

252

[This Bill is a reprint of the Bill as passed by the Legislative Council in 1881, with the modifications noted in the Report.]

## LEGISLATIVE COUNCIL.

### FISHERIES.—1882.

---

THIS Bill consolidates and amends seven Acts relating to the fisheries of the colony, inclusive of oysters and seals.

Experience has proved that fixed provisions in the existing Acts in relation to close seasons and other matters are not suitable in a colony having a coast-line running through twenty degrees of latitude, with varying climate, and that it is necessary, for the more efficient working of the Acts, that the powers conferred thereby should be more elastic and capable of change according to circumstances.

This requirement is also the more apparent at the present time, when the fishing trade is comparatively in its infancy, and the process of acclimatising fish has not yet been perfected.

While, therefore, in this Bill the penalty and procedure sections of the existing law have been preserved, it has been suggested to us that the administration of the Act should be given to Collectors of Customs in the different ports of the colony, whose regular functions peculiarly fit them for efficiently performing these duties. Provision has been made to this effect accordingly; whilst in respect of the fresh-water fisheries, powers are taken for the most suitable officers to be appointed for their regulation.

Some of the new clauses appearing in the Bill are adapted from Victorian Acts of 1873 and 1878 respectively; the marginal notes in each case show from what source the particular section is derived.

In Victoria an attempt was made by the first Act to enact definitely the powers regulating the fisheries in the colony, but it was found necessary by the Act of 1878 to revert to the original method of enabling the Governor in Council to provide for cases as they arose.

In New Zealand the need of such an administration has already been proved by applications from all parts of the colony.

Clauses 24 and 25 (from the Act of 1878) were omitted in the Bill of last year, but in consequence of the recommendations of practical men, they have been restored to this Bill, as it has been thought necessary to confer a power to close for a protracted time any fishery which might be threatened with exhaustion.

The clauses in the Bill of last year, granting exclusive licenses over protected oyster-beds, have been omitted from this Bill.

A. J. JOHNSTON.

W. S. REID.

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and having this day passed as now printed is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.

Legislative Council,

11th July, 1882.

[STATUTES REVISION COMMISSION.]

[As Reported from Committee of the House of Representatives, 4th August, 1882.]

\*\*\* Amendments by the Committee are shown thus:—Clauses struck out, underlined with thick lines. New clauses, with thin line. Words struck out, printed in erasure type within brackets. Words inserted, in italics, within brackets.

## Fisheries.—1882.

### ANALYSIS.

- |   |  |
|---|--|
| <p>Title.</p> <ol style="list-style-type: none"> <li>1. Short Title.</li> <li>2. Persons, &amp;c., exempted from Act.</li> <li>3. Interpretation.</li> </ol> <p style="text-align: center;">ADMINISTRATION.</p> <ol style="list-style-type: none"> <li>4. Commissioner of Customs to administer Act.</li> <li>5. Governor may make regulations as occasion requires for protection of fish, oysters, and seals. Penalty for breach of regulations.</li> <li>6. Governor in Council may extend list of fish, &amp;c., protected.</li> <li>7. Collectors of Customs to see Act carried into effect.</li> <li>8. Commissioner may appoint necessary officers.</li> <li>9. Powers of officers.</li> <li>10. Not to enter private grounds without leave.</li> <li>11. Introduced fish not to be taken.</li> <li>12. Poisonous material not to be put in water. Penalty. Temporary exemption.</li> <li>13. Prohibition of the use of dynamite in fisheries.</li> <li>14. No fixed engine to be used in rivers, &amp;c.</li> <li>15. Nets not to be emptied on land.</li> <li>16. Fixed engines may be destroyed.</li> <li>17. Offenders required to give their names.</li> <li>18. Apprehending of offenders.</li> <li>19. Offenders may be admitted to bail.</li> <li>20. Police to aid and assist in execution of Act.</li> <li>21. Search warrants may be granted.</li> <li>22. Fish, &amp;c., and fishing gear to be forfeited. Disposal thereof.</li> </ol> <p style="text-align: center;"><i>Fishing Seasons, Use of Nets, &amp;c.</i></p> <ol style="list-style-type: none"> <li>23. Fishing seasons to be appointed.</li> <li>24. Close seasons may be varied.</li> <li>25. Fisheries may be closed for three years.</li> </ol> <p style="text-align: center;"><i>Propagation of Fish, &amp;c.</i></p> <ol style="list-style-type: none"> <li>26. Commissioner may authorize fish or oyster-brood to be taken for purposes of propagation.</li> </ol> <p style="text-align: center;"><i>Natural Oyster-beds.—Exclusive Licenses.</i></p> <ol style="list-style-type: none"> <li>27. Discoverer of oyster-bed may apply for exclusive license.</li> <li>28. Notice of application to be advertised.</li> <li>29. Notice of intention to oppose to be given.</li> <li>30. Inquiry to be held in case of opposition.</li> <li>31. Inquiry in case of no opposition.</li> <li>32. Report to be made to Commissioner.</li> </ol> | <ol style="list-style-type: none"> <li>33. After report license may be issued.</li> <li>34. Licensee to have exclusive right to take oysters.</li> <li>35. Licensee may be forfeited for abuse thereof.</li> </ol> <p style="text-align: center;"><i>Artificial Oyster-beds.—Permissive Licenses.</i></p> <ol style="list-style-type: none"> <li>36. Permission to form and occupy artificial oyster-beds.</li> <li>37. Rights of the occupier.</li> </ol> <p style="text-align: center;"><i>Oyster-beds Generally.</i></p> <ol style="list-style-type: none"> <li>38. Boundaries of oyster-beds to be indicated by marks.</li> <li>39. General provisions affecting oyster-bed licenses.</li> <li>40. License not to warrant trespass upon lands.</li> <li>41. Persons entitled to land on the shore may form oyster-beds.</li> <li>42. Penalty for interfering with beds.</li> <li>43. Penalty for taking oysters without license.</li> <li>44. Oyster-brood to be returned to place whence taken.</li> </ol> <p style="text-align: center;">MISCELLANEOUS PENALTIES.</p> <ol style="list-style-type: none"> <li>45. Penalty for fishing in close season.</li> <li>46. Penalty for taking seals in close season.</li> <li>47. Penalty for selling fish contrary to Act.</li> <li>48. Penalties to apply to extended close seasons.</li> <li>49. Penalty for obstructing officers.</li> <li>50. Penalty in cases not provided for.</li> <li>51. On second conviction license to be forfeited.</li> </ol> <p style="text-align: center;">PROCEDURE.</p> <ol style="list-style-type: none"> <li>52. Offences committed on sea-coast, where to be tried.</li> <li>53. Proceedings to be in name of Commissioner or nominated officer.</li> <li>54. Onus of proof for having fish in close season.</li> <li>55. Proceedings to bar other proceedings.</li> <li>56. <i>No certiorari.</i></li> <li>57. Procedure in summary manner.</li> <li>58. Application of fees and penalties.</li> <li>59. Rewards to informers.</li> </ol> <p style="text-align: center;">MISCELLANEOUS.</p> <ol style="list-style-type: none"> <li>60. Limitation of actions.</li> <li>61. Persons taking fish or ova for propagation not liable to penalties.</li> <li>62. Fish hawkers not to require a hawkers' license.</li> <li>63. Proceedings against Natives to be taken only when authorized by Native Minister.</li> <li>64. Act not to affect provisions of Treaty of Waitangi.</li> <li>65. References to repealed Acts to apply to this Act.</li> <li>66. Repeals.</li> </ol> |
|---|--|

