

Hon. Mr. Whitaker.

## Fisheries Preservation.

### ANALYSIS.

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### A BILL INTITULED

AN ACT for the better Protection of Fish, Oysters, and Seals, and the Preservation of Fisheries. Title.

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

1. The Short Title of this Act is "The Fisheries Preservation Act, 1879." Short Title.
2. 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. Act not to affect provisions of the Treaty of Waitangi.
3. Section two of "The Protection of Animals Act Amendment Act, 1875," "The Fish Protection Act, 1877," "The Fisheries (Dynamite) Act, 1878," and "The Seals Fisheries Protection Act, 1878," are hereby repealed; but such repeal shall not affect anything duly done or suffered, or the proof of any past act or thing, or the right to any charges, fees, penalties, or forfeitures, but the same may be sued for, prosecuted, and recovered as if this Act had not passed. Repeals.
- All Orders in Council, rules, and regulations made under any of the aforesaid Acts shall continue in force until others respectively are made under the provisions hereof.
4. "The Oyster Fisheries Act, 1866," "The Salmon and Trout Act, 1867," and all Acts amending the same respectively, shall be read together with and be deemed to be incorporated with this Act. Other Acts incorporated.
- But all provisions of the incorporated Acts that are inconsistent with the provisions of this Act are hereby repealed.

Persons exempted  
from Act.

5. Nothing contained in this Act or in the Acts in the previous section mentioned shall apply to 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 any aboriginal native taking fish for his own use, nor to any person taking fish in water of which he is the owner, nor to any person authorized by such owner to take fish in such water, nor to any person with the written permission of the Commissioner of Crown Lands of a district or other person duly authorized to grant such permission taking fish or oysters for the *bond fide* purpose of removing them to stock other waters, nor to any nets tackle or boats used or fish or oysters taken by such person, nor to 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.

6. In this Act, if not inconsistent with the context,—

“Minister” means the Minister of Lands.

“Fishery” means any salt or fresh waters in the colony, or on the coasts or bays thereof, includes artificial waters, extends to the ground under such waters and to so much land out of water as is frequented by seals, but does not include waters the property of any private person.

“Fish” means and includes all fish ordinarily inhabiting the waters of the colony, their young, or fry, and spawn.

“Oysters” means and includes shore oysters, rock oysters, and mud oysters.

“Oyster brood” includes spat, cultch, or any small oysters less in circumference than five inches.

“Seals” includes their young.

“Produce of a fishery” includes fish, oysters, and seals.

“Close season” means the time during which it is declared unlawful to take the produce of any fishery.

“Boat” includes any barge or vessel of any tonnage, construction, or description.

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

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

Governor may  
appoint Board to  
report.

7. The Governor may at any time nominate and appoint a Board to consider and report upon any subject connected with the fisheries of the colony, for the information of the Minister and the benefit of those interested in the fisheries.

Commissioner of  
Crown Lands *ex  
officio* Inspector of  
Fisheries.

8. The Commissioner of Crown Lands of each land district shall, by virtue of his office, be Inspector of all Fisheries within his district, and it shall be his duty to see that the provisions of this Act, and of the Acts incorporated herewith, shall be duly carried into effect within his district, and for that purpose shall have and may exercise within his district all the powers granted by any such Act in that behalf; and also shall have all the powers of a local Inspector in any part of his district.

Any part of the colony not comprised within the limits of a land district may, for the purposes of this Act, be annexed by the Governor to any such district, and shall thereafter be deemed to form part thereof.

Governor may make  
regulations as  
occasion requires for  
protection of fish and  
fisheries.

9. The Governor in Council may from time to time, as may become necessary, make, vary, and rescind such rules, orders, and regulations as shall seem expedient for—

(1.) Providing for the more effectual government, management, protection, and improvement of any fisheries, and the registration of all boats and brands, the licensing of all persons engaged therein, and the fees to be paid for such licenses;

