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CONFIDENTIAL.

North American

No. 125.

North American Fisheries.

MEMORANDUM RESPECTING INSTRUCTIONS TO NAVAL OFFICERS.

THE determination of the Washington Treaty contracted in 1871 between Great Britain and the United States, revived the First Article of the Convention of 1818 with various Imperial and Colonial Acts passed in connection with the Convention, but suspended during the continuance of the Washington Treaty.

That Article provides :—

(1.) That American fishermen may fish “in common with the subjects of Her Britannic Majesty,” in certain specified parts of Newfoundland and Labrador, and on the shores of the Magdalen Islands, with liberty to dry and cure fish on the shores of certain of the unsettled—or, with the consent of the inhabitants, of the settled bays, harbours, and creeks of Newfoundland and Labrador.

(2.) That except within the above limits, American fishermen are not to take, dry, or cure fish on or within three miles of the coasts, bays, creeks, and harbours of British North America. But that they may enter such bays and harbours to obtain shelter, repairs, wood, or water, and for no other purpose whatever, under such restrictions as may be necessary to prevent abuse by fishing or otherwise.

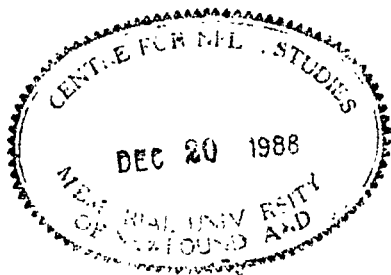
The position of the Fishery Question under the Convention of 1818 was the same therefore on the termination of the Washington Treaty, as it was on the termination in 1866 of the Reciprocity Treaty of 1854.

It may be well, therefore, to recapitulate shortly the chief points in the correspondence which passed on this subject between the years 1866 and 1873, the latter being the date at which the Fishery Articles of the Treaty of Washington came into operation in Canada.

Between 1866 and 1870, American fishermen were allowed to fish in all Canadian waters upon the payment of a license fee. This system was discontinued in 1870.

A letter to the Admiralty, dated 12th April, 1866, formed the basis of instructions issued to the Naval Officers on the North American station in 1870. (These instructions are annexed.)

Mr. Cardwell stated in this letter that Her Majesty's Government were clearly of opinion,



Instructions of 1870.
Annexure I.

that by the Convention of 1818, the United States had renounced the right of fishing, not only within three miles of the Colonial shores, but within three miles of a line drawn across the mouth of any British bay or creek. But the question, what is a British bay or creek, being one that had been the occasion of difficulty in former times, it was not at present the wish of Her Majesty's Government either to concede or, for the present, to enforce any rights in this respect which were in their nature open to any serious question. Even before the conclusion of the Reciprocity Treaty Her Majesty's Government had consented to forego the exercise of its strict right to exclude American fishermen from the Bay of Fundy; and they were of opinion that during the (then) present season that right should not be exercised in the body of the Bay of Fundy, and that American fishermen should not be interfered with either by notice or otherwise unless they were found within three miles of the shore or within three miles of a line drawn across the mouth of a bay or creek which was less than ten geographical miles in width, in conformity with the arrangement made with France in 1839. American vessels found within these limits were to be warned that by engaging or preparing to engage in fishing they would be liable to forfeiture, and should receive the notice to depart contemplated by certain local laws; but they should not be carried into port except after wilful and persevering neglect of the warnings which they might receive; and in case it should become necessary to proceed to forfeiture, cases should, if possible, be selected for that extreme step in which the offence of fishing had been committed within three miles of land.

It was stated that Her Majesty's Government did not desire that the prohibition to enter British bays should be generally insisted on, except when there was reason to apprehend some substantial invasion of British rights. And in particular, they did not desire American vessels to be prevented from navigating the Gut of Canso (from which Her Majesty's Government were advised they might be lawfully excluded), unless it should appear that this permission was used to the injury of Colonial fishermen, or for other improper objects.

The limit of ten miles across the mouth of bays, referred to in these instructions, was adopted by Canada, but was subsequently changed under directions from Lord Granville, 6th June, 1870; the Canadian Government being informed that Her Majesty's Government thought it advisable that United States fishermen "should not be excluded from any waters, except within three miles of shore, or in the unusual case of a bay which is less than six miles wide at its mouth that spreads out to a greater width within."

With regard to the right of fishing vessels to enter ports on the same footing as trading vessels, Lord Kimberley informed the Governor-General

(12th October, 1870) that the transshipment of fish and obtaining supplies could not be regarded as a "substantial invasion of British rights" such as was contemplated by Mr. Cardwell's instructions of 1866.

Writing subsequently to the Governor-General on the 12th of April, 1871, Lord Kimberley again referred to the same point in reference to instructions to the Commanders of Canadian cruisers. He stated that the Admiral had reported that the suppression of illegal fishing was not materially facilitated by the prohibition of trade, and he added that if the negotiations at Washington should be still pending when the fishery season commences, the enforcement of this exclusion might seriously endanger their success, and he could not therefore doubt that the Canadian Ministers would agree with Her Majesty's Government in the necessity of, at all events, suspending that part of the instructions referred to until the result of the negotiations should be known.

Canada gave way upon this point for the season of 1871, but it will be seen that this was done in view of the negotiations for the Washington Treaty.

It may here be stated that in May, 1870, the British Naval Officers were instructed not to seize any United States vessel, "unless it should be evident, and could be clearly proved that the offence of fishing had been committed, and the vessel itself was captured within three miles of the land."

The instructions issued by Canada to the Commanders of cruisers in 1871 (copy annexed), were brought into harmony with those issued to Her Majesty's Naval Officers as amended in the particulars above referred to.

During the fishing season of 1871 and 1872 the instructions to the Imperial officers were suspended in anticipation of the coming into force of the Treaty of Washington, but the Colonial Office informed the Admiralty that it was the "desire of Her Majesty's Government that during the suspension of those instructions the Officers commanding Her Majesty's ships should be directed, whilst abstaining from taking active measures to enforce the exclusion of United States fishermen from the fisheries in question, to assist the local authorities in preserving order amongst the fishermen, and to protect the Colonial Revenue vessels from being interfered with by any armed force." The fishery articles of the Treaty of Washington came into force in Canada on the 1st of July, 1873, but United States fishermen were admitted to the privileges of the Treaty from the commencement of the fishing season that year.

The fishery articles were abrogated on the first of July, 1885, and an *ad interim* arrangement was made with the Government of the United States, under which American fishermen continued to enjoy the use of the fisheries up to the end of that year on the understanding that Congress should be invited to consent to the appointment of a Commission with a view to the negotiation of

Canadian Instructions.
25th Feb., 1871. Annexure II.

a fresh Treaty. The Senate of the United States, however, rejected this proposal, and in 1886 the Canadian Government issued instructions to their cruisers to exclude United States fishermen from Canadian waters, except under conditions allowed by Convention of 1818. These instructions, a copy of which is annexed, are substantially the same as those issued in 1870 without the amendments in the instructions of 1871 above referred to, which were made at the instigation of Her Majesty's Government. Special secret instructions were, however, issued to Canadian officers to confine the exercise of their authority within the limit of three marine miles of any of the coasts, bays, creeks, or harbours of Canada with respect to any action taken against American fishing vessels and United States citizens engaged in fishing. With regard to the definition of creeks and harbours, the six-mile limit was to be observed.

