



ANNO QUADRAGESIMO PRIMO ET QUADRAGESIMO  
SECUNDO

# VICTORIÆ REGINÆ.

A.D. 1878.

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No. 102.

*An Act for the Protection and Preservation of Fish.*

[Assented to, 22nd October, 1878.]

**W**HEREAS it is necessary that means should be adopted to prevent as well the wanton destruction and waste of fish in the waters of the Province of South Australia occasioned by the improper use of nets and other devices employed in catching and taking the same, and of explosive and other noxious substances, as the protection thereof in certain places and during certain seasons— Be it therefore Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly, in this present Parliament assembled, as follows :

1. The following words and expressions in this Act shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to or inconsistent with such construction—

- i. The word "take" shall mean and include "catch" or "dredge for" or "raise": "Take."
- ii. The expression "fixed engine" shall include any net, implement, device, or contrivance fixed to the soil, or made stationary or partly stationary in any way or manner for the purpose of taking fish: "Fixed engine."
- iii. The word "waters" shall include salt and fresh waters, and any bay, estuary, or other inlet of the sea, but not any water or waters the property of any private individual: "Waters."

*The Fisheries Act.—1878.*

- “Boat.”                   iv. The word “boat” shall include any barge or vessel of any tonnage, construction, or description :
- “Use.”                   v. The word “use” shall include “attempt to use” or “assist in the use of”:
- vi. The word “Commissioner” shall mean the Commissioner of Crown Lands and Immigration.
- Nets or fixed engines not to be used in rivers, &c.                   2. Whosoever shall use for the purpose of catching fish any net or fixed engine in any river, creek, lake, or stream, or within such distance from the mouth of any river, creek, or stream, as may be proclaimed by the Governor as hereinafter provided, shall for every such offence be liable to a penalty of not less than Two Pounds nor more than Twenty Pounds ; and the Inspector of Fisheries or any of his assistants, or any person authorised by the Commissioner, may destroy any such fixed engine, and the materials of which the same shall be made shall be forfeited, and shall be disposed of as the Commissioner may direct ; and nets which have been used contrary to the provisions of this Act may at the option of the Justices before whom any person is convicted of an offence against this Act be forfeited, and every net so forfeited shall be disposed of as the Commissioner may direct.
- Penalty.
- Forfeiture of nets.
- Search for nets.                   3 The Commissioner or any Justice of the Peace may authorise in writing any person to search for or seize any net which has been forfeited as aforesaid, and the person so authorised may at any time between sunrise and sunset enter into and search any house, store, shop, tent, or other premises, and go on board of any boat and search for and seize and take away any such net.
- Emptying nets.                   4. It shall be unlawful to drag or draw on to the dry land any net containing fish ; but all such nets shall be emptied in the water ; and any person offending against, or assisting any person offending against this section, shall for every such offence be liable to a penalty of not less than Two Pounds, nor more than Twenty Pounds.
- Persons found using net to give name and address.                   5. Any person using any net or fixed engine, shall on demand by any person be bound to give his name and place of residence ; and any person who shall refuse to comply with such demand, or who shall give a false name or false place of residence, shall be liable to a penalty of not less than Two Pounds nor more than Twenty Pounds.
- Introduced fish not to be taken.                   6. If any person shall knowingly take, or assist in taking, or attempt to take, any fish not indigenous to the waters of South Australia, or any fish of the same species as any such non-indigenous fish introduced into such waters within three years after the introduction thereof, or within such further time as the Governor may by Proclamation published in the *Government Gazette* appoint, or if any person shall inadvertently capture any such fish and shall not forthwith return the same to the water in which they were captured, such person shall for every such offence be liable to a penalty of Twenty Pounds.
7. Whosoever

*The Fisheries Act.—1878.*

7. Whosoever shall put, or attempt to put, or assist in putting, or shall permit or suffer to flow or be put into any of the waters of the said province, any explosive, poisonous, noxious, or deleterious material or substance whatsoever with intent to destroy any fish therein, shall be guilty of a felony, and being convicted thereof shall be liable to be imprisoned for any term not exceeding four years with hard labor.

Explosive or poisonous material not to be put in waters.

8. If any person shall take, sell, or expose for sale, or have in his possession any fish of the species mentioned in the Schedule to this Act, of a less weight than the weight set after the name of such fish in such Schedule, or than any weight which may for the time being be substituted for such weight by the Governor, or of a less size than may be for the time being prescribed by any Proclamation of the Governor, as hereinafter provided, such person shall for every such offence be liable to a penalty of not more than Twenty Pounds, and all such fish and all fish contained in every basket or other receptacle of fish containing more of such fish than one-twentieth of the whole number of fish contained in such basket or receptacle shall be forfeited, and the Inspector of Fisheries and every assistant of such inspector or constable may seize the same.

Small fish not to be taken.

9. If any person take, sell or expose for sale during any close season for any species of fish, any fish of such species, such person shall for every such offence be liable to a penalty of not more than Twenty Pounds, and all such fish shall be forfeited, and the Inspector of Fisheries and every assistant to such inspector or constable may seize the same.

Fish not to be taken during close season.

10. All fish forfeited and seized under the provisions of this Act, may be disposed of in accordance with any general or special directions of the Commissioner.

Disposal of forfeited fish.

11. The Governor from time to time may appoint some person to be Inspector of Fisheries, and also some person or persons as assistant or assistants to such inspector, and every person so appointed may remove, and every such appointment and removal shall be notified in the *Government Gazette*; and it shall be the duty of such inspector and of every such assistant to enforce compliance with the provisions of this Act. And all constables are hereby required to aid and assist the said inspectors or assistants in executing his or their duties under this Act.

