



ANNO VICESIMO OCTAVO & VICESIMO NONO

VICTORIÆ REGINÆ.

C A P. CXXI.

An Act to amend "The Salmon Fishery Act, 1861."
[5th July 1865.]

WHEREAS by the Thirty-third Section of the "Salmon 24 & 25 Vict. c. 109.
Fishery Act, 1861," it is provided that it shall be
lawful for the Justices of the Peace assembled at any
General or Quarter Sessions of the Peace from Time to Time to
appoint Conservators or Overseers for the Preservation of Salmon,
and enforcing for that Purpose the Provisions of the said Act
within the Limits of the Jurisdiction of such Justices: And whereas
no Funds are provided by the said Act for carrying into effect the
Purposes thereof, and no Provisions are made for securing the
Co-operation of the Conservators of different Counties where a
River frequented by Salmon borders on or passes through several
Counties: And whereas it is expedient to amend the said Act
in respect of the foregoing Particulars, and it is also expedient
to make further Provisions for the Removal of illegal fixed Engines,
and otherwise to amend the said Act: Be it enacted by the Queen's
most Excellent Majesty, by and with the Advice and Consent
of the Lords Spiritual and Temporal, and Commons, in this pre-
sent Parliament assembled, and by the Authority of the same, as
follows:

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County in the District, stating in such Notice the Names and Addresses of the Members composing the Fishery Committee of his County, and the Clerk of the Peace of the County that made the Application for such Appointment shall, in the Notice sent by him, name a Time and Place at which the Joint Fishery Committee for such District is to meet.

Proceedings
of Joint
Fishery
Committee.

11. The said Joint Fishery Committee, on meeting at the Time and Place aforesaid, shall elect a Chairman, and the Chairman elected at the First Meeting shall, if he is present at the Time appointed for holding any other Meeting, be Chairman of that Meeting; if he is not so present the Members present may choose any One of their Number present to be Chairman of such last-mentioned Meeting.

A Joint Fishery Committee may adjourn from Time to Time and from Place to Place, and One Third of the whole Number of Members appointed shall be a Quorum.

Every Question shall be decided by a Majority of Votes of the Members voting on that Question, and in the event of an Equality of Votes at any Meeting the Chairman shall have a Second or Casting Vote.

The Proceedings of a Joint Committee shall not be invalidated by reason of there being any Vacancy or Vacancies in their Body.

Meeting
of Joint
Fishery
Committee.

12. The said Joint Fishery Committee shall proceed to appoint a Board of Conservators for such District, and shall determine the following Matters :

1. The Number of Conservators to be appointed as a Board :
2. The Number of Members of the Board to be appointed by each County in the District :
3. The Names of the First Members of the Board, distinguishing those who are to be considered as appointed by each County :
4. The Time and Place at which the First Meeting of the said Board is to be held :
5. The County by the Quarter Sessions of which the Accounts of the Board are to be audited, herein-after referred to as the Audit County.

Any Member of a Joint Committee may be appointed Member of the Board.

Dissolution
of a Joint
Fishery
Committee.

13. When a Joint Committee have completed their Dispositions for the Formation of a Board of Conservators for a District, they shall give Notice by Post of such Dispositions to the Clerks of the Peace of all the Counties in such District, and when such Notice has been given the Joint Committee shall be dissolved.

14. All

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14. All Justices of the Peace for any County any Part whereof is within the Limits of any Fishery District, being either Owners or Occupiers of any Lands of the Value of not less than One hundred Pounds *per Annum* abutting upon any Salmon River within the same, and having a Right of Fishing in such River, and all Persons paying under this Act Licence Duty within that District to an Amount of not less than Fifty Pounds *per Annum* each, shall be *ex-officio* Members of the Board of Conservators for such District in addition to the appointed Members of the said Board.

Ex-officio
Members of
Board.

15. The Members of a Board of Conservators shall hold Office for One Year, and be appointed annually at Quarter Sessions, and in the Case of a Board formed by a Joint Committee in the Proportions fixed by that Committee. Retiring Members shall be eligible for Re-appointment; and if at the Time when any annual Appointment ought to take place no such Appointment is made the existing Conservators shall remain in Office until their Successors are appointed.

Tenure of
Office by
Conserva-
tors.

Any casual Vacancy occurring by Death, Resignation, or otherwise in the Office of Conservator may be filled up by the Board, and the Member chosen to fill such Vacancy shall hold his Office for such Time only as the Member vacating would have held the same if no Vacancy had occurred.