In the course of the last fishery season the Imperial Government was urged by the Government of Canada to issue instructions in support of their cruisers.

On the 22nd of July, 1886, Lord Granville informed the Governor-General that Her Majesty's Government had hitherto deferred giving such instructions, inasmuch as it appeared to them to be preferable in the circumstances of the present moment that the Canadian officers and vessels should continue to protect the fisheries. It would, moreover, be necessary for Her Majesty's Government, his Lordship added, before issuing any instructions, to consider with the Dominion Government, the details of the procedure to be followed by Officers of Her Majesty's vessels.

Later, on the 3rd September, 1886, the Officer Administering the Government of Canada was informed by the Secretary of State (Mr. Stanhope) that, after consultation with Lord Lansdowne, Her Majesty's Government had arrived at the conclusion that it was not desirable in the interests of a friendly and permanent arrangement of the fishery question that any of Her Majesty's ships should now be specially despatched to the coast for the short period that remains of the present fishing season. Mr Stanhope added, "If unfortunately some satisfactory settlement should not be arrived at with the Government of the United States before the commencement of the next fishing season, Her Majesty's Government will, after communication with the Government of the Dominion, issue instructions to the Admiral on the station in order to secure due support to the Dominion vessels engaged in the protection of the fishing interests."

It may be here mentioned that an Imperial Act was passed in connection with the Convention of 1818—the effect of which may be thus stated:—

(1.) It enables the King, by Orders in Council, to make regulations for establishing the liberty of taking, drying and curing of fish, given by the convention to the inhabitants of the United States within certain limits.

*Canadian Instructions of 1886.
Annexure II.*

*Canadian Secret Instructions of 1886.
Annexure III.*

Earl Granville to
the Marquis of
Lansdowne,
P. 125, N. American,
No. 118.

59 Geo. III., cap.
38.

Section 1.

Section 2.

(2.) It prohibits persons on board foreign vessels from fishing, &c., within three marine miles of any coasts, bays, creeks or harbours whatever in any part of His Majesty's Dominions in America not included within the limits specified in the Convention, and imposes the penalty of forfeiture of any vessel found fishing, or to have been fishing, or preparing to fish within such distance.

Section 3.

(3.) It provides that it shall be lawful for United States fishermen to enter into any of such bays or harbours for the purpose of shelter and repairing damages therein, and of purchasing wood and of obtaining water, and for no other purpose whatever, subject, however, to such restrictions as may be necessary to prevent such fishermen from taking, drying, or curing fish in the said bays or harbours and as shall be imposed by any Order in Council or by Regulations issued by any Governor in pursuance of any Order in Council.

Section 4.

(4.) It imposes a penalty of £200 upon any person refusing to depart from such bays or harbours upon requisition of any Governor, or refusing to conform to any (such?) Regulations.

An Act was passed in 1836 by the Parliament of Canada which was confirmed by Order in Council, and which goes beyond the provisions of the Imperial Act above-mentioned in subjecting to forfeiture any foreign vessel which has entered the waters of Canada (except within certain limits) for any purpose not permitted by treaty or Convention, or by any law of the United Kingdom or of Canada for the time being in force.

Governor of Newfoundland to Secretary of State, 10th June, 1836 (Telegraphic).

On the 10th of June, 1836, the Newfoundland Government requested that Her Majesty would issue orders under the Imperial Act above referred to to require American fishermen to depart from bays and harbours of Newfoundland. The Governor of Newfoundland stated that no seizures or penalties were contemplated, but that the proposed measure was intended as a moral support of the action of Canada.

Mr. Stanhope to Governor, 14th September, 1836.

The Governor was informed in reply, that Her Majesty's Government did not consider it expedient at the present time to take any such action as that suggested.

It remains for Her Majesty's Government to consider what instructions shall be issued to Her Majesty's cruisers respecting the Canadian fisheries this year.

The principal point upon which a decision appears to be required is whether the instructions to British Naval Officers issued in 1870, including Mr. Cardwell's of 1866, can again be issued this year, and if so how far Her Majesty's Government would be disposed to insist on the modifications desired by the U. S. Secretary of State in regard to—

(1.) The limit of six miles across the mouths of bays and the non-seizure of United States vessels "unless it should be evident and could be clearly proved that the offence of fishing had been committed and the vessel itself captured within three miles of land."

(2.) The question of the admission of American

vessels to Canadian Ports to tranship their fish and obtain supplies; these privileges not being "regarded as a substantial invasion of British rights."

E. B. P.

16.2.87.

ANNEXURE I.

Instructions for Protection of the Fisheries, 1870.

By GEORGE GREVILLE WELLESLEY,
Esquire, Companion of the Most
Honourable Order of the Bath, Vice-
Admiral in Her Majesty's Fleet,
and Commander-in-Chief of Her
Majesty's Ships and Vessels
employed, and to be employed,
on the North American and West
Indian Station.

To the respective Captains, Commanders and
Commanding Officers of H.M. Ships
employed in the protection of the
Fisheries.

It being my intention to employ H.M. Ship
under your command in the protection of the
Fisheries, the following Instructions are furnished
for your guidance in conducting that important
duty, and they comprise what is necessary for
your employment on any of the Stations to which
you may be detached for that purpose.

1.

The mode in which it is the decision of Her
Majesty's Government that the United States'
fishermen are to be dealt with, is clearly set forth in
the annexed letters (A) from the Colonial Secretary
to the Lords Commissioners of the Admiralty,
dated 12th April, 1866, and 30th April, 1870.
In the margin of these letters are noted explan-
ations for your guidance; and I have to impress
upon you the extreme importance their Lordships
attach to your exercising the greatest discretion
in carrying out their instructions, and to your
using at all times the utmost temper and forbear-
ance compatible with the duty entrusted to you.

2.

The several Stations with their limits you will
find described in the Appendix (B).

3.

Your first duty on arriving on your Station will
be to acquaint yourself, by personal inquiry amongst
the Fishermen and others on the spot, with such
information in regard to the Fisheries as will
enable you with the experience you will have
gained at the end of the season, to make a full

report on this staple of Colonial commerce, and of the best means to be adopted in the ensuing year for its effectual protection.

4.

You are to make yourself thoroughly acquainted with the Coasts and the various Ports and anchorages where you will be able to seek shelter in bad or thick weather, so that you will experience no difficulty under such circumstances in making out the land when you close it.

5.

A letter from the Lords Commissioners of the Admiralty on the subject of Pilotage is annexed (C) by which you are to be guided. To your report (Art. 3) is to be added one from the Navigating Officer of the Ship relative to the Navigation and Pilotage of your Station.

6.

You will regulate your cruising according to the information you may obtain from time to time, giving your principal attention to that part of your Station on which you find the United States fishermen are chiefly engaged, and unless detained by stress of weather you are not to remain in harbour more than 48 hours at one time. During the night, where strong currents prevail and during fogs, it will be well to anchor whenever the weather, depth of water, and other circumstances permit, using your stream for the purpose in deep water.