### A BILL INTITULED

AN ACT to consolidate and amend the Laws relating to Fisheries. Title.

5 **BE IT ENACTED** by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

No. 5—2.

Short Title.

1. The Short Title of this Act is "The Fisheries Act, 1882," [and it shall come into operation on the first day of January, one thousand eight hundred and eighty-three.]

Persons, &c.,  
exempted from Act.

2. Nothing contained in this Act shall apply to—

- (1.) Any person using a landing-net to secure fish caught with a rod and line, nor to any person using a hand shrimp net; nor to
- (2.) Any person taking fish in water of which he is the owner; nor to
- (3.) Any person authorized by such owner to take fish in such water; nor to
- (4.) Any person, with the written permission of the Collector or other person duly authorized by the Commissioner of Trade and Customs to grant such permission, taking fish or ova, or oysters, or oyster brood for the *bona fide* purpose of ascertaining and verifying the existence or increase of such fish or oysters, or of removing them to stock other waters; nor to
- (5.) Any nets, tackle, or boats used, or fish or oysters taken, by such person; nor to
- (6.) Any person who, having unintentionally taken any fish or oysters contrary to the provisions of this Act, shall immediately return the same, with as little injury as possible, to the water.

Interpretation.

1866, No. 57, s. 2.  
1867, No. 34, s. 2.  
1877, No. 45, s. 2.  
1878, No. 42, s. 2.

3. In this Act, if not inconsistent with the context,—
- "Collector" means a Collector of Customs, and includes Sub-Collector or other principal officer of Customs at any port:
- "Commissioner" means the Commissioner of Trade and Customs:
- "Close season" means the time during which it is declared unlawful to take any species of fish, oysters, or seals; and applies to such season, however the same may be varied or extended:
- "Dam" means all weirs and other fixed obstructions used for the purpose of damming up water:
- "Fish" means and includes all fish inhabiting the waters of the colony, whether indigenous or not, their young, or fry, and spawn:
- "Fish-pass" means any fish-way, fish-ladder, or fish-gap:
- "Fixed engine" includes any weir, net, implement, device, or contrivance fixed to the soil, or partly stationary, in any way or manner for the purpose of taking fish; and also includes any net placed or suspended in any waters unattended by any person duly authorized to use the same for catching fish, and all engines, devices, machines, or contrivances, whether floating or otherwise, for placing or suspending such nets, or maintaining them in working order, or for making them stationary:
- "License" includes lease:
- "Oyster brood" includes spat, cultch, or any small oysters less in circumference than five inches:
- "Oysters" means and includes shore oysters, rock oysters, and mud oysters:

Fisheries.

25

“ Prescribed ” means prescribed by this Act or by regulations :

“ Salmon ” means and includes salmon, grilse, sea-trout, bull-trout, [*silver trout, brown trout, lake trout,*] smolts, parr, and other migratory fish of the salmon kind :

5 “ Seals ” includes all kinds of seals and their young :

“ Take ” means and includes “ kill,” or “ catch,” or “ dredge for,” or “ raise,” or “ hunt ” :

“ This Act ” includes regulations made thereunder :

“ Use ” includes “ attempt to use ” or “ assist in the use of ” :

10 “ Vessel ” includes any ship or vessel of any tonnage, construction, or description :

“ Waters ” means any salt, fresh, or brackish waters in the colony, or on the coasts or bays thereof, includes artificial waters, but does not include waters the property of any private person :

15 “ Weir ” means a dam used for the exclusive purpose of catching or facilitating the catching of fish.

ADMINISTRATION.

