



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 58 of 1982

An Act to provide for the conservation, enhancement and management of fisheries, the regulation of fishing and the protection of certain fish; to provide for the protection of the aquatic habitat; to provide for the control of exotic fish and disease in fish, and the regulation of fish farming and fish processing; to repeal the Fisheries Act, 1971-1980; to repeal the Fibre and Sponges Act, 1909-1973; and for other purposes.

[Assented to 1 July 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I**PART I****PRELIMINARY****Short title.**

1. This Act may be cited as the "Fisheries Act, 1982".

Commencement.

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation made for the purposes of subsection (1), suspend the operation of any specified provision of this Act until a subsequent day fixed in the proclamation or a day to be fixed by subsequent proclamation.

Arrangement.

3. This Act is arranged as follows:

PART I—PRELIMINARY**PART II—COMMONWEALTH-STATE ARRANGEMENTS****DIVISION I—PRELIMINARY****DIVISION II—JOINT AUTHORITIES****DIVISION III—ARRANGEMENTS WITH RESPECT TO THE MANAGEMENT OF PARTICULAR FISHERIES****PART III—ADMINISTRATION****DIVISION I—OBJECTIVES****DIVISION II—THE MINISTER AND THE DIRECTOR****DIVISION III—FISHERIES OFFICERS**

DIVISION IV—RESEARCH AND DEVELOPMENT

PART IV—REGULATION OF FISHING, ETC.

DIVISION I—FISHERIES AND FISHING

DIVISION II—PROTECTION OF AQUATIC HABITAT

DIVISION III—EXOTIC FISH, FISH FARMING AND DISEASE IN FISH

DIVISION IV—LEASES OR LICENCES TO FARM OR TAKE FISH

DIVISION V—FISH PROCESSING

DIVISION VI—SUSPENSION OR CANCELLATION OF AUTHORITIES

DIVISION VII—REVIEW OF DECISIONS OF MINISTER OR DIRECTOR

PART V—MISCELLANEOUS

4. The following Acts are repealed:

Repeals.

(a) the Fibre and Sponges Act, 1909-1973;

and

(b) the Fisheries Act, 1971-1980.

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

Interpretation.

“aquatic reserve” means any waters, or land and waters, declared by proclamation under Division II of Part IV to be an aquatic reserve:

“authority” means a licence, permit, registration or lease provided for by or under this Act:

“boat” means any means of transportation on or under water:

“Commonwealth Act” means the *Fisheries Act* 1952 of the Commonwealth as amended by subsequent Acts of the Commonwealth whether enacted before or after the commencement of this Act:

“Commonwealth proclaimed waters” means waters that are by virtue of a proclamation in force under the Commonwealth Act, proclaimed waters within the meaning of that Act:

“device” means any implement, apparatus, device or substance for taking or facilitating the taking of fish:

“the Director” means the person for the time being holding or acting in the office of the Director of Fisheries under Part III:

“exotic fish” means fish of a class declared by regulation to be exotic fish:

“farm fish” means fish propagated or kept for the purpose of trade or business:

“fish” means an aquatic organism of any species and includes the eggs, spat or spawn, or the body, or part of the body (including the shell) of such an organism:

“fish farming” means propagating or keeping stocks of fish for the purpose of trade or business:

PART I

“fisheries officer” means a person who is a fisheries officer under Part III either by virtue of appointment as such or *ex officio*:

“the Fisheries Research and Development Fund” means the Fisheries Research and Development Fund continued in existence under Division IV of Part III:

“fishery” means a class of fishing activities declared by regulation to constitute a fishery under Division I of Part IV:

“fishery licence” means a licence granted in respect of a fishery under Division I of Part IV and includes a duplicate copy of such a licence:

“fishing activity” means the act of taking fish, or an act preparatory to, or involved in, the taking of fish:

“fish processor” means a person who for the purpose of trade or business processes or purchases or obtains unprocessed fish, but does not include a person who purchases or obtains fish only from a registered fish processor:

“foreign boat” has the same meaning as it has in the Commonwealth Act:

“processing” in relation to fish does not include scaling, gilling, gutting, or chilling of fish, and “process”, “processed” and “unprocessed” have corresponding meanings:

“purchase” means—

(a) purchase or take in exchange;

(b) agree or offer to purchase or take in exchange;

(c) receive, or accept or take delivery, under an agreement to purchase or take in exchange;

or

(d) cause, suffer or permit an act referred to in paragraph (a), (b) or (c):

“registered boat”—

(a) means a boat registered by endorsement of a fishery licence under Division I of Part IV;

and

(b) includes a boat used in the place of a boat referred to in paragraph (a) with the consent of the Director and in accordance with the conditions (if any) of that consent:

“registered fish processor” means a person registered as a fish processor under Division V of Part IV:

“registered master”—

(a) means a person registered by endorsement of a fishery licence under Division I of Part IV as master of a boat that may be used pursuant to the licence;

and

(b) includes a person acting in the place of a person referred to in paragraph (a) with the consent of the Director and in accordance with the conditions (if any) of that consent:

“registered owner”—

(a) in relation to a registered boat means, subject to paragraph (b), the holder of the fishery licence on which is endorsed the registration of that boat;

or

(b) in relation to a boat being used by the holder of a fishery licence pursuant to this Act in place of a boat registered by endorsement on that licence—means the holder of that licence:

“the repealed Act” means the Fisheries Act, 1971-1980, repealed by this Act:

“sell” means—

(a) sell or give in exchange;

(b) agree or offer to sell or give in exchange;

(c) have in possession or control, expose, store, consign or deliver for sale or exchange;

or

(d) cause, suffer or permit an act referred to in paragraph (a), (b) or (c):

“species” includes sub-species or variety:

“take” in relation to fish means catch, take or obtain fish from any waters or kill or destroy fish in any waters:

“this Act” includes a regulation, proclamation, arrangement or other instrument under this Act:

“waters” means—

(a) any sea or inland waters including any body of water or watercourse of any kind whether occurring naturally or artificially created;

or

(b) the bed of such waters.

(2) A class of fishing activities may be defined in any regulation, proclamation, arrangement or other instrument under this Act by reference to all or any of the following factors:

(a) a species of fish;

(b) a description of fish by reference to sex, size, weight or any other characteristic;

(c) a number or quantity of fish;

(d) a period of time;

(e) an area of waters or a place;

(f) a method of fishing;

(g) a class or number of boats;

(h) a class of persons;

PART I

(i) a purpose of activities;

or

(j) any other factor.

(3) In this Act, a reference to engaging in a fishing activity of a class shall be construed as a reference to doing an act that falls within the defined class and as including a reference to—

(a) using a device for the purpose of the activity;

(b) using a boat for the purpose of the activity;

(c) being in charge of, or acting as a member of the crew of, a boat that is being used for the purpose of the activity;

(d) diving in waters for the purpose of the activity;

or

(e) causing, assisting, suffering or permitting a person to do an act referred to in this subsection.

(4) For the purposes of this Act, a fish shall not be regarded as having been taken if it is taken but forthwith returned to the water unencumbered in any way and with as little injury as possible.

(5) Where inland waters are surrounded by land and the surrounding land is in the ownership, possession or control of the same person, this Act does not apply in relation to any activity (other than fish farming) engaged in in relation to those waters.

(6) Subject to any limitations expressly prescribed in this Act, this Act shall apply—

(a) in relation to all waters that are within the limits of the State;

(b) except for purposes relating to a fishery that is to be managed in accordance with the law of the Commonwealth pursuant to an arrangement under Division III of Part II and except for purposes prescribed by paragraph (d)—in relation to any waters of the sea not within the limits of the State that are on the landward side of waters adjacent to the State that are Commonwealth proclaimed waters;

(c) for purposes relating to a fishery that is to be managed in accordance with the law of the State pursuant to an arrangement under Division III of Part II—in relation to any waters to which the legislative powers of the State extend, with respect to that fishery, whether pursuant to section 5 of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth or otherwise;

and

(d) for purposes relating to activities to which this Act applies, being activities that are, within the meaning of the Commonwealth Act, carried on for private purposes otherwise than by the use of a foreign boat—in relation to any waters to which the legislative powers of the State extend with respect to those activities.

PART II

PART II

COMMONWEALTH-STATE ARRANGEMENTS

DIVISION I—PRELIMINARY

DIVISION I

Interpretation.