You are to cruise as much as possible under sail, but you are to keep your fires banked in order that you may be prepared to use steam whenever the service renders it requisite that you should do so.

7.

You are to keep a List of all Vessels boarded within three miles of land, in the following form; and should any Foreign Vessel be found preparing to fish, the Master is to be informed that if he is found fishing, or having fished, within the prescribed limits he will be captured.

Boarded.		Name.					For what purpose boarded.	Remarks.
Date.	Where.	Vessel.	Under what Colours.	Owner.	Master.	Port belonging to.		

8.

You will keep me fully informed of your intended movements in order that I may be able to communicate with you should I desire to do so, and on arriving at each place of call you will send to the Telegraph Office to ascertain if there are any orders for you there.

9.

Your proceedings are to be reported weekly for my information, accompanied by your Log and a Track Chart for the week.

In every case of seizure a special report of the circumstances attending it is to be made to me forthwith.

Should no opportunity be presented of forwarding the Report at the expiration of the week, it is to be sealed and transmitted by the first opportunity which may occur subsequently.

These Reports are to be numbered consecutively as Fishing Report No. 1, 2, &c., and if in harbour the week's Log is to be accompanied by a blank report duly numbered. They are to include a Return of all Fishing Vessels boarded since the date of the last Return, on the same form as that given in Article 7.

10.

Such papers as are requisite for your information and guidance, arranged under the heads of the several Provinces, are added.

Such of these papers as do not apply to the Station on which you are employed, will prove useful as giving you a general knowledge of this special service and preparing you to act on any other Station where I may find it necessary to employ you.

11.

You are to remain on this service until recalled, but you will report specially to me when you consider your presence no longer required on your Station.

Given under my hand on board the "Royal Alfred," at Halifax the 23rd day of May, 1870.

(Signed) GEORGE G. WELLESLEY.

Additional Instructions for Officers employed in the protection of the Canadian Fisheries, for the season of 1870.

Confidential.

1. The Lords Commissioners of the Admiralty have informed me that it is probable a force of United States' Vessels of War will be sent to the Canadian Fishing Grounds this season to watch over the interests of American Vessels, and I have since learnt that some have already been despatched on this service; I have therefore to impress upon you the great importance which is attached by their Lordships to a cordial understanding being maintained between the Officers

commanding the Cruisers of both Countries, and you will consider it your duty to co-operate frankly and cordially with the United States' Officers in order to prevent, if possible, any misunderstanding or chance of collision between the American and English Fishermen.

2. The Canadian Government have refused to continue the system formerly adopted of granting licenses to Foreigners for the inshore Fisheries, and have informed me of their intention to employ Colonial Cruisers to act as a Marine Police in the prevention of any encroachments. A copy of the Special Instructions given to the Officers in command of these Cruisers is furnished for your information.

This force is under the direction and control of Captain Peter A. Scott, R.N., commanding the Dominion Steamer "Lady Head," and you are to co-operate with the officers commanding the Colonial Vessels and assist them when necessary in carrying out their duties in protecting the Fisheries; affording them when you meet all information you may possess which is likely to prove of use.

(Signed) GEORGE G. WELLESLEY,
Vice-Admiral.

H.M.S. "ROYAL ALFRED,"
at Halifax, 23rd May, 1870.

APPENDIX A.

Confidential.

NORTH AMERICAN FISHERIES.

Letter respecting Instructions to be sent to the Admiral on the North American Station, with reference to the Determination of the Reciprocity Treaty.

Confidential.

Copy of a Letter from the Secretary of State for the Colonies to the Lords of the Admiralty.

DOWNING STREET,
April 12th, 1866.

MY LORDS,

The determination of the Reciprocity Treaty contracted in 1854 between Great Britain and the United States revives the 1st Article of a Convention* of the 20th of October, 1818, with various

* Copy annexed.

Imperial and Colonial Acts enumerated in the margin,* of which the operation had been suspended during the continuance of the Treaty by the Imperial Act 18 and 19 Vict., cap. 3, sec. 1, or otherwise.

The precise provisions of that Article will be seen by reference to the Convention. Its general result is as follows :

1. American fishermen may fish "in common with the subjects of Her Britannic Majesty," in certain specified parts of Newfoundland and Labrador, and on the shores of the Magdalen Islands, with liberty to dry and cure fish on the shores of certain of the unsettled—or, with the consent of the inhabitants, of the settled—bays, harbours, and creeks of Newfoundland and Labrador.

2. Except within the above limits American fishermen are not to take, dry, or cure fish on or within three miles of the coasts, bays, creeks, and harbours of British North America. But they may enter such bays and harbours for certain specified purposes under such restrictions as may be necessary to prevent abuse by fishing or otherwise.

I. With regard to Newfoundland and Labrador, the Convention does but continue within certain geographical limits, and subject to a qualification in respect to the curing of fish, the privileges which have hitherto been exercised under the Reciprocity Treaty. It does not, therefore, call for much observation. It is only requisite to say that although the privilege of drying and curing fish on the Magdalen Islands is not expressly given to American fishermen, Her Majesty's Government have no desire at present to exclude them from it, nor to impose any narrow construction on the word "unsettled." A bay containing a few isolated houses is not to be considered as "settled" for the purpose of this clause of the Convention.

On the other hand, naval officers should be aware that Americans who exercise their right of fishing in Colonial waters in common with subjects of Her Majesty, are also bound, in common with those subjects, to obey the law of the country, including such Colonial laws as have been passed to insure the peaceable and profitable enjoyment of the fisheries by all persons entitled thereto.

The enforcement of the Colonial laws must be left, as far as the exercise of rights on shore is concerned, to the Colonial authorities, by whom Her Majesty's Government desire they shall be enforced with great forbearance, especially during the present season. In all cases they must be enforced with much forbearance and consideration, and they must not be enforced at all by Imperial officers if they appear calculated to place the

* Imperial, 59 Geo. III, c. 38. Nova Scotian Revised Statutes (3rd Series), c. 94, ss. 1-18. New Brunswick, 16 Vict., c. 69, ss. 1-18. Prince Edward Island, 6 Vict., c. 14, declared to contain the Fishery Regulations by Order in Council of 3rd September, 1844. (Copies annexed.)

A. The Report here directed is to be forwarded to me in triplicate for transmission to the Lords Commissioners of the Admiralty.

B. In all cases in which inconvenience would arise from the Clause in the Colonial Acts which prescribes the delivery of the Vessel seized, "to the Officer of the Colonial Revenue next to the place where seized," prosecute under this Act.

C. When prosecuting as above directed, avail yourself of the procedure authorised by the 103rd Clause of the Merchant Shipping Act.

An extract of a letter from the Under Secretary of State for the Colonies descriptive of the mode in which the combination of these two Acts is rendered effective for the purposes of prosecution is given herewith. See extract from Colonial Office letter of 23rd June, 1866.

D. This will enable you to send the Vessel for adjudication to any Admiralty Court, and consequently to that situated in the *Port most convenient* to you, i.e. a Vessel seized in Nova Scotian waters could be sent to Charlotte Town, Prince Edward Island, for condemnation, and so of all the other Provinces respectively.