- (2.) Prescribing any conditions and restrictions for the regulation of the said fisheries, and the carrying and sale of the produce thereof;
- 5 (3.) For the preservation of good order among the persons engaged in such fisheries;
- (4.) Regulating the appointment and removal of local Inspectors of Fisheries to supervise within the limits assigned to them respectively the due administration of any Act or regulations relating to such fisheries, and to prosecute offenders against any of the provisions thereof respectively;
- 10 (5.) Prescribing a "close season" or "close seasons" in every year for any species of fish, oysters, and seals, and declaring it unlawful for any person, during such seasons, to take any fish, oysters, or seals from any fishery, or in any way to injure or disturb any such fishery;
- 15 (6.) Prescribing the minimum size or weight of any fish, oyster, or seal that may be taken and carried away from any fishery;
- (7.) 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 any fishery, or altogether prohibiting the use of nets of any sort;
- 20 (8.) Fixing the time during which dredging over the ground of any fishery shall be prohibited, or prohibiting the use of any particular engines, tackle, or apparatus for taking the produce of any fishery;
- 25 (9.) Reserving from public use any natural oyster beds so as to prevent their destruction, and for granting leases of portions thereof to individuals for proper cultivation;
- 30 (10.) Closing altogether, for such periods as he shall think fit any fishery when its future productiveness is endangered;
- (11.) Setting apart any river or other fresh or salt waters for the natural or artificial propagation of fish, oysters, or seals, and the protection of young fish, or fry, or spawn, at all times, and especially upon its importation into the colony.
- 35 (12.) 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 fixed engines or apparatus for taking fish are not to be used.
- 40 (13.) Excluding any part of the colony from the operation of this Act, or of any regulation or regulations made thereunder.
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The Governor may, by such rules, orders, or regulations, impose any penalty not exceeding *twenty* pounds, and also appoint the *minimum* penalty for the breach of any such rules, orders, or regulations; and all such rules and regulations shall be published in the *Gazette*, and thereupon shall be binding and conclusive upon all persons as if the same had been contained in this Act.

10. It shall be unlawful to drag or to draw on to the dry land any net containing fish, but all such nets shall be emptied in the water; and any person offending against, or assisting any person offending against this section, shall for every such offence be liable to a penalty of not more than *twenty* pounds.

Emptying nets.

11. Where any natural oyster beds are in danger of being depopulated by the wanton destruction of the oysters thereon, the Governor may declare any such oyster beds to be a special oyster fishery, whereupon it shall be unlawful for any person to take oysters therein, save under the provisions of this section.

Governor may grant leases of natural oyster beds.

The Governor may grant to any person or persons a lease of an such special oyster fishery or any portion thereof for such time, upon such conditions, and upon payment of such fees as may be prescribed in the lease, and subject to general regulations, but may, notwithstanding such lease, from time to time, by notice in writing to the lessee or lessees, or any of them, exclude oysters from being taken in any particular part of such fishery. 5

In any such lease it shall be lawful for the Governor to comprise such part of the foreshore adjacent to the oyster beds as he shall think sufficient for the purpose of protecting the special fishery, and for the use of the lessees thereof. 10

Penalty for fishing in close season.

12. If any person take during any close season, for any species of fish, or oysters, any fish or oysters of such species, he shall for every such offence be liable to a penalty of not more than *twenty* pounds. 15

Penalty for taking seals in close season.

13. If any person take any seals during any close season for 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.

Fish, &c., and fishing gear to be forfeited.

14. All fish, oysters, or seals, unlawfully taken during any close season, and the baskets or other receptacles thereof, shall be forfeited; and also,— 20

Over and above any other penalty, all gear, tackle, or other apparatus in any boat used for such unlawful fishery, and all other gear, tackle, apparatus, or other implements otherwise used therein shall be forfeited to Her Majesty. 25

Disposal of forfeited fish and gear, &c.

15. All fish, oysters, or seals, and all baskets, or other receptacle thereof, and nets, gear, tackle, or other apparatus forfeited under the provisions of this Act, may be seized by any Inspector of Fisheries, local Inspector or Constable, and disposed of in accordance with any general or special directions of the Commissioner of Crown lands of the district. 30

Penalty for selling fish contrary to regulations.

16. If any person buys, sells, or exposes for sale, or has in possession any fish, oysters, or seals taken in contravention of this Act or of general regulations, he shall be liable for each offence to a penalty not exceeding *twenty* pounds; and fish, oysters, and seals so taken, and the baskets or receptacles thereof shall be forfeited. 35

And any person found in possession of any fish, oysters, or seals so taken, or of 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

Introduced fish not to be taken.