6. In this Part, unless the contrary intention appears—

“arrangement” means an arrangement made by the State with the Commonwealth under Division III whether or not it is also made with another State or other States:

“coastal waters” in relation to the State has the same meaning as it has in the Commonwealth Act:

“Commonwealth Minister” means the Minister for the time being administering the Commonwealth Act and any other Minister performing and exercising functions and powers pursuant to section 12C of the Commonwealth Act:

“fishery” means a class of fishing activities identified in an arrangement under this Part as a fishery to which the arrangement applies:

“Joint Authority” means—

(a) the South-Eastern Fisheries Joint Authority established under section 12D (1) of the Commonwealth Act;

and

(b) any other Joint Authority established under section 12D (6) of that Act of which the Minister is a member:

“Joint Authority fishery” means a fishery in respect of which there is in force an arrangement under Division III under which the fishery is to be under the management of a Joint Authority.

DIVISION II—JOINT AUTHORITIES

DIVISION II

7. (1) The Minister may exercise and perform any power or function conferred on the Minister by Part IVA of the Commonwealth Act, including any power or function of the Minister as a member of a Joint Authority.

Powers and functions of Minister.

(2) Where, in the exercise of the power conferred on him by Part IVA of the Commonwealth Act, the Minister appoints a deputy, the deputy may exercise and perform the powers and functions conferred by that Act on the deputy of a member of a Joint Authority other than the Commonwealth Minister.

8. All courts and persons acting judicially shall take judicial notice of the signature of a person who is or has been a member of a Joint Authority or a deputy of a member of a Joint Authority and of the fact that he is, or was at a particular time, such a member or deputy.

Judicial notice.

9. A Joint Authority has such functions in relation to a fishery in respect of which an arrangement is in force under Division III as are conferred on it by the law in accordance with which, pursuant to the arrangement, the fishery is to be managed.

Functions of Joint Authority.

10. (1) A Joint Authority may, by instrument in writing, either generally or otherwise, delegate to a person any of its powers under this Act other than this power of delegation.

(2) Where a power delegated under subsection (1) is exercised by the delegate, the power shall, for the purposes of this Act, be deemed to have been exercised by the Joint Authority.

(3) A delegation under this section may be expressed as a delegation to the person from time to time holding, or performing the duties of, a specified office, including an office—

- (a) in the service of;
- (b) in the service of an authority of;
- or
- (c) under the law of,

the Commonwealth, another State or a Territory of the Commonwealth.

(4) A delegate of a Joint Authority is, in the exercise of his delegated powers, subject to the directions of the Joint Authority.

(5) A delegation of a power under this section—

- (a) may be revoked, by instrument in writing, by the Joint Authority (whether or not constituted by the persons constituting the Joint Authority at the time the power was delegated);
- (b) does not prevent the exercise of the power by the Joint Authority; and
- (c) continues in force notwithstanding any change in the membership of the Joint Authority.

(6) A certificate signed by a member of a Joint Authority stating any matter with respect to a delegation under this section by the Joint Authority shall, in the absence of proof to the contrary, be accepted as proof of the matter stated.

(7) In any legal proceedings an apparently genuine document purporting to be a certificate referred to in subsection (6) shall, in the absence of proof to the contrary, be deemed to be such a certificate and to have been duly given.

(8) Nothing in this Part is intended to prevent the delegation by a Joint Authority, in accordance with the law of the Commonwealth, of powers conferred on the Joint Authority by the law of the Commonwealth.

11. (1) The provisions of section 12F (1) to (8) of the Commonwealth Act apply to and in relation to the performance by a Joint Authority of its functions under this Act.

(2) A written record of a decision of a Joint Authority, if signed by the Commonwealth Minister, or his deputy, who took part in or made the decision shall, in the absence of proof to the contrary, be accepted as proof that the decision, as recorded, was duly made.

(3) In proceedings in any court, an instrument or other document signed, on behalf of a Joint Authority, by a member of the Joint Authority shall be deemed to have been duly executed by the Joint Authority and, unless the contrary is proved, shall be deemed to be in accordance with a decision of the Joint Authority.

12. The Minister shall cause a copy of a report of a Joint Authority prepared under section 12G of the Commonwealth Act to be laid before each House of Parliament as soon as practicable after preparation of the report.

PART II
DIVISION II
Report of
Joint
Authority.

DIVISION III—ARRANGEMENTS WITH RESPECT TO THE MANAGEMENT OF PARTICULAR FISHERIES

DIVISION III

13. (1) The State may, in accordance with section 12J of the Commonwealth Act, make an arrangement referred to in section 12H of that Act for the management of a particular fishery.

Arrangement
for
management of
certain
fisheries.

(2) An arrangement may be terminated as provided by the Commonwealth Act.

(3) After an arrangement has been made, but before the arrangement takes effect, authorities, endorsements and other instruments may be granted, issued, renewed, made or executed, and regulations, proclamations and notices may be made, for the purposes of the operation of this Act as affected by the arrangement, as if the arrangement had taken effect, but such an authority, endorsement, instrument, regulation, proclamation or notice does not have effect before the arrangement takes effect.

(4) Upon the termination of an arrangement, authorities, endorsements and other instruments granted, issued, renewed, made or executed, and regulations, proclamations and notices made, for the purposes of the operation of this Act as affected by the arrangement cease to have effect.

(5) After action for the purpose of the termination of an arrangement has been taken, but before the termination takes effect, authorities, endorsements and other instruments may be granted, issued, renewed, made or executed, and regulations, proclamations and notices may be made, for the purposes of the operation of this Act as affected by the termination of the arrangement, as if the arrangement had been terminated, but such an authority, endorsement, instrument, regulation, proclamation or notice does not have effect before the termination of the arrangement takes effect.

14. Subject to this section, where there is in force an arrangement that provides that a particular fishery is to be managed in accordance with the law of the State, the provisions of this Act apply to and in relation to the fishery except that those provisions do not apply to or in relation to that fishery in respect of foreign boats in Commonwealth proclaimed waters or operations on or from foreign boats, or persons on foreign boats, in Commonwealth proclaimed waters or in relation to matters that occurred in or in relation to Commonwealth proclaimed waters before the arrangement took effect.

Application of
this Act to
fisheries in
accordance
with
arrangements.

15. Where, in respect of a fishery, there is in force an arrangement under which a Joint Authority has the management of the fishery and the fishery is to be managed in accordance with the law of the State, the Joint Authority has the functions of keeping constantly under consideration the condition of the fishery, formulating policies and plans for the good management of the fishery and, for the purposes of the management of the fishery, exercising the powers conferred on it by this Act and co-operating and consulting with other authorities (including other Joint Authorities within the meaning of the Commonwealth Act) in matters of common concern.

Functions of
Joint
Authority.

PART II

DIVISION III

Joint Authority to exercise certain powers instead of Minister or Director.

16. (1) Subject to this section, an authority or endorsement granted, issued, renewed or made under this Act otherwise than by virtue of this section does not authorize the doing of any act or thing in or in relation to a Joint Authority fishery.

(2) In respect of a Joint Authority fishery that is to be managed in accordance with the law of the State, the powers conferred before or after the commencement of this Part on the Minister or the Director or the delegate of the Minister or Director by or under this Act (this Part excepted) or the regulations (including powers with respect to the grant, renewal, revocation and suspension of authorities) are exercisable by the Joint Authority to the exclusion of the Minister or the Director or the delegate of the Minister or Director.

(3) An authority granted under this Act by a Joint Authority shall contain such conditions and limitations that it does not apply in relation to a Joint Authority fishery, or Joint Authority fisheries, not managed by that Joint Authority.

(4) A Joint Authority may endorse an authority granted under this Act (including an authority granted by that Joint Authority or another Joint Authority) so as to extend the operation of the authority to matters to which the powers of the Joint Authority under this Act are applicable and, where such an endorsement is made—

(a) the endorsement ceases to have effect if the authority ceases to have effect;

and

(b) the Joint Authority may suspend or revoke the endorsement as if it were an authority granted by the Joint Authority.

(5) Subject to section 19 (1) (b) and (c), where, at a time a fishery becomes a Joint Authority fishery, a regulation, proclamation or notice under this Act would, but for this subsection, apply to the fishery, the regulation, proclamation or notice, as the case may be, ceases so to apply.

(6) This section does not empower a Joint Authority to grant, or to take other action in respect of, an authority in respect of a foreign boat or to endorse such an authority.

