conditions as it thinks fit.

(5) A consent under subsection (4) does not confer on any person a right to remove material from the bed of a river which (apart from this section) he would not otherwise have.

(6) Nothing done under and in accordance with the conditions of a consent under subsection (4) constitutes an offence under subsection (1) or section 48.”.

Officers of the Commission.

20.— (1) Section 54 of the Act of 1952, is amended by the substitution of the following definition:

“ ‘ officer of the Commission ’ means an inspector or fishery officer appointed under section 55;”.

(2) Section 55(1)(b) of the Act of 1952 is amended by the substitution of “fishery officer” for “river watcher”.

River watchers.

21.— (1) Section 56 of the Act of 1952 is amended by the substitution for subsections (2) to (4) of the following subsections:

“(2) A person appointed to be a river watcher shall not act in that capacity until his appointment is confirmed by the appropriate court.

(3) A person making application under subsection (2) for confirmation of the appointment of a person as a river watcher shall, not less than 14 days before the date of the hearing of the application, give notice in writing of the application to the Commission, and the Commission shall be entitled to appear before the court, be heard and adduce evidence on the hearing of the application, and may do so by one of its officers or by solicitor or counsel.

(4) The confirmation of the appointment of a person as a river watcher shall be effected by the District Judge of the appropriate court endorsing the instrument of appointment.

(5) The appropriate court may, upon complaint made to it, revoke the appointment of the river watcher, and thereupon the appointment shall be terminated.

(6) Where a person who has appointed a river watcher revokes that appointment, he shall, within 14 days of the revocation, serve written notice thereof on the District Court clerk of the appropriate court.

(7) Where—

(a) the appointment of a person as a river watcher has been confirmed under subsection (4) or revoked under subsection

(5), or

(b) notice of the revocation of such an appointment has been received under subsection (6),

the District Court clerk of the appropriate court shall notify the Commission of such confirmation or revocation or, as the case may be, such notice, as soon as practicable.

(8) Any person who appoints another person to act as a river watcher shall, not later than 31 January in each year, make to the Commission a return in such form and containing such information as may be prescribed.

(9) The Commission shall maintain a register of the names and addresses of those who are entitled to act as river watchers and descriptions of the geographical areas in which each of such persons is entitled to so act.

(10) If any person—

(a) acts as a river watcher without having his appointment confirmed under subsection (4),

(b) so acts after his appointment has been revoked either by a court under subsection (5) or by the person appointing him, or

(c) so acts after he has ceased to be a river watcher by virtue of section 56A,

he shall be guilty of an offence against this Act and shall be liable on summary conviction to a fine not exceeding €1,500.

(11) In this section and sections 56A and 56B ‘the appropriate court’, in relation to a river watcher, means a court of summary jurisdiction sitting for the District Court district (or any one such district where there is more than one) within which the river watcher is appointed to act and ‘District Court clerk’ shall be construed accordingly.”.

(2) The Act of 1952 is amended by the insertion after section 56 of the following sections:

“Duration of appointment of river watchers.

56A.— (1) Any person whose appointment as a river watcher is confirmed after the coming into operation of *section 21* of the *Foyle and Carlingford Fisheries Act 2007* shall, unless his appointment is renewed under section 56B, cease to be a river watcher on the expiration of 5 years from the date of that confirmation.

(2) Any person whose appointment as a river watcher was confirmed before the coming into operation of that section shall, unless his appointment is renewed under section 55B, cease to be a river watcher—

(a) on the expiration of the period of 5 years from the date of that confirmation, or

(b) on the expiration of the period of 1 year from the coming into operation of that section,

whichever is the later.

(3) A person who ceases by virtue of this section to be a river watcher may be re-appointed as such under section 56.

Renewal of appointment as river watcher.

56B.— (1) Where a person ('the applicant') intends to renew the appointment of a river watcher, he shall, not less than 6 weeks before the date on which the appointment is to cease to have effect, serve a notice, in such form and containing such particulars as may be prescribed, on—

(a) the District Court clerk, and

(b) the Commission.

(2) Where the Commission objects to the renewal of the appointment of a river watcher, it shall, within 21 days of receiving a notice under subsection (1), notify the applicant and the District Court clerk of its objection and of the grounds thereof.

(3) Where, within the time specified in subsection (2), the District Court clerk has received no notice of an objection under that subsection, the District Judge assigned to the district concerned may confirm the appointment and endorse the instrument of appointment to that effect.

(4) Where the Commission notifies the applicant that there is an objection to the renewal of the appointment, the applicant may apply to the court for confirmation of the renewal of the appointment.

