**BILLE IASCAIGH AN FHEABHAIL (Uimh. 2), 1951.**
**FOYLE FISHERIES (No. 2) BILL, 1951.**

*Mar a tugadh isteach.*
*As introduced.*

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BILLE IASCAIGH AN FHEABHAIL (Uimh. 2), 1951.
FOYLE FISHERIES (No. 2) BILL, 1951.

# BILL

*entitled*

AN ACT TO AUTHORISE THE MAKING OF A CERTAIN AGREEMENT WITH RESPECT TO FISHING RIGHTS IN THE TIDAL WATERS OF THE LOUGH AND RIVER FOYLE AND ITS TRIBUTARIES, TO PROVIDE FOR THE MANAGEMENT, CONSERVATION, PROTECTION AND IMPROVEMENT OF THE FISHERIES IN THE FOYLE AREA, TO ESTABLISH A FOYLE FISHERIES COMMISSION AND TO DEFINE ITS FUNCTIONS, TO DISSOLVE THE BOARD OF CONSERVATORS FOR THE MOVILLE DISTRICT, AND TO PROVIDE FOR OTHER MATTERS (INCLUDING THE CHARGING OF FEES ON CERTAIN FISHING LICENCES) CONNECTED WITH THE MATTERS AFORESAID.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS :—

## PART I.

### Preliminary and General.

**1.**—This Act may be cited as the Foyle Fisheries Act, 1952. **Short title.**

**2.**—(1) In this Act— **Interpretation.**

"the Advisory Council" means the Advisory Council for the Foyle Area established under *section 22;* **Advisory Council.**

"authorised person" has the meaning given to it by *section 54;* **authorised person.**

"the Commission" means the Foyle Fisheries Commission established by *section 11;* **Commission.**

"District Justice" means a justice of the District Court; **District Justice.**

"establishment date" means the date appointed by order made under *section 10;* **establishment date.**

"the Fisheries Acts" means the Fisheries Acts, 1842 to 1949; **Fisheries Acts.**

"fishery rate" means a rate under *section 23;* **fishery rate.**

"fishery year" means the period of twelve months commencing on the 1st day of October in any year; **fishery year.**

"fishing engine" means any engine, net or instrument whatsoever capable of being used for the taking of fish; **fishing engine.**

"fishing licence" means a licence issued by the Commission under regulations made by the Commission under this Act; **fishing licence.**

**Foyle Area.** " the Foyle Area " has the meaning given to it by *section 3;*

**inquiry.** " inquiry " means an inquiry conducted under *section 82*;

**Irish Society.** " the Irish Society " means the body entitled the Society of the Governor and Assistants, London, of the New Plantation of Ulster within the Realm of Ireland;

**Minister.** " the Minister " means the Minister for Agriculture;

**Ministry.** " the Ministry " means the Ministry of Commerce for Northern Ireland;

**Moville Area.** " the Moville Area " means the area which was constituted by the Moville Fishery District Order, 1926, as the Moville District;

**Moville Board.** " the Moville Board " means the board of conservators for the Moville District;

**prescribed.** " prescribed " means prescribed by regulations made by the Commission under this Act;

**river.** " river " includes lake and estuary;

**salmon.** " salmon " includes sea trout, all fish of the salmon species, and the spawn and fry thereof;

**trout.** " trout " includes all fish of the brown trout kind and their spawn and fry but does not include sea trout.

(2) References in this Act to a fish shall be construed as including references to part of a fish.

(3) In this Act a reference by number to a Part or section is to the Part or section of this Act bearing that number unless it is indicated that reference to some other Act is intended.

(4) References in this Act to any enactment shall, unless the context otherwise requires, be construed as references to that enactment as amended by any subsequent enactment including this Act.

**The Foyle Area.**

**3.**—(1) In this Act " the Foyle Area " means the area comprising the fishery district, originally created and defined as the Londonderry District by an order made on the 9th day of July, 1855, by the Commissioners of Fisheries.

(2) Judicial notice shall be taken of the boundaries of the Foyle Area.

**Restriction of Fisheries Acts.**

**4.**—The provisions referred to in the third column of the *First Schedule* to this Act of the enactments referred to in the second column shall, on and from the establishment date, cease to apply to the Moville Area.

**Laying of accounts and reports before Oireachtas.**

**5.**—The Minister shall cause to be laid before each House of the Oireachtas a copy of the accounts of the Commission for each year audited in accordance with *paragraph 17* of the *Third Schedule* to this Act, and of the report of the auditors thereon, and a copy of the annual report furnished to him by the Commission.

**Deposit of copies of orders and regulations.**

**6.**—A copy of every order or regulation made under this Act shall be deposited—

(*a*) with the county registrar for the county of Donegal,

(*b*) with the District Court Clerk of every Court District which or part of which is situate in the Moville Area, and

(*c*) in every station of the Garda Síochána situate in the Moville Area.

**Expenses.**

**7.**—All expenses incurred by the Minister in carrying this Act into effect shall, to such extent as shall be sanctioned by the Minister for Finance, be defrayed out of moneys provided by the Oireachtas.

## PART II.

### Acquisition of Foyle Fishery Rights.

Power to acquire fishing rights, etc.

**8.**—(1) The Minister is hereby authorised to enter into an agreement (in this Act referred to as the vesting agreement) with the Ministry and the Irish Society in the terms of the draft set out in the *Second Schedule* to this Act.

(2) On the date of execution of the vesting agreement this subsection shall operate to vest in the Minister and the Ministry an absolute and indefeasible title to the fee simple in possession of all rights of fishing in the tidal portions of the Lough and River Foyle and of its tributary, the River Faughan, freed and discharged from all estates, titles, interests, incumbrances, rights, liberties and privileges whatsoever by whomsoever held, used, exercised or enjoyed, except the rentcharges referred to in the vesting agreement but indemnified therefrom as therein provided.

(3) *Subsection* (*2*) of this section shall not apply to a right vested, immediately before the date of execution of the vesting agreement, in any person, other than the Irish Society, to use a fixed engine under certificate granted under section 6 of the Salmon Fishery (Ireland) Act, 1863.

(4) On the date of execution of the vesting agreement this subsection shall operate to extinguish all the estate, right, title and interest of the Irish Society in and to the tidal portions of the Lough and River Foyle and of its tributary, the River Faughan, and the ground, soil and foreshore of those tidal portions.

(5) The vesting agreement shall operate, without further assurance, to convey, assign and transfer, on the date of the making thereof, to the Minister and the Ministry all the property thereby agreed to be sold, other than rights of fishing to which *subsection* (*2*) of this section applies.

(6) The Irish Society shall, notwithstanding any limitations on its powers, have power to enter into the vesting agreement without the consent of any person.

(7) It shall be the duty of the Minister and the Irish Society, and each such party is hereby empowered, to carry out the vesting agreement so far as the provisions thereof are to be performed by such party.

(8) If any person, other than the Irish Society, proves that he has been divested of an interest in a several right of fishing by *subsection* (*2*) of this section he shall be entitled to recover from the Commission compensation for loss of that interest, and any question whether compensation is payable under this subsection or as to the amount thereof shall, in default of agreement, be determined under and in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919, by an arbitrator appointed under that Act.

(9) When assessing compensation under *subsection* (*8*) of this section, the arbitrator shall have regard to the extent to which the right in question was exercised during the ten years ending on the execution of the vesting agreement.

Exemption from stamp duties.

**9.**—(1) Section 12 of the Finance Act, 1895, shall not operate to require the delivery to the Revenue Commissioners of a copy of this Act or the payment of stamp duty under that section on any copy of this Act.

(2) Stamp duty shall not be chargeable on the vesting agreement or on any instrument executed in pursuance thereof.

## PART III.

### The Foyle Fisheries Commission.

Commencement of this Part.

**10.**—The subsequent provisions of this Part shall come into operation on such day as the Minister, after consultation with the Ministry, may by order appoint.

Establishment of Foyle Fisheries Commission.

**11.**—(1) There is hereby established a body to be known as the Foyle Fisheries Commission.

(2) The functions of the Commission shall be—

(*a*) the management of the property vested in the Minister and the Ministry under *section 8*;

(*b*) the conservation, protection and improvement of the fisheries of the Foyle Area generally.

(3) The provisions of the *Third Schedule* to this Act shall apply to the Commission.

Exemption from rates and taxes.

**12.**—(1) The Commission shall not be liable for any tax whatsoever in respect of the property in or occupation of any lands, tenements and hereditaments or in respect of any of its income.

(2) The Commission shall not be liable for a rate leviable by any local authority in respect of the use or occupation by the Commission of any hereditament or tenement and any hereditament or tenement so used or occupied shall, for the purpose of section 2 of the Valuation (Ireland) Act, 1854, be deemed to be of a public nature and occupied for the public service.

(3) In each local financial year there shall be paid to a local authority in the Moville Area out of moneys to be provided by the Oireachtas such sum as that authority would have been entitled under law to receive in respect of rates but for the exemption conferred by *subsection* (*2*) of this section.

Regulations.