Application of certain provisions relating to offences.

17. For the purposes of the prosecution of a person for an offence under this Act in respect of anything done to or in relation to fish to which a Joint Authority fishery relates or otherwise in relation to a Joint Authority fishery, any reference in the provision creating the offence to an authority of a particular kind shall be read as a reference to such an authority, or an endorsement of such an authority, granted, issued, renewed or made by the relevant Joint Authority.

Presumption relating to certain statements.

18. A statement in an arrangement to the effect that specified waters—

(a) in the case of an arrangement to which the Commonwealth and the State are the only parties—are waters adjacent to the State;

and

(b) in the case of any other arrangement—are waters adjacent to the States that are parties to the arrangement or are waters adjacent to a specified State or States,

shall, for the purposes of this Act, be conclusively presumed to be correct.

19. (1) Where a Joint Authority is to manage a fishery in accordance with the law of the State, the Governor may, for the purpose of giving effect to a decision of the Joint Authority—

- (a) make regulations for the management of the fishery;
- (b) make a regulation applying to the fishery a regulation made otherwise than pursuant to this section;

or

- (c) amend a regulation made otherwise than pursuant to this section so that it is expressed to apply to the fishery, whether or not it also applies to any other fishery.

(2) The power conferred on the Governor to make regulations otherwise than under subsection (1) does not extend to the making of a regulation of a kind referred to in subsection (1) (a) or (b) or the amendment of a regulation in the manner referred to in subsection (1) (c).

(3) Where a regulation affecting a fishery that is to be managed by a Joint Authority is expressed to be made pursuant to this section, it shall be conclusively presumed that it was made for the purpose of giving effect to a decision of the Joint Authority.

PART III

PART III

ADMINISTRATION

DIVISION I

DIVISION I—OBJECTIVES

Objectives.

20. In the administration of this Act, the Minister and the Director shall have as their principal objectives:

(a) ensuring, through proper conservation and management measures, that the living resources of the waters to which this Act applies are not endangered or overexploited;

and

(b) achieving the optimum utilization and equitable distribution of those resources.

DIVISION II

DIVISION II—THE MINISTER AND THE DIRECTOR

Incorporation
of the Minister.

21. (1) The Minister shall be a corporation sole under the name the "Minister of Fisheries".

(2) The Minister shall have perpetual succession and a common seal and be capable of suing and being sued and of acquiring, holding and disposing of real and personal property of any kind and no limitation or deficiency of legal competence or capacity shall be imputed to the Minister.

(3) An apparently genuine document purporting to bear the common seal of the Minister shall be presumed in any legal proceedings, in the absence of proof to the contrary, to have been duly executed by the Minister.

The Director
of Fisheries.

22. (1) There shall continue to be an office of the Director of Fisheries.

(2) The Director of Fisheries shall be appointed and hold office subject to and in accordance with the provisions of the Public Service Act, 1967-1981.

Delegation.

23. (1) The Minister may, by instrument in writing, either generally or otherwise, delegate to the Director or any other officer of the Public Service of the State any of his powers under this Act other than this power of delegation.

(2) The powers conferred on the Minister by sections 28 and 57 shall not be the subject of any delegation.

(3) The Director may, by instrument in writing, either generally or otherwise, delegate to any officer of the Public Service of the State any of his powers under this Act other than this power of delegation.

(4) Where a power delegated under this section by the Minister or the Director is exercised by the delegate, the power shall, for the purposes of this Act, be deemed to have been exercised by the Minister or, as the case may be, the Director.

(5) A delegation under this section may be expressed as a delegation to the person from time to time holding, or performing the duties of, a specified office in the Public Service of the State.

(6) A delegate of the Minister or the Director is, in the exercise of his delegated powers, subject to the directions of the Minister or the Director.

(7) A delegation of a power by the Minister or the Director under this section—

(a) may be revoked, by instrument in writing, by the Minister or the Director;

and

(b) does not prevent the exercise of the power by the Minister or the Director.

(8) A certificate signed by the Minister or the Director stating any matter with respect to a delegation under this section by the Minister or, as the case may be, the Director shall, in the absence of proof to the contrary, be accepted as proof of the matter stated.

(9) In any legal proceedings, an apparently genuine document purporting to be a certificate referred to in subsection (8) shall, in the absence of proof to the contrary, be deemed to be such a certificate and to have been duly given.

24. (1) The Director shall, on or before the thirty-first day of December in each year, submit to the Minister a report on the administration of this Act during the year ending on the preceding thirtieth day of June.

Annual report.

(2) The Minister shall, as soon as practicable after his receipt of a report under subsection (1), cause copies of the report to be laid before both Houses of Parliament.

DIVISION III—FISHERIES OFFICERS

DIVISION III

25. (1) The Governor may appoint officers of the Public Service of the State to be fisheries officers for the purposes of this Act.

Fisheries officers.

(2) The Director shall, by virtue of his office, be a fisheries officer for the purposes of this Act.

(3) Every member of the police force of the State shall, by virtue of his office, be a fisheries officer for the purposes of this Act.

26. (1) The Minister shall, subject to subsection (2), issue to every fisheries officer an identity card stating the name of that person and the fact that he is a fisheries officer under this Act.

Identity cards and their production.

(2) The issue of an identity card is not required in the case of a fisheries officer who is a member of the police force of the State.

(3) A fisheries officer shall, upon demand by any person in relation to whom he is exercising or proposing to exercise any of his powers under this Act, produce his identity card, or where the fisheries officer is a member of the police force not in uniform, his warrant card, for the inspection of that person.

27. (1) A fisheries officer shall not, without the consent of the Minister—

Restriction on interests of fisheries officers.

(a) have any proprietary or pecuniary interest in a business, or a company or trust that has an interest in a business, involving the taking of fish or dealing in or with fish;

or

(b) act as agent for a person who has any such proprietary or pecuniary interest in any matter connected with such a business.

Penalty: One thousand dollars.

PART III
DIVISION III

(2) Where a fisheries officer appointed under section 25 (1) is convicted of an offence against subsection (1), he shall, upon such conviction, cease to hold office as a fisheries officer under this Act.

(3) A person (other than a fisheries officer) engaged in the administration of this Act shall, if he has an interest of a kind referred to in subsection (1) (a), declare the interest to the Minister.

Penalty: One thousand dollars.

**Powers of
fisheries
officers.**

28. (1) Subject to this section, a fisheries officer may for the purposes of the administration or enforcement of this Act—

- (a) where he reasonably suspects that any premises, land, waters, boat or vehicle is being, has been or is intended to be, used for, or in connection with, an activity regulated by or under this Act—at any time, enter and search and inspect and, where necessary for the purpose, break into or open any part of, or thing in, the premises, land, waters, boat or vehicle;
 - (b) where he reasonably suspects that anything has been done or omitted to be done in contravention of this Act in relation to any fish, boat, vehicle, device, equipment, document, record or other thing, or that it affords evidence of an offence against this Act—seize and retain the fish, boat, vehicle, device, equipment, document, record or other thing;
 - (c) give any directions to the person in charge of, or any person in or on, any premises, land, waters, boat or vehicle that are reasonably necessary in order to facilitate the exercise of the powers conferred by paragraph (a) or (b), including, without limiting the generality of the foregoing, directions with respect to the stopping or moving of a boat or vehicle;
 - (d) where he reasonably suspects that a person is engaging, is intending to engage, or has engaged in an activity regulated by or under this Act—require the person to state his full name and the address of his usual place of residence;
 - (e) where he reasonably suspects that a boat is being, is intended to be, or has been, used for the purpose of taking fish—require the person in charge of the boat to give information concerning the boat and her crew and any person on board the boat;
- or
- (f) require any person required to hold an authority or to have an authority in his possession to produce the authority, and take copies of or extracts from the authority.

(2) A fisheries officer shall not exercise the power conferred by subsection (1) (a) in relation to any premises except upon the authority of a warrant issued by a justice unless—

- (a) the power is exercised in relation to registered premises of a registered fish processor;
- or
- (b) the fisheries officer has reason to believe that in the circumstances urgent action is required.

(3) Where fish that are liable to seizure pursuant to subsection (1) (b) are contained in any receptacle or container, the receptacle or container and all its contents may be seized and retained pursuant to that subsection.