(5) A person making application under subsection (4) for confirmation of the renewal of the appointment of a person as a river watcher shall, not less than 14 days before the date of the hearing of the application, give notice in writing of the application to the Commission, and the Commission shall be entitled to appear before the Court, be heard and adduce evidence on the hearing of the application, and may do so by one of its officers or by solicitor or counsel.

(6) The confirmation of the renewal of the appointment of a person as a river watcher pursuant to an application under subsection (4) shall be effected by the District Judge endorsing the instrument of appointment.

(7) Where the appointment of a person as a river watcher has been renewed under this section, the District Court clerk shall notify the Commission of that renewal as soon as practicable.”.

Seizure and disposal of certain articles.

22.— (1) Section 59(1) of the Act of 1952 is amended by inserting after paragraph (f) the following paragraph:

“(ff) seize any equipment (of whatever nature) which has been, or is being, used for facilitating the unlawful taking of any fish.”

(2) Section 65 of the Act of 1952 is amended—

(a) by substituting for the words from the beginning of the section to “any boat or fishing engine, he shall,” the following:

“(1) Where a person seizes in the State any boat or fishing engine in exercise of powers conferred on him by this Part or any equipment in exercise of the power conferred by section 59(1)(ff), he shall”,

(b) in subsection (a) and (c) by substituting “had recently been” for “had been”,

(c) by inserting after subsection (c) the following subsection:

“(cc) if, in case of any equipment seized under section 59(1)(ff), the court finds that at the time of its seizure it had been, was being, or was about to be used to facilitate the unlawful taking of fish, the court shall order it to be forfeited;”,

and

(d) in subsection (d) by substituting “, fishing engine or equipment” for “or fishing engine”.

Powers of authorised persons.

23.— Section 59 of the Act of 1952 is amended by the insertion after subsection (1) of the following subsections:

“(1A) An officer of the Commission exercising any power under this Act may be accompanied and assisted by—

(a) an officer of the Minister,

(b) an officer of a regional board (within the meaning of the Fisheries Act 1980).

(1B) Without prejudice to subsection (1)(a), an authorised person other than a private river watcher may for the purpose of preventing or detecting the commission of any offence against any provision of this Act at any time enter on and traverse any land either on foot or, where there is a suitable roadway, lane or path, in a motor vehicle.

(1C) Where by virtue of subsection (1B) an authorised person brings a motor vehicle onto any land, he shall not cause or permit that vehicle to stand or remain in such a position as to cause or be likely to cause any danger or obstruction.

(1D) An authorised person, on leaving any land which he has entered by virtue of this section, shall leave that land as effectually secured against trespassers as he found it.”.

Warrants to enter certain premises.

24.— The Act of 1952 is amended by substituting the following section for section 60:

“Power of judge of the District Court to issue warrant to enter certain premises.

60.— (1) If a Judge of the District Court is satisfied by complaint on oath that the first condition is satisfied and that the second or third condition is satisfied the Judge may issue a warrant authorising an authorised person to enter any premises, if necessary using reasonable force, for any of the purposes mentioned in section 64(1).

(2) The complaint shall include—

(a) a statement as to whether any representations have been made by the occupier of the premises to an authorised person concerning the purpose for which the warrant is sought,

(b) a summary of any such representations.

(3) The first condition is that there are reasonable grounds for an authorised person to enter the premises for that purpose.

(4) The second condition is that each of the following applies to the occupier of the premises:

(a) he has been informed of the decision to seek entry to the premises and of the reasons for that decision;

(b) he has failed to allow entry to the premises on being requested to do so by an authorised person;

(c) he has been informed of the decision to apply for the warrant.

(5) The third condition is that—

(a) the premises are unoccupied or the occupier is absent and (in either case) notice of intention to apply for the warrant has been left in a conspicuous place on the premises, or

(b) an application for admission to the premises or the giving of notice of intention to apply for the warrant would defeat the

object of entering the premises.

(6) A warrant issued under this section shall not continue in force for more than 7 days from the date of its issue by the Judge of the District Court, which date shall be clearly visible on the warrant.

(7) A warrant issued under this section shall be executed only at a reasonable hour unless otherwise authorised by the warrant.

(8) A person authorised to enter premises by virtue of a warrant issued under this section—

(a) may take with him such other persons and such equipment as he considers may be necessary, and

(b) shall, on leaving any unoccupied premises which he has entered by virtue of such a warrant, leave them as effectually secured against trespassers as he found them.

(9) In this section ‘authorised person’ does not include a private river watcher.”.

Apprehension of offenders.