20 4. The general administration of this Act shall be under the control and direction of the Commissioner of *Trade and Customs*.

Commissioner of Customs to administer Act. Governor may make regulations as occasion requires for protection of fish, oysters, and seals. 1866, No. 57, ss. 7, 10. 1877, No. 45, s. 3. 1878, No. 43, ss. 4, 7.

5. The Governor in Council may from time to time make regulations, which shall have force and effect only in any waters or places specified therein,—

25 (1.) Providing for the more effectual protection and improvement of fish, and the management of any waters in which fishing may be carried on ;

Struck out.

30 (2.) Prescribing any conditions and restrictions for the regulation of fishing, the licensing of all persons engaged therein, an uniform date at which all such licenses shall expire, and the fees to be paid for such licenses ; and, subject to such regulations, every such license shall authorize the licensee to fish during the open season with rod and line in any waters in the colony : Provided that every such license shall cost twenty-one shillings, and shall authorize the licensee to fish with rod and line during the open season in any river or stream open under this Act throughout a Provincial District in which it has been issued, and that a license costing forty-two shillings shall apply to the whole colony ;

New Subsection.

45 (2.) Prescribing conditions and restrictions for the regulation of fishing, and the taking of oysters or seals respectively, the licensing of persons engaged therein, appointing a uniform date at which such licenses shall expire, and the fees to be paid for such licenses.

Provided that licenses to fish with rod and line during the open season, in any river or stream open under this Act, shall be issued, subject to such regulations, of two classes, namely,—

A local license, which shall be in force only within the provincial district wherein the same is issued, for which the fee shall be twenty-one shillings; and

A general license, which shall be in force throughout the colony, for which the fee shall be forty-two shillings.

- (3.) Preserving good order among the persons engaged in fishing; 10
- (4.) Regulating the relative powers and duties of all officers appointed under this Act;
- (5.) Prescribing a "close season" or "close seasons" in every year, month, and week, as may be most suitable [~~in the various~~] [*for the whole or any*] part of the colony, for any species of fish, oysters, and seals respectively, during which it shall be unlawful for any person to take any fish, oysters, or seals of such species respectively, or in any way to injure or disturb the same; 15
- (6.) Prohibiting the buying, selling, exposing for sale, or having in possession any fish, [*oyster, or seal, or any skins, oil, or blubber from any seal,*] in any manner in contravention of this Act;
- (7.) Prescribing the minimum size or weight of any fish, oyster, or seal that may be taken; 25
- (8.) Limiting the size, when wet, of the mesh on the square, or in extension from knot to knot, of nets and seines to be used in fishing, or altogether prohibiting the use of nets of any sort;
- (9.) Fixing the time or times during which dredging shall be prohibited, or prohibiting the use of any particular engines, tackle, or apparatus for taking any fish or oysters; 30
- (10.) Reserving from public use any natural oyster-beds, so as to prevent their destruction;
- (11.) Prohibiting altogether, for such periods as he shall think fit, the taking of seals [~~when~~] [*if*] their future productiveness is endangered; 35
- (12.) Setting apart any river or other fresh or salt waters for the natural or artificial propagation of fish, oysters, or seals; 40
- (13.) For the protection of young fish, or fry, or spawn at all times, and especially for the preservation and propagation thereof upon its importation into the colony;
- (14.) Preventing the ingress of fish to watercourses, cuts, channels, or sluices, now or hereafter constructed for the purpose of carrying water from any river, creek, stream or lake in which young fish or spawn is placed or deposited; 45
- (15.) Prohibiting or restricting from time to time, for any period which the Governor thinks necessary, fishing in any waters, river, or stream in which young fish or spawn is placed or 50

256

deposited, or at the mouth or entrance of any such waters, river, or stream ;

5 (16.) Defining the limits of, and what waters shall be deemed to be, and what shall be deemed the mouth or other boundary of, any river, creek, stream, bay, estuary or lake, and fixing a distance from the mouth of any or every river, creek, or stream within which nets and engines or apparatus for taking fish are not to be used ;

10 (17.) Providing that if any person having in his possession any fish, as well as any net or fixed engine, or any part thereof, be found within half a mile of any river, creek, or stream, or of the distance from the mouth of any river, creek, or stream within which nets and fixed engines are not to be used, such person shall be deemed to have used such net or fixed engine for the purpose of catching such fish in such river, creek, or stream, or such prohibited place, unless he prove the contrary to be the fact ;

Victorian Act, 1874  
No. 622, s. 3.

15 (18.) Providing that every person who in waters where salmon are found has heretofore constructed or hereafter shall construct a dam, or raises or alters a dam so as to create increased obstruction to the passage of fish, shall attach and maintain attached thereto in an efficient state a fish-pass, of such form and dimensions as may be determined by the Governor, and shall regulate the sluices so as to provide an uninterrupted flow of water through such fish-pass ;

20 (19.) Prohibiting the closing of any fish-pass so as to prevent the fish from passing through the same, and prohibiting the taking of any fish in its passage through a fish-pass ;

25 (20.) Excluding any part of the colony from the operation of this Act, or of any regulations.

30 The Governor may, by such regulations, impose any penalty not exceeding *fifty* pounds, and also appoint the *minimum* penalty for the breach of any such regulations ; and all such regulations shall be gazetted, and thereupon shall be binding and conclusive upon all persons as if the same had been contained in this Act.

Penalty for breach of regulations.  
1867, No. 34, s. 2.

35 6. The Governor, by Order in Council, gazetted, from time to time may declare that in any part or parts of the colony any species of fish, oyster, or seal shall be protected and come under the operation of such of the provisions of this Act as may be specified in such Order in Council, and may from time to time revoke, alter, and amend any such order.

