

## TASMANIA.

## THE FISHERIES ACT 1935.

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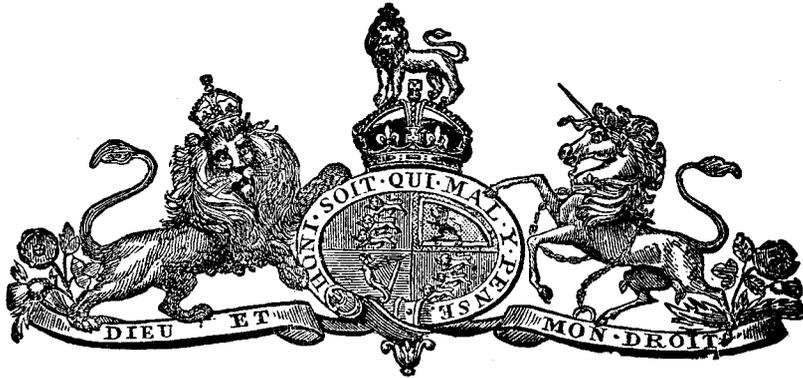
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## TASMANIA.



1935.

ANNO VICESIMO SEXTO

GEORGII V. REGIS.

No. 37.

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AN ACT to consolidate and amend the Law  
relating to the Fisheries of the State.

A.D.  
1935.

[18 October, 1935.]

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

## PART I.

## PRELIMINARY.

- |       |  |                 |
|-------|--|-----------------|
| 1     | This Act may be cited as the <i>Fisheries Act</i> 1935.  | Short title.    |
| 2     | The Acts enumerated in the schedule are hereby repealed.   | Repeal.         |
| 3—(1) | In this Act, unless the contrary intention appears—  | Interpretation. |
|       | “Anglers’ Association” means the Southern Tasmanian Licensed Anglers’ Association; the Northern Tasmanian Fisheries Association; and the North-Western Fisheries Association, and such other associations, if any, as may be approved by the Commissioners : |                 |

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- “ Board ” means the Sea Fisheries Board constituted under this Act :
- “ Boat ” means any ship, vessel, or boat of any description whatsoever :
- “ Commissioners ” means the Salmon and Freshwater Fisheries Commissioners appointed under this Act :
- “ Controlling body ” means, in relation to Part II., the Board ; and, in relation to Part III., the Commissioners :
- “ Cured ” means preserved by salting, smoking, drying, canning, or by any other means whatsoever :
- “ Dam ” includes any fixed obstruction used for the purpose of damming up water :
- “ Engine ” includes any net, implement, apparatus, or device for taking or facilitating the taking of fish :
- “ Fish, ” when used in, or in relation to, Part II., means any description of marine fish, or crustacea, or marine animal life, and their young, or fry, or spawn, and seals of every description and their young ; but does not include salmon ; and, when used in or in relation to Part III., means salmon and freshwater fish and their young, fry, or spawn :
- “ Fishing ” means taking any fish :
- “ Fishing-boat ” means a boat which is used in fishing for purposes of sale or business, or for collecting or carrying to land the fish caught by other boats :
- “ Freshwater fish ” means any description of fish living in fresh water, exclusive of salmon and of any kinds of fish which migrate to and from tidal waters :
- “ Inland waters ” means all waters that are not tidal waters :
- “ Licence ” means a licence under the Part in or in relation to which the term is used :
- “ Officer ” means an officer appointed under the Part, in or in relation to which the term is used :
- “ Oyster ” includes scallop and the brood, ware, half-ware, spat, and spawn of oysters and scallops, and “ oyster-bed ” includes scallop-bed :
- “ River ” includes stream and creek :
- “ Salmon ” means all fish of the salmon species :
- “ Take ” includes catch, dredge for, raise, kill, and attempt to take :
- “ The fishing industry ” means all matters relating to the carrying on of fishing for the purposes of sale or business :
- “ Tidal waters ” means such part of the sea or of a river as is within the ebb and flow of the tide at ordinary spring tides :
- “ Unclean, ” in relation to any fish, means that the fish is about to spawn, or has recently spawned, and has not recovered from spawning :
- “ Undersized, ” in relation to fish, means that the fish is of a less size than the minimum size which may be lawfully taken under the regulations :

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“ Unseasonable fish ” means fish taken otherwise than during the season when the taking thereof is permitted : A.D. 1935.

“ Waters,” used in relation to the Board, means any part of the sea within a distance of three miles from any part of the coast of Tasmania, and any estuary, port, harbour, or other inlet of the sea, and all tidal waters ; and, used in relation to the Commissioners, means any salt, brackish, or fresh waters in Tasmania, and any part of the sea within a distance of three miles of any part of the coast of Tasmania, and also all reservoirs, dams, channels, or works for water storage or distribution vested in, or under the control of, the Crown, or any statutory authority, but not any waters the property of any private person.

(2) Any reference to Part II. or Part III. shall include regulations made under such Part.

## PART II.

## SEA FISHERIES.

*Division I.—The Sea Fisheries Board.*

4—(1) For the purposes of this Part, the Board of five members constituted under the Act hereby repealed and called “ The Sea Fisheries Board,” shall, subject to this Act, continue under that name a body corporate, with perpetual succession and a common seal, and may hold land, and may sue and be sued in its corporate name. Continuation of the Sea Fisheries Board.

(2) The Commissioner of Police shall, *ex officio*, be a member of the Board and the Chairman thereof. Commissioner of Police to be Chairman.

(3) The four other members of the Board shall be appointed by the Governor, and, after the year one thousand nine hundred and thirty-five, one of such members shall be appointed to represent the Tasmanian Fishermen, Fishworkers, and Scallop-dredgers Association. Members appointed by Governor.

(4) Each of the members so appointed shall hold office for two years from the date of his appointment, unless he dies, resigns, or is removed from office, or is declared by the Governor to be disqualified for continuing to hold office, in any of which events a successor shall be appointed by the Governor, who shall hold office for the unexpired period of his predecessor’s term of office.

5 All courts and persons acting judicially shall take judicial notice of the common seal of the Board, and of the signatures of the Chairman and the appointed members thereof, and their deputies, and of the fact of their respective appointments. Judicial notice to be taken of common seal, &c., of the Board.

6—(1) The Chairman shall have a deliberative vote only. Chairman’s voting power.

(2) The Board may act notwithstanding a vacancy in its membership. Board may act notwithstanding vacancy.