25.— Section 62 of the Act of 1952 is amended—

(a) in subsection (1)(b) by inserting “to the satisfaction of the authorised person” after “name and address”,

(b) by the substitution for subsection (2) of the following subsection:

“(2) If any person fails to give his name and address to the satisfaction of an authorised person when required to do so in accordance with subsection (1)(b), he shall be guilty of an offence against this Act.”,

and

(c) by the deletion of subsection (3).

Powers of inspection, examination and detention.

26.— Section 64 of the Act of 1952 is amended—

(a) in subsection (1)—

(i) in paragraph (g) after “take the name and address” by inserting “and date of birth”,

(ii) in paragraph (g) by substituting “such fish or other article,” for “such fish or other article.”, and

(iii) by inserting after paragraph (g) the following paragraph:

“(h) to demand and take the name, address and date of birth of any person who is fishing or whom he reasonably suspects to be about to fish or to have fished within the preceding half hour.”,

(b) by substituting the following subsections for subsection (5):

“(5) Every person who refuses to give his own name and address and date of birth to the satisfaction of the authorised officer or the name and address of any other person (so far as known to him) when lawfully demanded under this section shall be guilty of an offence against this Act and shall be liable on summary conviction to a fine not exceeding €5,000.

(6) Nothing in this section shall be construed as authorising an authorised officer to enter—

(a) an enclosed garden, or

(b) any dwelling house or the curtilage thereof.”.

Penalties for offences.

27.— (1) Subject to *subsection (3)* each section of the Act of 1952 mentioned in *column (1)* of *Schedule 2* is amended to the extent specified in *column (2)* of that Schedule opposite such mention.

(2) Subject to *subsection (3)*, section 3 of the Act of 1983 is repealed.

(3) This section shall have effect as respects offences committed after the coming into operation of this section.

(4) The Act of 1952 is amended by the insertion after section 69 of the following new section:

“Costs and expenses relating to prosecutions.

69A.— Where a person is convicted of an offence under this Act, committed after the coming into operation of this section, the Court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Commission the costs and expenses, measured by the court, incurred by the Commission in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples and the carrying out of tests, examinations and analyses.”.

Exemption for acts done for improvement of fisheries, etc.

28.— The Act of 1952 is amended by substituting the following section for section 70:

“Saving for acts done for artificial propagation, scientific purposes or improvement of the fisheries.

70.— (1) Nothing in this Act shall prohibit anything done for the purpose of the artificial propagation of fish, for some scientific purpose or for the improvement of any fishery—

(a) by the Commission,

(b) by a person to whom a permit is issued under this section (or any other person acting under his directions), under the authority of, and subject to the conditions of, that permit.

(2) The Commission may, by permit in writing and subject to any specified conditions, authorise any named person to do, at any season of the year, any specified things for any of the purposes mentioned in subsection (1) and in particular, without prejudice to the generality of the foregoing—

(a) to catch fish of any specified kind and to have in his possession fish of that kind or their ova for the purpose of artificial propagation, transplantation, the stocking, restocking or improvement of any fishery or for any scientific purpose, and for the purpose of so catching to have in his possession, erect and use any fishing engine of a specified kind or to have in his possession and use any substance of a specified kind,

(b) to buy or sell ova or fry of fish of any specified kind for the purpose of stocking or restocking, or for any scientific purpose,

(c) to dispose of fish taken in accordance with the terms of the permit in such manner and on such terms as may be specified.

(3) A permit under this section shall not authorise anything to be done in relation to a several fishery otherwise than with the consent of the owner of that fishery.

(4) A person to whom a permit has been given by the Commission shall, if when doing anything pursuant to the permit he is so requested by an authorised person, produce the permit to that person.

(5) In this section ‘specified’ means specified in a permit.”.

Forfeiture of boats,
equipment etc.

29.— (1) The Act of 1952 is amended by the substitution for section 76 of the following section:

“Forfeiture of boats, fishing engines etc.

76.— Where a person is convicted of an offence under this Act the Court by which he is convicted may make such other order as to the forfeiture of—

(a) any fish illegally taken by him or in his possession at the time of the offence,

(b) any boat, fishing engine, equipment or other thing by means or in respect of which the offence is committed,

as the Court thinks fit.”.

(2) Section 77 of the Act of 1952 is repealed.

Judicial Review.

30.— The Act of 1952 is amended by the insertion after section 73 of the following section:

“Judicial Review.

73A.— (1) A person may, by way of, and only by way of, an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (in this section referred to as ‘the Order’) question the validity of—

(a) a decision of the Commission under Part VIA of this Act, or

(b) a decision on or determination of an appeal by the Appeals Board under Part VIA of this Act.