E. You may prosecute under the Colonial Acts when it will not be inconvenient to you, to adhere strictly to the Clause directing the delivery of the Vessel seized to the Revenue Officer next to the place where seized, but in no other case.

Americans at a disadvantage in comparison with British fishermen in the waters which, by the Treaty of 1818, are opened to vessels of the United States. On the contrary, their unequal operation should, in this case, be reported to their Lordships, a copy of the report being at the same time sent to the Governor of the Colony.

II. Fuller explanation is necessary respecting that part of the Convention by which the United States renounce the right of fishing, except within the permitted limits—"on or within three miles of any of the coasts, bays, creeks, or harbours" of British North America, and are forbidden to enter such bays or harbours, except for certain defined purposes.

The Act of Parliament (59 Geo. III, cap. 38), already mentioned, subjects to forfeiture any foreign vessel which is found fishing, or having fished, or preparing to fish, within the prohibited limits, and authorises the enforcement of this forfeiture by the like means and in the same Courts as may be resorted to under any Act of Parliament in the case of any offence against the laws relating to Customs, or the laws of trade and navigation.

The statutory mode of enforcing the law against Customs' offences committed in the Colonies will be found in the Act 16 and 17 Vict., cap. 107, and particularly in the 2nd, 183rd, 186th, and 223rd clauses. But as it would probably be held under this Act that a vessel could only be seized safely by a naval officer "duly employed for the prevention of smuggling" (section 233), it will be probably more convenient for naval officers to take advantage of the procedure authorised by the 103rd clause of the Merchant Shipping Act, which is a law relating to "trade and navigation."

Under that clause* (of which a copy is annexed) any commissioned officer on full pay in the military or naval service of Her Majesty may seize any ship subject to forfeiture, and bring her for adjudication before any Court having Admiralty jurisdiction in Her Majesty's dominions.

It will probably be advisable, as a general rule, that officers of the navy should proceed against vessels engaged in unlawful fishing under the Act of Geo. III and the Merchant Shipping Act, which extends to all the closed waters of British North America, and do not require the officer's authority to be fortified by any Colonial commission or appointment. But more extended powers are conferred by the above-mentioned local Acts of Nova Scotia, New Brunswick, and Prince Edward Island, on persons commissioned by the Lieutenant-Governors of these Colonies, and any officer who is permanently charged with the protection of the fisheries in the waters of any of these Colonies may find it useful to obtain such a commission.

It will invest him with a special authority in the waters of the Colony to which it relates, to bring into port any foreign vessel which continues within these waters for twenty-four hours after

notice to quit them, and, in case she shall have been engaged in fishing, to prosecute her to condemnation. It will also enable him to prosecute the forfeiture of the vessel, if it shall be found to have prohibited goods on board. But this power it would be undesirable to exercise, as Her Majesty's Government do not at present desire officers of the navy to concern themselves with the prevention of smuggling.

These being the powers legally exercisable by officers of Her Majesty's Navy, it follows to consider within what limits and under what conditions they should be exercised.

Her Majesty's Government are clearly of opinion, that by the Convention of 1818, the United States have renounced the right of fishing, not only within three miles of the Colonial Shores, but within three miles of a line drawn across the mouth of any British bay or creek. But the question what is a British bay or creek is one that has been the occasion of difficulty in former times.

It is, therefore, at present the wish of Her Majesty's Government neither to concede, nor, for the present, to enforce, any rights in this respect which are in their nature open to any serious question. Even before the conclusion of the Reciprocity Treaty, Her Majesty's Government had consented to forego the exercise of its strict right to exclude American fishermen from the Bay of Fundy; and they are of opinion that during the present season that right should not be exercised in the body of the Bay of Fundy, and that American fishermen should not be interfered with, either by notice or otherwise, unless they are found within three miles of the shore or within three miles of a line drawn across the mouth of a bay or creek which is less than ten geographical miles in width, in conformity with the arrangement made with France in 1839.* American vessels found within these limits should be warned that by engaging or preparing to engage in fishing they will be liable to forfeiture, and should receive the notice to depart which is contemplated by the laws of Nova Scotia, New Brunswick, and Prince Edward Island, if within the waters of one of these Colonies under circumstances of suspicion. But they should not be carried into port except after wilful and persevering neglect of the warnings which they may have received; and in case it should become necessary to proceed to forfeiture, cases should, if possible, be selected for that extreme step in which the offence of fishing has been committed within three miles of land. (See Letter following.)

Her Majesty's Government do not desire that the prohibition to enter British bays should be generally insisted on, except when there is reason to apprehend some substantial invasion of British rights. And in particular, they do not desire American vessels to be prevented from navigating

F. You will observe that the Colonial Acts prescribe the delivery of Vessels which are seized "to the Officers of the Colonial Revenue next to the place where seized," and further prescribe the Court in which the forfeiture shall be prosecuted.

In all cases in which delay would ensue from delivering the Vessel over as above directed, you are to send the Vessel direct to the Port where the Court exists, in which the Vessel seized is to be prosecuted, and there to deliver her over to the Revenue Officers.

G. You will not interfere with the American Fishermen in the Bay of Chaleurs unless they are found within three miles of a line drawn from Tracadigash Point to the East End of Heron Island.

H. The Canadian Government have determined, with the concurrence of Her Majesty's Government, to increase the stringency of the former practice by dispensing with the warnings hitherto given, and you are therefore to seize at once any vessel detected in violating the law, and send her into port for condemnation; but you are not to do so unless it is evident and can be clearly proved that the offence of fishing has been committed, and that she is captured within the prohibited limits. You are also to make every proper allowance for mistakes which may have arisen in the position of the Fishing Vessels from thick weather or other sufficient causes.

In all cases of capture, you are to be careful that the Vessel's position is determined by bearings taken in such a mode as will admit of their accuracy being sworn to in Court by three competent witnesses; and you are to have the same amount of evidence of the commission of the offence, whether that be of having fished, or of fishing.

In the event of making a seizure, you are when practicable, to tow the Vessel into Port, being careful in all cases to remove her Crew, with the exception of the Master, observing that when in tow her Colours are not to be hoisted. Should you not take the Vessel into Port yourself, her crew are to be landed at the nearest Port where there is an American Consul.

I. By "substantial invasion of British rights," you are to understand such proceedings as are detrimental to the British fishermen in the prosecution of their calling. Any case of this description is to be reported to me, in order to its being dealt with as I may direct, and the same course is to be pursued in regard to the Navigation of the Gut of Canso, should you observe it to be injurious to the Colonial fishermen, or otherwise detrimental to British interests.

* Hertslet. vol. v., p. 89; Convention of August 2, 1839 Arts. IX and X.

the Gut of Canso (from which Her Majesty's Government are advised they may be lawfully excluded), unless it shall appear that this permission is used to the injury of Colonial fishermen, or for other improper objects.

I have it in command to make this communication to your Lordships as conveying the decision of Her Majesty's Government on this subject.

I have, &c.,
(Signed) EDWARD CARDWELL.

Copy of a letter from the Under Secretary of State for the Colonies to the Secretary of the Admiralty.

