

*Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1863.* Fredericton, NB: G. E. Fenety, Printer to the Queen's Most Excellent Majesty, 1863.

26 Victoria – Chapter 6

**An Act relating to the Coast and River Fisheries. Passed 20th April, 1863.**

Section.

1. & .2 Leases, by whom and where granted, and length of term.
3. Lease, when and how sold. Private rights not to be affected.
4. Fishery Wardens, how appointed.
5. Duties of Wardens.
6. Rents of Leases, how disposed of.
7. Fiens, &c. how recovered and accounted for.
8. Warden may act as witness.
9. Salary of Wardens.
10. Rules, &c. to be made by Governor in Council. Penalties.
11. Rules, &c. to be taken as part of Act.
12. Tax on Nets, &c.
13. Wardens to collect tax and pay over to Province Treasurer. Annual returns, when and to whom made.
14. Wardens to mark out "Gurry Grounds," and give public notice of the same.
15. Persons erecting Mill dams must attach thereto a good and sufficient "fish-pass." Penalty for neglect.
16. Fish-ways to be attached to dams already built. Penalty for neglect. chargeable.
17. Slabs, edgings, &c. not to be thrown into the Rivers or Harbours. Exceptions. Sessions may make Rules and Regulations.

Section.

18. Salmon not to be taken after 31st August. Spearing prohibited.
19. Angling for Salmon permitted till 15th September.
20. Fishing, where prohibited.
21. Drift and sweeping Nets prohibited. Penalty.
22. Rules and Regulations relative to certain Parishes in the County of Charlotte.
23. Herring, when to be taken on Spawning Ground at Southern Head Grand Manan. Limits of Spawing Ground. Penalty.
24. Penalties for inraction of Sections 17, 18, and 23. Mode of recovery.
25. Governor in Council may impose further penalties.
26. Penalties, how recovered.
27. Penalties must be sued for within one month.
28. Chapter 101, Title xxii. Rev. Stat. repealed.
29. Act 23 Vic. Relating to Fisheries in Restigouche, when and how to be repealed.
30. Not to apply to or interfere with Fisheries in Harbour of St. John.
43. Limit of Act.

Be it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows—

1. That the Governor in Council may grant leases or licences of occupation for a term not exceeding five years, of Fishing Stations on ungranted shores, beaches, or Islands, which shall

terminate when such Stations shall cease to be used for such purpose; no Station shall occupy the whole of a locality where there may be space for more than one.

2. That the Governor in Council may grant leases or licences for fishing purposes on Rivers and streams above the tidal waters of such streams or rivers where the same belong to the Crown, or the lands are ungranted.

3. That when any application is made for any lease or licence under either of the preceding Sections, the lease or licence shall be sold at public auction, after thirty days notice in the Royal Gazette, the upset price being determined by the Governor in Council; but the rights of parties in lands and privileges already granted shall not be affected thereby.

4. That the Governor in Council may appoint such and so many persons as he may deem necessary to be Wardens of Fisheries in the various localities, who shall have jurisdiction over such Rivers and tributaries, and in such districts as may be defined and allotted to them by the Governor in Council.

5. That it shall be the duty of the said Wardens respectively, to watch over and protect the fisheries within their respective jurisdictions, and to enforce the provisions of this Act, and the rules and regulations to be made by authority hereof; and they shall be subject to the directions and liable to the penalties imposed by the regulations of the Governor in Council for misconduct or neglect of duty.

6. That the rents and profits arising from leases and licences granted under this Act, shall be paid into the Provincial Treasury, and a separate account kept of the same, called "The Fishery Protection Account."

7. That all fines and penalties imposed by this Act, or by the regulations to be made thereunder, shall be recovered in the name of any Warden of the district, who shall account for the same to the Provincial Treasurer in such manner as the Governor in Council may direct, and shall be carried to the credit of the account mentioned in the last Section.

8. That nothing in this Act contained shall prevent any Warden from being a competent witness for the recovery of any fine or penalty, or in any proceeding for any forfeiture under this Act, or under any regulation made under the authority of the same.

9. That the Wardens shall receive respectively such salary, not in any case exceeding four hundred dollars per annum, as the Governor in Council may deem right; the same to be paid by Warrant on the Provincial Treasury.

10. That the Governor in Council may make rules and regulations for the management and protection of the Fisheries on the Sea Coast, or around any Island of the said Coast, between low water mark and three marine miles of such mark; and may also make rules and regulations for the management and protection of the River Fisheries; imposing no greater penalty than forty dollars,

nor any longer imprisonment than twenty days; and all such rules and regulations shall be published in the Royal Gazette.