(2) The High Court shall not decline to consider an application for judicial review under the Order relating to a decision or determination referred to in subsection (1) by reason only of the fact that the decision or determination the subject of the application—

(a) was made, or is to be or may be made, outside the State, or

(b) relates to a place that is outside the State.

(3) In relation to an application referred to in subsection (1), no rule of law or procedure shall prevent the Court giving leave for service of the application or notice of the application concerned to a person affected who is outside the State.”.

Calculation of time periods.

31.— The Act of 1952 is amended by the insertion after section 83 of the following section:

“Calculation of time periods.

84.— (1) In this Act, or any regulations made under this Act, where a period of time is expressed to begin on, or be reckoned from, a particular day, that day shall not be included in the period.

(2) In this Act, or any regulations made under this Act, where a period of time is

expressed to end on, or to be reckoned to, a particular day, that day shall be included in the period.

(3) In this Act, or any regulations made under this Act, where the time limited for the doing of anything expires on a Saturday, Sunday or a public holiday, the time so limited shall extend to and the thing may be done on the first following day that is not a Saturday, Sunday or a public holiday.

(4) Where any document or notice is received by the Commission or the Appeals Board outside the business hours of the Commission, or as the case may be, the Appeals Board, the document or notice shall be deemed to have been received on the first following day which is not a Saturday, Sunday or public holiday.

(5) In subsections (3) and (4)—

(a) ‘ business hours ’ means such hours as may be prescribed for the purposes of this section,

(b) ‘ public holiday ’ means any day which is prescribed for the purposes of this section.”.

Enforcement of private fishing rights.

32.— (1) Paragraph 2 of the Third Schedule to the Act of 1952 shall be renumbered as subparagraph (1) of that paragraph.

(2) Subparagraph (1) (as renumbered by subsection (1)) of paragraph 2 of the Third Schedule to the Act of 1952 is amended by the insertion after clause (d) of the following clause:

“(e) enter into an agreement to enforce the fishing rights of any owner or occupier of land or waters in accordance with such terms and conditions as may be specified in the agreement and on payment of such sums as may be so specified.”.

Miscellaneous amendments to Act of 1952.

33.— (1) Section 13 of the Act of 1952 is amended—

(a) in subsection (1)(g) by the substitution of “fishing licences” for “licences”,

(b) in subsection (1)(k) by the insertion after “Act” of “, except in Part VIA,”, and

(c) in subsection (2) by the substitution of “fishing licence” for “licence”.

(2) Section 35(4) of the Act of 1952 is amended in paragraph (c) by the substitution of “fishing licence” for “licence” where that word occurs.

(3) Section 40(3) of the Act of 1952 is amended by the substitution of “fishing licence” for “licence”.

(4) Section 75 of the Act of 1952 is amended by the substitution of “fishing licence” for “licence” wherever that word occurs.

PART 4

Miscellaneous Amendments

Amendment of
Fisheries
(Amendment) Act
1997.

34.— The Fisheries (Amendment) Act 1997 is amended in section 2—

(a) by the insertion, after “Moville Area” of “or the Louth Area”, and

(b) by the substitution of “the respective meanings of those terms in” for “the meaning of”.

Amendment of
Foreshore Act
1933.

35.— The Foreshore Act 1933 is amended in section 3 by the insertion after subsection (1) of the following section:

“(1A) (a) Notwithstanding the provisions of subsection (1), where the Minister grants a licence under that subsection (a ‘foreshore licence’) to the Commission, such licence may, if the terms and conditions of the foreshore licence so provide, permit a person holding a licence under Part VIA of the Foyle Fisheries Act 1952 (an ‘aquaculture licence’) in respect of part or all of the area covered by the foreshore licence to do in the area specified in the aquaculture licence concerned any thing permitted by the aquaculture licence as specified in the foreshore licence as being permitted to be done by a person holding such an aquaculture licence, subject to such terms and conditions as may be contained in the foreshore licence.

(b) In this section ‘Commission’ means the body referred to in section 32 of the British-Irish Agreement Act 1999 .”.

SCHEDULE 1

Provisions to be inserted as Schedule 3A and Schedule 3B to the Act of 1952

Section 4 (2).

“SCHEDULE 3A

Foyle and Carlingford Aquaculture Licensing Appeals Board

Incorporation.