Governor in Council may extend list of fish, &c., protected.  
1867, No. 34, s. 4.

*New clause.*

45 7. It shall be the duty of the Collectors of Customs within the colony to see that the provisions of this Act are duly carried into effect, and for that purpose they severally shall have and may exercise all the powers granted by this Act in that behalf.

Collectors of Customs to see Act carried into effect.

50 8. The Commissioner may from time to time appoint such assistants to the *Collectors*, and such other officers, servants, and other persons as may appear to him to be necessary for the effective administration of this Act ; all of whom shall, as well as the Collectors aforesaid, be deemed to be officers appointed under this Act.

Commissioner may appoint necessary officers.  
1867, No. 34, s. 5.

Powers of officers.  
Ib., s. 6.

9. Any Collector and any person appointed as aforesaid is hereby empowered, for the enforcement of the provisions of this Act, to exercise the powers and authorities of a constable.

And shall be at liberty, at all times and seasons, without any let or hindrance whatsoever, 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 enter upon and examine all tributaries, sluices, millpools, milldams, millraces, and watercourses communicating therewith, and to pass along the same.

And to enter any boat or boats engaged in fishing, and to examine all standing, floating, or other nets whatsoever, and to seize all illegal nets, engines, instruments, and devices whatsoever, and all and every other nets, engines, and instruments whatsoever when used illegally, and to do all such other acts and things as he is required to do by such regulations as aforesaid.

The production of his instrument of appointment, or a copy of the *Gazette* notifying such appointment, shall be sufficient warrant for any such person so acting in any of the cases aforesaid.

Not to enter private grounds without leave.  
Ibid.

10. Nothing herein contained shall be construed to authorize any such officer to enter any garden enclosed within any wall or paling, nor any dwelling-house or the curtilage thereof, except when the ordinary passage to any such river, stream, or tributary, or to any sluice, millpool, milldam, millrace, or watercourse is through any such garden or curtilage as aforesaid, save when thereunto authorized by the warrant of a Justice of the Peace as hereinafter provided.

*New clauses.*

Introduced fish not to be taken.  
Victorian Act,  
1873, No. 473, s. 20.

11. If any person knowingly take, or assist in taking, or attempt to take, in any waters of the colony any fish not indigenous to New Zealand, or any fish of the same species as such non-indigenous fish introduced into such waters, within *three* years after the introduction thereof, or within such further time as may from time to time be prescribed; or if any person shall inadvertently capture any such fish and shall not forthwith return the same, with as little injury as possible, to the water in which they were captured, such person shall for every such offence be liable to a penalty of not less than *twenty* pounds.

Poisonous material not to be put in water.  
Ib., s. 21.

12. If any person put or attempt to put, or assist in putting, into any waters of the colony any poisonous, deleterious, or noxious material with intent to destroy any fish therein, or knowingly permit such poisonous, deleterious, or noxious material to flow or be cast into any river, creek, stream, pond, or lake, and thereby cause the destruction of any fish therein, such person shall be guilty of a misdemeanour, punishable by a fine not exceeding *fifty* pounds, or by imprisonment for a term not exceeding [~~two years.~~] [*one year.*]

Penalty.

Temporary exemption.

Provided however that where, at the commencement of this Act, the refuse of any works or factory flows into any such waters as aforesaid, no person shall be deemed to have committed an offence or be liable to any penalty in respect of the flow of such refuse into such waters until the expiration of *six* months from the passing of this Act.

Prohibition of the use of dynamite in fisheries.  
1878, No. 42, s. 3.

13. If any person shall use dynamite or other explosive substance to catch or destroy fish in any waters of the colony, he shall be liable, on summary conviction, either to a fine not exceeding *twenty* pounds, or, in the discretion of the Court, to be imprisoned with or without hard labour for a term not exceeding *two* months.

257

*New clauses.*

- 5 14. If any person shall erect or use any fixed engine in any waters, river, creek, or stream for the purpose of catching fish, he shall, for every such offence, be liable to a penalty not exceeding *twenty* pounds.
- 15 15. All nets containing fish shall be emptied in the water; and if any person drags or draws on to the dry land any such net, he shall for every such offence be liable to a penalty not exceeding *twenty* pounds.
- 10 16. Any Collector, or any officer appointed under this Act, may destroy any fixed engine; and the materials of which any such fixed engine shall be made shall be forfeited.
- 15 17. Any person using any net or fixed engine in any waters, river, creek, or stream shall, on demand by any person, be bound to give his name and place of residence; and any person who shall refuse to comply with such demand, or who shall give a false name or false place of residence, shall be liable to a penalty not exceeding *twenty* pounds.
- 20 18. Any Collector, or any officer appointed under this Act, or any constable, with or without warrant, may seize any net or nets, gear, tackle, or apparatus which any person found offending against any of the provisions of this Act may be using; and may also, with or without warrant, apprehend any person whose name and address are unknown to him and who is found offending against any of the provisions of this Act.
- 25 19. If the officer or person in charge of the lock-up or police station in which such person is detained see fit so to do, he may liberate such person on his making a deposit of ten pounds, or on his own recognizance in a like sum, conditioned to appear before some Justice of the Peace; and such deposit shall be absolutely forfeited if the aforesaid person fail to appear at the place and time notified by the officer or person taking the same; and such recognizance shall be made or be in such form and recoverable in the same manner as any recognizance now or hereafter may be, if taken and acknowledged before a Justice of the Peace.
- 30 20. All police constables and others, if called upon to aid and assist any Collector, or any other officer appointed under this Act in the execution of any of the powers vested in him by this Act, are hereby authorized and required to aid and assist such Collector, or officer in the lawful exercise of the powers and authorities so given to him for enforcing the provisions of this Act.
- 35 21. Any Justice of the Peace, upon information on oath that there is probable cause to suspect any breach of the provisions of this Act to have been committed anywhere, may, by warrant under his hand and seal, authorize and empower by name any officer appointed under this Act, or any constable, to enter any dwellinghouse or premises for the purpose of detecting such offence.