(3) Any three members of the Board shall form a quorum for the transaction of business. Quorum.

(4) Where there is an equal division of votes upon any question it shall pass in the negative. Equality of votes.

(5) Subject to this Part, the Board may regulate its own procedure. Procedure of Board.

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Board to have control of the fisheries of the State other than the salmon and freshwater fisheries.

Regulations.

*Division II.—Powers and Functions of the Board.*

**7** The Board shall have the management, control, protection, and regulation, subject to this Act, of the fisheries of the State, other than the salmon and freshwater fisheries

**8—(1)** The Board, with the approval of the Governor, may make regulations—

- I. Providing generally the conditions under which fishing may be carried on :
- II. Providing that all fishing-boats, or any specified class or classes of fishing-boats, shall be licensed ; regulating the issue, form, terms and conditions, duration, suspension, and cancellation of such licences ; and prescribing the fees to be paid for such licences, either in accordance with the tonnage of such boats or otherwise ; and providing for the refund of licence fees :
- III. Empowering the Board to refuse to issue a licence in any specified contingencies or generally :
- IV. Providing that any specified class or classes of engines used for the capture of fish shall be licensed ; regulating the issue, form, terms and conditions, duration, suspension, and cancellation of such licences ; and prescribing the fees to be paid for any such licences :
- v. Providing that all licensed fishing-boats, and all or any licensed engines, shall have distinguishing marks placed thereon or affixed thereto ; regulating the shape, size, and character of such marks, and the placing or affixing the same on or to such boats and engines ; providing for the issue and return of such marks ; and prescribing the charges to be made therefor :
- VI. Prohibiting the use of fishing-boats and engines which are required to be licensed and are not licensed, and of fishing-boats and engines which do not have the prescribed marks placed thereon or affixed thereto :
- VII. Providing for the licensing of persons using, or engaged or employed in, fishing boats ; regulating the issue, form, terms and conditions, duration, suspension, and cancellation of such licences ; prescribing the fees to be paid for such licences ; and prohibiting unlicensed persons from using, or being engaged or employed in, such boats :
- VIII. Providing for the issue of licences to take fish of any particular kind or species ; regulating the issue, form, terms and conditions, duration, suspension, cancellation, and return of such licences, and the fees to be paid in respect thereof ; and prohibiting persons required to be licensed from fishing without licences, and from fishing in any manner not authorised by such licences :

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- ix. Prescribing the times, seasons, and places at which the taking of the several kinds or species of fish shall commence and cease, or be prohibited or permitted : A.D. 1935.
- x. Prohibiting the taking of any particular kind or species of fish, or the female of such kind or species, either generally or for any prescribed period :
- xi. Prohibiting in prescribed places the taking of fish or any particular kind or species of fish :
- xii. Prescribing the minimum size of fish of any particular kind or species that may be taken :
- xiii. Prohibiting the taking of any undersized, unclean, or unseasonable fish :
- xiv. Prohibiting the buying, selling, or offering or exposing for sale, or the having possession of, any undersized, unclean, or unseasonable fish, or of any fish the taking of which is contrary to the regulations :
- xv. Prescribing the description, form, and size of nets, and other engines that may be used in fishing, or any kind of fishing, or in any place for fishing, and the sizes of the meshes of such nets ; and prohibiting or regulating the use, or the use in any place, or the possession, of any particular kind of net, or other engine for taking fish, or any kind or species of fish :
- xvi. Prescribing generally the conditions under which fish, or any particular kind or species of fish, may be taken, and prohibiting the taking of fish except under the prescribed conditions :
- xvii. Prescribing royalties to be paid in respect of the taking of any particular kind or species of fish :
- xviii. Prescribing that security be given by any licensee for the due observance and performance of the terms and conditions of his licence :
- xix. Prohibiting the doing of any matter or thing whatsoever tending, in the opinion of the Board, to be detrimental to fish or the fishing industry :
- xx. For the preservation of good order among persons engaged in fishing :
- xxi. Providing for the sale or other disposal of anything forfeited to the use of the Board :
- xxii. Providing that all or any fish intended for export from the State shall, before exportation, be inspected by an officer ; prescribing places where such inspection shall take place, and the fees to be paid for such inspection ; and prohibiting the exportation of fish which have not been so inspected :
- xxiii. Providing for the custody of the common seal of the Board, and prescribing the manner of affixing the same to all documents executed by the Board :
- xxiv. Providing for or prescribing any other matter or thing which in any manner relates to fishing or the fishing industry :

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xxv. Imposing penalties for breaches of the regulations, with power to impose a minimum penalty for the breach of any regulation, and different penalties for successive breaches, and daily penalties for continuing breaches, but so that no penalty for the breach of any regulation shall exceed fifty pounds, nor in the case of a continuing breach, five pounds in respect of any day during which the breach is continued, and with power also to impose a special penalty not exceeding five pounds in respect of each and every fish, or fish of any kind, or species, taken, bought, sold, offered, or exposed for sale, or in the possession of any person in breach of the regulations, and a special penalty of a like amount in respect of each and every net, engine, or other article of any kind whatsoever used or in the possession of any person in breach of the regulations ; and such special penalties may be in addition to any other penalties imposed for such breaches.

(2) The Governor at any time may amend or rescind any regulation made as aforesaid.

Board may make inquiries and experiments.

9 The Board at any time may make inquiries, investigations, and experiments—

- i. As to fishing and the fishing industry, and the best means to be adopted for the regulation, improvement, and protection thereof :
- ii. For ascertaining the best methods of taking, handling, preserving, or disposing of fish, or any kind of fish, for commercial purposes.

Application of revenue.

10 The revenue of the Board shall be applied and disposed of as follows :—

i. One-quarter of—

(a) All moneys arising from the sale of boats and other articles forfeited to and sold by the Board, or which shall be received by the Board in respect of any such boats or articles, after deducting therefrom the amount of any special expenses incurred by the Board in connection with the seizure, sale, disposal, or keeping possession of such boats and other articles : and

(b) All fees and other moneys received by the Board under this Part—

shall be paid by the Board to the Treasurer on account of the Consolidated Revenue in manner hereinafter mentioned :

- ii. The remaining revenue of the Board shall be retained and applied by it for the purpose of administering and carrying out the provisions of this Part.