DOWNING STREET,
30th April, 1870.

SIR,

In Mr. Secretary Cardwell's letter to the Lords Commissioners of the Admiralty of the 12th April, 1866 it was stated that American Vessels should not be seized for violating the Canadian Fishing Law "except after wilful and persevering neglect of the warnings which they may have received; and in case it should become necessary to proceed to forfeiture, cases should if possible be selected for that extreme step in which the offence of fishing has been committed within three miles of land."

The Canadian Government has recently determined, with the concurrence of Her Majesty's Ministers, to increase the stringency of the existing practice by dispensing with the warnings hitherto given and seizing at once any Vessel detected in violating the law.

In view of this change and of the questions to which it may give rise, I am directed by Lord Granville to request that you will move their Lordships to instruct the Officers of H.M. Ships employed in the protection of the Fisheries that they are not to seize any Vessel unless it is evident and can be clearly proved that the offence of fishing has been committed, and the Vessel itself is captured, within three miles of land.

I am, &c.,
(Signed) FREDERIC ROGERS.

K. You will be guided by the directions contained in the first paragraph of the above Note H.

ANNEXURE II.

The Lord Lisgar to the Earl of Kimberley. (Received May 18th, 1871).

(No. 99.)

GOVERNMENT HOUSE, OTTAWA,
May 4th, 1871.

MY LORD,

I have the honour to acknowledge the receipt of your Lordship's despatch, No. 389, of April 12th, 1871, suggesting the suspension of that part of the special instructions to the commanders of the Canadian marine police vessels which relates to the exclusion of United States' fishing vessels from entering bays or harbours for purposes of trade.

2. I duly referred your Lordship's despatch to the Privy Council of the Dominion, whose Minute thereon I beg now to enclose. Your Lordship will perceive that they have acted in accordance with your suggestion, and suspended the enforcement of the prohibition for the present season.

The Earl of Kimberley,
&c., &c., &c.

I have, &c.,
(Signed) LISGAR.

Enclosure .

Copy of a Report of a Committee of the Honourable the Privy Council approved by His Excellency the Governor-General, dated the day of May, 1871.

The Committee have had under consideration the despatch, No. 389, dated 12th April last, from the Right Honourable the Secretary of State for the Colonies, in reference to instructions to the commanders of the Canadian cruisers on the service of the protection of the fisheries for the approaching season of 1871, and suggesting the suspension of a portion thereof.

They have also had before them a Report, dated 2nd May, 1871, from the Honourable the Minister of Marine and Fisheries, to whom the above despatch was referred, submitting copy of the instructions to Canadian fishery officers, amended in the manner suggested by Lord Kimberley; and they advise that the change proposed be adopted, and a copy of such amended instructions transmitted for the information of Her Majesty's Government.

(Certified) WM. H. LEE,
Clerk, Privy Council, Canada.

DOMINION OF CANADA.

Confidential.

Special Instructions to Fishery Officers, ex-officio Magistrates, in Command of Government Vessels engaged as Marine Police in protecting the Inshore Fisheries of Canada.

DEPARTMENT OF MARINE AND FISHERIES,
FISHERIES BRANCH, OTTAWA,
February 25, 1871.

SIR,

The service to which you are appointed is a special and peculiar one; and the exercise on your part of the greatest possible discretion and judgment is required.

The following directions for your information and guidance are of a confidential nature.

The duties you will perform and the powers you shall exercise are defined by the present instructions.

Duties.—It will be your duty to cruise, at all times, with the vessel under your command, on the various "stations" to which, from time to time, you may be assigned; and to prevent foreign fishermen and fishing vessels from intruding on the inshore fisheries and fishing grounds of Canada, either to take or cure fish, or to procure bait for fishing.

Probably, American fishing vessels and fishermen chiefly will be concerned. Therefore, it is requisite for you to be more especially informed of the relation of United States' citizens to fishery privileges in British waters, as well those of a common and concurrent nature as those of an exclusively

Canadian character. Also, to be instructed to what extent and for what (other than fishing) purposes American fishing vessels and fishermen are permitted free access to the bays and harbours of the Dominion.

The terms of the first article of the Convention of the 20th October, 1818, between Great Britain and the United States has, since the expiration of the Reciprocity Treaty, governed the participation of American fishermen in the Gulf and Labrador fisheries. A copy of the said article is appended.

1. United States fishermen may exercise the liberty of fishing, in common with British subjects, along that part of the coast of Canada extending from Mount Joly, near the river Grande Natashquan, to the easterly limit of Canada at Blanc Sablon Bay, and around the Magdalen Islands, and enjoy freedom also to land and cure fish on certain of the unsettled shores of the Labrador coast. Wherever any settlement exists within these limits, the privilege of landing and curing fish may be enjoyed by previous agreement with the settlers, or with proprietors of the ground.

2. In all other parts foreigners are precluded from fishing within three marine miles of Canadian shores. American vessels may, however, enter into all bays and harbours for certain specified purposes.

These purposes are: for shelter, repairing damages, purchasing wood, and obtaining water. Under the treaty United States fishermen are prohibited from frequenting colonial ports and harbours for any other purpose whatever; but for the present season it is not proposed to enforce such prohibition. And during such admission they may be subjected to any restrictions necessary to prevent them from taking, drying, or curing fish therein, or in any other manner abusing the privileges thus accorded to them.

With regard to the Magdalen Islands, although the liberty to land, and to dry and cure fish there, is not expressly given by the terms of the Convention to United States fishermen, it is not at present intended to exclude them, nor is it desirable to impose a narrow construction on the term "unsettled." Places containing a few isolated houses might not, in some instances, be susceptible of being considered as "settled" within the meaning and purpose of the Convention. Something would, however, depend upon the facts of the situation, and the circumstances of the settlement. Private and proprietary rights form an element in the consideration of this point. The generally conciliatory spirit in which it is desirable that you should carry out these instructions, and the desire of Her Majesty's Government that rights of exclusion should not be strained, must influence you in making as fair and liberal an application of the term as shall consist with the just claims of all parties.

Should interference with the pursuits of British fishermen, or the property of Canadians, appear to be inseparable from the exercise of such indulgence, you will withhold it, and insist upon entire exclusion.

Americans, when so admitted, should be made aware that—in addition to being obliged in common with those subjects of Her Majesty with whom they exercise concurrent privileges of fishing in Colonial waters, to obey the laws of the country, and particularly such Acts and Regulations as exist to ensure the peaceable and profitable enjoyment of the fisheries by all persons entitled thereto—they are peculiarly bound to observe peace and order in the quasi-settled places to which, by the liberal disposition of Canadian authorities, they may be admitted.

Wheresoever foreigners may fish in Canadian waters, you will compel them to observe the fishery laws. Particular attention should be directed to the injury which results from cleaning fish on board of their vessels while afloat, and throwing overboard the offals, thus fouling the fishing, feeding, and breeding grounds. The Fisheries Act (Sect. 14) provides a heavy penalty for this offence.

Take occasion to inquire into and report upon any modes of fishing, or any practices adopted by foreign fishermen which appear to be injurious to the fisheries.