No fixed engine to be used in rivers, &amp;c.

Victorian Act, 1873. No. 473, s. 15.

Nets not to be emptied on land. Ib., s. 16.

Fixed engines, &amp;c., may be destroyed. Ib., s. 15.

Offenders required to give their names. Ib., s. 17.

Apprehending of offenders. Ib., s. 4.

Offenders may be admitted to bail. Ib., s. 5.

Police to aid and assist in execution of Act.

Search warrants may be granted. 1867, No. 34, s. 7.

*New clause.*

- 50 And the person so authorized may, at any hour between sunrise and sunset, enter into and search any house, shop, store, tent, or other premises, and go on board of any vessel or boat, and search for, seize and take away any such net or nets, gear, tackle, or apparatus.

Fish, &c., and fishing gear to be forfeited. 1867, No. 34, s. 10.

Disposal thereof.

**22.** All fish, oysters, or seals unlawfully taken, *and any skins, oil, or blubber from seals taken as aforesaid*, and the baskets or other receptacles thereof, and also all fixed engines, nets, gear, tackle, or other apparatus used in any unlawful fishing, [*or taking of oysters or seals,*] whether found on shore or in any vessel or boat, shall be forfeited, and shall be disposed of as [~~may be prescribed by regulations.~~] *[the Commissioner may think fit.]* 5

*New clause.*

*Fishing Seasons, Use of Nets, &c.*

Fishing seasons to be appointed.

**23.** The Governor may, by Order in Council, from time to time prescribe the times and seasons in every year, as may be most suitable in the various parts of the colony, at which the taking of any species of fish, oysters, and seals respectively shall commence and cease; and may fix the times and places, or the manner at and in which any lawful sort of net or engine, to be employed in fishing, shall be used. 15

Every such order shall have force and effect only in any waters or places specified therein.

Close seasons may be varied. 1878, No. 43, s. 4 extended.

**24.** The Governor may, by Order in Council, from time to time extend or vary the time during which it is prohibited to take any *species of fish, oysters, and seals respectively*; and may from time to time vary the close season so extended, and also may prescribe that any such order shall take effect in the whole colony, or only in particular parts thereof, to be defined in such order. 20

Fisheries may be closed for three years. *ib.*, s. 5 extended.

**25.** The Governor, if he shall think it necessary for the preservation of *any species of fish, oysters, or seals respectively*, may, in a similar manner, extend the time during which it is prohibited to take *any species of fish, oysters, or seals respectively*, over any term not exceeding three years, and may at any time before the expiration of any such term further continue the same. 25

Every such order shall have force and effect only in any waters and places, and shall apply only in respect to the particular species of fish, oysters, or seals, respectively specified therein. 30

*New clause.*

*Propagation of Fish, &c.*

Commissioner may authorize fish or oyster-brood to be taken for purposes of propagation.

**26.** Any Collector, with the sanction of the Commissioner, may, by writing under his hand, authorize any person to be named in such writing,— 35

(1.) To take any fish not indigenous in New Zealand, or the ova of any such fish, for the purpose of ascertaining and verifying the existence or increase of any such fish, or for the purpose of propagating such fish in waters other than those from which the same are taken: 40

(2.) To take oysters and oyster-brood from natural oyster-beds for the purpose of supplying and replenishing any artificial oyster-bed in his occupation:

If, in either case, *fourteen days'* notice of the purpose of taking such fish, or ova, or oysters, or oyster-brood is published in a newspaper circulating in the neighbourhood, stating the places from and to which respectively the said fish or oysters are to be taken. But such notice shall not be necessary in case such authority shall extend to the capture of fish for purposes of verification only. 45