17. If any person knowingly takes or assists in taking or attempts to take, in any fishery 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 appointed under any regulations, 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, he shall be liable for every such offence to a penalty of not less than *twenty* pounds. 45 50

Poisonous material not to be put in water.

18. If any person puts, or attempts to put or assists in putting into any fishery of the colony any poisonous, deleterious, or noxious material with intent to destroy any fish therein, or knowingly permits 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, he shall be guilty of a misdemeanour punishable by a fine not exceeding *fifty* pounds, or by imprisonment for a term not exceeding *two* years. 55 60

19. Any person who uses dynamite or other explosive substance to catch or destroy fish in a fishery 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 5 a term not exceeding *two* months.

Prohibition of the use of dynamite in fisheries.

20. Any offence committed under this Act on the sea-coast, or at sea within one marine league of the coast, shall be deemed to be committed in a fishery; and, if beyond the ordinary jurisdiction of any Court of summary jurisdiction, shall be deemed either to have 10 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, and may be tried and punished accordingly.

Offences committed on sea-coast, where to be tried.

21. The Inspector of Fisheries, and every local Inspector, or any constable, with or without warrant, may seize any net or nets, gear, 15 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.

Apprehending of offenders.

22. If the officer or constable 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 20 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 constable 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.

Offenders may be admitted to bail.

23. All police constables and others, if called upon to aid and assist any Inspector of Fisheries or other officer in the execution of any of the powers vested in him by this Act, are hereby authorized and required to aid and assist such Inspector or officer in the lawful exercise of the powers and authorities so given to him for enforcing 25 the provisions of this Act or of any of the Acts incorporated herewith.

Police to aid and assist constables.

24. Any Justice of the Peace, upon information on oath that there is probable cause to suspect any breach of the provisions of this Act, or of any of the Acts incorporated herewith, to have been committed anywhere, may, by warrant under his hand and seal, authorize 30 and empower by name any Inspector of Fisheries, or other officer appointed by the Governor under this Act, or any constable, to enter any dwellinghouse or premises for the purpose of detecting such offence.

Search warrants may be granted.

25. The Commissioner of Crown Lands of a land district or any Justice of the Peace may authorize in writing any person to search 35 for and seize any net or nets, gear, tackle, or apparatus which has been forfeited; 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 boat, and search for, seize, and take away any such net or nets, gear, tackle, or apparatus.

Search for forfeited tackle, &c.

26. All prosecutions and proceedings under this Act, or under any of the Acts incorporated herewith, may be in the name of the Commissioner of Crown lands of the land district wherein an offence is committed or an offender is found, or of any officer appointed under this Act or nominated in writing for that purpose by the aforesaid 40 Commissioner.

Proceedings to be in name of Commissioner.

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

27. The evidence of informers, owners or occupiers of fisheries, or of other persons interested in any fishery, shall be receivable in all 45 Courts upon any legal proceedings taken against any offender against

Evidence of informers, &c., admissible.

any of the provisions of this Act, or of any of the Acts incorporated herewith, notwithstanding that the witness shall be entitled in case of the conviction of the offender to receive a portion of the penalty awarded: And it shall be lawful for the Justices hearing the case to convict the offender upon such evidence, notwithstanding that the witness shall not be corroborated by any other testimony. 5

No *certiorari*.

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

Procedure in summary manner.

29. All offences and all penalties under this Act, or under any of the Acts incorporated herewith, where not otherwise provided for, may be heard and determined and recovered in a summary way, with or without information in writing, before any two or more Justices of the Peace. 10

Penalties to apply to extended close seasons.

30. Any penalties imposed by this Act for taking any fish, oysters, or seals during any close season for the same respectively, shall apply to such season however the same may be varied or extended. 15

Application of fees and penalties.

31. All fees and penalties received and recovered under this Act or under any of the Acts incorporated herewith, shall be paid into the Consolidated Fund, and the amount received in each year shall be primarily applicable to the payment of any salaries or other expenses to become payable under this Act. 20

Rewards to informers.

32. The Governor may prescribe, in any case of conviction for an offence under this Act, or under any of the Acts incorporated herewith, 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. 25