11. That the rules and regulations so made shall be in addition to the provisions of this Act, and shall, when so made and published, have the like force and effect as if herein contained and enacted.

12. The Governor in Council may impose and levy an annual tax on every net used for the taking of Salmon on the Sea Coast, or in the Bays and Rivers of this Province, not exceeding fifty cents for every net fifty fathoms in length, and one half cent for every fathom above fifty fathoms, and may also enforce and levy such annual tax as may be deemed reasonable, on all and every engine, weir or trap used for taking fish in the Rivers, or on the Sea Coast, or in the Bays of this Province.

13. That the taxes imposed under the provisions of this Act, or the regulations to be made by authority hereof, shall be collected by the Wardens in the respective districts, and shall be paid by them into the Provincial Treasury in such manner as the Governor in Council may direct; and it shall be the duty of the Wardens to make full and correct returns of the amounts so collected and paid over by them respectively, annually, on the thirty first day of October in each year, such returns to be forthwith transmitted to the Auditor General.

14. That the Wardens shall, when necessary, mark out and designate, in proper positions, within their respective districts, proper "gurry grounds," putting up notices thereof on the several school houses and other most public places in the Parish where the said gurru grounds are marked out, and shall publish the like notice in the Royal Gazette; and no person shall throw overboard any ballast or offal of fish in any river, harbour, or roadstead, or within three marine miles of the mainland, or of any Island, or on any fishing bank, except on the gurru grounds; and any person acting in contravention of this Section, shall be liable to a penalty of twenty dollars.

15. Every person who constructs a new dam for mill or other purposes, or alters any dam so as to create increased obstructions to the fish in any waters where Salmon are found, shall attach and maintain attached thereto, in an efficient state, a fish-pass or ladder, of such form and dimensions as may be considered necessary by the Warden of the district, and if he do not do so he shall incur a penalty of forty dollars, and also a penalty of four dollars for each week he shall neglect to construct such ladder or fishway, after having been required so to do by the Warden of the district; and it shall be lawful for the Warden at any time after the expiration of one month from the giving notice to such persons of his intention so to do, to cause such ladder or fishway to be constructed, and to recover the expense of such construction from the owner or occupier of such dam, in a suit for money paid to the use of such person; and for the purpose of so constructing such ladder or fishway, it shall be lawful for the said Warden and all parties employed by him, to enter upon the premises with all the necessary means and materials to construct and complete the same.

16. In every dam now built across any stream or river, except where fish may not resort, a proper and suitable fishway shall be made and kept, under a penalty not exceeding twenty eight dollars,

nor less than four dollars; and a further penalty of four dollars each week such dam shall be suffered to remain unprovided with such fishway, after due notice given by the Warden; and the Warden having jurisdiction, shall determine the dams entitled to the above mentioned exception.

17. That no slabs, edgings, or other mill rubbish, shall be thrown, put, or be allowed to fall into any of the Rivers or Harbours, except saw dust in streams above the tidal waters where Mills are so constructed that the saw dust falls directly from the saw into the stream; provided nevertheless, that nothing in this Section contained shall prevent the General Sessions or local authorities from making rules and regulations, or other ordinances or provisions for the preservation or protection of any Rivers and Harbours, where authorized so to do by any law now in force or hereafter to be made.

18. That no Salmon shall be taken on any coast, nor in any of the Bays, Rivers, or Harbours, or in any fresh water stream or river, after the thirty first day of August in any year, nor between sunset on any Saturday night and sunrise on the following Monday morning, nor in any place at any time by spearing, nor shall any person sell or offer for sale or purchase any Salmon taken by spearing; nothing in this Section shall apply to prevent killock nets remaining set on Sunday, in places where stake nets cannot be set.

19. That angling for Salmon may be permitted until the fifteenth day of September in each year.

20. That no person shall use any net, or take Salmon in any way whatever at any Salmon leap, or where any artificial Salmon-pass shall have been constructed, nor in any pools or ponds where the Salmon are wont to spawn; and no stake net, seine, or weir, or other contrivance for taking Salmon, shall be set or placed within two hundred yards next below any dam erected across any river, stream, or water course.

21. That no drift nets or sweeping nets shall be used for catching Salmon in any River or Stream, or Harbour; any person using the same shall be subject to a penalty of not less than four dollars nor more than twenty dollars, and shall also forfeit the nets so illegally used.