258

*Natural Oyster-beds.—Exclusive Licenses.*

27. Whenever any person shall, before or after the passing of this Act, have discovered on or near the coast of New Zealand a natural oyster-bed, he may apply to the *Collector at the* ~~[nearest] port~~ <sup>5</sup> *[nearest to the place]* on or near the coast where such natural oyster-bed shall be for the issue to him of an exclusive license for the use of such oyster-bed or any part thereof, as hereinafter provided.
28. The applicant for such exclusive license shall publish, in some newspaper circulating ~~[near the place where such oyster bed is situate,]~~ <sup>10</sup> *[at such port]* a notice of such application, and shall in such notice describe the oyster-bed with reasonable certainty, and such notice shall be repeated once in each week during four consecutive weeks.
29. Any person wishing to oppose the issue of an exclusive license to the applicant shall give notice in writing of his intention so to do <sup>15</sup> to such *Collector* within *one* month of the first publication of such notice.
30. Upon receiving notice of the intention to oppose the grant of an exclusive license, the *said Collector*, or some person appointed by him by writing under his hand, shall hold an inquiry concerning the <sup>20</sup> expediency of issuing an exclusive license. The *Collector* or person holding such inquiry shall have power to administer an oath.
31. If no notice of intention to oppose the issue of an exclusive license is received before the expiration of *one* month from the day of publishing the first advertisement of notice of such application as <sup>25</sup> aforesaid, the *Collector*, or some person appointed by him by writing under his hand, shall inquire concerning the due publication of such notice as aforesaid, and the expediency of issuing an exclusive license.
32. The *Collector* or person holding any such inquiry as aforesaid <sup>30</sup> shall report to the Commissioner whether, in his opinion, an exclusive license ought to be granted to the applicant, and for what term, if any, and shall state the facts on which he grounds his opinion.
33. On the receipt of such report the Commissioner may issue <sup>35</sup> to the applicant an exclusive license to use the said oyster-bed, or any part thereof, for such period not exceeding five years from the date of such license as, having regard to the said report, he shall think fit.
34. The licensee, his executors, administrators, and assigns shall, <sup>40</sup> during the whole of the term in the said license mentioned, have the sole and exclusive right by himself or themselves, or his or their servants, agents, or licensees, to dredge for and take oysters from the said bed.
35. If at any time during the currency of any exclusive license <sup>45</sup> any *Collector* shall certify under his hand to the Commissioner that the holder of such license, or any person by his direction or permission, is managing or using the oyster-bed in such manner that the same is likely to be exhausted or greatly reduced in value, the Commissioner may, by public notice gazetted, cancel and revoke such license; and the licensee shall not be entitled to claim or receive any compensation in respect of any such cancellation or revocation.
- 50 On the gazetting of such public notice the license affected thereby, and all rights and privileges acquired under such license, shall absolutely cease and determine.

Discoverer of oyster-bed may apply for exclusive license. 1839, No. 50, s. 2.

Notice of application to be advertised. *Ib.*, s. 3.

Notice of intention to oppose to be given. *Ib.*, s. 4.

Inquiry to be held in case of opposition. *Ib.*, s. 5.

Inquiry in case of no opposition. *Ib.*, s. 6.

Report to be made to Commissioner. *Ib.*, s. 7.

After report license may be issued. *Ib.*, s. 8.

Licensee to have exclusive right to take oysters. *Ib.*, s. 10.

License may be forfeited for abuse thereof. *Ib.*, s.12.

*Artificial Oyster-beds.—Permissive Licenses.*

Permission to form  
and occupy artificial  
oyster-beds.  
1866, No. 57, s. 3.

**36.** The occupier of any lands bordering on the sea or any estuary, or any person, with the consent of such occupier, may apply to the Collector at the nearest port or place for a permissive license to form or plant any artificial oyster-bed on or near the shore adjacent to such lands; and the Commissioner, on the report of the said Collector upon any such application, may grant such license to the applicant [upon such conditions as he may think fit.] 5

Any person who shall obtain from the Commissioner, in the same manner, a permissive license for the purpose, may form or plant any artificial oyster-bed on or near the shore adjacent to any Crown lands bordering on or near the sea or any estuary. 10

Rights of the  
occupier.

1866, No. 57, s. 4.  
1869, No. 50, s. 13.

**37.** The person forming or planting any such artificial oyster-bed, his executors, administrators, and assigns, shall hold the same for such period not exceeding thirty years as the Commissioner may think fit, as tenant thereof. 15

But the forming and planting of such artificial oyster-beds as aforesaid shall not give any exclusive right or title to the occupation of the said shore or sea-ground except for the purpose aforesaid, or prevent the full and free exercise and enjoyment of any right whatsoever in or along the said shore or sea-ground, subject to the provisions of this Act. 20

*Oyster-beds Generally.*

Boundaries of  
oyster-beds to be  
indicated by marks.  
1866, No. 57, s. 5.  
1869, No. 50, s. 11.

**38.** The occupier of every artificial oyster-bed, and of every natural oyster-bed whereof any person or persons shall have the exclusive license, shall respectively set up on some convenient part of the adjacent shore, not being private property, distinguishing posts or marks, to be approved by the Collector at the nearest port from which the boundaries of such oyster-bed may be sufficiently indicated. 30

Where any such oyster-bed cannot be conveniently marked by posts or otherwise on the shore, the same may be indicated by buoys or other floating marks approved as aforesaid.

*New clause.*

General provisions  
affecting oyster-bed  
licenses.

**39.** The provisions following shall apply to every license of any natural oyster-bed, or for the forming of an artificial oyster-bed:— 35

- (1.) Every license shall set forth the limits and boundaries as nearly as practicable of the area to which such license extends, and shall continue in force for such time, and be subject to such conditions and restrictions, and the payment of such fees, and in such manner as shall be prescribed therein. 40
- (2.) It shall be granted only with the consent of the Commissioner or local authority respectively in whom is vested any part of the foreshore affected thereby. 45
- (3.) It shall be subject to a condition that any part of the area affected thereby may at any time after not less than three months' notice be resumed, if needed for the purpose of constructing any public works on such area, without the 50

250

licensee being entitled to claim any compensation in respect of such resumption.

(4) It shall not include within the area described to be affected any part of a public reserve, or any land reserved for public purposes.

5

40. No license shall confer a right of entry upon the lands of any person without or against his consent.

License not to warrant trespass upon lands.

10

41. Nothing in this Act contained shall be deemed to make it necessary for any person who, by express words in a grant, lease, or license from the Crown is seized of or entitled to the soil of and in any part of the sea-shore to obtain any permission under this Act to form oyster-beds on such parts of the shore.

Persons entitled to land on the shore may form oyster-beds.