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**11** The Board shall, on or before the thirty-first day of January and the thirty-first day of July in each year, cause to be prepared and delivered to the Treasurer an account of all revenue received by it during the period of six months immediately preceding the month in which such account is required to be so delivered, and of the amount payable by the Board to the Treasurer in respect of such period ; and the Board shall, at the time of the delivery of such account, pay to the Treasurer such lastmentioned amount.

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Payments to  
Treasurer.*Division III.—Oyster Leases.*

**12**—(1) It shall be lawful for the Governor, on the recommendation of the Board, and on such terms and conditions as the Governor thinks fit, to lease to any person, for any term not exceeding twenty years, any portion of the shore and bed of the sea, or of an estuary or tidal water, above or below, or partly above and partly below, low-water mark, for the purpose of the forming, laying, maintaining, and working of an oyster bed, and for all other purposes incidental thereto.

Governor may  
lease any portion  
of the seashore  
and bed of the  
sea for an oyster-  
bed.

(2) Nothing in this Part shall authorise the Governor to grant any lease of any land which is not the property of the Crown, or whereby the rights of any person in such land, or in any land thereto adjoining, shall be prejudiced or interfered with without the consent in writing of such lastnamed person.

Proviso.

**13** It shall be lawful for the Governor, upon the recommendation of the Board, to lease any natural oyster-bed to any person upon such terms and conditions, and for any term not exceeding ten years, as the Governor thinks fit.

Governor may  
lease natural  
oyster-bed.

**14**—(1) Every lease under this Part shall be under the hand of the Governor, and shall by reference to a map or otherwise, as to the Governor seems best, define the position and limits of the oyster-bed or area comprised therein.

Provisions  
relating to lease.

(2) Public notification of an application for any such lease as aforesaid shall be given in such manner as shall be prescribed.

(3) In considering applications for the lease of a natural oyster-bed, preference shall be given to the applicant, if any, who in the opinion of the Board was the discoverer of such oyster-bed.

(4) A copy of every lease issued by the Governor under this Part shall be forwarded to the Board, who shall cause the same to be recorded in a book to be kept for that purpose.

(5) The production of a copy of any such lease as aforesaid, certified under the hand of the Chairman or Secretary of the Board, shall be evidence that the lease of which the same purports to be a copy was duly granted by the Governor, and that all matters and things by this Part required to be done previously to the granting of such lease have been duly done and performed.

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Power to lessee  
to remove oysters  
from public beds  
at all seasons.

**15** The holder of any lease granted under this Division, and his agents, servants, and workmen, may at any season, with the consent of the Board, and under and subject to such conditions as the Board may prescribe, dredge for and take oysters from any unleased natural oyster-bed for the purpose of supplying or replenishing therewith any oyster-bed held or made, or in course of being made, under any such lease, and may apply the oysters so taken accordingly; but, if any person applies or uses, or if any lessee authorises or permits to be applied or used otherwise than in manner authorised by this section, any oysters so taken, such person or lessee shall be liable to all the like penalties and consequences to which he would have been liable if this section had not been enacted.

Effect of lease.

**16**—(1) Every lessee under this Part shall have the exclusive right, subject to any prescribed conditions, of taking oysters within the limits of his lease.

(2) Every such lessee shall also, for the purpose of making and maintaining oyster-beds, have the right, within such limits as aforesaid, at any season to collect oysters of any size or description, and remove the same from place to place, and deposit them where he thinks fit, and do all things necessary for making and maintaining such oyster-beds; and nothing lawfully done by him in pursuance of this subsection shall render such lessee liable as for a breach of this Part.

Property in  
oysters in beds  
held under lease.

(3) All oysters being in or on any oyster-bed held under any such lease as aforesaid shall be the absolute property of the lessee; and, in all courts and elsewhere, and for all purposes, shall be deemed to be in the actual possession of the lessee.

Limits of sea-  
shore leased to  
be marked.

**17** Every lessee shall mark out, and keep marked by clear and distinct marks as prescribed, the limits of any portion of the sea-shore comprised in any such lease; and no person shall be liable to any civil proceedings at the suit of the lessee, or any person claiming through him, for taking any oysters within such limits, unless the same have been marked and kept marked as required by this section.

Power to the  
Governor to  
revoke leases  
in certain cases.

**18**—(1) In any case where any such lease is granted, if it appears to the Board that the lessee under such lease, or his assigns, within the period of three years from the date of such lease, has not taken steps proper in their opinion to form or lay the oyster-bed, for the forming or laying whereof such lease was granted, the Governor, by an order in writing under his hand, may revoke such lease, and thereupon all the rights and privileges created by such lease shall cease and determine.

(2) Prior to the making of any such order, the Governor shall cause a notice in writing, stating his intention to make such order, to be served upon the holder of such lease, or, in case such holder cannot be found, the Governor shall cause such notice to be inserted twice in the Gazette; and no such order shall be made until after the expiration of one month from the service of such notice, or from the date of the last of such notices in the Gazette, as the case may be.

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**19**—(1) For the purposes of this Division the Board may, with respect to any lease or oyster-fishery, make such inquiries and examinations by an officer or otherwise, and require from such lessee such information, as the Board may think necessary or proper; and the lessee shall afford all facilities for such inquiries and examinations, and give such information accordingly.

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Termination  
of lease in  
certain cases.

(2) Upon a report from the Board that it is not satisfied that the lessee of an oyster-bed is within the limits of his lease, the Governor by proclamation may declare such lease terminated.

(3) Upon such proclamation, such lease shall absolutely cease and determine, and all rights and privileges thereunder shall be forfeited.

**20**—(1) No person other than the lessee, or his assigns, their agents, servants, and workmen, within the limits of any oyster-bed comprised in the lease, shall knowingly—

Penalties for  
injuring oyster  
beds.

- i. Use any implement of fishing except a line and hook :
- ii. Dredge for any ballast, or other substance, except under a lawful authority for improving the navigation :
- iii. Deposit any stone, ballast, rubbish, or other substance :
- iv. Place any implement, apparatus, or thing prejudicial or likely to be prejudicial to any oyster-bed or oysters, or brood or spawn thereof, or to the oyster-fishery, except for a lawful purpose of navigation or anchorage :
- v. Disturb or injure in any manner, except as last aforesaid, any oyster-bed or oysters, or brood or spawn thereof, or the oyster-fishery : or
- vi. Interfere with or take away any of the oysters from such bed without the consent of the lessee or his assigns.