Governor may appoint Inspector of Fisheries.

12. All prosecutions and proceedings under this Act may be in the name of the Commissioner, or of any officer appointed under this Act, or nominated in writing for that purpose by the said Commissioner.

Proceedings to be in name of Commissioner

13. The Governor from time to time by Proclamation to be published in the *Government Gazette*, may substitute other weights for the weights set opposite the names of every or any of the species of fish

Governor may make Proclamation.

*The Fisheries Act.—1878.*

fish mentioned in the Schedule hereto, or for the weights substituted for any of such weights by any previous Proclamation; and may prescribe for every or any of the species of fish in the said Schedule mentioned a less size than which it shall be unlawful to take, sell, or expose for sale or possess fish of such species, and may for any species of fish prescribe a "close season" or "close seasons" in every year, and may define the limits of and what waters shall be deemed to be and what shall be deemed to be the mouth or other boundary of any river, creek, stream, bay, estuary, or lake, and may define the waters and fix a distance from the mouth of any or every river, creek, or stream, within which nets and fixed engines are not to be used.

Act not to apply in certain cases.

14. Nothing in this Act shall apply to any person using a landing net to secure fish caught with a rod and line, nor to any fixed engine used solely for catching eels, nor to any person using a hand shrimp net, nor to any aboriginal native taking fish for his own use, nor to any person taking fish in water of which he is the owner, nor to any person authorised by such owner to take fish in such water, nor to any person with the written permission of the Commissioner catching fish for the *bonâ fide* purpose of removing them to stock other waters, or otherwise in the discretion of the Commissioner, nor to any nets, engines, or boats used or fish taken by such person, nor to any person who, having unintentionally taken any fish contrary to the provisions of this Act, shall immediately return the same with as little injury as possible to the water.

Apprehension of offenders.

15. The Inspector of Fisheries and every assistant to such inspector or any constable with or without warrant may seize any net or nets which any person found offending against any of the provisions of this Act may be using, and may also with or without warrant apprehend any person whose name and address are unknown to him, and who is found offending against any of the provisions of this Act.

Offenders may be admitted to bail by inspector.

16. If the inspector or person in charge of the police station in which such person is detained see fit so to do, he may liberate such person on his making deposit of Ten Pounds, or on his own recognizance in the like sum conditioned to appear before some Justice, and such deposit if such person shall fail to appear at the place and time notified by the person taking the same shall be absolutely forfeited, and such recognizance shall be made or be in such form and recoverable in the same manner as any recognizance now or hereafter may be if taken and acknowledged before some Justice.

Offence may be set forth in words of this Act.

17. Under this Act in every complaint or information for any penalty or forfeiture, and in every conviction or warrant of commitment for any penalty, it shall be sufficient to set forth the offence in the words of this Act.

Want of form not to invalidate proceedings.

18. No warrant of commitment for any offence under this Act shall be held void by reason of any defect in such warrant, nor shall any

*The Fisheries Act.—1878.*

any party be entitled to be discharged out of custody on account of any such defect, provided it be alleged in such warrant that the said party has been convicted of such offence, and provided it shall appear to the Court or Judge before whom such warrant is returned that such conviction proceeded upon good grounds.

19. Informations may be laid for any offence against this Act at the instance of any person, and all fines and penalties for any such offence, and all sums of money payable as and for compensation under the provisions hereof, may be recovered in a summary way, before any Special Magistrate or two Justices of the Peace, under the provisions of an Ordinance, No. 6 of 1850, "To facilitate the performance of the duties of Justices of the Peace out of Session, with respect to summary convictions and orders," or of any Act hereafter to be in force for facilitating the duties of Justices of the Peace with respect to summary convictions and orders; and all convictions and orders may be enforced as in the said Ordinance or Act is mentioned.

Who may lay infor-  
mations.

Summary procedure.

20. There shall be an appeal from any order or conviction of any Special Magistrate or Justices under this Act, or from any order dismissing any information, or for the payment of costs, or otherwise, which appeal shall be to the Local Court of Adelaide of Full Jurisdiction only, and the proceedings on such appeal shall be conducted in manner appointed by the said Ordinance, No 6 of 1850, for appeals to Local Courts, or by any Act amending the same; but such Local Court of Adelaide, aforesaid, may make such order as to the payment of the costs of appeal as it shall think fit, although such costs may exceed Ten Pounds.

Appeal.

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

No *certiorari*.

22. One-half of every sum which shall be imposed as a penalty under this Act shall be paid to the person on whose information the conviction shall have been obtained, unless compensation shall have been awarded to such person, in which case no further sum shall be paid to him than the amount of such compensation, and the other half, or the whole, of every such penalty, as the case may be, shall be paid to the Treasurer for the public uses of the said province.

Half of penalties to  
informer, unless com-  
pensation awarded.

23. This Act may for all purposes be cited as "The Fisheries Act."

Short title.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

WM. F. DRUMMOND JERVOIS, Governor.

*The Fisheries Act.—1878.*

## SCHEDULE.

	Ounces.
Murray Cod .....	16
Murray Perch .....	8
Pike .....	12
Schnapper .....	8
Bream .....	4
Bream, Silver .....	4
Perch .....	4
Perch, English .....	4
Flounder .....	3
Sole .....	3
Ling .....	4
Butter Fish .....	4
Gurnet, or Gurnard .....	4
Rock Cod .....	4
Cat Fish .....	4
Whiting, Sand .....	2
Whiting .....	3
Flathead .....	3
Travele .....	3
Silver Fish, or Silver Perch .....	3
Salmon Trout .....	2
Ruff, or Roughy .....	2
Stranger .....	2
Mullet .....	2
Gar Fish .....	1