**13.**—(1) The Commission may, with the approval of the Minister and the Ministry, make such regulations as appear to the Commission to be expedient for the management, conservation, protection and improvement of the fisheries of the Foyle Area and without prejudice to the generality of the foregoing, may make regulations in relation to all or any of the following matters—

(*a*) the regulation of fishing and preservation of good order amongst persons fishing,

(*b*) the times and seasons for the taking of fish or any kind of fish or for any mode of taking fish or any kind of fish and the conditions subject to which fish or any kind of fish may be taken,

(*c*) prohibiting any mode of taking or destroying fish or any kind of fish,

(*d*) the times and places or the mode at or in which any fishing engine may be used,

(*e*) the description and form of nets to be used and the size of the meshes of those nets.

(*f*) the prohibition, either absolutely or otherwise than under and in accordance with a licence issued by the Commission, of the use of any fishing engine,

(*g*) the making of applications for, and the issue, alteration, renewal, and revocation of licences, whether generally or in specified cases,

(*h*) the protection of waters from poisoning and pollution by any deleterious or poisonous matter, or from any predatory fish or animals,

(*i*) the prohibition of any practice whatsoever tending in the opinion of the Commission to impede the lawful capture of fish or to be in any manner detrimental to the fisheries,

(*j*) defining, by reference to a map or otherwise, the mouth of any river in the Foyle Area, the mouth of any tributary river at its entrance into any other river therein, the boundary between the tidal and freshwater portions of any river therein, the point or points to or from which distances are to be measured under this Act, or the space within which it is prohibited by this Act or by regulations under this section to use or practise certain methods of fishing,

(*k*) anything referred to in this Act as prescribed,

(*l*) anything relating in any manner to the management and protection of the fisheries.

(2) Regulations made by the Commission under this section may provide for charging in respect of any licence or other document issued or varied by the Commission such fees, payable at such time and in such manner, as may be prescribed.

(3) Every regulation made by the Commission under this section shall, as soon as may be after it is made, be published in *Iris Oifigiúil* and in one or more newspapers circulating in the Foyle Area.

(4) Any instrument made under the Fisheries Acts which is in force immediately before the establishment date and applies to the fishery district known as the Moville District shall thereafter continue in force and be deemed to be made under this section and may be revoked by regulations under this section.

(5) The Minister shall cause every regulation made under this Act 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.

(6) If any person contravenes (whether by act or omission) any regulations under this section, he shall be guilty of an offence against this Act.

Restriction on number of licences.

**14.**—(1) The number of licences for fishing with fishing engines of any kind (other than rod and line) in the tidal waters of the Foyle Area which may be issued by the Commission in any year shall not exceed such number as may be for the time being prescribed.

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

*Financial Provisions.*

Annual Estimate.

**15.**—The Commission shall furnish to the Minister on or before the 30th day of November in every fishery year an estimate of its income and expenditure for that year.

Grants.

**16.**—(1) There may be paid to the Commission, out of moneys provided by the Oireachtas, a grant or grants of such amount as the Minister, with the concurrence of the Minister for Finance, may sanction towards the expenses of the Commission for any fishery year.

(2) In determining the amount of a grant under this section for a particular fishery year the Minister shall have regard to the amount of any grant paid or to be paid to the Commission by the Ministry for that year.

Advances.

**17.**—(1) For the purpose of enabling the Commission to exercise or perform its functions, the Minister may, with the concurrence of the Minister for Finance, make advances from time to time to the Commission, out of moneys provided by the Oireachtas.

(2) A sum advanced under this section shall be repayable on such terms as may, with the concurrence of the Minister for Finance, be agreed between the Minister and the Commission.

Power of the Commission to borrow temporarily.

**18.**—The Commission may borrow temporarily by arrangement with bankers such sums as it may from time to time require, up to an amount not exceeding such amount as may from time to time be approved by the Minister and the Ministry.

*Dissolution of Moville Board.*

Dissolution of Moville Board of Conservators.

**19.**—(1) The Moville Board is hereby dissolved.

(2) All property, rights and liabilities of the Moville Board are hereby transferred to the Commission.

Continuance of pending legal proceedings.

**20.**—The Commission shall, upon the establishment date, become and be a party to all pending legal proceedings to which the Moville Board is a party, in place of that Board, and the proceedings shall be continued accordingly and shall not abate or be discontinued or prejudicially affected by reason of the dissolution of that Board.

Continuation of licences.

**21.**—(1) A special local licence—

(*a*) issued by the Moville Board under the Fisheries (Tidal Waters) Act, 1934 (No. 24 of 1934), for the tidal waters of the River Foyle known as the " Branch Stream " to which that Act was declared by order of the Minister to apply, and

(*b*) in force immediately before the establishment date,

shall, notwithstanding *section 4*, continue in force in accordance with its terms subject to the provisions of the Fisheries (Tidal Waters) Act, 1934, and section 54 of the Fisheries Act, 1939 (No. 17 of 1939), and the orders and regulations of the Minister thereunder and those provisions, orders and regulations shall be construed in relation to such licences with the substitution of references to the Commission for references to the Moville Board.

(2) A licence (other than a special local licence) issued by the Moville Board and in force immediately before the establishment date shall continue in force in accordance with its terms and shall be deemed to be a fishing licence for the purposes of this Act.

*The Advisory Council for the Foyle Area.*

Establishment and Functions of Advisory Council.

**22.**—(1) There shall be an Advisory Council for the Foyle Area.

(2) The functions of the Advisory Council shall be to watch over the interests of the holders of fishing licences and the occupiers of fisheries in the Foyle Area, to make such suggestions and representations as it thinks proper to the Commission in relation to any of the Commission's functions, and to advise the Commission upon any matter referred to it by the Commission.

(3) The provisions of the *Fourth Schedule* to this Act shall apply to the Advisory Council.

## PART IV.

### Rates on Fisheries.

Rates on fisheries.

**23.**—(1) In the fishery year commencing on the 1st day of October, 1952, and in every subsequent fishery year, the Com-

mission shall, on or before the 31st day of December, make a rate of an amount equal to twenty shillings in the pound on every fishery (other than a fishery of which the Commission is the occupier) in the Moville Area on the valuation thereof appearing in the revised Valuation List required under the Valuation Acts to be issued by the Commissioner of Valuation not later than the preceding 1st day of March.

(2) Every rate under this section shall be paid by the several persons liable therefor in two moieties on the 1st day of April and the 1st day of September in the fishery year for which the rate is payable and shall be so paid over and above all or any licence fees paid by those persons under this Act for that or any other fishery year.

(3) A person who is liable to be rated under this Act in respect of a fishery shall, in respect of that fishery, be exempt from liability for any rate leviable by a local authority.

(4) Subsection (7) of section 13 of the Fisheries Act, 1925 (No. 32 of 1925), shall apply to the Moville Area and for the purpose of such application the exemption conferred by *subsection (3)* of this section shall be deemed to have been conferred by the said section 13.

Liability of occupier for fishery rate.

**24.**—The occupier of a fishery shall be liable to pay the fishery rate in respect of the fishery.

Collection of fishery rate.

**25.**—Fishery rate shall be collected by such persons as the Commission may from time to time appoint, adequate security being taken by the Commission from the persons so appointed for the due accounting for the rate collected, and the costs of the collection of the rate shall be part of the expenses of the Commission.

Recovery of fishery rate.

**26.**—(1) Fishery rate may be recovered at the suit of the Commission as a simple contract debt in any court of competent jurisdiction.

(2) If any sum due in respect of fishery rate is not paid within one month after the date on which it is required by *subsection (2)* of *section 23* to be paid, such sum shall be recoverable (at the option of the person entitled by law to collect and recover it) from the occupier or from any other person who, when such fishery rate was made or at any subsequent time, held, used or occupied the said fishery or any part thereof and, if such last-mentioned person is a tenant of the occupier, he may, unless the contract of tenancy provides for the payment of fishery rate by the tenant, deduct the amount of any fishery rate so recovered from him from any rent payable to the occupier.

Fishery rates struck by Moville Board.

**27.**—*Sections 24, 25* and *26* shall apply to every fishery rate struck by the Moville Board and confirmed under section 13 of the Fisheries Act, 1925 (No. 32 of 1925), and not fully paid before the establishment date.

## PART V.

### Times of Fishing and Ancillary Provisions.

Close seasons and close time.

**28.**—(1) The annual close season in the Foyle Area shall be the period prescribed for that purpose or, if no period is prescribed, the period beginning on the 1st day of September and ending on the 14th day of April next following.

(2) The annual close season for angling in the Foyle Area shall be the period prescribed for that purpose or, if no period is prescribed, the period beginning on the 13th day of October and ending on the 31st day of January next following.

(3) The weekly close time in the Foyle Area shall be the period prescribed for that purpose or, if no period is prescribed, the period beginning at 6 o'clock a.m. on Saturday and ending at 6 o'clock a.m. on the following Monday.

(4) Different periods may be prescribed under this section in respect of different parts of the Foyle Area and, where a period is so prescribed for a particular part of that area, 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 part as references to the period so prescribed.