Copies of the fishery laws of Canada accompany the present instructions.

Powers.—The capacity in which you are vested with magisterial powers is that of Fishery Officer for the Provinces forming the Dominion of Canada. Your power and authority as a fishery officer are derived from the following statutes: "The Fisheries Act" (31 Vict., cap. 60);

"An Act respecting Fishing by Foreign Vessels" (31 Vict., cap. 61) and "An Act to amend the Act respecting Fishing by Foreign Vessels" (33 Vict., cap. 15);

"Chapter 94 of the Revised Statutes (third series) of Nova Scotia" of the Coast and deep Sea Fisheries);

The Act entitled "An Act to amend cap. 94 of the Revised Statutes of Nova Scotia" (29 Vict cap. 35);

An Act passed by the Legislature of the Province of New Brunswick, entitled "An Act relating to the Coast Fisheries, and for the Prevention of Illicit Trade" (16 Vict., cap. 69); The Imperial Act 59 Geo. III, cap. 38;

Also from such Regulations as have been passed or may be passed by the Governor-General in Council, or from Instructions from the Department of Marine and Fisheries, under the Fisheries Act hereinbefore cited.

In such capacity, your jurisdiction must be strictly confined within the limit of "three marine miles of any of the coasts, bays, creeks, or harbours," of Canada, with respect to any action you may take against American fishing vessels and United States' citizens engaged in fishing. Where any of the bays, creeks, or harbours shall not exceed six geographical miles in width, you will consider that the line of demarcation extends from headland to headland, either at the entrance to such bay, creek, or harbour, or from and between given points on both sides thereof at any place nearest the mouth where the shores are less than six miles apart; and may exclude foreign fishermen and fishing vessels therefrom, or seize if found in violation of these regulations within three marine miles of the coast.

Should you have occasion to compel any American fishing vessels or fishermen to conform to the requirements of the Fisheries Act and Regulations as regards the modes and incidents of fishing, at

those places to which they are admitted under the Convention of 1818,—particularly in relation to ballast, fish offals, setting of nets, and hauling of seines, and use of “*trawls*,” or “*bultows*,” more especially at and around the Magdalen Islands,—your power and authority over such cases will be similar to that of any other fishery officer appointed to enforce the fishery laws in Canadian waters. (Vide Fisheries Act.)

Certain portions of the foregoing Acts relate to the prevention of illicit trade. Instructions will therefore be given you by the Customs Department, authorising you to act as an officer of Customs: and it will form part of your duty to see that the laws and regulations affecting revenue are duly observed. In your capacity of a Customs officer, you cannot receive any aid from Her Majesty's vessels to enforce authority under the Customs laws.

Jurisdiction.—The limits within which you will, if necessary, exercise the power to exclude United States fishermen, or to detain American fishing vessels or boats, are for the present to be exceptional. Difficulties have arisen in former times with respect to the question, whether the exclusive limits should be measured on lines drawn parallel everywhere to the coast and describing its sinuosities, or on lines produced from headland to headland across the entrances of bays, creeks, or harbours. Her Majesty's Government are clearly of opinion, that by the Convention of 1818 the United States have renounced the right of fishing not only within three miles of the Colonial shores, but within three miles of a line drawn across the mouth of any British bay or creek. It is, however, the wish of Her Majesty's Government neither to concede, nor for the present to enforce any rights in this respect which are in their nature open to any serious question. Until further instructed, therefore, you will not interfere with any American fishermen unless found within three miles of the shore, or within three miles of a line drawn across the mouth of a bay or creek which, though in parts more than six miles wide, is less than six geographical miles in width at its mouth. In the case of any other bay, as Bay des Chaleurs, for example, you will not interfere with any United States' fishing vessel or boat, or any American fishermen, unless they are found within three miles of the shore.

Action.—You will accost every United States' vessel or boat actually within three marine miles of the shore, along any other part of the coast except Labrador and around the Magdalen Islands, or within three marine miles of the entrance of any bay, harbour, or creek, which is less than six geographical miles in width, or inside of a line drawn across any part of such bay, harbour, or creek, at points nearest to the mouth thereof not wider apart than six geographical miles, and if either fishing, preparing to fish, or having obviously fished within the exclusive limits, you will, in accordance with the above recited Acts, seize at once any vessel detected in violating the law, and send or take her into port for condemnation; but you are not to do so *unless it is evident, and can be clearly proved, that the offence of fishing has been committed*, and that the vessel is captured within the prohibited limits.

Copies of the former and of the latter Acts are furnished herewith for your use and distribution.

These Acts of Parliament subject to summary seizure and to forfeiture any foreign ship, vessel, or boat which is found fishing, or having fished, or preparing to fish within the prohibited limits, and provide for carrying out the seizure and forfeiture.

Compulsory means may be employed; but resort to force will be justified only after every other prudent effort has failed.

Directions.—If from threatened resistance and obvious determination to contest the seizure, and because of the relative inadequacy of your own force you shall believe any attempt at capture liable to be frustrated, you will warn the parties of the futility of resistance, and that you are authorised to procure the assistance, if needed, of any of Her Majesty's cruisers. In case of need you must signal for or otherwise procure the immediate aid of one of Her Majesty's ships, or of some other of the Canadian Government vessels belonging to the marine police. With both the first and last mentioned you will co-operate in all things pertaining to the protection of the fisheries.

If a foreign ship, vessel, or boat be found violating the Convention, or resisting consequent seizure, and momentarily effects her escape from the vicinity, she remains always liable to seizure and detention if met by yourself in Canadian waters, and in British waters everywhere if brought to account by Her Majesty's cruisers. But great care must be taken to make certain of the identity of any offending vessel to be so dealt with.

All vessels seized must be disposed of as soon as convenient in the manner directed by law; and information, with a statement of the facts, and the depositions of your sailing master, clerk, lieutenant, or mate, and of two at least of the most respectable of your crew, be despatched with all possible diligence to the Government. Be careful to describe the exact locality where the unlawful fishing took place, and the ship, vessel, or boat was seized. Also corroborate the bearings taken by soundings, and by buoying the place (if possible) with a view to actual measurement, and make such incidental reference to conspicuous points and landmarks as shall place beyond doubt the illegal position of the seized ship, vessel, or boat. Omit no endeavour or precaution to establish on the spot that the trespass was or is being committed within three miles of land.

As it may be possible that any foreign fishing craft has been carried within the headland lines and into Canadian waters by violent or contrary winds, by strong tides, through misadventure, or any other cause independent of the will of the master and the crew, you will consider these circumstances and satisfy yourself with regard thereto before detaining any vessel.

On capture it will be desirable to take part of the foreign crew aboard the vessel under your command, and place some of your own crew, as a measure of precaution, on board the seized vessel; first lowering the foreign flag borne at the time of capture. If your ordinary complement of men does not admit of this being done, or if because of several seizures the number of your hands might be too much reduced, you will endeavour to engage a few trustworthy men to supply any such emergency. The portion of foreign crew taken on board the Government vessel you will land at the nearest place where a Consul of the United States is situated, or where the readiest conveyance to any American Consulate in Canada, or the other British Provinces, may be reached, and leave them there.