(4) A person shall not—

(a) fail to comply with a requirement made of him, or direction given to him, by a fisheries officer under this section;

or

(b) hinder or use abusive, threatening or insulting language to a fisheries officer, a person accompanying or assisting a fisheries officer, or any other person engaged in the administration or execution of this Act.

Penalty: Two thousand five hundred dollars.

(5) A person shall not assault a fisheries officer, a person accompanying or assisting a fisheries officer, or any other person engaged in the administration or execution of this Act.

Penalty: Four thousand dollars, or imprisonment for two years, or both.

(6) A fisheries officer may arrest without warrant any person—

(a) who hinders or assaults a fisheries officer, a person accompanying or assisting a fisheries officer or any other person engaged in the administration or execution of this Act;

or

(b) where he has reason to believe that the person has committed an offence against this Act and—

(i) failed to state truthfully his name or the address of his usual place of residence when required to do so under this section;

(ii) would fail to attend court in answer to a summons issued in respect of the offence;

or

(iii) would continue or repeat the offence if not arrested.

(7) Upon arresting any person in pursuance of this section, a fisheries officer shall forthwith convey the person, or cause him to be conveyed, to the nearest police station.

(8) Any person arrested in pursuance of this section who escapes from lawful custody shall be guilty of an offence and liable to a penalty not exceeding four thousand dollars, or imprisonment for two years, or both.

(9) Where anything has been seized under this section, the following provisions shall apply—

(a) the thing seized shall be held by the Crown pending proceedings for an offence against this Act related to the thing seized, unless the Minister—

(i) upon application, authorizes its release to the person from whom it was seized or any person who had legal title to it at the time of its seizure subject to such conditions as the Minister thinks fit, including conditions as to the giving of security for satisfaction of an order under paragraph (b) (i) (B);

or

PART III
DIVISION III

- (ii) in the case of fish or any other perishable thing, orders that it be forfeited to the Crown;
- (b) where proceedings for an offence against this Act related to the thing seized are instituted within six months of its seizure and the person charged is convicted of the offence, the court may—
- (i) where the thing seized has not been forfeited by order of the Minister—
- (A) order that it be forfeited to the Crown;
- or
- (B) where it has been released pursuant to paragraph (a) (i), order that it be forfeited to the Crown or order that the person to whom it was released pay to the Minister an amount equal to its market value at the time of its seizure, as the court thinks fit;
- or
- (ii) where the thing seized has been forfeited by order of the Minister, confirm the forfeiture;
- (c) where—
- (i) the thing seized has not been released pursuant to paragraph (a) (i);
- and
- (ii) proceedings for an offence against this Act related to the thing seized are not instituted within six months of its seizure, or such proceedings are so instituted, but no order for making or confirming forfeiture is made under paragraph (b),
- the person from whom the thing was seized or any person who had legal title to it at the time of its seizure shall be entitled to recover, by action in any court of competent jurisdiction—
- (iii) where the thing seized has not been forfeited by order of the Minister—the thing itself, or, if it has deteriorated or been destroyed, compensation of an amount equal to its market value at the time of its seizure;
- or
- (iv) where the thing seized has been forfeited by order of the Minister—compensation of an amount equal to its market value at the time of its seizure or, if it has been sold, the amount realized by its sale;
- (d) where the thing seized is forfeited to the Crown by order of the Minister or a court, it may be disposed of by sale, destruction or otherwise as the Minister directs;
- (e) any proceeds of sale under paragraph (d) and any amount recovered under an order under paragraph (b) (i) (B) shall be paid into the Fisheries Research and Development Fund;
- (f) where any compensation is payable under this subsection, the moneys required for that purpose shall be paid out of the Fisheries Research and Development Fund.

(10) Notwithstanding subsection (9), where—

(a) a fisheries officer finds any device for taking fish unattended and, pursuant to this section, seizes the device and any fish caught or trapped by the device;

and

(b) the owner of the device is unknown,

the following provisions shall apply:

(a) the Minister may order that the fish (if any) be forfeited to the Crown, in which case the fish may be disposed of by sale, destruction or otherwise as he directs and any proceeds of sale shall be paid into the Fisheries Research and Development Fund;

(b) notice of the seizure of the device shall be given in accordance with the regulations;

and

(c) if, after the expiration of one month from the giving of the notice, the owner remains unknown and the Minister determines that there is reason to believe that the device had been, was being, or was intended to be, used in contravention of this Act, he may order that it be forfeited to the Crown, in which case it may be disposed of by sale, destruction or otherwise as he directs and any proceeds of sale shall be paid into the Fisheries Research and Development Fund.

(11) A fisheries officer may, while acting in the exercise of his powers or functions under this Act, be accompanied by any person, and, if he reasonably believes that it is necessary in the circumstances, request any suitable person to assist him in the exercise of his powers or functions.

(12) A person, while assisting a fisheries officer in response to a request for assistance, shall have and may exercise all such powers of a fisheries officer as are reasonably necessary for the purpose.

(13) A fisheries officer may, if he believes that it is necessary for the purpose of enforcing any of the provisions of this Act, request the person in charge of any boat to make the boat available for his use.

(14) Where a fisheries officer makes use of a boat pursuant to subsection (13), the Minister may pay to the person who would otherwise have been entitled to the use of the boat at that time such compensation as he considers proper for any loss incurred as a result of the boat being made available for use by the fisheries officer.

29. A person shall not, by words or conduct, falsely represent that he is a fisheries officer.

False representation.

Penalty: Two thousand five hundred dollars.

30. (1) No personal liability shall attach to a fisheries officer, or any person lawfully assisting a fisheries officer, for any act or omission by him in good faith and in the exercise or discharge, or purported exercise or discharge, of the powers, duties or functions of a fisheries officer under this Act.

Immunity from personal liability.

(2) A liability that would, but for subsection (1), lie against a fisheries officer or other person shall lie against the Crown.

PART III
DIVISION IV

DIVISION IV—RESEARCH AND DEVELOPMENT

Research and
development.

31. The Minister may carry out any research, exploration, experiments, works or operations of any kind for the conservation, management or enhancement of living resources found in waters to which this Act applies or the advancement or promotion of any fishing, fish farming or fish processing activity and for that purpose make and carry out any arrangement with any other authority or person.

Research and
Development
Fund.

32. (1) The Fund known as the "Fisheries Research and Development Fund" shall continue in existence under that name and continue to be kept in the Treasury.

(2) The Fund shall consist of the following moneys:

- (a) the moneys in the Fund immediately before the commencement of this Act;
- (b) any charges and fees paid under this Act;
- (c) any moneys required to be paid into the Fund under any other provision of this Act;
- (d) any moneys received by way of grant, gift or bequest for the purposes of the Fund;
- (e) any income from investment of moneys belonging to the Fund;
- and
- (f) any moneys appropriated by Parliament for the purposes of the Fund.

(3) The Fund may be applied by the Minister (without further appropriation than this subsection)—

- (a) for the purpose of carrying out any research, exploration, experiments, works or operations of a kind referred to in section 31;
- and
- (b) in making any payment required by any other provision of this Act to be made from the Fund.

(4) The Minister may, with the approval of the Treasurer, invest any of the moneys belonging to the Fund that are not immediately required for the purposes of this Act in such manner as may be approved by the Treasurer.

PART IV

PART IV

REGULATION OF FISHING, ETC.

DIVISION I—FISHERIES AND FISHING

DIVISION I

Interpretation.

33. In this Division—

“licence” means a fishery licence under this Division:

“registration” means registration of a boat by endorsement of a fishery licence, or registration of the master of a boat by endorsement of a fishery licence, under this Division.

34. (1) No person shall, for the purpose of trade or business, engage in a fishing activity of a class that constitutes a fishery unless—

Persons and boats engaged or used in fisheries to be licensed.

(a) he holds a licence in respect of the fishery;

or

(b) he is acting as an agent of a person holding a licence in respect of the fishery.

Penalty: Five thousand dollars.

(2) No person shall, for the purpose of trade or business, use a boat, or cause, suffer or permit a boat to be used, for the purpose of engaging in a fishing activity of a class that constitutes a fishery unless—

(a) the boat—

(i) is registered by endorsement of a licence in respect of the fishery held by him or a person of whom he is acting as an agent;

or

(ii) is being used in the place of a boat referred to in subparagraph (i) with the consent of the Director and in accordance with the conditions (if any) of that consent;

and

(b) the boat is in the charge of a person who—

(i) is registered by endorsement of the licence as the master of a boat that may be used pursuant to the licence;

or

(ii) is acting in the place of a person referred to in subparagraph (i) with the consent of the Director and in accordance with the conditions (if any) of that consent.