1. (1) The Appeals Board shall have the legal capacities of a body corporate.
- (2) The Appeals Board shall have the power to acquire, hold and dispose of land or other property.
- (3) The Appeals Board shall not acquire, hold or dispose of land without the consent of the Council, the Department of Finance and Personnel in Northern Ireland and the Minister for Finance.
- (4) Judicial notice shall be taken of the seal of the Appeals Board.

Membership.

2. (1) Subject to the provisions of this paragraph, the remuneration, allowances and expenses of the Chairperson and other members of the Appeals Board, and any other terms and conditions on which they hold office, shall be determined by the Council, the Department of Finance and Personnel in Northern Ireland and the Minister for Finance.
- (2) A member of the Appeals Board shall hold office for such period as may be determined by the Council.
- (3) A person may resign as a member or Chairperson of the Appeals Board by notice in writing to the Council.
- (4) The Council may dismiss a person from his office as a member or as Chairperson of the Appeals Board, if—
 - (a) he fails without reasonable excuse to discharge his functions for a continuous period of 3 months,
 - (b) he is convicted of an offence on indictment and is sentenced to a term of imprisonment of not less than 3 months,
 - (c) he is adjudicated bankrupt,
 - (d) he makes a composition or arrangement with his creditors, or
 - (e) in the opinion of the Council he is unable or unfit to carry out his functions.

(5) If a member of the Appeals Board dies, resigns or is removed from office, the Council may appoint a person to fill the vacancy, and the person so appointed shall be appointed in the same manner as the member who occasioned the vacancy.

(6) A person appointed under subparagraph (5) shall hold office for such period as may be determined by the Council.

(7) Any person who is or becomes entitled under the Standing Orders of Dáil Éireann or Seanad Éireann to sit in either of those two Houses, or who is or becomes a member of the European Parliament, shall, while so entitled or being such member, be disqualified from membership of the Appeals Board and, if already a member of the Appeals Board, shall cease to be a member of the Appeals Board.

Staffing and premises.

3. (1) The Appeals Board may for the purposes of its functions, with the approval of the Council—

(a) employ staff, and

(b) engage the services of such other persons as the Appeals Board considers necessary or expedient.

(2) The Appeals Board shall, with the approval of the Council, the Department of Finance and Personnel in Northern Ireland and the Minister for Finance, determine the remuneration, grading, numbers and terms and conditions of service of staff employed by the Board.

(3) The Appeals Board may, in the case of such of its staff as may be determined by it with the approval of the Council, the Department of Finance and Personnel in Northern Ireland and the Minister for Finance, pay such pensions, allowances or gratuities, or provide and maintain such pension schemes, as may be so determined.

Procedure.

4. At a meeting of the Appeals Board—

(a) the quorum shall be 5 members,

(b) the Chairperson when present shall preside,

(c) in the absence of the Chairperson the members present shall appoint one of their number to preside, and

(d) every question shall be determined by a majority of votes of the members present and, in the event of an equality of votes, the Chairperson or other

member presiding shall have a casting vote in addition to his or her deliberative vote.

5. The seal of the Appeals Board shall, when applied to a document, be authenticated by the signature of the Chairperson or other member authorised by the Appeals Board to act for that purpose.

Code of conduct.

6. (1) The Appeals Board shall, as soon as practicable, draw up a code of conduct for approval by the Council.

(2) Without prejudice to subparagraph (1), the code shall cover the obligations of the Appeals Board to the public and the accountability and conduct of its members and staff (including membership of, or employment by, other organisations, acceptance of gifts or other benefits and the disclosure of other interests relevant to the work of the Appeals Board and confidentiality).

Accounts.

7. (1) The Appeals Board shall, in such form as may be determined by the Council, keep proper accounts and financial records and shall prepare a statement of accounts in respect of each year containing such information and in such form as the Council may direct.

(2) The Appeals Board shall submit copies of the statement prepared in pursuance of subparagraph (1) to—

(a) the Council,

(b) the Comptroller and Auditor General and the Comptroller and Auditor General for Northern Ireland who will in co-operation examine and certify the accounts.

(3) The statement prepared under subparagraph (1) shall be laid before both Houses of the Oireachtas.

(4) Any report concerning the Appeals Board by the Comptroller and Auditor General and the Comptroller and Auditor General for Northern Ireland shall be laid before both Houses of the Oireachtas.

(5) The Appeals Board shall permit officers of the Comptroller and Auditor General and the Comptroller and Auditor General for Northern Ireland access to all records as may be required to carry out the above functions.

Annual report.

8. (1) The Appeals Board shall submit a report on its activities in each year to the Council at such date and in such form as the Council may direct.

(2) A copy of the report submitted under subparagraph (1) shall be laid before both Houses of the Oireachtas.