Fishing during close seasons.

**29.**—If any person—

(*a*) fishes for, takes, kills or attempts to take or kill salmon or trout (except with a rod and line), during the annual close season, or

(*b*) fishes for, takes, kills or attempts to take or kill salmon or trout with a rod and line during the annual close season for angling, or

(*c*) aids or assists in any such act or attempt,

he shall be guilty of an offence against this Act.

Fishing during close time.

**30.**—If any person fishes for, takes, kills or attempts to take or kill salmon or trout (except with a rod and line) during the weekly close time or aids or assists in any such act or attempt he shall be guilty of an offence against this Act.

Obstruction of salmon and trout.

**31.**—(1) If any person places any obstruction, uses any contrivance or does any act for the purpose of obstructing the passage of salmon or trout during the annual close season or weekly close time he shall be guilty of an offence against this Act.

(2) Nothing in this section shall apply to lawful fishing with rod and line.

Removal of fixed engines during close season and close time.

**32.**—(1) The occupier of any fixed engine for taking salmon or trout shall forthwith, after the commencement of the annual close season and until the end of that season, and also during the weekly close time, cause the fixed engine to be removed or rendered incapable of taking or obstructing the passage of salmon and trout.

(2) If any person fails to comply with this section, he shall be guilty of an offence against this Act.

(3) In this section "fixed engine" means any net, implement, engine or device, fixed to the soil or secured by anchors or held by

hand or made stationary in any other way and used solely for the purpose of taking or facilitating the taking of fish.

Removal of nets from banks of rivers during close season.

**33.**—If any person engaged in fishing for salmon or trout by means of nets of any kind or description omits or neglects to remove and carry away from any strand or from the banks of any river or from the vicinity thereof such nets during the annual close season such person shall be guilty of an offence against this Act.

Use of nets during close season or close time.

**34.**—If any person does any of the following things during the annual close season or weekly close time—

(*a*) places, affixes or attaches any net to any stake, bridge, sluice or lock gates of a canal or other such fixed erections, or

(*b*) lays, draws or fishes with any net whatsoever,

he shall be guilty of an offence against this Act.

Prohibition of sale, etc., of salmon and trout unlawfully captured.

**35.**—(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 on summary conviction thereof to a fine not exceeding twenty-five pounds, together with a further fine not exceeding two pounds for each salmon or trout so bought, sold, exposed for sale or found in his possession.

(2) In any proceedings under this section, the onus of proving that the salmon or trout, the subject of the proceedings, was lawfully captured shall lie on the defendant.

(3) Where a person, being a common carrier, is charged with the offence of having in his possession any salmon or trout unlawfully captured, it shall be a good defence to the charge for him to prove—

(*a*) that he had the salmon or trout in his possession as a common carrier and not otherwise, and

(*b*) that at the time at which the salmon or trout was accepted by him for carriage, the consignor delivered to him a certificate in writing signed by the consignor to the effect that the salmon or trout was lawfully captured.

(4) Where—

(*a*) a person is charged with an offence under this section in relation to a salmon or trout, and

(*b*) he proves that the fish was caught by rod and line at a particular place during a period other than the annual close season for angling at that place, and

(*c*) if the capture of the fish was prohibited save in accordance with a licence, he proves that the fish was caught by the holder of such a licence.

the charge against him shall be dismissed.

Restrictions on sale and export for sale of salmon and trout.

**36.**—(1) The provisions to which this section applies shall have effect in relation to the Moville Area with the substitution of—

(*a*) references to the Commission for references to a board of conservators,

(*b*) references to the Moville Area for references to any district, and

(*c*) references to an officer of the Commission for references to the clerk of a board of conservators.

(2) The Commission is hereby exempted from compliance with the provisions to which this section applies.

(3) The provisions to which this section applies are—

(*a*) Part III of the Fisheries Act, 1925 (No. 32 of 1925), as amended, and

(*b*) Sections 42 and 44 of the Fisheries Act, 1939 (No. 17 of 1939).

## PART VI.

### Protection of Fisheries.

*Regulations as to Nets.*

Restrictions on use of nets.

**37.**—If any person—

(*a*) makes use of or fishes with any net formed with a false bottom (except nets for the taking of eels), or

(*b*) places two or more nets one behind the other, or

(*c*) uses any nets covered with canvas, hide, or other substance for the purpose of taking small fish, or

(*d*) affixes or keeps up continued nets stretched across any river,

he shall be guilty of an offence against this Act.

Mesh of nets for the taking of salmon in the sea and tideways.

**38.**—(1) If, on any part of the coast or within any bay, estuary or tideway thereof, any person uses any net to which this section applies with a mesh of less size than one and three-quarter inches from knot to knot, to be measured along the side of the square, or seven inches to be measured all round each such mesh, such measurement being taken in the clear when the net is wet, then, subject to *subsection* (*2*) of this section, he shall be guilty of an offence against this Act.

(2) The Commission may by regulation under *section 13* permit the use of nets to which this section applies having meshes of a less size than that specified in *subsection* (*1*) of this section.

(3) In this section the expression " net to which this section applies " means any net or other engine which is not formed of a rigid material and which is used for the taking of salmon.

Use of salmon nets near mouths of rivers.

**39.**—(1) If any person (other than the owner of a several fishery within the limits thereof) shoots, draws, or uses any net for taking salmon at the mouth of any river or within half a mile seaward or half a mile inwards or along the coast from the mouth of any river, he shall be guilty of an offence against this Act.

(2) If any person shoots, draws, or stretches any net entirely across the mouth or across any other part of a river, he shall be guilty of an offence against this Act.

(3) Where regulations under this Act define the mouth of any tributary river, references in this section to the mouth of any river shall be construed as including references to the mouth of that tributary river.

Restriction on possession of unlawful net, etc.

**40.**—(1) No person shall have in his possession or control in any river or on or near the banks of any river any net or other instrument or lure or bait the use of which for the purpose of taking salmon, trout or other fish is unlawful.

(2) Any person who has in his possession or control any net or other instrument or lure or bait in contravention of this section shall be guilty of an offence against this Act.

(3) Where—

(*a*) a person is found in possession of or has in his control any net in the vicinity of the boundary between the tidal and freshwater portions of any river, and

(*b*) by reason thereof such person is charged with an offence under this section,

it shall be a good defence to such charge for such person to prove

that he is the holder of a licence to use such net and that such net is intended for use in such tidal portion.

*Prohibition of Certain Methods of Fishing for, and of Practices Liable to Destroy, Salmon and Other Fish.*

Use or possession of explosives.

**41.**—(1) In this section—

" explosive " means dynamite or other explosive substance;

" waters " means any river or any part of the sea coast.

(2) If any person employs in any waters any explosive for the purpose of capturing or destroying fish, he shall be guilty of an offence against this Act.

(3) If any person, being on the bank of or near any waters, has in his possession any explosive with intent to employ it for the purpose of capturing or destroying fish, he shall be guilty of an offence against this Act.

(4) Every person guilty of an offence under *subsection* (*2*) or (*3*) of this section shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding twelve months or to both such fine and such imprisonment.

Use or possession of deleterious or poisonous matter.

**42.**—(1) If any person employs in any river any deleterious or poisonous matter for the purpose of capturing or destroying fish, he shall be guilty of an offence against this Act.

(2) If any person, being on the bank of or near any river, has in his possession any deleterious or poisonous matter with intent to employ it for the purpose of capturing or destroying fish, he shall be guilty of an offence against this Act.

Penalty for using etc., certain devices for taking fish.

**43.**—(1) If, for the purpose of taking any fish, any person uses or has in his possession or control in any river or on or near the banks thereof any light or fire of any kind, he shall be guilty of an offence against this Act.

(2) If, for the purpose of taking any fish, any person uses or has in his possession or control in any river or on or near the banks thereof, any otter, spear, strokehaul, gaff or other instrument of a similar kind, he shall, subject to *subsection* (*3*) of this section, be guilty of an offence against this Act.

(3) *Subsection* (*2*) of this section shall not apply to the use, possession or control of—

(*a*) a gaff used or to be used solely as an auxiliary to lawful angling between sunrise and one hour after sunset, or

(*b*) a gaff used or to be used by the holder of a fishing licence in respect of any box in a fishing weir or fishing mill dam solely for the purpose of lawfully removing fish therefrom, or

(*c*) an eel spear used for taking eels.

(4) Every person guilty of an offence under *subsection* (*1*) or (*2*) of this section shall be liable on summary conviction thereof to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding twelve months or to both such fine and such imprisonment.

Fishing for salmon or trout in a river by cross lines.

**44.**—If any person takes, catches or fishes for any salmon or trout by means of cross lines in any river, he shall be guilty of an offence against this Act.

Damming, etc., river or mill race for purpose of taking salmon or trout.

**45.**—If any person dams, teems or empties any river or water-course for the purpose of taking or destroying any salmon or trout, such person shall be guilty of an offence against this Act.

Taking fish unlawfully killed or found dead.