When any of Her Majesty's vessels about the fishing stations or in port shall be met with, you should, if circumstances permit, go on board and confer with the naval commander, and receive any suggestions he may feel disposed to give which do not conflict with these instructions, and afford him any information you may possess about the movements of foreign craft; also inform him what vessels you have accosted and where.

Do not fail to make a full entry of all circumstances connected with foreign vessels, noting their names, tonnage, ownership, crew, port, place of fishing, cargo, voyage, and destination, and (if ascertainable) their catch. Report your proceedings as often as possible, and keep the Department fully advised on every opportunity where instructions would most probably reach you at stated intervals.

The service in which you are engaged will be subject to the general direction and control of the chief Officer in command, Captain P. A. Scott, R.N., on board the Government steamer "Lady Head" (in the cases of the schooners "Stella Maria" and "La Canadienne," this general control is vested in Napoleon Lavoie, Esq.), whose orders and arrangements you will conform to in every respect. He is advised to consult and to act in conjunction with the British Admiral and naval officers commanding Her Majesty's ships.

The precise limits of the station on which you are to cruise, and the further details of your duties, will be described in the directions you will receive as above.

Considerable inconvenience is caused by Canadian fishing vessels and those belonging to Prince Edward Island neglecting to show their colours. You will draw the attention of masters to this fact, and request them to hoist their colours without requiring to be hailed and boarded.

It cannot be too strongly impressed upon you, nor too carefully enjoined on the officers and crew under your command, that the present service should be performed in a spirit of forbearance and moderation.

The Government relies on your prudence, discretion, and firmness in the performance of the special duties thus entrusted to you.

I have, &c.,
(Signed) P. MITCHELL,
Minister of Marine and Fisheries.

APPENDIX A.

ARTICLE I OF CONVENTION BETWEEN HIS BRITANNIC MAJESTY AND THE UNITED STATES OF AMERICA, Signed at London, October 20th, 1818.

Article I.—Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish, on certain coasts, bays, harbours, and creeks of His Britannic Majesty's dominions in America, it is agreed between the high contracting parties that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company. And that the American fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America, not included within the above-mentioned limits; Provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

6,037.

ANNEXURE III.

(Confidential.)

Special Instructions to Fishery Officers, ex-officio Magistrates in command of Government Steamers and Vessels engaged as Fisheries Police Vessels in protecting the Inshore Fisheries of Canada.

OTTAWA,
16th March, 1886.

SIR,

In the performance of the special and important service to which you have been appointed you will be guided by the following confidential instructions.

For convenience of reference, these have been divided under the different headings of *Powers, Jurisdiction, Duties, and General Directions.*

The Powers with which you are invested, are derived from, and to be exercised in accordance with, the following statutes among others:—"The Fisheries Act" (31 Vic., cap. 60, of Canada); "An Act respecting Fishing by Foreign Vessels" (31 Vic., cap. 61, of Canada), and the subsequent statute entitled: "An Act to amend the Act respecting Fishing by Foreign Vessels," made and passed the 12th May, 1870 (33 Vic., cap. 15, of Canada); also an "Act to further amend the said Act" (34 Vic., cap. 23, of Canada).

"Chapter 94 of the Revised Statutes (third series) of Nova Scotia" (of the Coast and Deep Sea Fisheries), amended by the Act entitled "An Act to amend cap. 94 of the Revised Statutes of Nova Scotia" (29 Vic., cap. 35).

An Act passed by the Legislature of the Province of New Brunswick, entitled "An Act relating to the Coast Fisheries and for the Prevention of Illicit Trade" (16 Vic., cap. 69);

Also an Act passed by the Legislature of Prince Edward Island (6 Vic., cap. 14), entitled "An Act relating to the Fisheries and for the prevention of Illicit Trade in Prince Edward Island, and the Coasts and Harbours thereof."

Also from such regulations as have been passed, or may be passed by the Governor-General-in-Council, or from instructions from the Department of Fisheries, under "The Fisheries Act" hereinbefore cited.

As Fishery Officer you have full authority to compel the observance of the requirements of the Fisheries Acts and regulations by foreign fishing vessels and fishermen in those parts of the coasts of Canada to which, by the Convention of 1818, they are admitted to privileges of taking or drying and curing fish concurrent with those enjoyed by British fishing vessels and fishermen.

You will receive instructions from the Customs Department authorising you to act as an officer of the Customs, and in that capacity you are to see that the Revenue Laws and Regulations are duly observed.

Your jurisdiction with respect to any action you may take against foreign fishing vessels, and citizens engaged in fishing, is to be exercised only within the limits of "three marine miles" of any of "the coasts, bays, creeks, or harbours" of Canada.

With regard to the Magdalen Islands, although the liberty to land and to dry and cure fish there is not expressly given by the terms of the Convention to United States fishermen, it is not at present intended to exclude them from these Islands.

It will be your duty to protect the inshore fisheries of Canada in accordance with the Conditions laid down by the Convention of October 20th, 1818, the first Article of which provides:

"Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish, on certain coasts, bays, harbours, and creeks of His Britannic Majesty's dominions in America, it is agreed between the High Contracting Parties, that the inhabitants of the said United States shall have, for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly

“ indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson’s Bay Company; and that the American fishermen shall also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland, hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose, with the inhabitants, proprietors, or possessors of the ground.

“ And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish, on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty’s dominions in America, not included within the abovementioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours, for the purpose of shelter and repairing of damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.”

By this you will observe, United States fishermen are secured the liberty of taking fish on the southern coasts of Labrador, and around the Magdalen Islands, and of drying and curing fish along certain of the Southern shores of Labrador, where this coast is unsettled, or if settled after previous agreement with the settlers or owners of the ground.

In all other parts the exclusion of foreign vessels and boats is absolute, so far as fishing is concerned, and is to be enforced within the limits laid down by the Convention of 1818, they being allowed to enter bays and harbours for four purposes only, viz. :— *for shelter, the repairing of damages, the purchasing of wood, and to obtain water.*

You are to compel, if necessary, the maintenance of peace and good order by foreign fishermen pursuing their calling and enjoying concurrent privileges of fishing or curing fish with British fishermen, in those parts to which they are admitted by the treaty of 1818.

You are to see that they obey the laws of the Country, that they do not molest British fishermen in the pursuit of their calling and that they observe the regulations of the Fishery laws in every respect.

You are to prevent foreign fishing vessels and boats which enter bays and harbours for the four legal purposes above mentioned, from taking advantage thereof, to take, dry, or cure fish therein, to purchase bait, ice, or supplies, or to tranship cargoes, or from transacting any business in connection with their fishing operations.

It is not desired that you should put a narrow construction on the term “unsettled.” Places containing a few isolated houses might not, in some instances, be susceptible of being considered as “settled” within the meaning and purpose of the Convention. Something would, however, depend upon the facts of the situation and circumstances of the settlement. Private and proprietary rights form an element in the consideration of this point. The generally conciliatory spirit in which it is desirable that you should carry out these instructions, and the wish of Her Majesty’s Government that the rights of exclusion should not be strained, must influence you in making as fair and liberal an application of the term as shall consist with the just claims of all parties.