SCHEDULE 3B

Procedure in relation to appeals

Notice of appeal.

1. (1) A notice of appeal shall—

(a) be made in writing,

(b) state—

(i) the name and address of the appellant,

(ii) the name and address of the appellant's legal representative, if appropriate, and

(iii) an address for service,

(c) contain—

(i) a brief statement of the facts,

(ii) a summary of the principal grounds for contesting the decision of the Commission and the arguments supporting those grounds,

(iii) a statement of the relief sought by the appellant and any directions sought pursuant to paragraph 14,

(iv) a schedule listing all the documents annexed to the notice of appeal,

and

(d) be accompanied by such fee (if any) as may be prescribed.

(2) If the appellant wishes to request confidential treatment for any part of his appeal,

he shall indicate in the notice of appeal, or within 14 days of sending it to the Appeals Board, the relevant passages or documents, together with the reasons for the request, and, if so directed by the Appeals Board, supply a non-confidential version of the notice of appeal.

(3) There shall be annexed to the notice of appeal a copy of every document on which the appellant intends to rely.

2. (1) If the Appeals Board considers that the notice of appeal does not comply with paragraph 1, or is incomplete, or is lacking in clarity, the Appeals Board may give such directions as may be necessary to ensure that the notice of appeal is put in order and dealt with justly.

(2) The Appeals Board may, if satisfied that the efficient conduct of the proceedings so require, defer service of the notice of appeal on the Commission until after the directions referred to in subparagraph (1) have been complied with.

3. (1) The Appeals Board may strike out a notice of appeal at any stage in the proceedings if—

(a) having considered the grounds of appeal set out in the notice of appeal—

(i) it considers that the notice of appeal discloses no valid ground of appeal, or

(ii) it is of the opinion that the appeal is vexatious, frivolous or without substance or foundation,

or

(b) the notice of appeal does not comply with paragraph 1 in a substantial respect, and the appellant has not remedied the defect pursuant to a direction under paragraph 2(1), or

(c) the appellant fails to comply with a direction of the Appeals Board.

(2) Where the Appeals Board strikes out a notice of appeal it may make any consequential order it considers appropriate.

4. (1) The appellant may amend the notice of appeal only with the permission of the Appeals Board.

(2) Where the Appeals Board grants permission under subparagraph (1) it may do so on such terms as it thinks fit, and shall give such further or consequential directions as may be necessary.

(3) The Appeals Board shall not grant permission to amend the notice of appeal in

order to add a new ground for contesting the decision unless—

- (a) such ground is based on matters which have come to light since the notice of appeal was sent to the Appeals Board, or
- (b) it was not practicable to include that ground in the notice of appeal, or
- (c) the circumstances are, in the opinion of the Appeals Board, exceptional.

Withdrawal of appeal.

5. (1) The appellant may withdraw his appeal only with the permission of the Appeals Board.

(2) Where the Appeals Board gives permission under subparagraph (1) it may—

- (a) do so on such terms as it thinks fit,
- (b) notify such parties to the appeal as the Appeals Board thinks fit in such manner as it thinks fit, and
- (c) publish notice of the withdrawal in such manner as the Appeals Board thinks fit.

Response to notice of appeal.

6. On receiving a notice of appeal the Appeals Board shall—

- (a) send an acknowledgement of its receipt to the appellant, and
- (b) subject to paragraphs 2(2) and 3, send a copy of the notice of appeal to the Commission.

7. (1) The Commission shall send a response to the Appeals Board in the form required by this paragraph so that the response is received within six weeks, or such further time as the Appeals Board may allow, of the date on which the Commission received a copy of the notice of appeal sent in accordance with paragraph 6(b).

(2) The response shall contain—

- (a) a copy of the decision which is the subject of the appeal,
- (b) a succinct presentation of the arguments upon which the Commission will rely in opposing the notice of appeal,

(c) the relief sought by the Commission and any directions sought pursuant to paragraph 14, and

(d) a copy of the documents upon which the Commission intends to rely and a schedule listing those documents.

(3) On receiving the response, the Appeals Board shall send a copy of the response to the appellant.

8. If the Commission wishes to request confidential treatment for any part of its response, it shall indicate in the response, or within 14 days of sending it to the Appeals Board, the relevant passages or documents, together with the reasons for the request, and, if so directed by the Appeals Board, supply a non-confidential version of the response.

9. (1) If the Appeals Board considers that the response does not comply with paragraph 7, or is incomplete, or is lacking in clarity, the Appeals Board may give such directions as may be necessary to ensure that the response is put in order and dealt with justly.