**46.**—(1) Every person who by any means removes or causes to be removed from any river—

(*a*) any salmon or trout which have been killed otherwise than by lawful means, or

(*b*) any salmon or trout which have been found dead, from any cause whatever, by such person,

shall be guilty of an offence against this Act.

(2) This section shall not apply to—

(*a*) any person acting under the authority of the Minister, or

(*b*) any member or officer of the Commission, or

(*c*) any owner of a fishery or his agent acting under the written authority of the Commission, or

(*d*) so far as respects the removal or causing to be removed of any diseased salmon or trout, or any salmon or trout found dead from any cause, any member of the Garda Síochána or any Sanitary Officer.

*Protection of Young and Breeding Fish.*

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

**47.**—If any person—

(*a*) wilfully takes, sells, purchases, or has in his possession the spawn, smolts or fry of salmon or trout, or

(*b*) wilfully obstructs the passage of the smolts or fry of salmon or trout, or

(*c*) injures or disturbs the spawn or fry of salmon or trout, or

(*d*) injures or disturbs any spawning bed, bank or shallow where the spawn or fry of salmon or trout may be,

he shall be guilty of an offence against this Act.

Disturbing fish on spawning beds.

**48.**—If any person disturbs fish on the spawning beds or attempts (except by means of lawful angling with rod and line) to catch fish thereon, he shall be guilty of an offence against this Act.

Penalties for taking, buying, etc., unseasonable salmon or trout.

**49.**—(1) Every person who at any time wilfully takes, kills, destroys, buys, sells, exposes for sale or has in his custody or possession any unclean or unseasonable salmon or trout, shall be guilty of an offence against this Act and shall be liable on summary conviction thereof to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding twelve months or to both such fine and such imprisonment.

(2) Where a person is charged with taking a salmon or trout in contravention of this section it shall be a good defence to prove that such salmon or trout was taken accidentally, and was returned without injury to the water immediately upon being taken.

*Miscellaneous Offences.*

**50.**—If any person obstructs any person lawfully engaged in fishing or in proceeding to or in returning from lawful fishing, such first-mentioned person shall be guilty of an offence against this Act. Obstructing persons lawfully fishing.

**51.**—If any person wilfully and maliciously places any fishing engine with intent to prevent fish from entering the nets of any other person set and placed in a lawful manner such first-mentioned person shall be guilty of an offence against this Act. Placing fishing engine with intent to prevent fish entering nets lawfully set.

**52.**—If any person gives or causes to be given or aids or assists in giving any signal or warning to any person engaged in fishing unlawfully of the approach of any member or officer of the Commission, member of the Garda Síochána, or river watcher appointed under *section 56*, he shall be guilty of an offence against this Act. Giving warning to persons unlawfully fishing.

*Agents for Fishery Owners.*

**53.**—(1) Any fishery owner may by power of attorney under his hand appoint an agent to act for him for the purposes of this Act. Appointment.

(2) All things which by this Act are directed to be done by or with relation to any person may be lawfully done by or with relation to an agent appointed by him under this section and the agent may be dealt with in all respects as that person himself might have been dealt with under this Act.

(3) Every agent appointed under this section shall have full power, in the name and on behalf of his principal, to take part in or act upon any inquiry, or prosecute, oppose or defend any complaint, appeal, action, writ, suit or other proceeding or to attend, vote at and take part in any meeting or do or suffer any other act for the purposes of this Act.

(4) Every person who appoints an agent under this section shall be bound by the acts of the agent, according to the authority committed to him, as fully as if that person had so acted.

(5) Every power of attorney under this section shall be produced, inspected or registered and copies and extracts thereof made at such times and places and in such manner as the Commission may prescribe.

(6) A power of attorney under this section may be in the following form—

"I, A. B. of ———————————— hereby appoint C. D. of ———————————— to be my lawful attorney to act for me in all respects as if I myself were present and acting, and I make this appointment under the *Foyle Fisheries Act, 1952.*

Dated this ———— day of ————————, 19——.

(Signed) A. B."

(7) Where a person is convicted of an offence against this Act he shall thereafter be disqualified from being appointed an agent under this section for a period of seven years from the date of conviction.

## PART VII.

### Powers of Authorised Persons.

Definitions.

**54.**—In this Part—

" authorised person " means (except where the context otherwise requires) a member of the Garda Síochána, a member or officer of the Commission or a private river watcher;

" officer of the Commission " means an inspector or river watcher appointed under *section 55*;

" private river watcher " means a river watcher appointed under *section 56*;

Appointment of inspectors and river watchers.

**55.**—(1) The Commission may by instrument under its common seal appoint a person to be—

(*a*) an inspector, or

(*b*) a river watcher,

and may revoke such instrument.

(2) An instrument under this section shall not be subject to stamp duty.

Appointment of river watchers by persons interested in fisheries.

**56.**—(1) Each of the following persons—

(*a*) any person interested in the preservation of the fish of any river in the Moville Area,

(*b*) any persons who have united themselves into a society for the preservation of any fishery in any such river,

(*c*) the owner of any fishery in any such river,

(*d*) the owner of any salmon fishery on the sea coast,

may, from time to time, by instrument in writing in the form set out in the *Fifth Schedule* to this Act, appoint any person to be a river watcher for the protection of the fisheries on such part of the sea coast or in any such river or the tributaries thereof.

(2) A person appointed to be a river watcher under this section shall not act in that capacity until his appointment is confirmed (which confirmation shall be effected by endorsing the instrument of appointment) by any District Justice within whose district the river watcher is appointed to act.

(3) A District Justice may upon complaint made to him revoke the appointment of a person appointed under this section to act within his district, and thereupon the appointment shall be determined.

(4) If any person acts as a private river watcher without having his appointment confirmed under *subsection* (*2*) of this section or after his appointment has been revoked under *subsection* (*3*) of this section, he shall be guilty of an offence against this Act and shall be liable on summary conviction thereof to a fine not exceeding ten pounds.

Limitations on exercise of powers.

**57.**—(1) The powers conferred by this Part on a private river watcher shall be exercised only for the protection of the fisheries specified in his instrument of appointment.

(2) The powers conferred by this Part on a member or officer of the Commission shall be exercised only for the protection of the fisheries of the Foyle Area.

**58.**—The production by an officer of the Commission or a private river watcher of his instrument of appointment under this Part shall be a sufficient warrant for his exercising the powers conferred on him by this Part, but the production of such instrument by him shall not be necessary in exercising those powers unless he has been first required to produce it.

Warrant for exercise of powers.

**59.**—(1) An authorised person may, for the purposes of the protection of the fisheries, do all or any of the following things—

General powers.

(*a*) enter into and pass through or along the banks or borders of any rivers frequented by salmon or trout or of the tributaries thereof,

(*b*) with boats or otherwise enter upon any such rivers,

(*c*) enter upon and examine all weirs, sluices, mill dams, mill races and watercourses communicating with such rivers,

(*d*) enter any boat which has been or is engaged or is about to engage in fishing,

(*e*) examine all standing, floating or other nets whatsoever,

(*f*) seize any unlawful fishing engine or any lawful fishing engine which is being unlawfully used,

(*g*) do all such other acts and things as he is authorised to do by or under this Act.

(2) Nothing in this section shall be construed as authorising any person to enter any enclosed garden or any dwelling-house or the curtilage thereof except where the ordinary road or passage to any weir, dam or dyke traverses such garden or curtilage.

**60.**—(1) Where upon an information on oath it appears to any Peace Commissioner that there are reasonable grounds for believing that a breach of the provisions of this Act or any instrument made thereunder has been committed within any enclosed garden or any dwelling-house or the curtilage thereof, he may by warrant under his hand empower an authorised person to enter the said garden or dwelling-house or the curtilage thereof, at such times in the day or night as may be mentioned in the warrant.

Power of Peace Commissioner to grant warrant to enter certain places.

(2) A warrant under this section shall not continue in force for more than seven days from the date thereof.

**61.**—(1) A member or officer of the Commission or member of the Garda Síochána may, subject to any directions and regulations given or made by the Commission, do with respect to any vessel employed in fishing, all or any of the following things—

Boarding and examination of fishing vessels.

(*a*) board such vessel,

(*b*) examine the certificate of registry and the fishing engines of such vessel, and ascertain whether the provisions of this Act or the Fisheries Acts have been complied with and whether the master or other persons on board are carrying on fishing in the manner required by this Act,

(*c*) seize any unlawful fishing engine or any lawful fishing engine unlawfully used.

(2) If the master of any fishing vessel refuses to produce the certificate of registry of such vessel when required to do so by a member or officer of the Commission or member of the Garda Síochána, he shall be guilty of an offence against this Act.

Apprehension of offenders.

**62.**—(1) If, within the Foyle Area, any person (in this section referred to as the offender) is found offending against the provisions of the Fisheries Acts or this Act or the corresponding law of Northern Ireland, the following provisions shall have effect :—

(*a*) an authorised person may require the offender to do either or both of the following things—

(i) desist from such offence;

(ii) give his name and address;

(*b*) if the offender, after being so required, wilfully continues such offence or fails or refuses to give his name and address, the authorised person and any persons acting under his directions may apprehend the offender;

(*c*) where the offender is apprehended under this section by an authorised person who is not a member of the Garda Síochána, that person shall, subject to *subsection* (*2*) of this section, forthwith deliver the offender into the custody of a member of the Garda Síochána to be dealt with according to law.