Penalty : Two pounds for the first offence ; five pounds for the second offence ; and ten pounds for every subsequent offence.

(2) Any person convicted under this section may be ordered to pay, in addition to any penalty, such sum not exceeding ten pounds as the court adjudicating considers a reasonable compensation for the damage sustained, and the sum so ordered shall be paid to the party aggrieved.

**21**—(1) Except as in this Part otherwise provided, all persons engaged in fishing for or taking oysters shall cull all such oysters as may be taken or caught, and shall not remove from any fishing-ground or oyster-bed any oyster of less than the prescribed dimensions, and shall immediately throw back into the water all oysters of less dimensions than prescribed, as well as all gravel and fragments of shells as shall be raised or taken while engaged in such fishing.

Conditions to be  
observed by  
persons fishing  
for oysters.

Penalty : Five pounds.

(2) No person shall buy, sell, or have in his possession any oysters taken in contravention of this section.

Penalty : Five pounds.

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*Fisheries.*


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*Division IV.—Seals.*

Governor  
may define  
limits of seal  
fishery.

**22** The Governor, on the recommendation of the Board, may by proclamation define the limits or parts of the State, being lands of the Crown not otherwise alienated or disposed of, including any lands below high-water mark, in respect of which licences may be issued under this Part conferring the right of taking seals.

Licensee may use  
certain Crown  
lands for works.

**23**—(1) Every licence granted for the taking of seals shall empower the licensee to hold, use, and occupy such land of the Crown available for occupation as may be authorised by the Minister for the erection of dwelling-houses and other buildings and works necessary to carry on the taking of seals.

Penalty for  
taking of seals  
by unauthorised  
persons.

(2) No person without the authority of the holder of a licence for the taking of seals shall take any seal within the area in respect of which such licence is granted.

Penalty : Five pounds.

(3) Any person convicted under this section may be ordered to pay in addition to any penalty, such sum as the court adjudicating considers reasonable compensation for the damage sustained by the licensee in respect of such taking, and the sum so ordered shall be paid to such licensee.

*Division V.—Offences.*

Penalties for  
certain offences.

**24**—(1) No person shall—

- i. Fail to facilitate by all reasonable means the boarding of any boat by any officer or other person authorised under this Act to board the same :
- ii. Refuse to allow to be made any search which is authorised under this Act:
- iii. Refuse to give to any officer any information lawfully demanded of him by such officer, or refuse to state his name or place of abode to any officer when lawfully required by such officer so to do, or state a false name or place of abode to such officer: or
- iv. Assault, resist, or obstruct any officer or other person in the execution of the powers or authorities conferred on him by this Act.

Penalty : Fifty pounds.

(2) No master or person in charge of any fishing-boat shall fail without reasonable cause, the proof thereof shall lie on him, to have on board such boat the licence issued under this Act in respect of such boat.

Penalty : Fifty pounds.

(3) No person being—

- i. The holder of a licence in respect of any fishing-boat : or
- ii. A fish-curer—

shall fail to furnish to the Board any return, as and when prescribed, of the fish taken or cured by such person respectively.

Penalty : Twenty pounds.

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(4) No person shall cause or knowingly permit to flow, or put or knowingly permit to be put, into any waters containing fish, any liquid or solid matter to such an extent as to cause the waters to be poisonous or injurious to fish or the spawning grounds, spawn, or food of fish. A.D. 1935.

Penalty : Fifty pounds.

(5) No person shall—

- i. Use dynamite or other explosive substance with intent thereby to take or destroy fish in any waters :
- ii. Put any poison, lime, or noxious material in any waters with intent thereby to take or destroy any of the fish that may then be, or may thereafter be put, therein.

Penalty : Fifty pounds.

## PART III.

## SALMON AND FRESHWATER FISHERIES.

*Division I.—The Salmon and Freshwater Fisheries Commissioners.*

**25—(1)** The body constituted under the Act hereby repealed to be Commissioners for the purposes of this Part, and called “The Salmon and Freshwater Fisheries Commissioners,” shall, subject to this Act, continue under that name a body corporate with perpetual succession and a common seal, and may hold land, and may sue or be sued in their corporate name. Appointment of Commissioners.

(2) After the thirty-first day of December, one thousand nine hundred and thirty-five, the Commissioners shall consist of eleven persons appointed by the Governor as hereinafter provided.

(3) Three of the Commissioners shall be appointed as aforesaid annually to represent respectively the Northern Tasmanian Fisheries Association, the North-Western Fisheries Association, and the Southern Tasmanian Licensed Anglers’ Association; and shall be nominated respectively by those bodies.

(4) The remaining eight Commissioners shall be such persons, being licensed anglers, as the Minister in his discretion shall recommend, who are resident in the respective areas controlled by such Associations as aforesaid, in the following proportions—

The Southern Tasmanian Licensed Anglers’ Association—four :

The Northern Tasmanian Fisheries Association—two : and

The North-Western Fisheries Association—two.

(5) Subject to such transitory provisions as may be prescribed for securing the retirement of two Commissioners annually by rotation, each Commissioner appointed under subsection (4) hereof shall hold office for a term of four years, unless he dies, resigns, or is removed from office, or is declared by the Governor to be disqualified for continuing to hold office, in any of which events a successor shall be appointed by the Governor, who shall hold office for the unexpired period of his predecessor’s term of office; and, subject as aforesaid, the two of such eight Commissioners who have been longest in office shall retire each year.

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Proceedings of  
Commissioners.**26**—(1) The Commissioners shall appoint one of their number as chairman.

(2) The Chairman shall have a deliberative vote only.

(3) The Commissioners may act notwithstanding a vacancy in their numbers.

(4) Any five Commissioners shall form a quorum for the transaction of business.

(5) Subject to this Part the Commissioners may regulate their own procedure.

*Division II.—Powers and Functions of the Commissioners.*Commissioners to  
have control of  
salmon and fresh-  
water fisheries.**27** The Commissioners shall, subject to this Act, have the management, control, protection, and regulation of the salmon and freshwater fisheries of the State.

Regulations.