Should interference with the pursuits of British fishermen or the property of Canadians appear to be inseparable from the exercise of such indulgence, you will withhold it and insist upon entire exclusion.

United States fishermen should be made aware that, in addition to being obliged, in common with those subjects of Her Majesty with whom they exercise concurrent privileges of fishing in Colonial waters, to obey the laws of the country, and particularly such Acts and Regulations as exist to ensure the peaceable and profitable enjoyment of the Fisheries by all persons entitled thereto, they are peculiarly bound to preserve peace and order in the *quasi* settled places to which, by the liberal disposition of Canadian authorities, they may be admitted.

Wheresoever foreigners may fish in Canadian waters, you will compel them to observe the Fishery Laws. Particular attention should be directed to the injury which results from cleaning fish on board of their vessels while afloat, and the throwing overboard of offals, thus fouling the fishing, feeding and breeding grounds. “The Fisheries Act” (Section 14) provides a heavy penalty for this offence.

Take occasion to enquire into and report upon any modes of fishing, or any practices adopted by foreign fishermen, which appear to be injurious to the fisheries:

You will accost every foreign fishing vessel within the limits described, and if that vessel should be either fishing, preparing to fish, or should obviously have been fishing within the prohibited limits, you will, by virtue of the authority conferred upon you by your Commission, and under the provisions of the Acts above recited, seize at once (resort to force in doing so being only justifiable after every other effort has failed) any vessel detected in violating the law and send her or take her into port for condemnation.

Copies of the Acts of Parliament subjecting to seizure and forfeiture any foreign ship, vessel or boat which should be either fishing, preparing to fish, or should obviously have been fishing within the prohibited limits, and providing for carrying out the seizure and forfeiture, are furnished herewith for your information and distribution.

Should you have occasion to compel any foreign fishing vessels or fishermen to conform to the requirements of the "Fisheries Act and Regulations," as regards the modes and incidents of fishing, at those places to which they are admitted under the Convention of 1818, particularly in relation to ballast, fish offals, setting of nets, hauling of seines, and use of "trawls" or "bultows," more especially at and around the Magdalen Islands, your power and authority under such cases will be similar to that of any other fishery officer appointed to enforce the Fishery Laws in Canadian waters (*vide Fisheries Act*).

If a foreign ship, vessel, or boat be found violating the Convention or resisting consequent seizure, and momentarily effects her escape from the vicinity of her capture or elsewhere, she remains always liable to seizure and detention if met by yourself in Canadian waters, and in British waters everywhere if brought to account by Her Majesty's cruisers. But great care must be taken to make certain of the identity of any offending vessel to be so dealt with.

All vessels seized must be placed, as soon as possible, in the custody of the nearest Customs Collector, and information, with a statement of the facts, and the depositions of your sailing master, clerk, lieutenant, or mate, and of two at least of the most reliable of your crew, be despatched with all possible diligence to the Government. Be careful to describe the exact locality where the violation of the law took place, and the ship, vessel or boat was seized. Also corroborate the bearings taken, by soundings, and by buoying the place (if possible) with a view to actual measurement, and make such incidental reference to conspicuous points and land marks as shall place beyond doubt the illegal position of the seized ship, vessel or boat.

Omit no precaution to establish on the spot that the trespass was or is being committed within three miles of land.

As it is possible that foreign fishing craft may be driven into Canadian waters by violent or contrary winds, by strong tides, through misadventure, or some other cause independent of the will of the master and crew, you will consider these circumstances, and satisfy yourself with regard thereto before taking the extreme step of seizing or detaining any vessel.

On capture, it will be desirable to take part of the foreign crew aboard the vessel under your command, and place some of your own crew, as a measure of precaution, on board the seized vessel; first lowering the foreign flag borne at the time of capture. If your ordinary complement of men does not admit of this being done, or, if because of several seizures, the number of your hands might be too much reduced, you will in such emergency endeavour to engage a few trustworthy men. The portion of foreign crew taken on board the Government vessel you will land at the nearest place where a Consul of the United States is situated, or where the readiest conveyance to any American Consulate in Canada may be reached, and leave them there.

When any of Her Majesty's vessels about the fishing stations or in port are met with, you should, if circumstances permit, go on board and confer with the Naval Commander, and receive any suggestions he may feel disposed to give, which do not conflict with these instructions, and afford him any information you may possess about the movements of foreign craft; also inform him what vessels you have accosted and where.

Do not fail to make a full entry of all circumstances connected with foreign fishing vessels, noting their names, tonnage, ownership, crew, port, place of fishing, cargo, voyage, and destination, and (if ascertainable) their catch. Report your proceedings as often as possible, and keep the Department fully advised, on every opportunity, where instructions would most probably reach you at stated intervals.

Directions as to the stations and limits on which you are to cruise, and any further instructions that may be deemed necessary, will from time to time be conveyed to you.

Considerable inconvenience is caused by Canadian fishing vessels neglecting to

show their colours. You will draw the attention of masters to this fact, and request them to hoist their colours without requiring to be hailed and boarded.

It cannot be too strongly urged upon you, nor can you too earnestly impress upon the officers and crew under your command, that the service in which you and they are engaged should be performed with forbearance and discrimination.

The Government relies on your prudence, discretion and firmness in the performance of the special duties entrusted to you.

I am, &c.,

Minister of Marine and Fisheries.

6,038.

ANNEXURE IV.

The Minister of Marine and Fisheries to Captain Scott.

(Confidential.)

OTTAWA,
23rd March, 1886.

SIR,

Adverting to the letter of my department of the 18th instant, enclosing your commission as a Fishery Officer in the Dominion, I have now the honour to send you the instructions by which you are to be guided in the performance of the special duties to which your instructions refer.

In addition thereto, I have to direct that until otherwise ordered you will strictly confine the exercise of your authority within the limit of three marine miles of any of the coasts, bays, creeks, or harbours of Canada, with respect to any action you may take against American fishing vessels and United States citizens engaged in fishing. Where any of the bays, creeks, or harbours shall not exceed six geographical miles in width you will consider that the line of demarcation extends from headland to headland, and the three marine miles are to be measured from this line outward.

In cases where such bay, creek, or harbour is more than six (6) geographical miles in width at its mouth or entrance you will consider the line of demarcation to be drawn between the first points from the mouth or entrance to such bay or harbour at which the width shall not be more than six (6) geographical miles, and the three marine miles will be measured from this line outward, and you may exclude foreign fishermen and fishing vessels therefrom, or seize, if found in violation of the Articles of the Convention, within three marine miles of the coast. In all other respects you will be guided by the instructions herewith.

You will, for the present, proceed with the Government steamer "Lansdowne" to cruise in the Bay of Fundy, or such adjacent Canadian waters as you may deem expedient, reporting from time to time by telegraph or otherwise as may be necessary.

All these instructions you are to consider of a strictly confidential character.

The Government relies upon your judgment to perform with a spirit of forbearance and moderation the delicate and important duties with which you are entrusted.

I am, &c.,
(Signed) GEORGE E. FOSTER,
Minister of Marine and Fisheries.

Captain P. A. Scott, R.N.,
St. John, N.B.