(2) If the authorised person who apprehended the offender or a member of the Garda Síochána into whose custody he has been delivered has reason to believe that—

(*a*) the offender is resident in Northern Ireland, and

(*b*) the offence is an offence under the said corresponding law of Northern Ireland,

he may forthwith deliver the offender into the custody of a member of the police forces of Northern Ireland to be dealt with according to that law.

(3) Where a person is delivered into the custody of a member of the Garda Síochána in purported compliance with a provision of the law of Northern Ireland corresponding to this section, the member shall take him into custody to be dealt with according to law.

Powers in relation to fishing engines, etc.

**63.**—Where an authorised persons finds—

(*a*) during the annual close season or the weekly close time—

(i) any passage in any fishing engine or contrivance closed or obstructed, or

(ii) any fishing engine or other contrivance whatsoever placed or used in contravention of this Act or any instrument made thereunder, or

(*b*) at any time, any obstruction in a fish pass, or

(*c*) at any time, any obstruction in the waste gate appurtenant to any mill or factory when such waste gate is required by law to be open,

he may open such passages and remove such obstructions, doing no unnecessary damage, and seize and remove all things so found or used contrary to the provisions of the Fisheries Acts or this Act or any instrument made thereunder.

Powers of inspection, examination, and detention.

**64.**—(1) Every person (in this section referred to as an authorised officer) being a member or officer of the Commission or member of the Garda Síochána is hereby authorised to do all or any of the following things—

(*a*) to stop and search any person conveying or suspected to be conveying fish of any kind or any instrument,

poison or explosive used or adapted for killing or taking fish unlawfully and to inspect any fish, instrument or substance which such person is found to be conveying and for that purpose to open and search any vehicle or package in which any fish, instrument or substance is being or is suspected to be conveyed;

(*b*) at all reasonable times to enter upon and have free access to the interior of—

(i) any premises in which fish is or is believed to be sold, or kept, exposed or stored for sale, or

(ii) any premises in which any instrument or substance intended for the destruction of fish is or is believed to be kept, or

(iii) the premises of any person engaged in the business of carrying goods for reward, or

(iv) any aerodrome, pier, quay, wharf, jetty or dock or premises thereon, or

(v) any ship, boat, aircraft, railway wagon, motor lorry, cart, or other vessel or vehicle used for the conveyance of goods;

(*c*) to examine all fish found in any place which he is authorised by this section to enter and for that purpose to open any package found in such place and containing or suspected to contain fish;

(*d*) to stop, enter and search, on any river or the banks thereof or any part of the sea or the shores thereof any boat used or suspected to be used for fishing or containing or suspected to contain fish unlawfully captured and to examine all fish and all fishing engines found therein and for that purpose to open any package which contains or is suspected to contain any fish or fishing engine;

(*e*) to take, remove and detain in his custody any fish (either together with or without any package in which the same may be contained) found in the course of the exercise of any of the powers conferred by this section in respect of which an offence under this Act is being or is suspected of being committed or which have been or are suspected of having been unlawfully captured;

(*f*) to take, remove and detain in his custody any fishing engine or any article liable or believed to be liable to forfeiture under the Fisheries Acts or this Act;

(*g*) to demand and take the name and address of the person having custody of any fish or other article which the authorised officer is authorised under this section to examine and also demand and take from such person the name and address of the owner of such fish or other article.

(2) Where an authorised officer detains in his custody under the authority of this section any fish or other article he shall, as soon as may be, take such steps as may be proper to have the person guilty or suspected to be guilty of the offence committed or suspected to have been committed in relation to such fish or other article dealt with according to law.

(3) Where an authorised officer detains in his custody under the authority of this section any fish and such fish is likely to become unfit for human food before the matter can conveniently be dealt with by any Court, he shall produce such fish to a Peace Commissioner, and if authorised so to do by such Peace Commissioner shall destroy or otherwise dispose of such fish.

(4) A Peace Commissioner to whom any fish is produced in pursuance of this section shall, if he is of opinion that the fish ought in the circumstances to be destroyed or otherwise disposed of, give to the person producing the fish a certificate in writing describing the fish and any marks, peculiarities or other particulars thereof pointed out to him by such person and authorising such person to destroy or otherwise dispose of the fish, which certificate shall be conclusive evidence of all such matters of fact as aforesaid stated therein.

(5) Every person who refuses to give his own name and address 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.

Procedure consequent upon seizure of unlawful fishing engines and lawful fishing engines unlawfully used.

**65.**—Where a person, in exercise of the powers conferred on him by this Part, seizes in the State any fishing engine, he shall, as soon as may be, bring it before the District Justice in whose district it was seized, and thereupon the following provisions shall have effect—

(*a*) if the District Justice finds that the fishing engine is one the use of which is prohibited by law, he shall order it to be forfeited and destroyed,

(*b*) if the District Justice finds that the fishing engine is a lawful fishing engine which at the time of its seizure had been, was being, or was about to be, unlawfully used in any part of the Foyle Area, he shall order it to be forfeited,

(*c*) if the District Justice finds that the fishing engine is a lawful fishing engine which at the time of its seizure had not been, was not being or was not about to be, unlawfully used as aforesaid, he shall order it to be returned to the person who appears to him to be the owner thereof.

Protection of authorised persons.

**66.**—No authorised person shall be liable for any loss or damage occasioned by or in the course of the exercise of any of the powers conferred on him by this Part unless such loss or damage was caused by him wantonly or maliciously.

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 twenty pounds or to imprisonment for any term not exceeding two months or to both such fine and such imprisonment.

## PART VIII.

### Legal Proceedings.

Application of penal provisions of Act.

**68.**—The provisions of this Act relating to offences apply to—

(*a*) acts and omissions in the Moville Area by any person, and

(*b*) acts and omissions in any part of the Foyle Area by a person resident in the State.

**69.**—(1) 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 fifty pounds and, in the case of a continuing offence, to a further fine not exceeding five pounds for every day during which the offence is continued after conviction.

Penalties for offences.

(2) The Commission may prescribe lower money penalties for breach of a particular regulation than those provided under *subsection* (*1*) of this section and that subsection shall, in any such case, be construed as if such lower penalties were substituted for those so provided.

**70.**—Nothing in this Act shall prohibit anything done by the Commission or by a person previously authorised in writing by the Commission in that behalf for the purpose of the artificial propagation of fish, for some scientific purpose or for the improvement of any fishery.

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

**71.**—For the purposes of this Part a body corporate shall be deemed to be resident in the State if it is incorporated under the laws of the State.

Residence of body corporate.

**72.**—Where an offence against this Act was committed by a body corporate and is proved to have been so committed with the consent or approval of, or to have been facilitated by any neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, that person shall also be guilty of the offence and may be proceeded against and punished accordingly.

Offences by bodies corporate.

**73.**—Notwithstanding anything contained in any other enactment, an offence against this Act may be heard and determined by the District Court upon the complaint, oral or otherwise, of the Commission or an officer of the Commission or a member of the Garda Síochána but not of any other person, except with the consent of the Commission.

Trial of offences.

**74.**—(1) Where any regulations define—

(*a*) the mouth of a river, or

(*b*) the mouth of any tributary river, or

(*c*) the boundary between the tidal and freshwater portions of any river, or

(*d*) the point or points to or from which distances are to be measured under this Act,

such mouth, boundary, point or points shall for the purposes of any proceedings under this Act be as so defined.

Evidence of mouths of rivers, boundaries between tidal and freshwater portions of rivers, points of mouths of rivers to or from which distances are to be measured.

(2) Where any regulations define the space within which it is by or under this Act prohibited to use certain fishing engines, the space so defined shall for the purposes of any proceedings under this Act be taken to be the area within which it is prohibited to use those fishing engines.

Forfeiture of licences.

**75.**—(1) (*a*) If the person who is the holder of a licence issued by the Commission is convicted of an offence to which this subsection applies the Court may direct the licence to be forfeited and declare that person to be disqualified for holding a licence of the Commission for such period, not exceeding one year, as the Court may direct.

(*b*) This subsection applies to—

(i) an offence under any section of this Act,

(ii) an offence under any section of the Fisheries Acts.

(2) Where a person who is the holder of a licence issued by the Commission is convicted by a court of justice in Northern Ireland of an offence under the law of Northern Ireland relating to fisheries and, as a result of such conviction, the licence is declared to be forfeited and that person is declared to be disqualified for a particular period for holding a licence of the Commission, the Commission shall direct the licence to be forfeited and that person shall be disqualified for holding a licence for that period.

(3) Where a licence is directed to be forfeited under this section, it shall thereupon cease to be in force.

(4) Where a person is convicted by a Court of an offence against this Act or under any provision of the Fisheries Acts, the registrar or clerk of the Court shall as soon as may be forward to the Commission a copy of the conviction certified in accordance with the rules of Court.