Penalty: Five thousand dollars.

(3) Subsection (2) does not apply to a boat of a prescribed class.

35. (1) An application for a licence or registration must be made to the Director in such manner and form, contain such information and be accompanied by such papers and documents (including photographs) as are prescribed in relation to the class of licence or registration sought.

Applications for licences or registration.

PART IV
DIVISION 1

(2) An applicant for a licence or registration must, if the Director so requires—

(a) furnish the Director with such further information, papers or documents as he specifies;

and

(b) verify by statutory declaration any information furnished for the purposes of the application.

(3) An applicant for a licence or registration must at the time of making the application pay to the Director such application fee (if any) as may be prescribed.

Grant of
licences or
registration.

36. (1) Subject to this Act, an application—

(a) for a licence shall be determined by the Director subject to and in accordance with the provisions of the scheme of management prescribed for the fishery;

(b) for registration of a boat shall not be granted by the Director unless he is satisfied—

(i) that the applicant is the holder of a licence that is in force;

and

(ii) as to the matters prescribed by the scheme of management for the fishery;

(c) for registration of a person as the master of a boat shall not be granted by the Director unless he is satisfied—

(i) that the applicant is the holder of a licence that is in force;

(ii) that a boat is registered in the name of the applicant by endorsement of the licence;

and

(iii) that the person nominated as the proposed master is a fit and proper person to be master of the boat.

(2) Notwithstanding the provisions of subsection (1) (c), where the scheme of management prescribed for the fishery provides that only the holder of a licence in respect of the fishery may be registered as the master of a boat used pursuant to the licence, the person nominated as the proposed master must be the holder of the licence.

(3) A licence or registration shall not be granted by the Director except upon payment of the licence or registration fee, or, upon payment, in accordance with the regulations, of an instalment of the licence or registration fee, prescribed under this Act.

(4) The Director shall, upon granting an application for registration, effect the registration by an endorsement of the licence in relation to which the registration was granted.

(5) The Director may, upon application in the prescribed manner and form by the holder of the licence on which any registration is endorsed, revoke the registration.

37. (1) The Director may upon granting a licence, or at any other time, impose a condition of the licence, being a condition —

(a) directed towards conserving, enhancing or managing the living resources to which the fishery relates;

or

(b) related to any other matter prescribed by the scheme of management for the fishery.

(2) The Director may, at any time, revoke or vary a condition of a licence.

(3) The conditions of a licence shall be endorsed on the licence.

(4) The holder of a licence shall not contravene, or fail to comply with, a condition of the licence.

Penalty: For a first offence—one thousand dollars; for a second offence—two thousand five hundred dollars; for a subsequent offence—five thousand dollars.

38. (1) Subject to this section, no licence shall be transferable.

Transfer of
licences.

(2) Where the scheme of management prescribed for a fishery provides that licences, or a class of licences, in respect of the fishery are transferable, a licence in respect of the fishery, or a licence of the class prescribed, may be transferred with the consent of the Director.

(3) The Director shall not give his consent to the transfer of a licence unless he is satisfied as to the matters prescribed by the scheme of management.

(4) Where a licence is transferable, the registration of a boat effected by endorsement of the licence, may also be transferred.

39. (1) A licence and any registration effected by endorsement of the licence shall, subject to this Act, remain in force until the expiration of the term prescribed for licences in respect of the fishery.

Licences and
registration
run together.

(2) Where—

(a) a licence is cancelled or surrendered under this Act, any registration endorsed on the licence shall be deemed to have been cancelled or surrendered;

or

(b) a licence is suspended under this Act for any period, any registration endorsed on the licence shall be deemed to have been suspended for the same period.

40. (1) The holder of a licence (being a natural person) shall carry the licence with him at all times when he is engaging in any fishing activity pursuant to the licence.

Licences to be
carried during
the course of
fishing
activities, etc.

Penalty: Five hundred dollars.

(2) Where a registered boat is being used upon any waters for any purpose, the person in charge of the boat shall carry with him the licence pursuant to which the boat may be used for the purpose of taking fish.

Penalty: Five hundred dollars.

PART IV
DIVISION I

Offence of
engaging in
certain fishing
activities.

41. No person shall engage in a fishing activity of a prescribed class.

Penalty: For a first offence—one thousand dollars; for a second offence—two thousand five hundred dollars; for a subsequent offence—five thousand dollars.

Offence of
taking
protected fish.

42. No person shall take a fish of a class declared by regulation to be protected.

Penalty: For a first offence—two thousand dollars; for a subsequent offence—five thousand dollars.

Temporary
prohibition of
certain fishing
activities.

43. (1) The Governor may, by proclamation, declare that it shall be unlawful for a person to engage in a fishing activity of a class specified in the proclamation during a period specified in the proclamation.

(2) The Governor may, by proclamation, vary or revoke a declaration under subsection (1).

(3) No person shall engage in a fishing activity in contravention of a proclamation under this section.

Penalty: For a first offence—one thousand dollars; for a second offence—two thousand five hundred dollars; for a subsequent offence—five thousand dollars.

Offences with
respect to
sale, purchase,
possession or
control of fish.

44. (1) No person shall sell or purchase fish taken in waters to which this Act applies unless the fish was taken pursuant to a licence.

Penalty: Five thousand dollars.

(2) No person shall sell or purchase, or have in his possession or control—

(a) fish taken in contravention of this Act;

or

(b) fish of a prescribed class.

Penalty: For a first offence—one thousand dollars; for a second offence—two thousand five hundred dollars; for a subsequent offence—five thousand dollars.

Interference
with lawful
fishing
activities.

45. (1) No person shall, without reasonable excuse—

(a) obstruct or interfere with a lawful fishing activity;

or

(b) interfere with fish taken in the course of any lawful fishing activity.

Penalty: One thousand dollars.

(2) Where a person is obstructing or interfering with a lawful fishing activity in contravention of subsection (1), he shall, at the request of a person engaged in the lawful fishing activity, cease or discontinue the obstructive conduct or interference or remove the obstruction.

Penalty: One thousand dollars.

(3) A court convicting a person of an offence against this section may, whether or not a penalty is imposed, order the person convicted to pay to any

person affected by the commission of the offence such compensation as the court considers proper for loss or damage suffered by that person as a result of the commission of the offence.

46. The Governor may make regulations for the conservation, enhancement and management of the living resources of the waters to which this Act applies, the regulation of fishing and the protection of certain fish, and, without limiting the generality of the foregoing, may by such regulations—

Regulations
relating to
fisheries and
fishing.

- (a) declare that any prescribed class of fishing activities constitutes a fishery;
- (b) prescribe a scheme of management for a fishery and for that purpose (without limiting the matters which may be provided for in the scheme)—
 - (i) limit the applications for licences in respect of the fishery that may be considered by the Director to those made during a specified period or to those made during a specified period after a call by the Director for applications or otherwise;
 - (ii) prescribe the maximum number of licences that may be in force in respect of the fishery or that may be granted in relation to applications made during a specified period or during a specified period after a call for licence applications in respect of the fishery;
 - (iii) prescribe qualifications that applicants for licences in respect of the fishery must possess to be eligible to be granted the licences and any other matters to which the Director shall have regard in determining eligibility for licences in respect of the fishery;
 - (iv) prescribe a procedure of competitive tendering or ballots under which applicants for licences in respect of the fishery who are eligible to be granted licences may be selected for the available number of licences;
 - (v) prevent or restrict the granting to bodies corporate of licences in respect of the fishery or the granting of licences to be held by more than one person;
 - (vi) provide that only the holder of a licence in respect of the fishery may be registered as the master of a boat used pursuant to the licence;
 - (vii) prescribe matters of which the Director must be satisfied before granting the registration of a boat;
 - (viii) prescribe matters that may be the subject of conditions of licences in respect of the fishery;
 - (ix) prescribe and provide for any security to be given by the holder of a licence in respect of the fishery for due compliance with the provisions of this Act;
 - (x) prescribe the term of licences granted in respect of the fishery and provide for the renewal of such licences;
 - (xi) authorize the transfer of licences or a class of licences in respect of the fishery;