1866, No. 57, s. 18

15

42. If any person shall wilfully damage, interfere with, or remove oysters from any artificial oyster-bed, or from any natural oyster-bed during the currency of any exclusive license thereof, without the consent of the occupier of such bed, every such person shall be liable to a penalty of not less than *twenty* shillings, nor more than *fifty* pounds, and shall also, in addition to such penalty, forfeit and pay to the party aggrieved such sum of money not exceeding *fifty* pounds as shall appear to the Justices before whom such person shall be convicted to be a reasonable compensation for the damage and injury done.

Penalty for interfering with beds.

1866, No. 57, s. 5.  
1869, No. 50, s. 11.

20

43. If any person shall, by any means whatsoever, take any oysters from any natural oyster-bed lying below the level of the lowest water of spring tides, or shall dredge for oysters, or use any oyster-dredge or any net, instrument, or engine whatsoever in or upon any such natural oyster-bed for the purpose of taking or catching oysters, although no oysters shall be actually taken, or shall with any net, instrument, or engine drag upon the ground or soil of any such natural oyster-bed, [*or shall take any rock oysters for the purpose of sale or export,*] without having a license under this Act, every such person shall be liable to a penalty not exceeding *five* pounds.

Penalty for taking oysters without license.

1866, No. 57, s. 9.

25

30

44. If any person, other than a person lawfully taking oysters or oyster-brood for the purpose only of supplying or replenishing any such artificial oyster-bed as hereinbefore mentioned, whilst lawfully taking, catching, or dredging for oysters on or from any natural oyster-bed, shall happen to raise or take any oyster-brood, and shall not, within six hours thereafter, return such brood to the place whence taken, every such person shall, for every such offence, be liable to a penalty not exceeding *ten* pounds.

Oyster-brood to be returned to place whence taken.

Ib., s. 11.

35

40

MISCELLANEOUS PENALTIES.

45. If any person, during any close season for any species of fish or oysters, shall take any fish or oysters of such species, he shall for every such offence be liable to a penalty of not more than *twenty* pounds.

Penalty for fishing in close season.

Ib., s. 6.

45

46. If any person, during any close season for seals, shall take any seal or seals, he shall for every such offence be liable to a penalty not exceeding *fifty* pounds, and in addition thereto shall be liable to a further penalty not exceeding *ten* pounds in respect of each seal so taken.

Penalty for taking seals in close season.

1878, No. 43, s. 3.

50

47. If any person buys, sells, or exposes for sale, or has in possession, any fish, or oysters, or any seal or seals taken in contravention of this Act, *or any skins or oil or blubber from any seal or seals, taken as aforesaid,* he shall be liable for each offence to a penalty not exceed-

Penalty for selling fish contrary to Act.

1877, No. 45, s. 5.

ing *twenty* pounds; and fish, oysters, and seals so taken, and the *skins, oil, and blubber so taken, and all* baskets or receptacles thereof, shall be forfeited.

Penalties to apply to extended close seasons.  
1878, No. 43, s. 6.

48. Any penalties imposed by this Act for taking, buying, selling, exposing for sale, or having in possession any fish, or oysters, or any seal or seals during any close season for the same respectively, shall apply to such season however the same may be varied or extended. 5

Penalty for obstructing officers.  
1867, No. 34, s. 8.

49. If any person assaults, resists, or obstructs any officer in the execution of any of the powers conferred on him by this Act, every person so offending shall for every such offence incur a penalty not exceeding *ten* pounds. 10

*New clause.*

Penalty in cases not provided for.  
Victorian Act, 1878, No. 622, s. 5.

50. If any person shall fail or neglect to observe all or any of the provisions of this Act, or shall do or commit anything contrary to the true intent or plain meaning thereof, he shall, for every such offence, if no other penalty is provided, be liable to a penalty not exceeding *twenty* pounds. 15

On second conviction license to be forfeited.  
1866, No. 57, s. 16.

51. If any person shall be convicted of a second or subsequent offence against the provisions of this Act, such person shall forfeit any license or permission he may have obtained under the authority of this Act, and shall be incapable of holding any such license or permission for the period of *three* years. 20

PROCEDURE.

Offences committed on sea-coast, where to be tried.  
1878, No. 42, s. 4.

52. Any offence committed under this Act on the sea-coast, or at sea within *three* miles from any part of the coast, shall be deemed to be committed in waters of the colony; and, if beyond the ordinary jurisdiction of any Court of summary jurisdiction, shall be deemed either to have been committed on the land abutting on such sea-coast or adjoining such sea, or to have been committed in any place where the offender is found. 25 30

*New clause*

Proceedings to be in name of Commissioner or nominated officer.

53. All prosecutions and proceedings under this Act may be in the name of the Commissioner or of any officer appointed under this Act or nominated in writing for that purpose by the Commissioner, and may be brought in any district wherein an offence is committed or an offender is found. 35

Onus of proof for having fish in close season.

In any such prosecution or proceeding, it shall be sufficient to set forth the offence in the words of this Act.

54. Any person found in possession of any fresh fish, or oysters, or of any seal or seals, or any seal-skin or seal-skins, oil, or blubber during any close season, or any part or portion thereof, shall be deemed to have obtained the same in violation of this Act, except only upon legal proof to the contrary, which proof shall devolve wholly upon the person accused. 40

Proceedings to bar other proceedings.  
1866, No. 57, s. 14.

55. Every conviction or order under this Act shall be a full and effectual release from all further or other proceedings, whether civil or criminal, for the same cause, and shall and may be pleaded in bar of such proceedings. 45

*New clause.*

No *certiorari*.

56. No proceeding under this Act shall be removed into the Supreme Court by *certiorari*. 50

260

57. All offences and all penalties under this Act, where not otherwise provided for, may be heard and determined and recovered in a summary way, before any two or more Justices of the Peace.