(5) A document purporting to be a copy of a conviction or order made by a court of justice in Northern Ireland and to be certified in accordance with the law of Northern Ireland shall, for the purposes of this section, be evidence of such conviction or order without further proof, unless the contrary is shown.

Forfeiture of fishing engines, etc., as statutory consequence of conviction.

**76.**—Where a person is convicted of an offence against this Act, any fish illegally taken by him or in his possession at the time of the offence and also any fishing engine or thing by means or in respect of which the offence is committed shall, as a statutory consequence of conviction, stand forfeited.

Non-obligation of Court to pronounce or record forfeiture.

**77.**—Where, as a statutory consequence of a conviction under this Act, a particular thing stands forfeited, then, notwithstanding any rule of law, it shall not be necessary for the Court—

(*a*) to pronounce the fact of such forfeiture at the time of adjudication, or

(*b*) to record the fact of such forfeiture in the Minute Book of the District Court or in the order of conviction.

Disposal of fines.

**78.**—(1) This section applies to every fine imposed for an offence under any section of this Act.

(2) Section 51 of the Court Officers Act, 1926 (No. 27 of 1926), shall not apply to a fine to which this section applies.

(3) Every fine to which this section applies shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance shall direct.

(4) Where a fine to which this section applies is remitted in whole or in part after it has been paid into or disposed of for the benefit of the Exchequer under *subsection* (*3*) of this section, such fine or the portion thereof so remitted (as the case may be) shall be repaid out of the Exchequer in such manner as the Minister for Finance shall direct.

Payments to Commission and Gárda Síochána Reward Fund in respect of fines

**79.**—(1) This section applies to—

(*a*) an offence under any section of this Act, and

(*b*) an offence under any provision to which section 10 of the Fisheries (Amendment) Act, 1949 (No. 18 of 1949), applies committed in the Foyle Area.

(2) Where a fine imposed for an offence to which this section applies has been paid or levied, then, unless the fine has been wholly remitted, the following provisions shall apply—

(*a*) in case it appears to the Minister that a member of the Garda Síochána was the means of bringing to justice the person by whom the offence was committed, there shall be paid—

(i) to the Commission a sum equal to two-thirds of the fine or, if the fine was remitted in part, of so much thereof as was not remitted, and

(ii) into the Garda Síochána Reward Fund a sum equal to one-third of the fine or, if the fine was remitted in part, of so much thereof as was not remitted;

(*b*) in any other case, there shall be paid to the Commission a sum equal to the fine or, if the fine was remitted in part, so much thereof as was not remitted.

(3) All moneys payable under *subsection* (*2*) of this section shall be paid by the Minister, out of moneys provided by the Oireachtas, at such times as he thinks fit.

Disposal of forfeitures and payments to Commission and Gárda Síochána Reward Fund.

**80.**—(1) Where any thing is forfeited under this Act, the Minister may direct that it be sold or otherwise disposed of in such manner as he thinks fit or be returned to the person who appears to him to be the owner.

(2) The net proceeds of a sale under *subsection* (*1*) of this section shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance shall direct.

(3) (*a*) In case it appears to the Minister that a member of the Garda Síochána seized a particular thing forfeited under *section 76* or under any provision to which section 15 of the Fisheries (Amendment) Act, 1949 (No. 18 of 1949), applies, as a statutory consequence of a conviction for an offence committed in the Foyle Area, or was the means of bringing to justice the person convicted of the offence which resulted in the forfeiture, then a sum equal to two-thirds of the net proceeds referred to in *subsection* (*2*) of this section shall be paid to the Commission and a sum equal to one-third shall be paid to the Garda Síochána Reward Fund.

(*b*) In any other case, a sum equal to the net proceeds shall be paid to the Commission.

(4) All moneys payable under *subsection* (*3*) of this section shall be paid by the Minister, out of moneys provided by the Oireachtas, at such times as he thinks fit.

Proof of regulations, bye-laws, etc.

**81.**—(1) In any proceedings, a document purporting to be a copy of any instrument in writing made or issued (whether before or after the passing of this Act) under the Fisheries Acts or this Act in relation to the Foyle Area or any part thereof shall, if it is certified under the common seal of the Commission to be a true copy, be *prima facie* evidence of the instrument.

(2) Section 4 of the Documentary Evidence Act, 1925 (No. 24 of 1925), shall apply to regulations made by the Commission under this Act.

Inquiries.

**82.**—(1) The Commission may from time to time hold an inquiry in relation to the fisheries of the Foyle Area or any of them and the best means to be adopted for the management, conservation, protection or improvement thereof.

(2) An inquiry may be conducted by the Commission or by a person appointed by it for the purpose.

Powers in relation to inquiry.

**83.**—(1) The Commission or person holding an inquiry may—

(*a*) summon witnesses to attend at the inquiry,

(*b*) examine on oath (which any member of the Commission or that person, as the case may be, is hereby authorised to administer) witnesses attending at the inquiry,

(*c*) require any witness to produce any documents in his power or control which the Commission or that person, as the case may be, considers necessary for the purposes of the inquiry.

(2) A witness at an inquiry shall be entitled to the same immunities and privileges as if he were a witness before the High Court.

(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 thereof to a fine not exceeding twenty-five pounds.

*Section 4*

## FIRST SCHEDULE.

ENACTMENTS NOT IN FORCE IN MOVILLE AREA.

| Session and Chapter or Number and Year (1) | Short title (2) | Provisions not in force (3) |
|---|---|---|
| 5 & 6 Vic., c. 106. | The Fisheries (Ireland) Act, 1842. | Sections 20, 28, 33 (so far as relates to salmon and trout), 35 (so far as relates to salmon and trout), 40, 66, (except so far as relates to a several fishery), 70, 73, 78, 82 to 91, 111, 112 and Schedule. |
| 8 & 9 Vic., c. 108. | The Fisheries (Ireland) Act, 1845. | Sections 10 to 14. |

| Session and Chapter or Number and Year (1) | Short title (2) | Provisions not in force (3) |
|---|---|---|
| 11 & 12 Vic., c. 92. | The Fisheries (Ireland) Act, 1848. | Sections 4 to 9, 11 to 19, 21 to 24, 26 to 34, 36, 38 and Schedule (so far as relates to salmon and trout). |
| 13 & 14 Vic., c. 88. | The Fisheries (Ireland) Act, 1850. | Sections 4, 7 to 9, 12, 13 34, 36 and 46. |
| 26 & 27 Vic., c. 114. | The Salmon Fishery (Ireland) Act, 1863. | Sections 18, 20 to 23, 25, 26, 29 and 31. |
| 32 & 33 Vic., c. 92. | The Fisheries (Ireland) Act, 1869. | Sections 15 and 17. |
| 9 Edw. VII, c. 25. | The Fisheries (Ireland) Act, 1909. | The whole Act (so far as relates to salmon and trout). |
| No. 6 of 1924. | The Fisheries Act, 1924. | The whole Act. |
| No. 32 of 1925. | The Fisheries Act, 1925. | Sections 5 to 14, 24, 25, 27, 28, 30, 33, 34 and First Schedule (so far as relates to salmon and trout). |
| No. 24 of 1934. | The Fisheries (Tidal Waters) Act, 1934. | The whole Act. |
| No. 17 of 1939. | The Fisheries Act, 1939. | Sections 6 to 24, 27, 28 35 to 37, 39, 48, 52 to 96. |
| No. 6 of 1944. | The Fisheries (Amendment) Act, 1944. | Section 2. |
| No. 18 of 1949. | The Fisheries (Amendment) Act, 1949. | Sections 5 to 15 and Second Schedule. |
| No. 27 of 1949. | The Fisheries (Statute Law Revision) Act, 1949. | Sections 7 to 13, 24 to 26, 28, 31 to 33, 35 to 39. |

## SECOND SCHEDULE.

*Section 8.*

### DRAFT TERMS OF AGREEMENT TO BE MADE BETWEEN THE IRISH SOCIETY AS VENDOR AND THE MINISTER AND THE MINISTRY AS PURCHASERS.

1. (1) The Irish Society sells and the purchasers purchase for the consideration hereinafter appearing all the estate right title and interest of the Irish Society to and in—

(*a*) the fee simple in possession free from incumbrances of a several fishery in the tidal portions of the Lough and River Foyle and of its tributary the River Faughan (as shown coloured yellow on the map prepared in triplicate upon which for the purpose of identification the parties hereto have affixed their seals immediately before the execution of this Agreement) exclusive of such rights in the ground and soil thereof as are in paragraph 2 hereof agreed to be extinguished and save as mentioned in paragraphs 3 and 4 hereof;

(*b*) the lands held by the Irish Society for the purposes of or in connection with the said several fishery and more particularly referred to in the annex to this Agreement

free from incumbrances save as mentioned in paragraph 3 hereof according to the several estates and titles for and under which they are respectively held and enjoyed;

(*c*) all fixed nets or other fixed engines of any kind whatsoever belonging to the Irish Society and situate in the said tidal waters; and

(*d*) all easements, quasi-easements, accommodations and other rights owned used or enjoyed by the Irish Society for the purposes of or in connection with the said several fishery over across or on any lands other than those herein expressly mentioned.