22. That within the Parishes of Grand Manan, West Isles, Campo Bello, Pennfield, and Saint George, in the County of Charlotte, no seine or net shall be set across the mouth of any Haven, River, Creek, or Harbour, nor in such place extending more than one third the distance across the same, or be within forty fathoms of each other, nor shall they be set within twenty fathoms of the shore at low water mark; and every fish weir in the said Parishes dry at low water mark, or which, in the opinion of Warden or Wardens requires a gate, shall have a gate therein of such dimensions and in such position as he or they may determine; and it shall be the duty of the Warden or Wardens, and the Overseers of the Fisheries in the Parishes in this Section mentioned, to severally seize and remove any net or obstruction whatever, set or placed contrary to the provisions of this Section, and after five days' notice to sell the same, together with any fish found therein, in some public place in the Parish where the seizure is made; after deducting from the proceeds the charges of seizure and sale, the residue shall be applied to the payment of the penalty incurred.

23. That no Herring shall be taken between the fifteenth day of July and the fifteenth day of October in any year, on the spawning ground at the southern head of Grand Manan, to commence at the eastern part of Seal Cove, taking in the two Inner Islands, so called, at a place known as Red Point, thence extending westerly along the coast to the southern head of Bradford's Cove, and extending one mile from the shore; all nets or engines used for catching Herrings on the said ground within that period shall be seized and forfeited, and every person engaged in using the same shall be guilty of a misdemeanor, and be imprisoned for any term not exceeding three months, or fined in a sum not exceeding twenty five pounds.

24. That any person guilty of violating the provisions of Section the seventeenth of this Act, for each offence shall forfeit and pay a fine not exceeding twenty dollars, nor less than four dollars; any person violating the provisions of Section the eighteenth of this Act, shall for each offence forfeit and pay a fine of not exceeding twenty dollars, nor less than four dollars; every person violating the provisions of Section the twenty third of this Act shall, in addition to the pains and penalties thereby incurred, forfeit and pay for each and every offence a fine of not less than twenty dollars nor more than eighty dollars, in the discretion of the Justices before whom tried; to be sued for and recovered before any two Justices of the County where the offence shall be committed.

25. That the Governor in Council may, by regulations, impose a fine or fix fines and penalties for the breach of any of the provisions of this Act not herein provided for, and make full provision for the further protection of the Fisheries in the various localities in this Province, by rules and regulations for the prevention of spearing, the setting of fixed traps, weirs, or engines, or brush or wooden barricades, the buying or selling of speared Salmon, taking or destroying young Salmon or Spawn, the use of poisonous substances or chemicals, the disturbing of spawning fish, or taking fish to be used for manures, the size of meshes in nets, the manner of setting, and the length of nets, and any other matters deemed necessary, and may fix the fines and penalties for the violation of all and any of the regulations, as he may deem necessary; and such provisions and regulations, when so made and published in the Royal Gazette, shall have all the force of law.

26. That every penalty or forfeiture imposed by this Act, or the regulations made hereunder, may be sued for and recovered on complaint of any Warden of the district, before any Stipendiary or other Magistrate or Magistrates, in a summary manner, upon the oath of one or more credible witness or witnesses, and the proceedings and the costs to be recovered shall be the same as provided by law in other cases where summary jurisdiction is given to Magistrates, except so far as is herein otherwise provided.

27. That all penalties incurred under this Act or the regulations, must be sued for within one month from the committal of the offence; and all fines and penalties may be recovered in the ordinary way by distress and sale of the offender's goods and chattels, and for want of such goods and chattels, imprisonment in the common gaol, as provided by law in cases of summary convictions.

28. That Chapter 101, Title xxii, of the Revised Statutes, 'Of the Sea and River Fisheries,' and all Acts in addition to and in amendment of the same, are hereby repealed.

29. That an Act made and passed in the twenty third year of the Reign of Her present Majesty, intituled *An Act relating to the Fisheries in the County of Restigouche*, and the regulations of the Sessions made thereunder, shall remain in force until regulations shall be made by the Governor in Council under this Act, at which time the Governor in Council may, by Proclamation in the Royal Gazette, declare the same to be repealed, when this Act, and the regulations made hereunder, so far as the same may be applicable to the County of Restigouche, shall have effect in and apply to that County and to the River Restigouche and its tributaries.

30. Nothing in this Act contained shall in any wise apply to or interfere with the Fisheries of the Harbour of the City of Saint John, or with the rights, powers, duties, authorities or privileges of the Mayor, Aldermen and Commonalty of the City of Saint John.