Procedure in summary manner. 1866, No. 57, s. 17. 1877, No. 45, s. 7.

Struck out.

5 58. All fees and penalties received and recovered under this Act shall be paid into the Public Account, and be applied,—

(1.) In the first instance in defraying the salaries and other expenses of carrying into effect the provisions of this Act :

10 (2.) The balance shall be handed to the Treasurer of some registered acclimatization society in the district in which such fees or fines shall have been paid or recovered, for the purposes of such society :

15 (3.) If there shall be more than one such society in a district, then such balance shall be divided between all the societies, or paid to such one or more of them as the Governor in his discretion may direct :

(4.) And, if there shall be no such society, shall form part of the Consolidated Fund.

20 The provisions of this section shall be sufficient authority to the Colonial Treasurer for the issue and payment of any fees to the Treasurer of any acclimatization society, as herein directed, without any appropriation thereof respectively.

New clause.

25 58. All fees and penalties received and recovered under this Act shall be paid into the Public Account, and be applied in the first instance in defraying the salaries and other expenses of carrying into effect the provisions of this Act. The balance shall be handed to the Treasurer of some registered acclimatization society in the provincial district in which such fees shall have been paid or in which the offence was committed in respect whereof such fines were respectively recovered, for the purposes of such society.

Application of fees and penalties. 1877, No. 45, s. 6. 1880, No. 13, s. 32.

30 If there shall be more than one such society in any such district, then such balance shall be divided between all the societies in such district, or paid to such one or more of them as the Governor in his discretion may direct.

35 Provided that, of the fees received in any provincial district in respect of general licenses which are in force throughout the colony, one-half only of the balance thereof shall be paid to the society, or divided among the societies in such district as aforesaid, and the other half shall be divided between all the societies in the colony outside of such district, in such proportion as the Governor in his discretion may direct.

40 And, if there shall be no such society, shall form part of the Consolidated Fund.

45 The provisions of this section shall be sufficient authority to the Colonial Treasurer for the issue and payment of any fees to the treasurer of any acclimatization society, as herein directed, without any further appropriation thereof respectively.

50 59. The Commissioner may direct, in any case of conviction for an offence under this Act, that any portion of the penalty, not exceeding a moiety thereof, shall be granted to or distributed amongst the persons giving any information that procured the conviction.

Rewards to informers. 1866, No. 57, s. 13.

## MISCELLANEOUS.

Limitation of actions.  
1867, No. 34, s. 11.

60. No action shall be brought against any *Collector or officer appointed under this Act* for anything done in pursuance of this Act, unless such action shall be commenced within three months after the cause of action has arisen, nor unless notice in writing of such action and the cause thereof is given to the defendant one month at least before the commencement of the action; and the defendant may plead the general issue and give this Act and the special matter in evidence, and the plaintiff shall not recover in such action if tender of sufficient amends has been made before action brought, or if a sufficient sum of money has been paid into Court after action brought.

If a verdict is given for the defendant, or the plaintiff is nonsuited or discontinues his action, or if judgment is given against the plaintiff, the defendant shall recover his full costs as between solicitor and client, and, though a verdict is given against the defendant, the plaintiff shall not have costs against the defendant unless the Judge who tries the case certifies his approbation of the action and of the verdict.

Persons taking fish or ova for propagation not liable to penalties.

61. The fines and restrictions for the capture or sale of fish imposed by this Act shall not extend to any society or person carrying on the business of breeding, rearing, preservation, and sale of fish:

Provided that the fish caught or ova obtained are solely for the purpose of artificial propagation, and the fish or ova sold are from the waters belonging to such society or person.

Fish hawkers not to require a hawker's license.

62. Notwithstanding anything contained in "The Municipal Corporations Act, 1876," or any other Act, fresh fish may be sold by hawkers without a hawker's license at all lawful seasons.

*New clauses.*

Proceedings against Natives to be taken only when authorized by Native Minister.

63. No aboriginal native of New Zealand nor half-caste who shall be habitually living with the aboriginal natives according to their customs, shall be sued for any penalty, fine, or forfeiture under this Act, unless and until the authority of the Native Minister to take proceedings has been filed in the Court in which such proceedings are intended to be taken.

Act not to affect provisions of Treaty of Waitangi.  
1877, No. 45, s. 8.

64. Nothing in this Act contained shall be deemed to repeal, alter, or affect any of the provisions of the Treaty of Waitangi, or to take away, annul, or abridge any of the rights of the aboriginal Natives to any fishery secured to them thereunder.

References to repealed Acts to apply to this Act.

65. Wherever in any Act now in force reference is made to any Act hereby repealed, such first-mentioned Act shall take effect and operate, so far as it may not be inconsistent with or repugnant hereto, and as if reference had been made therein to this Act instead of to such repealed Act.

Repeals.

66. The Acts enumerated below are hereby repealed, without prejudice, however, to any Proclamation, Order in Council, rule or regulation, or any appointment, notice, license, lease, or other grant made thereunder respectively, and subsisting at the commencement of this Act:—

- 1866, No. 57.—"The Oyster Fisheries Act, 1866."  
1867, No. 34.—"The Salmon and Trout Act, 1867."  
1869, No. 50.—"The Oyster Fisheries Act Amendment Act, 1869."  
1874, No. 71.—"The Oyster Fisheries Act Amendment Act, 1874."  
1877, No. 45.—"The Fish Protection Act, 1877."  
1878, No. 42.—"The Fisheries (Dynamite) Act, 1878."  
1878, No. 43.—"The Seals Fisheries Protection Act, 1878."