(2) The consideration for the said sale is the payment by the Purchasers to the Irish Society of the sum of £106,885 (with interest on £102,485 portion of the said sum, calculated at the rate of three per centum per annum from the first day of March, 1951, to the date of this Agreement) (the receipt of which said sum and interest the Irish Society hereby acknowledges).

2. In consideration of the payment to it of the sum aforesaid the Irish Society hereby consents and agrees to all the estate right title and interest of the Irish Society in and to the ground and soil and foreshore of the tidal portion of said Lough and River Foyle and of the tidal portion of the River Faughan (which said tidal portions are shown coloured yellow on the said map) being extinguished by legislation and hereby releases and discharges the purchasers and all other persons whatsoever from and against all actions suits claims and demands by the Irish Society (whether for compensation or otherwise) in respect or in consequence of such extinction or of the divesting of any other estate right title or interest of the Irish Society in to or over the said tidal portions by virtue of the operation of any such legislation.

3. The Irish Society will at its own expense when requested by the purchasers enter into a covenant binding upon the Irish Society and its successors in title with the purchasers and each of them their and each of their successors in title that the rentcharge of £250 per annum settled upon the Lord Bishop of Derry and his successors for ever by Statute 3 and 4 Anne Chapter 1 and the rentcharge of £12 settled upon the said Bishop by virtue of Deed Poll dated 11th May, 1705, shall be charged upon such of the property of the Irish Society as the purchasers shall select and to the intent that the said rentcharges shall be paid by the Irish Society and its successors in title in complete exoneration of the Purchasers and their successors in title and indemnifying the lands and property hereby sold and the estates rights title and interests agreed in paragraph 2 hereof to be extinguished by legislation and the Purchasers and each of them their and each of their successors in title from and against the payment of the same or of any part thereof and against all proceedings costs damages claims demands and liability by reasons of any non-payment of the same or any part thereof.

4. Nothing in this agreement shall prejudice or affect any right vested immediately before the execution hereof in any person other than the Irish Society to use a fixed engine under certificate granted under Section six of the Salmon Fishery (Ireland) Act, 1863.

5. This Agreement shall operate as if it contained covenants by the Irish Society:—

(*a*) as to the several fishery described in paragraph 1 (*a*) hereof that the Irish Society has not executed or done or knowingly suffered or been party or privy to any deed or thing whereby or by means whereof the said several fishery or any part thereof is or may be impeached, charged, affected or incumbered in title, estate or otherwise or whereby or by means whereof the Irish Society is in anywise hindered from selling and conveying the said several fishery or any part thereof in the manner affected by this agreement,

(*b*) as to the lands described in paragraph 1 (*b*) hereof in terms of those implied in a conveyance for valuable consideration other than a mortgage (including in respect of leasehold property the further covenant in respect of an assignment thereof) by a person who conveys and is expressed to convey as beneficial owner.

## ANNEX.

1. ALL THOSE two parcels of ground with the buildings thereon situate adjacent to the Fort of Culmore in the Townland of Culmore Parish of Templemore Barony of North West Liberties of Londonderry and County of Londonderry more particularly delineated on the map thereof marked Number 1 prepared in triplicate upon which for the purpose of identification the parties hereto have affixed their seals immediately before the execution of this Agreement and thereon coloured red.

2. ALL THAT parcel of ground with the buildings thereon situate adjoining the road leading to Culmore Point which said road runs between the parcel and the River Foyle as the said parcel is more particularly delineated on the map thereof marked Number 2 prepared in triplicate upon which for the purpose of identification the parties hereto have affixed their seals immediately before the execution of this Agreement whereon the parcel is coloured red and blue which premises are in the Townland of Culmore Parish of Templemore Barony of the North West Liberties of Londonderry and County of Londonderry.

3. ALL THAT parcel of ground with the buildings thereon known as " Shell Rock Hut " situate near Rosses Bay in the Townland of Caw, Parish of Clondermot, Barony of Tirkeeran and County of Londonderry, more particularly delineated on the map thereof marked Number 3 prepared in triplicate upon which for the purpose of identification the parties hereto have affixed their seals immediately before the execution of this Agreement and thereon coloured red.

4. ALL THAT parcel of land containing 8 acres and 15 perches or thereabouts statute measure situate in the Townland of Cloghboy, Barony of Strabane Lower and County of Tyrone, the subject of folio 5349 of the Register County Tyrone together with all buildings and erections thereon and the appurtenances thereunto belonging or in anywise appertaining thereto which said parcel is more particularly delineated on the map thereof marked Number 4 prepared in triplicate upon which for the purpose of identification the parties hereto have affixed their seals immediately before the execution of this Agreement and thereon coloured blue.

## THIRD SCHEDULE.

*Section* 11,

### The Foyle Fisheries Commission.

1. The Commission shall be a body corporate with perpetual succession and a common seal and power to sue and be sued and to acquire and hold land without licence in mortmain. **Incorporation.**

2. The Commission shall have, in addition and without prejudice to any powers given to it under any other provision of this Act, power to do any of the following things— **Particular powers of the Commission.**

(*a*) to take legal proceedings for the enforcement of any provision of this Act or of any regulations made under this Act;

(*b*) to purchase or take on lease any fishery or any establishment for the artificial propagation or rearing of salmon, trout or other freshwater fish and to operate any fishery and any such establishment;

(*c*) to apply and expend, subject to the provisions of this Act, all money paid to the Commission in such manner as the Commission thinks proper for the government, management, maintenance or improvement of the fisheries of the Foyle Area;

(*d*) to execute such works and do such things as the Commission considers expedient for the purpose of its functions.

Special powers during transitional period.

3. (1) Notwithstanding anything contained in this Act, the Commission may at its discretion, during the transitional period, control, manage and deal with the fishing in that part of the tidal waters of the Foyle Area vested in the Minister and the Ministry which lies between an imaginary straight line drawn across the River Foyle to join the points where the southernmost boundary of the County of Derry meets the river on each side and the defined mouth of the river.

(2) The transitional period for the purpose of this paragraph shall be the period of three years commencing on the establishment date or such longer period as the Minister and the Ministry may from time to time fix by agreement.

Disposal of surplus moneys.

4. Any surplus moneys for the time being in the hands of the Commission shall be disposed of by it in such manner as the Minister and the Ministry may from time to time jointly direct.

Membership.

5. The Commission shall consist of four members, of whom two shall be senior members and two shall be junior members.

Appointment.

6. (1) One senior and one junior member shall be appointed by the Minister and the other senior member and junior member shall be appointed by the Ministry.

(2) Each member, except a member appointed to fill a casual vacancy, shall be appointed for a period of five years.

(3) If a casual vacancy occurs amongst the members, the authority who appointed the outgoing member shall appoint a person to fill the vacancy.

(4) The person so appointed shall hold office for the remainder of the period for which his predecessor, if he had continued to be a member, would have held office.

(5) An outgoing member may be re-appointed.

Chairman.

7. (1) The first chairman of the Commission shall be such senior member as the members may elect. In the event of a tie, he shall be chosen by lot.

(2) The first chairman shall hold office until the end of the first year of his term of office as a member.

(3) At the end of that year, the other senior member shall be chairman for a period of one year and thereafter the office shall be held in rotation for one year by the senior members.

(4) If a person ceases to be a member during his term of office as chairman, the person appointed as a member in his place shall hold office as chairman for the remainder of that term.

The Secretary.

8. (1) The Commission shall have a secretary.

(2) The secretary shall be the junior member who was appointed to the Commission by the authority other than that by whom the senior member who is the chairman for the time being was appointed.

Resignation and removal of members.

9. A member may be removed from office by, and may resign by letter addressed to, the authority by whom he was appointed.

Offices.

10. The Commission shall have an office in the State and an office in Northern Ireland.

Common seal.

11. (1) The common seal of the Commission shall, when applied to a document, be attested by the signature of one member appointed by the Minister and one member appointed by the Ministry.

(2) Judicial notice shall be taken of the common seal of the Commission and every document purporting to be an instrument made by the Commission and to be sealed with the common seal of the Commission and to be attested in accordance with this paragraph shall, unless the contrary is shown, be received in evidence and be deemed to be such instrument without further proof.

Contracts and instruments not under seal.

12. Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into or executed on behalf of the Commission by any person generally or specially authorised by the Commission for that purpose.

Procedure at meeting.

13. (1) The quorum for a meeting of the Commission shall be two, of whom one shall be a member appointed by the Minister and the other shall be a member appointed by the Ministry.

(2) Every question at a meeting shall be decided by the votes of the majority of those present and voting.

(3) In case of an equal division of votes at a meeting at which all the members are present and voting, the chairman shall have a second or casting vote.

(4) Subject to *subparagraph* (*1*), the Commission may act notwithstanding vacancies in its membership.

(5) Subject to the provisions of this Schedule, the Commission may regulate, by standing orders or otherwise, its procedure and business.