- (xii) prescribe matters of which the Director must be satisfied before consenting to the transfer of a licence in respect of the fishery;
 - (xiii) prescribe fees for applications for the granting or transfer of licences in respect of the fishery;
 - (xiv) prescribe fees for the granting, renewal or transfer of a licence in respect of the fishery, being fees of amounts fixed by reference to the estimated total value of production by the licence holders in respect of the fishery during an antecedent period or otherwise (which fees may vary according to the term, or unexpired period of the term, of the licence or any other prescribed factor);
 - (xv) provide for the payment, refund and recovery of fees or parts of fees payable in respect of fishery licences;
- (c) require and regulate the application or affixing of a mark or other distinguishing feature to registered boats and other boats of a prescribed class;
 - (d) require and regulate the removal of prescribed marks or other distinguishing features from boats that have ceased to be registered under this Act and other boats of a prescribed class;
 - (e) prescribe and provide for the payment, recovery or refund of fees for registration of boats or registration of masters of boats, being fees which may vary according to prescribed factors;
 - (f) prohibit, restrict or regulate the carrying or possession of devices;
 - (g) require and provide for the registration of devices and prescribe fees for such registration which may vary according to prescribed factors;
 - (h) require and regulate the application or affixing of marks or other distinguishing features to devices and equipment used for or in connection with fishing activities;
 - (i) prescribe and regulate the devices and equipment to be installed in or carried on boats used for fishing activities;
 - (j) prescribe methods for determining the size or weight of fish;
 - (k) restrict or regulate the treatment, handling, storage, movement or dealing by persons engaged in fishing activities of or with fish taken in the course of those fishing activities;
 - (l) require persons engaging in fishing activities of a prescribed class to furnish the Director with returns in the form fixed by the Minister setting out the prescribed information relating to those fishing activities and any matters ancillary or incidental to or connected with those fishing activities;
 - (m) prescribe and provide for penalties not exceeding two thousand dollars for any contravention of, or failure to comply with, any regulation made under this section.

DIVISION II—PROTECTION OF AQUATIC HABITAT

PART IV
DIVISION II

47. (1) The Governor may, by proclamation, declare any waters, or land and waters, specified in the proclamation to be an aquatic reserve.

Declaration of aquatic reserves, controlled aquatic reserves and declared waters.

(2) Any waters that were immediately before the commencement of this Act a controlled aquatic reserve shall be deemed to be an aquatic reserve declared by proclamation under subsection (1).

(3) Land shall not form part of an aquatic reserve unless the land has been placed under the care, control and management of the Minister.

(4) The Governor may, by proclamation, vary or revoke a proclamation under subsection (1).

48. (1) Except as provided by the regulations or pursuant to a permit under this section, no person shall enter or remain in an aquatic reserve.

Protection of aquatic habitat.

Penalty: For a first offence—one thousand dollars; for a second offence—two thousand five hundred dollars; for a subsequent offence—five thousand dollars.

(2) Except as provided by the regulations or pursuant to a permit under this section, no person shall engage in an operation involving or resulting in—

(a) disturbance of the bed of any waters;

(b) removal of or interference with aquatic or benthic flora or fauna of any waters;

or

(c) discharge, release or deposit of any matter (whether solid, liquid or gaseous) in any waters.

Penalty: For a first offence—one thousand dollars; for a second offence—two thousand five hundred dollars; for a subsequent offence—five thousand dollars.

(3) The Director may issue a permit to any person authorizing that person to engage in any activity, or do any act, specified in the permit during such period and subject to such conditions as may be specified in the permit.

(4) The Director may, if he thinks fit, vary or revoke a condition of the permit, or impose a further condition.

(5) The holder of a permit under subsection (3) shall not contravene, or fail to comply with, a condition of the permit.

Penalty: For a first offence—one thousand dollars; for a second offence—two thousand five hundred dollars; for a subsequent offence—five thousand dollars.

(6) In this section, “aquatic or benthic flora or fauna” includes mangroves but does not include fish.

PART IV
DIVISION III

DIVISION III—EXOTIC FISH, FISH FARMING AND DISEASE IN FISH

Offence to
import, sell,
etc., certain
exotic fish.

49. (1) No person shall bring, or cause to be brought, into the State or sell, purchase or deliver any exotic fish to which this section applies.

Penalty: Two thousand dollars.

(2) Subject to this section, on or after the expiration of the period of six months from the commencement of this section, no person shall have in his possession or control any exotic fish to which this section applies.

Penalty: Two thousand dollars.

(3) The Director may, upon application made by any person before the expiration of the period referred to in subsection (2), issue a permit authorizing the person to continue to possess exotic fish specified in the permit, if he is satisfied that the fish have been in the possession of that person since the commencement of this section.

(4) A permit under this section shall be subject to such conditions as may be specified in the permit.

(5) The Director may, if he thinks fit, vary or revoke a condition of the permit, or impose a further condition.

(6) The holder of a permit under subsection (3) shall not contravene, or fail to comply with, a condition of the permit.

Penalty: Two thousand dollars.

(7) This section does not apply to exotic fish of a prescribed class.

Offence to
release
certain fish into
natural waters.

50. (1) Subject to this section, no person shall release or permit to escape into, or deposit in, any waters—

(a) any exotic fish;

(b) any farm fish;

or

(c) any fish that have been kept apart from their natural habitat.

Penalty: Two thousand dollars.

(2) The Director may, upon application by any person, issue a permit authorizing the person to release fish of a prescribed class into waters specified in the permit subject to such conditions as may be specified in the permit.

(3) The Director may, if he thinks fit, vary or revoke a condition of the permit, or impose a further condition.

(4) The holder of a permit under subsection (2) shall not contravene, or fail to comply with, a condition of the permit.

Penalty: Two thousand dollars.

Regulations
relating to
exotic fish,
fish farming
and disease in
fish.

51. The Governor may make regulations for the control of exotic fish, the regulation of fish farming, and the control of disease in fish, and, without limiting the generality of the foregoing, may by such regulations—

(a) prescribe the measures to be taken for the prevention, elimination or control of disease in farm fish, or the prevention of the escape of farm fish or water used for the purpose of fish farming;

- (b) require any person operating a fish farm or keeping any fish to notify the Director of the occurrence of disease or symptoms of disease in the fish farmed or kept by that person;
- (c) prohibit, restrict or regulate the sale or processing of farm fish;
- (d) prohibit, restrict or regulate the bringing into the State or possession or control of fish that may be affected by disease;
- (e) prescribe the powers of fisheries officers for the detection, prevention, elimination or control of disease in fish;
- (f) regulate the disposal of the water in which fish have been kept;
- (g) prescribe and provide for the measures to be taken and the powers of the Director and other fisheries officers for the recovery, eradication or containment of exotic fish or other fish that have been released or have escaped into any waters, or for the treatment of waters contaminated by water in which such fish have been kept;
- (h) prescribe and provide for penalties not exceeding two thousand dollars for any breach of, or failure to comply with, any regulation made under this section.

DIVISION IV—LEASES OR LICENCES TO FARM OR TAKE FISH

DIVISION IV

52. In this Division—

Interpretation.

“fish” includes the fibre of sea grass and sponges.

53. (1) Subject to this section and section 76 of the Harbors Act, 1936-1981, the Minister may, upon application and payment of such fee as he thinks appropriate, grant to any person a lease or licence for a term not exceeding ten years in respect of any area consisting of land or of waters, or of land and adjacent waters, conferring rights to occupy and use the area for fish farming or to take fish from the area.

Leases or licences to farm or take fish.

(2) Land shall not be included in a lease or licence under this section conferring rights to occupy and use an area for fish farming unless the land has been placed under the care, control and management of the Minister.

(3) The terms, covenants, conditions, limitations, rights of renewal and cancellation, reservations and restrictions in any lease or licence granted under this section (whether by way of renewal or otherwise) shall be such as are determined by the Minister.

(4) The Director shall cause notice of the granting of a lease or licence under this section to be published in the *Gazette*.

(5) Any franchise to take fish granted under the repealed Act and in force immediately before the commencement of this Act—

- (a) shall continue in force subject to and in accordance with its terms and conditions;
 - (b) shall not be transferred except with the consent of the Minister;
- and

PART IV
DIVISION IV

(c) may be revoked by the Minister upon any contravention of or failure to comply with a condition of the franchise.

(6) Any lease or licence to use and occupy an area for fish farming granted under the repealed Act and in force immediately before the commencement of this Act shall continue in force subject to and in accordance with its terms, covenants, conditions, limitations, rights, reservations and restrictions.