**28**—(1) The Commissioners, with the approval of the Governor, may make regulations—

- i. Providing generally the conditions under which fishing may be carried on :
- ii. Providing for the issue of licences to take fish of any particular kind, or species ; regulating the issue, form, terms, and conditions, duration, suspension, cancellation, and return of such licences, and the fees to be paid in respect thereof ; and prohibiting persons required to be licensed from fishing without licences, and from fishing in any manner not authorised by such licences :
- iii. Prescribing the times, seasons, and places, at which the taking of the several kinds or species of fish shall commence and cease, or be prohibited or permitted :
- iv. Prohibiting the taking of any particular kind or species of fish, or the female of such kind or species, either generally or for any prescribed period :
- v. Prohibiting in prescribed places the taking of fish or any particular kind or species of fish :
- vi. Prescribing the minimum size of fish of any particular kind or species that may be taken :
- vii. Prohibiting the taking of any undersized, unclean, or unseasonable fish :
- viii. Prohibiting the buying, selling, or offering or exposing for sale, or the having possession of, any undersized, unclean, or unseasonable fish, or of any fish the taking of which is contrary to the regulations :
- ix. Prohibiting the sale or exposure for sale, or the possession, by any specified classes of persons on business premises, of any specified kind or species of fish :
- x. Prescribing the description, form, and size of nets, and other engines that may be used in fishing, or any kind of fishing, or in any place for fishing, and the sizes of the meshes of

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such nets ; and prohibiting or regulating the use, or the use in any place, or the possession of, any particular kind of net, or other engine for taking fish or any kind or species of fish : A.D. 1935.

- xI. Prescribing generally the conditions under which fish, or any particular kind or species of fish, may be taken, and prohibiting the taking of such fish except under the prescribed conditions :
- xII. Prohibiting the doing of any matter or thing whatsoever tending in the opinion of the Commissioners to be detrimental to the salmon or freshwater fisheries or to fishing :
- xIII. Providing for the sale or other disposal of anything forfeited to the use of the Commissioners :
- xIV. Providing for the custody of the common seal of the Commissioners, and prescribing the manner of affixing the same to all documents executed by the Commissioners :
- xv. Providing for or prescribing any other matter or thing which shall in any manner relate to the salmon or freshwater fisheries or to fishing : and
- xvi. Imposing penalties for breaches of the regulations, with power to impose a minimum penalty for the breach of any regulation, and different penalties for successive breaches, and daily penalties for continuing breaches, but so that no penalty for the breach of any regulation shall exceed fifty pounds, nor in the case of a continuing breach, five pounds in respect of any day during which the breach is continued, and with power also to impose a special penalty not exceeding five pounds in respect of each and every fish, or fish of any kind or species, taken, bought, sold, offered, or exposed for sale, or in the possession of any person in breach of the regulations, and a special penalty of a like amount in respect of each and every net, engine, or other article of any kind whatsoever used or in the possession of any person in breach of the regulations ; and such special penalties may be in addition to any other penalties imposed for such breaches.

(2) The Governor, at any time, may amend or rescind any regulation made as aforesaid.

**29** The Commissioners may, out of any funds at their disposal, grant and pay to any anglers' association such sums of money as shall be approved by the Minister to be expended by such association for all or any of the following purposes—

Commissioners  
may make grants  
to anglers'  
associations.

- i. The stocking with fish of any rivers or other waters :
- ii. The artificial propagation of fish for stocking any such rivers or waters :
- iii. The maintenance of any fish hatchery belonging to or controlled by any such association :
- iv. Any other purpose of a similar nature.

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Application of  
revenue.Commissioners  
may alter bed of  
river.Gratings to be  
provided to  
prevent ingress  
of salmon to  
artificial channels.Dams to be  
provided with  
fish-passes.Powers of  
Commissioners.Turbines, &c. to  
be fitted with  
gratings.

**30** The revenue of the Commissioners shall be applied for the purpose of administering and carrying out the provisions of this Part.

*Division III.—Powers and Duties Relating to Inland Waters.*

**31** If in any river, reefs, ledges of rocks, shoals, or other material obstructions prevent or impede the free passage of fish, and hinder the approach and access of the same to the upper parts of the river (or any lake or waters communicating therewith) and the depositing of their spawn therein, the Commissioners may, if they think fit, make such alterations in the bed of such river as shall effectually secure a free and uninterrupted passage at all seasons of the year for all fish.

**32**—(1) Every person having the control of any conduit or artificial channel used for diverting water for any purpose from any waters frequented by salmon shall, unless exempted under this section, place and maintain at his own expense efficient gratings, constructed and placed to the satisfaction of the Commissioners across such conduit or channel, for preventing the descent of salmon and like gratings across the outfall of the conduit or channel for preventing the entry of salmon into the outfall.

Daily penalty : Five pounds.

(2) The Minister or the Commissioners may grant to any such person as aforesaid an exemption in writing relieving him of the obligation imposed by subsection (1) hereof.

(3) When any dam is, or is placed, in or across any river, or any outlet of any lake frequented by salmon, or in or on the shores of any such lake, for sustaining the water of such lake for any purpose whatsoever, and such dam in the opinion of the Commissioners does not permit, in one or more parts thereof, the free passage of salmon, the owner or occupier of such dam, within a reasonable time after the service by post upon him of a notice from the Commissioners so to do, shall, at his own expense, make and maintain in an efficient state a fish-pass for salmon, of such form and dimensions as the Commissioners shall approve as part of the structure of, and in connection with, the dam, if no such fish-pass already exists.

Daily penalty : Five pounds.

(4) If any person fails to comply with any of the foregoing provisions of this section, the Commissioners may cause to be done any work by this section required to be done by such person, and for that purpose may enter into and upon the dam and any land or place necessary for that purpose, and may recover from such person the cost of so doing upon complaint under the *Justices Procedure Act 1919* or in any court of competent jurisdiction.

(5) Where turbines or similar hydraulic machines are used, the person owning or using the same shall, during the descent of salmon to the sea, provide a grating, lattice, or other efficient means to prevent such fish passing into any such machine.

Penalty : Twenty pounds.

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**33**—(1) The sluices for drawing off the water which would otherwise flow over any dam in waters frequented by salmon shall, unless an exemption in writing from such obligation is granted by the Commissioners or the Minister, at all times when the water is not required for such water-power, navigation, irrigation, or other purposes as aforesaid, be kept shut in such manner as to cause such water to flow through the fish-pass, if any, in or connected with the dam, or, if there is no such fish-pass, over the dam.

Penalty : Twenty pounds.

(2) This section shall not prevent any person from opening a sluice for the purpose of letting off water in cases of flood or, subject to previous notice in writing to the Commissioners, for cleaning or repairing any dam or any works used in connection therewith or the appurtenances thereof.

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Sluices.

*Division IV.—Offences.*

**34**—(1) No person shall—

i. Use any light for the purpose of catching fish.

Penalty : Minimum, ten pounds ; maximum, twenty pounds.

ii. Use any otter lath or jack, wire or snare, spear, gaff (except as hereinafter provided), strokehaul, snatch, or other like instrument for taking or killing fish.

Penalty : Twenty pounds.

iii. Have in his possession a light or any of the foregoing instruments, in such circumstances as to satisfy the court before which he is charged that he intended at the time to take or kill fish by means thereof.

Penalty : Twenty pounds.

iv. Throw or discharge any stone or other missile into any water for the purpose of taking or killing, or facilitating the taking or killing, of any fish, or discharge any firearm for any such purpose.

Penalty : Twenty pounds.

v. Use any explosive substance for the purpose of taking or killing fish.

Penalty : Minimum, fifteen pounds ; maximum, twenty pounds.

(2) For the purposes of this section—

i. The expression “otter lath or jack” includes any small boat or vessel, board, stick, or other instrument, whether used with a hand line, or auxiliary to a rod and line, or otherwise for the purpose of running out lures, artificial or otherwise :

ii. The expression “strokehaul or snatch” includes any instrument or device, whether used with a rod and line or otherwise, for the purpose of foul-hooking any fish.

(3) It shall be lawful for any person to use a gaff, consisting of a plain metal hook without a barb or tailer, as auxiliary to angling with a rod and line.

Prohibition of fishing with lights, spears, &c.

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Prohibition of  
use of roe.Prohibition of  
disturbing fish  
spawning.Saving of acts  
done for artificial  
propagation or  
scientific pur-  
poses.Prohibition of  
obstructing  
passage of fish.Nets not to be  
used in fresh  
waters.Application of  
section 24 to this  
Part.Administration of  
this Part.**35**—(1) No person shall, for the purpose of fishing—

- i. Use any fish roe: or
- ii. Buy, sell, or expose for sale, or have in his possession, any roe of salmon.

Penalty: Twenty pounds.

(2) No person shall wilfully disturb any spawn or spawning fish, or any bed, bank, or shallow on which any spawn or spawning fish may be.

Penalty: Twenty pounds.

(3) This section shall not prejudice the legal right, if any, of any person to take materials from any waters; and no person shall incur any penalty under this section in respect of any act done for the purpose of the artificial propagation of fish, or for some scientific or other purpose, for the doing of which he has obtained the previous permission in writing of the Commissioners.

**36** No person shall—

- i. Place or use in any inland or tidal waters any engine, instrument, or device for the purpose of obstructing or hindering the free passage of fish in such waters:
- ii. In any river, lake, or stream above the flow of the salt water, lay, draw, make use of, or fish with any kind of net or other engine, instrument, or device, excepting rod and line, and a landing net, or a gaff, consisting of a plain metal hook without a barb, used in connection therewith, for the purpose of taking any fish:
- iii. Wilfully injure a fish-pass, or do any act whereby the efficiency of a fish-pass is impaired: or
- iv. Unlawfully or maliciously cut through, break down, or otherwise destroy, any dam, floodgate, or sluice, with intent to destroy or take any fish.

Penalty: Twenty pounds.

**37**—(1) The provisions of subsections (1), (4), and (5) respectively of section twenty-four shall apply in relation to all waters under the jurisdiction of the Commissioners and in relation to all officers and persons appointed or authorised by the Commissioners under this Act as if the same were enacted in this Part.

(2) No person shall, in relation to this Part, do any act or thing which, if done in relation to Part II., would constitute a contravention of any of the provisions cited in subsection (1) hereof.

Penalty: Fifty pounds.

**38** The Governor at any time may assign the administration of this Part to a Minister other than the Minister to whom the administration of Part II. is assigned, and any reference to the Minister in, or in relation to, this Part shall be construed accordingly.

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## PART IV.

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## GENERAL PROVISIONS RELATING TO BOTH CONTROLLING BODIES.

*Division I.—Controlling Bodies.*

**39** Without prejudice to the power of the Governor to remove any person from office, the Governor may declare any member of a controlling body to be disqualified from continuing to hold office if he—

Disqualifications.

- i. In any way participates, or claims to be entitled to participate, in the profit of, or in any benefit or emolument arising from, any contract or agreement made by or on behalf of such controlling body : or
- ii. He votes at any meeting of the controlling body in respect of any recommendation in which he is (otherwise than as a member of the general public, or as a shareholder in, but not being a director of, any incorporated company, in which there are more than twenty members) directly or indirectly interested, or if he remains at any meeting of such body while the subject matter of any such recommendation is under discussion :
- iii. He is absent without leave of such body from three consecutive meetings of such body : or
- iv. Being a member of the Board, he is or becomes beneficially interested in the sale of fish either through or by a shop, boat, or company, whether incorporated or otherwise, unless he is appointed to represent the Tasmanian Fishermen, Fish-workers, and Scallop-dredgers' Association.

**40** Each controlling body, with the consent in writing of the Minister may appoint a Secretary, and all such inspectors, clerks, bailiffs, and other officers as may be necessary for the purposes of this Act, and may pay to such Secretary and other officers, out of any funds at the disposal of such body, such remuneration, by way of salary or otherwise, as may be approved by the Minister.

Bodies may appoint Secretary and other officers.

**41**—(1) Each controlling body shall cause minutes to be kept, in a book to be provided for that purpose, of the proceedings at meetings of such body, and of the attendance of members thereat.

Bodies to cause minutes to be kept.

(2) Minutes of the proceedings at any such meeting shall be signed by the Chairman at the next ordinary meeting.

**42** Any contract made on behalf of a controlling body, which if made between private persons would by law be—

Contracts how made.

- i. Required to be under seal, may be made by such body under its common seal :
- ii. Required to be in writing, and signed by the parties to be charged therewith, may be made in the name and on behalf of such body in writing, signed by any person acting under its express or implied authority : or

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iii. Valid, although made by parol only, may be made by parol, in the name and on behalf of such body, by any person acting under its express or implied authority—  
and any such contracts may be varied or discharged in like manner respectively.

Controlling body may acquire land.

**43**—(1) Either controlling body, with the consent of the Governor, may purchase, acquire, or take on lease any land for the purposes of this Act, and with the like consent may sell any land so purchased or acquired, and which is no longer required for such purposes, and may surrender the lease of any land taken on lease and which is no longer so required.