(2) The Appeals Board may, if satisfied that the efficient conduct of the proceedings so require, defer service of the response on the appellant until after the directions referred to in subparagraph (1) have been complied with.

10. (1) The Appeals Board may, after hearing the parties, strike out the response at any stage in the proceedings if—

(a) it considers that the response discloses no valid ground of defence,

(b) the response does not comply with paragraph 7 in a substantial respect, and the Commission has not remedied the defect pursuant to a direction under paragraph 9(1), or

(c) the Commission fails to comply with a direction of the Appeals Board.

(2) When the Appeals Board strikes out a response it may make any consequential order it considers appropriate.

11. (1) The Commission may amend the response only with the permission of the Appeals Board.

(2) Where the Appeals Board grants permission under subparagraph (1) it may do so on such terms as it thinks fit, and shall give such further or consequential directions as may be necessary.

(3) The Appeals Board shall not grant permission to amend the response in order to add a new ground for contesting the decision unless—

- (a) such ground is based on matters which have come to light since the response was sent to the Appeals Board, or
- (b) it was not practicable to include that ground in the response, or
- (c) the circumstances are exceptional.

Consolidation, location and conduct of proceedings.

12. (1) Where two or more notices of appeal have been received in respect of the same decision or which involve the same or similar issues, the Appeals Board may, on the request of a party or of its own motion, direct that the appeals or any particular issue or matter raised in the notices of appeal be consolidated or heard together.

(2) Before giving a direction under this paragraph, the Appeals Board shall invite the parties to the relevant proceedings to submit their observations on the consolidation of the proceedings.

13. The Appeals Board may hold any meeting or hearing or give any directions in such place as it thinks fit having regard to the just, expeditious and economical conduct of the proceedings.

Directions and witnesses.

14. (1) The Appeals Board may at any time, on the request of a party or of its own motion, give such directions as are provided for in subparagraph (2) or such other directions as it thinks fit to secure the just, expeditious and economical conduct of the proceedings.

(2) The Appeals Board may give directions—

- (a) as to the manner in which the proceedings are to be conducted and, in particular, as to whether any part of the proceedings should take the form of an oral hearing,
- (b) as to any time limits to be observed, including any time limits in respect of the conduct of any oral hearing,
- (c) for any party to file a reply to the response or other pleadings,
- (d) requiring persons to attend and give evidence or to produce documents,
- (e) as to the evidence which may be required or admitted in proceedings before the Appeals Board and the extent to which it shall be oral or written, including, where a witness statement has been submitted,

whether the witness is to be called to give oral evidence,

- (f) as to the submission in advance of a hearing of any witness statements or expert reports,
- (g) as to the examination or cross-examination of witnesses,
- (h) as to the fixing of time limits with respect to any aspect of the proceedings,
- (i) as to the abridgement or extension of any time limits, whether or not expired,
- (j) for the disclosure between, or the production by, the parties of documents or classes of documents,
- (k) in relation to the inspection of any area,
- (l) for the appointment and instruction of experts, whether by the Appeals Board or by the parties and the manner in which expert evidence is to be given,
- (m) for the award of costs or expenses, including any allowances payable to persons in connection with their attendance before the Appeals Board,
- (n) in relation to such other matters as it thinks fit.

(3) The Appeals Board may, in particular, of its own motion—

- (a) put questions to any party to the appeal,
- (b) invite any party to the appeal to make written or oral submissions on certain aspects of the proceedings,
- (c) ask any party to the appeal for information or particulars,
- (d) ask any party to the appeal to produce any documents or papers relating to the appeal.

(4) A request by a party for directions shall be made, as far as practicable, in the notice of appeal or response.

(5) A request for directions made otherwise than in the notice of appeal or response shall be made in writing and shall be—

- (a) served by the Appeals Board on any party to the appeal who might be affected by such directions, and

(b) determined by the Appeals Board taking into account the observations of the parties.

15. (1) Subject to subparagraphs (2) and (3), the Appeals Board may at any time, either of its own motion or on the request of any party, issue a summons, requiring any person to do one or both of the following:

(a) to attend as a witness before the Appeals Board at the time and place set out in the summons; and

(b) to answer any questions or produce any documents or other material in his possession or under his control which relate to any matter in question in the proceedings.

(2) A request by a party for the issue of a summons under this paragraph shall state—

(a) upon which facts the witness is to be questioned and the reasons for the examination,

(b) the documents required to be produced.

(3) No person may be required to attend in compliance with a summons under this paragraph unless—

(a) he has been given at least 7 days notice of the hearing, and

(b) he is paid such sum as the Appeals Board may determine.