DIVISION V

DIVISION V—FISH PROCESSING

Fish processors
required to be
registered.

54. (1) No person shall act as a fish processor unless he is registered under this section as a fish processor.

Penalty: Two thousand dollars.

(2) No registered fish processor shall use any premises, place, boat or vehicle for, or in connection with, processing, storing or dealing with unprocessed fish unless the premises, place, boat or vehicle is specified in the certificate of registration.

Penalty: Two thousand dollars.

(3) The Director may, subject to this Act, upon application made by any person in the prescribed manner and form and upon payment of the registration fee, or, upon payment, in accordance with the regulations, of an instalment of the registration fee, register that person as a fish processor and specify in the certificate of registration the premises, places, boats and vehicles proposed to be used by the applicant for or in connection with processing, storing or dealing with unprocessed fish.

(4) Registration under this section shall, subject to this Act, remain in force until the expiration of the term specified in the certificate of registration and may, from time to time, upon application in the prescribed manner and form and upon payment of the registration fee, or upon payment, in accordance with the regulations, of an instalment of the registration fee, be renewed for successive terms of such period as may be specified in the certificate.

(5) The Director may, upon application at any time by any person registered under this section as a fish processor and payment of the prescribed fee, specify in the certificate of registration any additional premises, place, boat or vehicle mentioned in the application that the person proposes to use for or in connection with processing, storing or dealing with unprocessed fish.

(6) Where a person registered under this section ceases to use for or in connection with processing or storing or dealing with unprocessed fish any premises, place, boat or vehicle specified in the certificate of registration, he shall within fourteen days after the cessation, give the Director notice in writing of the cessation.

Penalty: Two hundred dollars.

Regulations
relating to fish
processing.

55. The Governor may make regulations for the regulation of fish processing and matters ancillary or incidental to or connected with fish processing, and, without limiting the generality of the foregoing, may by such regulations—

- (a) prescribe the records to be kept by fish processors;
- (b) require fish processors to furnish the Director with returns in the form determined by the Minister setting out the prescribed information relating to the sale, purchase, processing, storage or movement of processed or unprocessed fish;
- (c) regulate the manner in which and the means by which unprocessed fish may be delivered, consigned or transported for processing;
- (d) regulate the manner in which unprocessed fish are received and stored by fish processors including the labelling of receptacles in which they are received and stored and the treatment of and dealing with processed fish;
- (e) prohibit or regulate the use of boats in relation to the storage, processing, treatment of and dealing with fish;
- (f) prescribe the fees for registration of fish processors or the specification of additional premises, places or boats in certificates of registration, being fees which may vary according to prescribed factors;
- (g) provide for the payment of fees for registration of fish processors and their recovery;
- (h) provide for the refund of a fee for registration of a fish processor or a part of such fee;
- (i) prescribe and provide for penalties not exceeding two thousand dollars for any contravention of, or failure to comply with, any regulation made under this section.

DIVISION VI—SUSPENSION OR CANCELLATION OF AUTHORITIES

DIVISION VI

56. (1) A court convicting a person of an offence against this Act may, if it thinks fit, in addition to imposing any other penalty, make an order—

Suspension or
cancellation of
authorities by
courts.

- (a) suspending for a period specified by the court, or until the further order of the court, any specified authority held by the person;

or

- (b) cancelling any specified authority held by the person.

(2) Subject to this section, where a court convicts the holder of a fishery licence of a prescribed offence, the Director shall cause the conviction to be recorded on that licence.

(3) Subject to this section, where a court convicts the holder of a fishery licence of a prescribed offence, the court shall, in addition to imposing any other penalty—

- (a) if he has one previous conviction for a prescribed offence, suspend the licence for a period specified by the court, being a period of not less than three months during which fishing pursuant to the licence would otherwise have been lawful;

or

- (b) if he has two previous convictions for prescribed offences, cancel the licence.
- (4) For the purposes of subsection (3)—
- (a) previous convictions for prescribed offences shall be taken into account whether or not recorded on the licence;
- (b) a conviction for a prescribed offence that is recorded on a licence shall be attributed to the holder of the licence whether the offence was committed by the holder of the licence or a previous holder of the licence;
- (c) two or more convictions for prescribed offences arising out of events taking place on the same day shall be regarded as a single conviction for a prescribed offence;
- and
- (d) a conviction for a prescribed offence committed more than three years before the offence under consideration was committed shall be disregarded.
- (5) If a court by which a person is convicted of a prescribed offence is satisfied by evidence given on oath forthwith upon conviction that the offence is trifling, the court shall certify accordingly.
- (6) Where a court certifies that a prescribed offence is trifling—
- (a) the conviction shall not be recorded on a fishery licence held by the convicted person;
- (b) the court shall not make an order under subsection (3) in consequence of the conviction;
- (c) the conviction shall not be taken into account for the purposes of subsection (3) upon conviction for any other prescribed offence.
- (7) In any proceedings for a prescribed offence an apparently genuine document purporting to be a fishery licence on which there is recorded a conviction for a prescribed offence shall, in the absence of proof to the contrary, be deemed to be a fishery licence on which the conviction was duly recorded in accordance with the provisions of this section.
- (8) Where an authority has been suspended under this section, the authority may be renewed but shall remain subject to suspension until the expiration of the period of suspension.
- (9) Where an appeal has been instituted against a conviction, any order made under this section by the convicting court shall be suspended until the determination of the appeal.
- (10) In this section "prescribed offence" means—
- (a) an offence against section 28, 34 (2), 37, 41, 42, 43 or 44 (2);
- or
- (b) an offence against section 69 where the principal offence was an offence referred to in paragraph (a).

Suspension or
cancellation of
authorities by
Minister.

57. (1) The Minister may, after calling upon a person who holds an authority to show cause why an order under this section should not be made against him, make an order under this section if he is satisfied—

- (a) that the authority was obtained improperly;
- or

- (b) that the person has been convicted of an offence against any other Act (including an Act of the Commonwealth or another State or a Territory of the Commonwealth), being an offence related to fishing or involving violent or threatening behaviour and the offence is of such a nature that, in the opinion of the Minister, an order under this section should be made against the person.

(2) Subject to subsection (1), the Minister may, by notice published in the *Gazette*, make an order—

- (a) suspending for a period specified by the Minister, or until the further order of the Minister, any specified authority held by the person;
- or
- (b) cancelling any specified authority held by the person.

(3) Where an authority has been suspended under this section, the authority may be renewed but shall remain subject to suspension until the expiration of the period of suspension.

DIVISION VII—REVIEW OF DECISIONS OF MINISTER OR DIRECTOR

DIVISION VII

58. (1) A person aggrieved—

- (a) by a decision of the Director refusing an application for an authority or the transfer of an authority or imposing or varying a condition of an authority;
- (b) by a decision of the Minister refusing an application under section 28 (9) (a) (i);
- or
- (c) by an order of the Minister made under section 57,

may apply to a District Court for a review of the decision or order.

(2) The application for review must be made within one month of the making of the decision or order to be reviewed, but the District Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the application be so made.

(3) The District Court may, on the review, do one or more of the following, according to the nature of the case:

- (a) confirm the decision or order subject to review;
- (b) substitute, or make in addition, any decision or order that should, in the opinion of the court, have been made in the first instance;
- (c) remit the subject matter of the appeal to the Director, or, as the case may require, the Minister, for further consideration;
- (d) make any further or other order as to costs or any other matter that the case requires.

(4) The powers conferred by section 28 of the Local and District Criminal Courts Act, 1926-1981, include power to make rules regulating the practice and procedure on such reviews.

(5) The Director or the Minister, shall, if so required by any person affected by a decision or order referred to in subsection (1) made by him, state in writing the reasons for his decision or order.

Review of
decisions
relating to
licences.

PART IV
DIVISION VII

(6) If the reasons of the Director or the Minister, are not given in writing at the time of making a decision or order and the person in relation to whom it was made then requested the Director or the Minister to state his reasons in writing, the time for making an application for review shall run from the time of service upon that person of the written statement of those reasons.

(7) Where the Minister or the District Court is satisfied that an application for review of an order of the Minister has been instituted, or is intended, the Minister or the District Court may suspend the operation of the order until the completion of the review.

(8) Where the Minister has suspended the operation of an order under subsection (7), the Minister may terminate the suspension, and where the District Court has done so, the District Court may terminate the suspension.