Application of *Lands Clauses Act*.

21 Vict. No. 11.

(2) All the provisions of the *Lands Clauses Act*, except sections eight and nine thereof, shall be incorporated with this Act, and in the construction of the said incorporated Act and this Act, this Act shall be deemed to be the Special Act, and the controlling body shall be deemed to be the promoters of the undertaking.

Governor may reserve Crown land for the purposes of this Part.

**44**—(1) The Governor may, on the certificate of either controlling body that the use of any Crown land is required by such body for the purposes of this Act, and on the recommendation of the Minister, by proclamation, declare that the same shall be a reserve for the purposes of this Act, and thereupon the possession, management, and control of such land shall vest in such body for the purposes of this Act.

(2) On the certificate of such controlling body that the use of any land included in any such proclamation as aforesaid is no longer required for the purposes of this Act, the Governor may revoke such proclamation so far as it relates to the land referred to in such certificate.

Bodies may issue permits to take fish for scientific purposes.

**45** Either controlling body may issue a permit to any person authorising such person to take, under such conditions, and at such times, and in such manner, in all respects as shall be stated in such permit, fish of any kind, or species for artificial propagation, or for scientific purposes, or for such other purposes as shall be approved by such body; and such person shall not be liable to any penalty under this Act by reason of anything done by him in compliance with such permit.

*Division II.—Powers of Officers.*

Officers to have police powers.

**46**—(1) Every officer is hereby empowered, for the enforcement of the provisions of the Part under which he is appointed, to exercise the powers and authorities of a member of the Police Force.

(2) For the purposes of this Act every member of the Police Force shall have, and may exercise all or any of the powers and authorities conferred by this Act on an officer; and, whenever in this Act reference is made to an officer, such reference shall, unless the contrary intention appears, include a reference to a member of the Police Force.

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(3) Any officer exercising any power or authority, or carrying out any duty, conferred or imposed on him by this Act, may employ such persons as he thinks fit to assist him in so doing, and no person so employed shall incur any liability by reason of his rendering any such assistance. A.D. 1935.

(4) The production by any officer of his appointment in writing, or of a copy of the Gazette containing a notification of such appointment, shall be sufficient authority for such officer to do all such acts and things as he is required or empowered to do under this Act; but it shall not be necessary for any member of the Police Force doing any such acts or things to produce any authority for so doing. Production of authority.

**47—**(1) It shall be lawful for any officer at any time or season, for the purpose of doing any act or thing which he is required or empowered to do under this Act, to enter into, and pass through or along the banks or borders of, any waters, and with boats or otherwise to enter upon such waters, and to pass along the same; and for the purposes of Part III. to enter upon and examine all reservoirs, sluices, mill-pools, mill-races, dams, fish-passes, watercourses, and channels communicating with any such waters. Officer may enter certain premises.

(2) Nothing in this section contained shall be construed as authorising any officer to enter any garden enclosed with a wall or fence, nor any dwelling-house, or the curtilage thereof, except where the ordinary passage of any inland or tidal waters is through any such garden or curtilage as aforesaid, save when thereunto authorised by a warrant of a justice as hereinafter provided.

(3) It shall be lawful for any justice, upon complaint on oath that there is reasonable cause to suspect that a breach of this Part has been committed within any of the hereinbefore excepted grounds and premises, by warrant under his hand, to authorise and empower any officer to enter the excepted premises for the purpose of detecting such offence, at such time or times in the day or night, as in such warrant is mentioned. Justice may issue warrant.

(4) No such warrant shall continue in force for more than fourteen days from the date thereof.

**48** It shall be lawful for any officer for the purpose of searching for fish of a less size than may be lawfully taken, or for fish taken contrary to the provisions of this Act— Power to search shops, &c., for fish unlawfully taken.

1. At all reasonable times to enter any shop, or the place of business of any dealer where fish are publicly exposed for sale, and any cool store, smoke-house, canning factory, or other place where fish are kept or treated for the purposes of business:
11. To examine the basket, tray, or other receptacle in the possession, or under the control of, any fisherman, angler, or itinerant vendor of fish: and

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- III. To stop and search any vehicle, and at all reasonable times to enter and search any premises, and to search any bags, baskets, or other receptacles, which, in any of the said cases, are suspected, on reasonable grounds, to contain, or to be used for the concealment of fish, taken in contravention of this Act.

Further powers  
of officers.**49** It shall be lawful for any officer—

- i. To board and enter upon any boat, and to search the same for any fish, engines, nets, or other articles :
- ii. To examine any nets, engines, or other articles found in any place whatsoever in use for fishing, or in the possession or under the control of any person, and intended or adapted for fishing :
- iii. To seize, take, detain, remove, and secure any boat, fish, engines, nets, or other articles (wheresoever the same may be or be found) which such officer has reason to believe are liable to be forfeited under this Act :
- iv. To require the owner, or the person in whose name the boat is registered, or the master or other person in charge of any fishing-boat to produce the licence for the boat, and to take copies thereof or of any part thereof :
- v. To require the owner, or the person in whose name the boat is registered, or the master or other person in charge of any fishing-boat to give any explanation concerning the boat and her crew and any person on board such boat :
- vi. To require any person on any fishing-boat, or engaged in fishing, to state his name and place of abode.

*Division III.—Forfeiture and Penalties, &c.*Certain boats,  
fish, &c., to be  
forfeited.

**50** All boats, engines, nets, and other articles used, or in the possession of any person, and all fish taken, bought, sold, offered, or exposed for sale, or in the possession of any person, contrary to the provisions of this Act, shall be forfeited to and become the property of the controlling body constituted under the Part under which such contravention occurs.

Forfeiture of  
boats unlawfully  
used.

**51** Any boat the crew of which, or any part of the crew of which, is found—

- i. Fishing or taking fish : or
- ii. Preparing to fish or take fish—

or is proved to have been fishing or taking fish anywhere within the jurisdiction of the State contrary to the provisions of this Act, and any boat on board of which any fish unlawfully taken, or any part thereof, or any engine or apparatus for fishing, the use of which is prohibited by this Act, is found, shall, together with all other boats, if any, con-

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nected or used therewith, and the tackle, rigging, furniture, stores, and appurtenances, engines, nets, and other apparatus, belonging thereto or being thereon, shall be forfeited to and become the property of the controlling body appointed under the Part, the provisions of which have been contravened. A.D. 1935.

**52—**(1) Where any boat or article has been seized under this Act as forfeited, and no proceedings have been taken within fourteen days after such seizure against any person for the offence in respect of which such forfeiture was incurred, the officer seizing shall, forthwith after the expiration of such fourteen days, give notice in writing of such seizure to the owner of such boat or article, by delivering the notice to him, either personally or by post ; and such boat or article shall be deemed to be condemned, and may be sold or otherwise disposed of by the controlling body concerned, unless such owner shall, within one month from the date of the seizure, give notice in writing to such body that he disputes the forfeiture, whereupon proceedings shall be taken against such owner for the forfeiture and condemnation of such boat or article. Procedure where  
no prosecution  
for offence.

(2) Where the owner of such boat or article was present at such seizure, or is not known, or is not in the State, no such notice as aforesaid shall be necessary.

**53—**(1) If any article seized under this Act as forfeited shall be fish, or shall be of a perishable nature, the same may be forthwith sold by the controlling body, and the proceeds thereof retained to abide the result of any proceedings that may be taken in respect of such forfeiture. Disposal of  
perishable  
articles.

(2) The Minister may authorise any boat or articles seized to be delivered to the owner, or the person disputing the forfeiture thereof, on his giving security to the controlling body to pay the value of the goods so seized in case of their condemnation. Seized articles  
may be  
delivered on  
security.

**54—**(1) When the commission of any offence against this Act involves a forfeiture of any boat or articles, the conviction of any person for such offence shall take effect as a condemnation of such boat or articles, without any complaint being laid for such condemnation. Condemnation  
of things  
forfeited.

(2) When any complaint shall have been laid against any person for the forfeiture of any boat or articles seized under this Act, the magistrate or justices, upon the appearance of the defendant or upon proof of service of the summons if he fails to appear, may proceed to the examination of the matter, and on proof that the boat or articles are liable to forfeiture may condemn the same.

(3) Condemnation under this Part of any boat or articles by any justices, or as the result of any conviction by such justices, may be proved in any court of justice, or before any competent tribunal, by production of a certificate of such condemnation purporting to be signed by the justices, or an examined copy of the record of such condemnation certified by the clerk of petty sessions.

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Release of  
articles and  
mitigation of  
penalties.

**55**—(1) The Governor may—

- i. Direct the restoration to the owner thereof of any boat or other article seized under this Act, whether or not condemnation thereof has been ordered : and
- ii. Grant relief from the whole or any part of any penalty imposed under this Act—

upon such terms and conditions, if any, as the Governor may think fit.

(2) Where any such direction has been given, or relief granted, upon or subject to any condition, the same shall not take effect until such condition is fulfilled.

(3) If such owner accepts the terms and conditions imposed by the Governor, or accepts the benefit of any order or direction under this section, he shall not have or maintain any action for recompense or damage on account of any seizure, detention of, or interference with, any such boat or other article, and the person making the seizure shall not proceed in any manner for condemnation if such condemnation has not already taken place.

Condemned  
articles to be the  
property of  
controlling body.

**56** Except where otherwise provided, all fish, boats, nets, engines, and other articles forfeited or liable to be sold under the provisions of this Act shall become the property of the controlling body concerned, and may be sold or disposed of in such manner as such body may direct.

Reasonable cause  
for seizure a bar  
to action.  
Evidence.

**57**—(1) No person shall be liable for any seizure under this Act for which there shall have been reasonable cause.

(2) In all legal proceedings in respect of any seizure under this Act, the onus of proving that such seizure was illegal or that the person making the same was not lawfully authorised so to do shall lie upon the person alleging such illegality or want of authority.

Penalties in  
addition to  
forfeiture.  
No penalty for  
accidental taking.

**58**—(1) All penalties shall be in addition to any forfeiture.

(2) A person who, while fishing lawfully, accidentally takes any undersized, unclean, or unseasonable fish, or any fish the taking of which is at the time unlawful, shall not incur any penalty or forfeiture under this Act if he immediately returns such fish to the water with the least possible injury.

Arrest of  
offenders.

**59**—(1) Any person found offending against this Act may be required by any officer to desist from so doing and to state his name and place of abode.

(2) If any person so required to desist wilfully continues his offence, any officer may arrest him without warrant, and may seize any or other engine or instrument unlawfully used by such offender.

(3) Every person so arrested shall be taken or conveyed before a justice as soon as is practicable and not later than within twenty-four hours after such arrest to be dealt with according to law.

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(4) If it is not practicable to take or convey such person before a justice within such twenty-four hours, he shall be released, but without prejudice to any proceedings against him upon complaint. A.D. 1935.

*Division IV.—Financial Provisions.*

**60** One-half of all penalties recovered under—

Application of penalties.

i. Part II. shall be paid to the Reward Branch of the Police Provident Fund: and

ii. Part III. shall be paid to the Commissioners—

and the balance of all such penalties shall be paid into the Consolidated Revenue.

**61** The revenue of each controlling body shall consist of—

Revenue of controlling bodies.

i. All licence and other fees and all royalties payable under the Part under which such body is constituted:

ii. All moneys arising from the sale of all boats and other articles forfeited to and sold by such body, or received by it in respect of such boats or articles: and

iii. All other moneys received by such body under this Act.

**62** Each member of a controlling body shall be entitled to be paid, out of the funds at the disposal of such body such travelling and other expenses as may be prescribed.

Expenses of controlling bodies.

**63**—(1) All moneys received by either controlling body under this Act shall be paid into the Commonwealth Bank to the credit of an account in the name of such controlling body, and such account shall be operated on only by cheque signed by a member of such controlling body, and countersigned by the Secretary, or some other officer thereof authorised in that behalf by the Minister.

Bank account to be opened.

(2) The provisions of the *Audit Act* 1918, in respect of the moneys and accounts of local authorities, except section thirty-two A thereof, shall apply to the moneys and accounts of each controlling body as if such body were a local authority as therein defined.

**THE SCHEDULE.**

Regnal Year and Number.	Title of Act.
16 Geo. V. No. 42 .....	<i>The Fisheries Act</i> 1925
20 Geo. V. No. 57 .....	<i>The Fisheries Act</i> 1929
21 Geo. V. No. 49 .....	<i>The Fisheries Act</i> 1930