(4) The Appeals Board may make the summoning of a witness on the request of a party conditional upon the deposit with the Appeals Board of a sum determined by the Appeals Board as sufficient to cover—

(a) the costs of the summons,

(b) the sum referred to in subparagraph (3)(b).

(5) The Appeals Board shall advance the funds necessary in connection with the examination of any witnesses summoned by the Appeals Board on its own motion.

(6) If any person—

(a) on being duly summoned to attend as a witness before the Appeals Board does not attend, or

(b) being in attendance, refuses to produce any document or other material in his possession or under his control which he is lawfully required to

produce or to answer any question which he is lawfully required to answer,

he shall be guilty of an offence under this paragraph and shall be liable on summary conviction to a fine not exceeding €1,500 or to imprisonment for a term not exceeding 3 months, or to both.

16. If any party fails to comply with any direction given in accordance with this Schedule, the Appeals Board may, if it considers that the justice of the case so requires, order that such party be debarred from taking any further part in the proceedings without the permission of the Appeals Board.

Oral hearing to be in public.

17. Any oral hearing shall be in public except for any part of the hearing where the Appeals Board is satisfied that it will be considering information which is, in its opinion, confidential information.

Decision of the Appeals Board.

18. (1) The decision of the Appeals Board shall be delivered in such manner as may be determined by the Appeals Board.

(2) The Appeals Board shall send a copy of the decision to each party to the appeal.”.

SCHEDULE 2

Amendments Relating to Penalties

Section 27 .

Section	Extent of Amendment
(1)	(2)

35. The following subsection is substituted for subsection (1):

“(1) If any person buys, sells, exposes for sale or has in his possession any salmon or trout unlawfully captured such person shall be guilty of an offence against this Act and shall be liable

—
(a) on summary conviction, to a fine (not exceeding in all €4,000) not exceeding €1,500 together with an amount not exceeding €250 for each salmon and €100 for each trout in respect of which the offence was committed or to imprisonment for a term not exceeding 6 months, or to both, or

(b) on conviction on indictment, to a fine not exceeding €10,000 or to imprisonment for a term not exceeding 2 years, or to both.”.

41. The following subsection is substituted for subsection (4):

“(4) Every person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both, or

(b) on conviction on indictment, to a fine not exceeding €10,000 or to imprisonment for a term not exceeding 2 years, or to both.”.

43. The following subsection is substituted for subsection (4):

“(4) (a) Every person guilty of an offence under subsection (1) or (2) of this section shall be liable, on summary conviction, to a fine not exceeding €4,000 or to imprisonment for a term not exceeding 6 months, or to both.

(b) Every person guilty of an offence under subsection (3A) of this section shall be liable—

(i) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both, or

(ii) on conviction on indictment, to a fine not exceeding €10,000 or to imprisonment for a term not exceeding 2 years, or to both.”.

49. The following subsection is substituted for subsection (1):

“(1) Every person who at any time unlawfully takes, kills, destroys, buys, sells, exposes for sale or has in his custody or control any unclean or unseasonable salmon or trout shall be guilty of an offence against this Act and shall be liable—

(a) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both, or

(b) on conviction on indictment, to a fine not exceeding €10,000 or to imprisonment for a term not exceeding 2 years, or to both.”.

52A. The following subsection is substituted for subsection (2):

“(2) Every person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both, or

(b) on conviction on indictment, to a fine not exceeding €10,000 or to imprisonment for a term not exceeding 2 years, or to both.”.

67. The following section is substituted for section 67:

“Penalty for assaulting or obstructing authorised persons.

67.—If any person assaults, obstructs or impedes any person exercising any power conferred by this Part, he shall be guilty of an offence against this Act and shall be liable on summary conviction to a fine not exceeding €4,000 or to imprisonment for a term not exceeding 6 months, or to both.”.

69. The following section is substituted for section 69:

“Penalties for offences.

69.—Any person who commits an offence against this Act for which a penalty is not provided by any other provision of this Act shall be liable on summary conviction to a fine not exceeding €4,000.”.

83. The following subsection is substituted for subsection (3):

“(3) If any person—

(a) on being duly summoned to attend as a witness at an inquiry makes default in attending, or

(b) being in attendance, refuses to take an oath which he is lawfully required to take, or to produce any document in his power or control which he is lawfully required to produce, or to answer any question which he is lawfully required to answer,

he shall be guilty of an offence under this section and shall be liable on summary conviction to a fine not exceeding €1,500.”.

¹ OJ No. L175, 05.07.1985, p.40

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