(9) No appeal shall lie against a decision of a District Court made upon a review.

PART V

PART V

MISCELLANEOUS

59. (1) The Minister may, by notice published in the *Gazette*, exempt any person or class of persons from any specified provisions of this Act. Exemptions.

(2) An exemption under this section may be made subject to such conditions as the Minister thinks fit and specifies in the notice.

(3) The Minister may, if he thinks fit, by notice published in the *Gazette*, vary or revoke an exemption or a condition of an exemption under this section or impose a further condition.

(4) A person to whom an exemption under this section applies shall not contravene, or fail to comply with, a condition of the exemption.

Penalty: Two thousand dollars.

60. (1) The Director may, by notice in writing, require the holder of an authority to return the authority to him at a place and within a period specified in the notice— Return of authorities.

(a) if the authority is suspended or cancelled;

(b) for the purpose of varying or revoking a condition of the authority or imposing a further condition;

or

(c) in the case of a fishery licence, for the purpose of enabling a conviction for an offence to be recorded on the licence.

(2) A person given a notice under this section shall not fail to comply with the notice.

Penalty: Five hundred dollars.

(3) Where the Director has required the return of an authority under subsection (1) but has not received the authority within the period specified in the notice, the authority shall, if it has not already been suspended or cancelled, be suspended from the expiration of that period until it is returned to the Director.

61. (1) The holder of an authority may at any time surrender the authority to the Director. Surrender of authorities.

(2) Where an authority is surrendered to the Director the authority shall cease to have any force or effect.

62. The Director may issue a duplicate copy of an authority if he is satisfied (upon the basis of evidence verified by statutory declaration, if he so requires) that the authority previously issued has been lost or destroyed or that some other proper cause exists. Copies of authorities.

63. A person shall not— Misuse of authorities.

(a) except as contemplated by this Act or without other reasonable excuse, give any other person the possession or control of an authority that is not in the name of that other person;

(b) except as contemplated by this Act or without other reasonable excuse, have in his possession or control an authority that is not in his name;

or

(c) falsely represent himself to be the person named in an authority.

Penalty: One thousand dollars.

Certain
authorities
may be held
jointly.

64. (1) Subject to this Act, an authority may be granted to two or more natural persons who propose to engage jointly in the activity authorized by the authority.

(2) An application for an authority to be granted to two or more persons shall be made as a joint application by those persons in the manner and form prescribed in relation to the kind of authority sought.

(3) Where an authority is granted under this Act to two or more persons—

(a) only one authority shall be granted;

(b) each person granted the authority shall be specified in the authority;

and

(c) each person specified in the authority shall be deemed to be the holder of the authority.

(4) Where an authority is held jointly by two or more persons under this Act, the authority is liable to be suspended or cancelled pursuant to Part IV for an offence committed or an act done or an omission made by one of the holders of the authority whether or not the other holder, or each of the other holders, of the authority was also guilty of the offence or act or omission.

Director to
keep register
of authorities.

65. (1) The Director shall keep a register of all authorities granted under this Act in such form and containing such information as he thinks fit.

(2) The register referred to in subsection (1) shall be made available for public inspection.

Additional
penalty based
upon value of
fish taken
unlawfully.

66. Where a person is convicted of an offence against this Act involving the taking of fish, the court shall, in addition to imposing any other penalty prescribed by this Act, impose a penalty equal to—

(a) five times the amount determined by the convicting court to be the wholesale value of the fish at the time at which they were taken;

or

(b) ten thousand dollars,

whichever is the lesser amount.

Evidentiary
provisions.

67. (1) In proceeding for an offence against this Act, an apparently genuine document purporting to be a certificate signed by the Director certifying—

(a) that a person named in the certificate was or was not at a specified time the holder of a specified authority;

(b) that a provision set out in the certificate was at a specified time a condition of a specified authority;

(c) that a boat specified in the certificate was or was not at a specified time a registered boat;

(d) that a person specified in the certificate was or was not at a specified time a registered master in relation to a specified boat,

shall, in the absence of proof to the contrary, be proof of the matters certified.

(2) In proceedings for an offence against this Act, an allegation in the complaint—

(a) that a person named in the complaint was at a specified time a fisheries officer;

(b) that any fish in relation to which any act or omission is alleged to have been done or made was a fish of a specified species, sex, size or weight, or was a fish having any other specified characteristic;

(c) that any purpose specified in the complaint was the purpose for which any act was done,

shall, in the absence of proof to the contrary, be deemed to be proof of the matter alleged.

(3) In proceedings for an offence against this Act, if it is proved that a fish was in the possession or control of a person on a particular day in proximity to waters to which this Act applies, or an area of such waters specified in the complaint, it shall be presumed, in the absence of proof to the contrary, that the fish was taken by that person from such waters or area of waters on that day.

(4) In proceedings for an offence against this Act, if it is proved that on a particular day in proximity to waters to which this Act applies, or an area of such waters specified in the complaint, a person had in his possession or control any fish and a device capable of being used for taking such fish, it shall be presumed, in the absence of proof to the contrary, that the person took the fish by means of that device on that day from such waters or area of waters.

(5) In proceedings for an offence against this Act, if it is proved that a fish was in a boat on a particular day in proximity to waters to which this Act applies, or an area of such waters specified in the complaint, it shall be presumed in the absence of proof to the contrary, that the boat was used for the purpose of taking the fish from such waters or area of waters on that day.

(6) In proceedings for an offence against this Act, if it is proved that on a particular day in proximity to waters to which this Act applies, or an area of such waters specified in the complaint, a person had in his possession or control a device that is prohibited under this Act or the use of which is prohibited in such waters or area of waters, it shall be presumed, in the absence of proof to the contrary, that the person had used that device for the purpose of taking fish in such waters or area of waters on that day.

(7) In proceedings for an offence against this Act, evidence of a distance, height, depth or position as determined by the use of an electronic, sonic, optical, mechanical or other device by a fisheries officer or any other competent person shall, in the absence of proof to the contrary, be accepted as proof of the distance, height, depth or position.

(8) In proceedings for an offence against this Act, a statement made in evidence by a fisheries officer that a place or area described or indicated by him was within waters specified by or under this Act shall, in the absence of proof to the contrary, be accepted as proof of the matter so stated.

(9) In proceedings for an offence against this Act, a statement made in evidence by a fisheries officer that any packaging, label, slip or mark on the outside or inside of a receptacle, container, box or package of fish consigned for or on sale was marked with or contained the name or brand of any person shall, in the absence of proof to the contrary, be accepted as proof that that person consigned those fish for or on sale.

(10) In proceedings for an offence against this Act, a statement made in evidence by a fisheries officer that any packaging, label, slip or mark on the outside or inside of a receptacle, container, box or package of fish was marked with the name or brand of any person shall, in the absence of proof to the contrary, be accepted as proof that the fish were in the possession or control of that person.

False or misleading information.

68. A person shall not, in furnishing information in or in connection with any application or otherwise in pursuance of this Act make or cause to be made any statement that is false or misleading in a material particular.

Penalty: One thousand dollars.

Offences committed by bodies corporate or employees or committed on boats.

69. (1) Where a body corporate is guilty of an offence against this Act, every member of the governing body of the body corporate shall be guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless he proves that he exercised all reasonable diligence to prevent the commission of the offence.

(2) Where a person is guilty of an offence against this Act committed while he was acting as the agent of another person, that other person shall be guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

(3) Where a registered boat is used in or in connection with the commission of an offence against this Act, the registered owner of the boat shall be guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

Summary proceedings.

70. (1) Proceedings in respect of an offence against this Act shall be disposed of summarily.

(2) Proceedings in respect of an offence against this Act may be commenced within twelve months of the day on which the offence is alleged to have been committed.

Service of documents.

71. (1) Any notice or document required or authorized by this Act to be given to or served on any person shall be deemed to have been duly served if it has been—

(a) served on that person personally;

or

(b) in the case of the holder of any authority, sent by registered or certified mail addressed to him at his address for service, or left for him at that address with a person apparently over the age of sixteen years.

(2) The address for service of the holder of an authority is the last address for service of that person of which notice has been given in accordance with the regulations.

72. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Any regulations made under this or any other section of this Act may—

(a) be of general application or limited according to the persons or things, classes of persons or things, times, places or circumstances to which they are expressed to apply;

and

(b) make provision facilitating proof of the commission of an offence against the regulations.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor