



No. 38.

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1st Session, 8th Parliament, 27 Victoria, 1863

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**BILL.**

An Act to amend chapter sixty-two of the  
Consolidated Statutes of Canada, respecting  
Fisheries and Fishing.

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September, 1863.

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Mr. PRICE.

QUEBEC:

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An Act to amend chapter sixty-two of the Consolidated Statutes of Canada, respecting Fisheries and Fishing.

**WHEREAS**, with a view to secure the more efficient working of the  
 “Act respecting Fisheries and Fishing,” chapter 62 of the Con-  
 solidated Statutes of Canada, it is requisite to make amendments and  
 additions thereto: Therefore, Her Majesty, by and with the advice  
 5 and consent of the Legislative Council and Legislative Assembly of  
 Canada, etc., etc., etc., enacts as follows:

Preamble.  
 Con. Stat.  
 Can., cap. 62.

1. The first section of the said Act shall be repealed, and the follow-  
 ing clause substituted therefor:—“The Commissioner of Crown Lands  
 may grant special fishing leases and licenses for fisheries and fishing,  
 10 and licenses of occupation on lands belonging to the Crown for any term  
 not exceeding nine years; provided always that where Salmon Rivers  
 are known to have been exhausted, special leases may be granted for a  
 term not exceeding thirty years with a condition of their being well re-  
 stocked by the lessee, and the Governor General in Council may make  
 15 all and every such regulation or regulations as may be found necessary  
 or expedient for the better management and regulation of the fisheries  
 of the Province, and for the regulation or prevention of fishing, except  
 under such leases and licenses.”

New section  
 constituted  
 for sect. 1.  
 Licenses for  
 fishing.  
 Proviso.

Regulations.

2. The second section of the said Act is hereby repealed, and  
 20 the following shall be substituted therefor:—“The Commissioner of  
 Crown Lands may, as occasion shall require, appoint Inspectors and  
 Overseers, in Upper and Lower Canada, whose powers and duties shall  
 be defined by this Act and the regulations to be made under it, and by  
 instructions from the Department of Crown Lands; and every Inspec-  
 25 tor and Overseer so appointed under oath of office shall be *ex officio* a  
 Justice of the Peace for all the purposes of this Act and the regulations  
 to be made under it, within that section of the Province in which the dis-  
 trict for which he is appointed is situated: Provided the Salaries and  
 disbursements of such Officers in their capacity of Inspectors or Over-  
 30 seers, shall not exceed in the aggregate the sum of sixteen thousand  
 dollars.”

New section  
 substituted  
 for sect. 2.  
 Appointment,  
 powers, &c.,  
 of Inspectors  
 and Overseers

3. The third section of the said Act shall refer to deep sea fishing.

Sect. 3, ex-  
 plained.

4. Section five of the said Act shall be amended by inserting the  
 words “and lease” after the words “set apart.”

Section 5  
 amended.

5. The seventh section of the said Act is hereby repealed, and the  
 following substituted therefor:—“Whoever throws over board, ballast,  
 coal ashes, stones, or other prejudicial or deleterious substances, in any  
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New section  
 substituted  
 for section 7.

- Penalty for throwing overboard subst. necs prejudicial to the fisheries. river, harbor, or roadstead, or any water where fishing is carried on, or throws over board, or lets fall upon any fishing bank or ground, leaves or deposits, or causes to be thrown, left or deposited, upon the shore, beach, or bank of any water, or upon the beach between high and low water mark, inside of any tidal estuary, or within two hundred yards of the mouth of any Salmon river, remains or offals of fish, or of marine animals, or leaves decayed or decaying fish in any nets or other fishing apparatus, shall incur for any such offence a fine not exceeding \$30, and every person so doing, whether master or servant, and the Master or owner of any Vessel or boat from which such ballast or offals, or other prejudicial substance are thrown, shall severally become liable for each offence: Provided always, that it shall be lawful to bury such remains or offals ashore, beyond high water mark, and at establishments situated inside of the mouths of rivers, for carrying on deep sea fisheries, to drop the same into perforated boxes or enclosures built upon the beach or under stageheads, in such manner as to prevent the same from being floated or drifted into the streams, or to dispose of them in such other manner as may be prescribed by any fishery officer." 5 10
- Proviso; how total may be disposed of.
- Sect. 8 and 9 amended. Penalty for destroying, using nets. 6. The word "standing" shall be omitted from sections 8 and 9 of the said Act, and the 8th section shall be amended by adding, " And the Master or owner of any vessel or boat tearing, destroying, damaging in any way, or carrying away any seines or nets so let and used for the capture of fish within half a mile from the shore, shall be liable for every such offence, in addition to the ordinary fines, to pay to the owner of such seines or nets, the amount of any damage done, which may be adjudged by the Magistrate in command of the vessel for the protection of fisheries or any other magistrate." 20 25
- Section 10 amended. 7. The tenth section of the said Act shall be amended by adding as follows: " And no one with boat or vessel shall disturb, impede or injure any sedentary seal or other fishery." 30
- Section 11 amended. 8. The eleventh section shall be amended by omitting the words "by law," and adding after the words "against him," the following words, "upon complaint before the Stipendiary or any Magistrate." 35
- Section 13 amended. 9. Section thirteen of the said Act shall be amended as affects Upper Canada only, by substituting the word "April" for the word "May," and the words "thirty-first of January" for the words "first of November," and inserting after the word "imposed," the words "or rent due." 40
- Section 16 amended. 10. The sixteenth section shall be amended by inserting after the word "Tribunal," the words "and the Stipendiary Magistrate in command of the Government Vessel for the protection of the fisheries in the Gulf of St. Lawrence is hereby declared to be one of the competent Tribunals." 45
- Section 19 explained. 11. Nothing contained in section nineteen of the said Act shall preclude the granting by the Commissioner of Crown Lands of written permission to obtain fish for purposes of stocking or artificial breeding. 50
- Section 20 amended. 12. The twentieth section shall be amended by substituting the words "twenty-fourth day of July," for the words "first day of August," and the word "May" for the word "March," except as regards the North shore of the Gulf of St. Lawrence, from the River Kegasca to the Eastern Boundary of Canada at Blanc Sablon, where the fishing season shall extend from the 1st of May to the 1st of July inclusive. 50

**13.** The twenty-first section of the said Act shall be amended by inserting the words "or near" after the words "in any way whatever at." Section 21 amended.

**14.** The twenty-second section of the said Act shall be amended by inserting the words "or using" after the word "placing," and the words "lease of fishery" after the word "apparatus," in the sixth line—and one-third of the course of any river and at least two-thirds of the main channel at low tide of such river must always be kept open. Section 22 amended.

**15.** The twenty-third section of the said Act is hereby repealed, and the following section and sub-sections are enacted in its stead:—  
 "For the purpose of affording to fish a passage over dams and slides or other obstructions, built or to be hereafter built across any stream where the Commissioner of Crown Lands may deem and determine it to be necessary for the public interest that the same should exist, there shall be attached and maintained in practical and effective condition upon each such impediment a durable and efficient artificial fishway, in whatever place and of whatever form and capacity will admit of the certain ascent of fish past the same: which passes and fishways shall in every instance be kept open and supplied with a sufficient quantity of water to fulfil the purposes of this requirement during such time or times as may be required by any fishery Officer under written instructions from the Department of Crown Lands." New section substituted for section 23.

"2. For the construction and maintenance of each and every fishway, the Commissioner of Crown Lands may authorize payment of one-half of the expense incurred, and should it be expedient to forthwith procure the construction of any fishway, he also may give directions to make and complete the same, and in lieu of prosecuting for the penalty hereinafter provided, he may recover the cost so disbursed by action before any competent tribunal: provided always, that the owner's share of expense may consist of work and materials furnished." Fishways over dams, &c. to be made. How the cost shall be defrayed.

"3. The penalty for non-compliance with the next preceding sub-sections may be recovered from any of the parties designated in section 56 of this Act, and shall be four dollars for each day during which such failure obtains, the liability to begin upon and continue from the date of conviction by any Magistrate; and the production of a certified copy by any fishing officer, of notice given in accordance with instructions from the Department of Crown Lands, shall be received as proof that the party to whom it is addressed has been duly notified." Penalty for non-compliance with this section.

**16.** The actual possessors of sedentary seal fisheries will be deemed the owners thereof, for the purposes of this Act, so long as they have not abandoned them for the space of twelve calendar months. Sedentary Seal Fisheries

1. The Governor in Council may order that licenses should be granted to the said sedentary seal fisheries, upon the seal fishers paying an annual fee not exceeding three per cent. of the yearly revenue of any sedentary seal fishery; and the said license giving a necessary extent of ground and proper limits for the fruitful working of the said sedentary seal fisheries. Licenses.

2. It is forbidden to any one to go, during the time of the sedentary seal fishing, with a sail boat or any other kind of boat in or near a sedentary seal fishery, so as to impede the setting of seal nets and to frighten away the shoals of seal coming into the said sedentary seal fishery: provided the said sedentary seal fishery is not placed so as to impede navigation at the entrance of harbors or roadsteads. Protection. Proviso.

3. Any one taking up, tearing or damaging in any way, any part of a sedentary seal fishery, will incur for each offence a penalty not exceeding the sum of sixty dollars; and shall remain liable for any dam- Penalty for damaging such Fisheries.

- Recovery.** age which the party sustaining the injury may prove and recover before the magistrate in command of the vessel for the protection of the fisheries.
- Deciding difficulties between neighbouring fishery owners.** 4. All difficulties arising between neighboring possessors of sedentary seal fisheries, concerning all matters relating to their fisheries, and the way of fishing the same, are to be decided summarily by the said magistrate, on the report of arbitrators appointed to examine the affair. 5
- Levying penalty.** 5. All amounts of damage or compensation granted by the said arbitrators, shall be levied by means of warrant in the way usually prescribed to Justices of the Peace, issued by the said magistrate against the goods and chattels of the defendant. 10
- Penalty for other contraventions.** 6. Any person transgressing any of the preceding provisions shall be liable to pay a penalty of *forty dollars*, to be recoverable in the usual way before the said magistrate, or in default of payment, either immediately or after such delay as may have been given, to an imprisonment not exceeding three months. 15
- Limitation of suits.** 7. The prosecutions for penalties and damages incurred in virtue of the preceding clauses, shall be commenced during the twelve months following the offence and not after that time. 20
- Section 24 amended.** 17. In section twenty-four of the said Act the words "of the twentieth section" shall be struck out.
- Section 25 amended.** 18. The twenty-fifth section of the said Act shall be amended by omitting the words "knot to knot."
- New sections constituted for sections 27, 28, 29.** 19. The twenty-seventh, twenty-eight, and twenty-ninth sections of the said Act are hereby repealed, and the following shall be substituted therefor:—"It shall not be lawful to fish for, catch, or kill any kind of trout or lunge in any way whatever between the twentieth day of September and the tenth day of December in each year; and no one shall at any time fish for, catch or kill trout by means of nets, weirs or battows, in any inland lake, river or stream, except in the river St. Lawrence,—provided always, that as affecting the waters of Upper Canada, such prohibitions shall apply only to the kind known as speckled trout, and at all times, and in any water, and in any way, trout may be taken as a bait for catching codfish." 25 30 35
- Prohibition against fishing in certain ways and at certain seasons**  
**Proviso.**
- Section 30 repealed.** 20. Section thirty of the said Act is hereby repealed.
- Sec. 31 and 32 repealed.** 21. The thirty-first and thirty-second sections of the said Act as regards maskinonge, pickerel or pike, are repealed, the killing or taking of the said fish is hereafter permitted at any season, in both sections of the Province,—provided always that pickerel are considered as young pike. 40
- Section 33 amended.** 22. The thirty-third section of the said Act shall be amended by adding the words "or stream" after the word "river."
- New section substituted for section 34**  
**License to take spawn may be granted in close season.** 23. The thirty-fourth section of the said Act is hereby repealed, and the following is enacted in its stead:—"The Commissioner of Crown Lands may grant or authorize to be granted written permission for any responsible person or persons to fish during close seasons for the *bona fide* purpose of procuring fish-spawn; and any person who wilfully injures or destroys any place set apart or used for the propagation of fish under section five, or fishes therein without permission, shall incur a fine of not less than *twenty* nor more than *two hundred* dollars." 45 50

- 24.** The thirty-fifth section of the said Act shall be amended by adding the words: "Above high-water for carrying on the deep-sea fisheries along the sea coast" after the words, "any fishing station;" provided that nothing herein contained shall affect any claim now pending **5** under former Acts. Section 33 amended.
- 25.** It shall not be lawful to fish for, catch or kill salmon, salmon trout, sea trout, or trout of any kind, lunge, winnoniche, bass, or dorce, by means of spear, grapnel hooks, negog, mishugans, nor by aid of torchlight, or any other artificial light; and any of the said fish found **10** or killed in contravention of this section shall be forfeited, and the transgressors or accessories shall be subject to the penalties imposed by the twenty-fourth section of the said Act; provided that it shall be lawful for Indians on the South Shore to spear salmon from the 1st of May to the 10th of July in any unleased river, and to sell or barter speared **15** salmon. Fish not to be killed in certain ways. Proviso in favor of Indians.
- 26.** It shall not be lawful to fish for, kill, or have in possession any salmon fry, parr or smolt; and any party found in possession of any such fish, shall forfeit for each such fish the sum of not less than *twenty cents*, or more than *one dollar*, with costs, together with all apparatus **20** that may have been used to capture any of the said salmon fry, parr or smolt. Salmon, fry, &c., not to be taken. Penalty.
- 27.** It shall not be lawful to fish for white fish, by use of any kind of seine, net or nets, between the 1st day of June and 20th day of September in any year, in Upper Canada, or between the 1st day of **25** August and 1st day of December, in Lower Canada, nor shall the fry of the same be at any time destroyed. Close time for white fish.
- 28.** It shall not be lawful to catch or take, in any way whatever, the fresh water herring, in any of the lakes of Lower Canada, between the 10th of May and the 10th of July, in any year. For fresh water herring.
- 29.** The Commissioner of Crown Lands may grant special licenses and leases to any party or parties for any term of years, who may wish to plant or form oyster beds in any of the bays or between any of the islands on the coast of Canada, and in the St. Lawrence; and the holder of any such leave or license shall have the exclusive right to fish for **30** or dispose of the oysters produced or found on the beds, within the limits of any such license, for the term of such lease. Licenses to form and hold oyster beds.
- 30.** The thirty-seventh section of the said Act shall be amended by omitting the words "the Superintendent of Fisheries or" **35** Section 37 amended.
- 31.** Section thirty-nine of the said Act shall be amended by substituting the words "twenty-four" for the word "twelve." **40** Section 39 amended.
- 32.** In section forty of the said Act the words "and has not goods or chattels whereon the same may be levied," shall be inserted after the words "condemned to pay." Section 40 amended.
- 33.** The forty-second and forty-fourth sections of the said Act shall be amended by leaving out of both the words "the Superintendent of Fisheries or," and by adding in section forty-two, after the words "of this Act," the following words: "and may upon view remove instantly and detain any materials illegally in use." **45** Sections 42 & 44 amended.

Section 43  
amended.

**34.** The forty-third section of the said Act shall be amended so as to read as follows:—When it is expedient to proceed against a defendant without delay, any Stipendiary, or other Magistrate may issue a summons, returnable immediately to compel the defendant to appear before him forthwith, or may issue a warrant for the apprehension of such defendant simultaneously with the summons.

Compelling  
defendant to  
appear immedi-  
ately.

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Section 48  
amended.

**35.** The forty-eighth section of the said Act shall be amended by omitting the words "for white fish in either of the said rivers within Upper Canada."

Section 51  
amended.

**36.** The fifty-first section shall be amended by substituting for the words "the Superintendent of Fisheries," the words "each Fishery Officer."

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Sections 54,  
64, 66 and 71  
amended.

**37.** The fifty-fourth, sixty-fourth, sixty-sixth and seventy-first sections of the said Act shall be amended by substituting the term "Inspector" for that of "Superintendent."

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Section 67  
amended.

**38.** The sixty-seventh section shall be amended by inserting the word "exclusively" after the words "shall be paid."

Grant for  
oyster-beds  
renewed.

**39.** *The seventy-second section of the said Act is hereby re-enacted.\**

**40.** The said Act shall be further amended by the addition of the several clauses following.

20

Penalty for  
fishing within  
licensed  
limits of "n-  
other person.

**41.** Whoever fishes for, takes, or catches or kills fish in any river, or along any beach, or within any limits described in leases or licenses now existing or hereafter to be granted, except by permission of the occupant under such lease or license for the time being, shall incur a penalty not exceeding *one hundred dollars*, with costs, and the forfeiture of fishery apparatus so used, and all fish taken or caught; and any such lessee or licensee may, upon his own view, remove and place in the custody of a fishery officer, or the nearest Magistrate, or Captain of Militia, or Constable, any net or apparatus so used in trespass, to be afterwards dealt with according to law. Provided always, that the occupation of any fishing station or waters so leased or licensed for the express purpose of net fishing, shall not interfere with the definition contained in section three of the present Act, nor prevent angling for other than purposes of trade and commerce.

25

30

Proviso.

Boundaries of  
estuary fish-  
ing.

**42.** The Commissioner of Crown Lands, or other person authorized by him to such effect, shall have power to define the tidal boundary of estuary fishing for the purposes of this Act; and above the actual limit so to be laid down, it shall be unlawful to fish with nets, weirs, or any self-acting machine, under a penalty not to exceed \$100, and the forfeiture of all materials used, and fish taken and had in connection therewith.

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Additional  
powers con-  
ferred on  
commander  
of armed ves-  
sel.

**43.** The Stipendiary Magistrate at the head of the service for the protection of fisheries of the Gulf of St. Lawrence on board the armed vessel employed for that service, shall be moreover Commissioner for the organization and protection of the maritime fisheries of Lower Canada, and besides the powers now conferred upon him by the present Fishery Act, he shall be vested with the power of judging summarily several delinquencies such as ordinary theft, theft on shipwrecks, and like offences, and shall have the same summary powers now enjoyed by Recorders, Sheriffs, and Police Magistrates in Towns.

45

\* Note.—This clause will be proposed by Resolution in Committee of the Whole.



- 44.** The nineteenth clause of the said Act shall be amended by adding to it: "nor shall any lease be granted for fishing in the said Burlington Bay and Dundas Marsh." Section 19 amended.
- 45.** The use of nets or other apparatus for the capture of salmon shall be confined to tidal waters, and any fishery officer may determine the length of each net so to be set any where in the tide way; provided that nothing contained in this section shall prevent the use of nets for catching salmon in the lakes of Upper Canada. As to Acts for catching salmon.
- 46.** All nets, or other lawful appliances for the capture of salmon, shall be placed within the estuary fishings at distances of not less than 200 yards apart on each side, or along either bank of any river or stream, without intermediate fishing materials of any kind being set or used in and about any other part of the stream. Made of setting nets.
- 47.** Any Fishery Inspector or Overseer may prescribe either in writing or orally on sight, the distance apart to be left between salmon nets and their extension, elsewhere than in such places as this Act defines the same. Power of Inspector. &c.
- 48.** The use of pound and trap nets is prohibited: and no net or other device shall be so placed as to obstruct the passage of fish into and from their accustomed resorts for the purpose of spawning and increasing their species. Certain nets prohibited.
- 49.** In Upper Canada, no salmon shall be captured within two hundred yards of the mouth of any creek or stream which salmon frequent to spawn. As to spawning rivers in U. C.
- 50.** Whales, seals and porpoises shall not be hunted or killed by means of rockets, explosive instruments, or shells, under a penalty not exceeding \$300. Rockets, &c. not to be used.
- 51.** The catching, killing or molesting of fish when passing or attempting to pass through any fishway, or in surmounting any obstacle or leaps, the use of any invention to catch, kill, or molest fish in the mill-dams, fish-ways, mill-heads, and water courses appurtenant thereto, are hereby forbidden. Killing fish at certain places forbidden.
- 52.** Bass and doree shall not be taken or killed in any way between the 1st of June and 1st of August any year. Close season for bass and Dory.
- 53.** The Commissioner of Crown Lands may sanction the adaptation of any natural or artificial obstructions in salmon rivers, to the passage of fish; and in any case may receive private aid and contributions towards effecting the same. Passages for salmon.
- 54.** All materials or appliances used, and all fish had in contravention to this Act, shall be confiscated to Her Majesty, and the proceeds of disposal thereof may be applied towards defraying expenses under this Act. Things used in contravention of this Act forfeited.
- 55.** Fines and forfeitures, and proceeds derived from the sale of confiscated articles, under this Act, shall be paid into the Department of Crown Lands, and applied towards the expenses incurred for the protection of fisheries. Application of fines, &c.
- 56.** When not otherwise specified, every proprietor or proprietress owner, agent, or tenant, occupier, or person actually in charge, either as occupant or servant, shall be deemed to be jointly or severally liable for penalties recoverable under any of the provisions of the Fisheries Act. Who shall be liable.

No proceedings to be squashed for want of form.

57. No proceeding under this Act shall be dismissed, and no conviction thereunder shall be quashed for want of form; nor shall any warrant of arrest, or commitment be held void by reason of any defect therein, provided it is alleged that the party has been convicted, and there is a good and valid conviction to sustain the same.

Evidence of Regulations under Fisheries Act.

58. The publication in the English and French language in the *Canada Gazette* shall be sufficient notice to give legal effect to any Regulation or By-law adopted under the *Fisheries Act*; and the production of a copy of any Regulation or By-law so in force purporting to be printed by the Queen's Printer, and certified by the Commissioner or Assistant Commissioner of Crown Lands, as having been approved and adopted by order of the Governor General in Council, shall be admitted as full and sufficient evidence of the same, in all courts of law or equity in Canada.

Certain officers to forfeit fish exposed for sale during the close seasons.

59. It shall be the duty of every police officer or constable, clerk of a market or other party in charge of any market place in every Village, Town and City, to seize and forfeit on view to his own proper use, or gift, any fish enumerated in this Act, which is exposed for sale or otherwise, during prohibited seasons; but every such seizure and appropriation, with the date, place, and circumstances thereof, shall be duly reported, together with a full description of the person in whose possession such fish was found, to some Justice of the Peace, having jurisdiction over the District within which such forfeiture has taken place.

Application of fines under this Act.

60. One half of every fine levied by virtue of this Act shall be paid to Her Majesty, and the remaining moiety thereof shall be paid to the prosecutor, together with costs taxed to him for attendance as a witness, or otherwise, unless the prosecutor has been examined as a witness and has renounced his share of the penalty, in which case he shall have his costs only, and the whole penalty shall belong to the Crown for the use aforesaid.

Stating offences against this Act.

61. Each offence against any Regulation or By-law made under this Act may be stated as in contravention of the *Fisheries Act*.

Receiving fishermen not discharged.

62. Any proprietor or commander of any vessel shall be liable to a penalty of *forty dollars* for receiving on board any vessel of his as passenger, any person engaged in the fisheries, who shall not be in possession of a certificate of discharge from his employer.

Lessors in arrears.

63. Any lessor of a river, lake, or coast fishing shall have no right to a renewal of his lease or license, if he has been in arrears of rent or percentage for four months after same is due.

Citation of this Act.

64. This Act shall be and form one with the Act first hereinbefore mentioned and hereby amended, and any infraction of this Act shall be cited as a breach of the *Fisheries Act*; and the citation of the *Fisheries Act* shall include the said Act and this Act.