Minutes.

14. The secretary shall keep minutes of the proceedings of the Commission and each member of the Commission shall have the right to inspect and make extracts from the minutes.

Power to acquire and dispose of land.

15. The Commission may purchase and take on lease such land and build, equip and maintain such premises as it considers necessary for the performance of its functions and may sell or lease any such land or premises no longer required by it for that purpose.

Staff

16. (1) The Commission may employ such staff as it considers necessary for the performance of its functions.

(2) The numbers, grades, remuneration and conditions of employment of members of the staff shall be such as the Commission, with the approval of the Minister and the Ministry, may determine.

(3) On the establishment date the persons who, immediately before that date, were employed by the Moville Board or the board of conservators for the Londonderry District shall become members of the staff of the Commission on the same conditions as those subject to which they were so employed.

Accounts and audit.

17. (1) The accounts of the Commission shall be made up to the 30th day of September in each year.

(2) The accounts for each year shall be audited by an auditor appointed by the Minister and an auditor appointed by the Ministry.

(3) The fees of auditors and the expenses of audits shall be paid by the Commission.

(4) Copies of the audited accounts and of the report of the auditors thereon shall, immediately after the audit, be sent by the auditors to the Minister and to the Ministry.

Annual report.

18. The Commission shall annually make to the Minister and the Ministry a report of its work during the preceding year.

Expenses of members.

19. The Commission shall pay to each of its members such travelling, maintenance and incidental expenses incurred by him as the authority by whom he was appointed may sanction.

*Section* 22

## FOURTH SCHEDULE.

### The Advisory Council for the Foyle Area.

Constitution.

1. The Advisory Council shall consist of—

(*a*) elected members, and

(*b*) *ex-officio* members.

Election year.

2. The year 1952 and every third successive year thereafter shall be an election year for the purpose of the subsequent provisions of this Schedule.

Elected members.

3. (1) In each election year the Commission shall conduct an election of persons to be elected members of the Advisory Council.

(2) Every person who is the holder of a fishing licence shall be entitled to vote at an election and shall have such number of votes as may be appropriate in accordance with a prescribed scale based on the amount of fees paid for fishing licences for the time being held by him.

(3) Every person who is the rated occupier of a fishery or fisheries in the Foyle Area the total rateable valuation of which is less than fifty pounds but not less than one pound shall also be entitled to vote at an election and shall have such number of votes as may be appropriate in accordance with a prescribed scale based on the amount of fishery rate paid in respect of the fishery or fisheries for the fishery year next preceding the election year.

(4) A person shall not be eligible for the office of elected member of the Advisory Council unless he resides or possesses real property in the Foyle Area.

(5) The elected members for the time being in office shall go out of office on the completion of the election of their successors.

Regulations as to elections

4. For the purposes of elections the Commission may prescribe—

(*a*) the electoral divisions into which the Foyle Area is to be divided,

(*b*) the number (not being more than nine or less than three) of persons to be elected for each electoral division,

(*c*) such other provisions as it thinks proper.

Ex-officio members

5. (1) Every person (other than the Commission) who is the rated occupier of a fishery or fisheries in the Foyle Area, the total rateable valuation of which is fifty pounds or more, shall, subject to the provisions of this paragraph, be an *ex-officio* member of the Advisory Council.

(2) A person shall not be an *ex-officio* member while any sum due by him to the Commission for fishery rate remains unpaid after the expiration of fourteen days from the date upon which it became payable.

Disqualification.

6. A person who is convicted of an offence under the Fisheries Acts or against this Act shall be disqualified from being a member of the Advisory Council for the period of seven years from the date of conviction.

Chairman and vice-chairman.

7. (1) The Advisory Council shall, at its first meeting after each election and as occasion requires, elect one of its members to be chairman and another of its members to be vice-chairman.

(2) Subject to subparagraph (5) the person elected to be chairman or vice-chairman shall, unless he sooner dies, resigns or becomes disqualified, hold office until the election of his successor.

(3) The chairman and vice-chairman shall be eligible for re-election.

(4) The chairman or vice-chairman may at any time resign his office.

(5) If the chairman or vice-chairman ceases to be a member of the Advisory Council he shall cease to be chairman or vice-chairman.

(6) If, at the election of chairman or vice-chairman, there is an equality of votes for two or more persons, one of those persons shall be elected by lot.

The Secretary.

8. The Advisory Council may from time to time as occasion requires appoint a person to be secretary to the council, and may at any time terminate such appointment.

Casual Vacancies.

9. (1) Whenever a casual vacancy occurs amongst the elected members, the Advisory Council may co-opt a person who is a holder of a fishing licence or a rated occupier of a fishery in the Foyle Area to fill the vacancy until the next election.

(2) The Advisory Council may act notwithstanding vacancies in its membership.

Meetings.

10. (1) At a meeting of the Advisory Council—

(*a*) the chairman shall, when present, be chairman of the meeting;

(*b*) when the chairman is absent or if the office of chairman is vacant, the vice-chairman shall, when present, be chairman of the meeting;

(*c*) when the chairman and vice-chairman are absent or if the offices of chairman and vice-chairman are vacant, the members of the Advisory Council who are present shall choose one of their number to be chairman of the meeting.

(2) Every question at a meeting shall be determined by a majority of the votes of the members present and voting on the question, and, in case of an equal division of votes, the chairman of the meeting shall have a second or casting vote, save where the question is the election of the chairman of the Advisory Council.

(3) The quorum for a meeting of the Advisory Council shall be such number as the Council may from time to time fix or, if no quorum is for the time being so fixed, one-third of the membership at the date of the first meeting after the previous election, any fraction being disregarded.

(4) The first meeting of the Advisory Council after each election shall be convened as soon as may be by the Commission.

(5) The Commission may at any time convene a meeting of the Advisory Council.

(6) Members of the Commission shall be entitled to attend and take part in meetings of the Advisory Council but not to vote.

(7) Subject to the provisions of this Schedule, the Advisory Council shall regulate, by standing orders or otherwise, its procedure and business.

Facilities to be provided by the Commission.

11. The Commission shall provide accommodation for the holding of meetings of the Advisory Council and such stationery and office equipment as the Council may reasonably require for the conduct of its affairs, and shall make available the services of members of the staff of the Commission to do all necessary clerical work for the Council.

## FIFTH SCHEDULE.

*Section 56.*

FORM OF APPOINTMENT OF RIVER WATCHER UNDER *Section 56*.

I, A. B. (or we, A. B. and C. D., as the case may be) of

(name the place or places of residence),

do hereby appoint E. F., of
(name the place of his residence),

a river watcher to protect the fishery of
(name the fishery, river, or sea coast, as the case may be),

pursuant to the *Foyle Fisheries Act*, 1952; and the said E. F., of
(name the place of his residence),

is hereby authorised to do all lawful acts as such river watcher according to the provisions of the said Act.

(Signed)

To all whom it may concern.

I, the undersigned Justice of the District Court, do hereby approve of the above appointment.

BILLE IASCAIGH AN FHEABHAIL (Uimh. 2), 1951.

# BILLE

*(mar a tugadh isteach)*
*dá ngairmtear*

Acht dá údarú comhaontú áirithe a dhéanamh i leith cearta iascaigh in uiscí taoide Locha agus Abhann an Fheabhaill agus a shuainmheachán, do dhéanamh socruithe chun an t-iascach i líomatáiste an Fheabhaill a bhainistí, a chaomhaint, a chosaint agus d'fheabhsú, do bhunú Coimisiúin Iascaigh an Fheabhaill agus do mhíniú a fheidhmeanna, do dhí-scaoileadh an Bhoird Chaomhnóirí do Cheantar Bhun an Phobail, agus do dhéanamh socruithe i gcóir nithe eile (lena n-áirítear táillí d'éileamh ar cheadúnais iascaigh áirithe) a bhaineas leis na nithe réamhráite.

*An tAire Talmhaíochta a thug isteach.*

*Do hordaíodh, ag* Dáil Éireann, *do chlóbhualadh,* 18*ú Iúil,* 1951.

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

Le ceannach díreach ón Oifig Díolta Foilseachán Rialtais An Stuara, Árd Oifig an Phoist, Baile Átha Cliath, nó trí aon díoltóir leabhar.

Clóbhuailte ag Cahill & Co., Ltd

[*Leath-Choróin Glan.*]

Wt. 4301—1810. 625. 2/52. C.&Co. (1107).

FOYLE FISHERIES (No. 2) BILL, 1951.

# BILL

*(as introduced)*
*entitled*

An Act to authorise the making of a certain agreement with respect to fishing rights in the tidal waters of the Lough and River Foyle and its tributaries, to provide for the management, conservation, protection and improvement of the fisheries in the Foyle area, to establish a Foyle Fisheries Commission and to define its functions, to dissolve the Board of Conservators for the Moville District, and to provide for other matters (including the charging of fees on certain fishing licences) connected with the matters aforesaid.

*Introduced by the Minister for Agriculture.*

*Ordered, by* Dáil Éireann, *to be printed,* 18*th July,* 1951.

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