16. Notice of the First and of every subsequent Appointment of a Board of Conservators, specifying the Names and Addresses of the Persons appointed, shall, in the Case of a Board appointed by the Justices of a single County, be advertised by the Clerk of the Peace of that County in some Newspaper published or circulated in such County, and in the Case of a Board appointed by a Joint Committee be advertised by the Clerk of the Peace of every County in the District in some Newspaper published or circulated in that County.

Notice of
Appoint-
ment of
Conserva-
tors.

17. After the Appointment of a Board of Conservators in pursuance of this Act in any District the Powers of all Conservators or Overseers for the Preservation of Salmon, appointed in pursuance of any other Act of Parliament, of Charter or Custom, and all Powers of appointing the same, shall absolutely determine within the Limits of the said District.

Cesser of
Powers of
existing
Conserva-
tors.

18. No Objection shall be made at any Trial or in any legal Proceeding to the Validity of any Orders or Proceedings relating to the Appointment of a Board of Conservators in any District after the Expiration of Three Calendar Months from the Date of the Advertisement of such Appointment in the Newspaper, and a Copy of the Newspaper containing the Advertisement of the Appointment of a Board of Conservators shall be receivable in all Courts of

Rules as to
Objections
and Evi-
dence.

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may be present, shall be receivable in Evidence in all legal Proceedings without further Proof; and until the contrary is proved every Meeting of the Board in respect of the Proceedings of which Minutes have been so made shall be deemed to have been duly convened and held, and all the Members thereof to have been duly qualified.

Enumera-
tion of
Powers of
Board of
Conserva-
tors.

27. A Board of Conservators shall have Power within their District to do the following Things, or such of them as they may in their Discretion think expedient; that is to say,

- (1.) From Time to Time, by Writing under the Hand of the acting Chairman for the Time being of the Board, to appoint a sufficient Number of Water Bailiffs and other Officers, to assign to them their Salaries and Duties, and to remove any Water Bailiff or Officer so appointed: Provided always, that nothing herein contained shall prevent the said Board of Conservators from obtaining the Services of additional Constables under the Act Third and Fourth *Victoria*, Chapter Eighty-eight, Section Nineteen, for the Purpose of carrying out the Provisions of this Act; such Constables, when appointed, to have all the Powers and Privileges of Water Bailiffs, and to be paid for their Services by the said Board:
- (2.) To issue such Licences for fishing as are provided by this Act:
- (3.) To purchase by Agreement, for the Purpose only of Removal, Dams, Fishing Weirs, Fishing Mill Dams, or fixed Engines they may deem it expedient to remove for the Benefit of the Fisheries in their District:
- (4.) To take legal Proceedings against Persons violating the Provisions of the Salmon Fishery Acts, 1861, 1865, or either of them, or for removing such Weirs or other fixed Engines as they may be advised are illegal:
- (5.) Generally to execute such Works, do such Acts, and incur such Expenses as they may deem expedient to be executed, done, or incurred for the Protection and Improvement of the Salmon Fisheries within their District, the Increase of Salmon, and the stocking of the Waters in their District therewith, but so that it shall not be lawful for a Board of Conservators to pay to any Member of the Board any Salary, Fees, or other Remuneration for his acting in any way as a Member of or under the Board:

Provided that this Section shall not authorize anything to be done which may injuriously affect any navigable River, Canal, or Inland Navigation.

Mortgage of
Licence
Duties.

28. A Board of Conservators may, for the Purpose of defraying any Costs, Charges, and Expenses incurred or to be incurred by them under

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under the Salmon Fishery Acts, 1861, 1865, with the Consent of One of Her Majesty's Principal Secretaries of State, borrow and take up, at Interest on the Credit of the Licence Duties authorized to be imposed by them, or of any other Property belonging to them, any Sums of Money necessary for defraying such Costs, Charges, and Expenses; and for the Purpose of securing the Repayment of any Sums of Money so borrowed, together with such Interest as aforesaid, the Board of Conservators may mortgage and assign over to the Persons by or on behalf of whom such Sums are advanced the said Duties and Property, or any Part thereof; and the Clauses of the Commissioners Clauses Act, 1847, with respect to Mortgages to be created by the Commissioners, shall form Part of and be incorporated with this Act, and any Mortgagee or Assignee may enforce Payment of his Principal and Interest by Appointment of a Receiver.

29. An Account of the Receipts and Disbursements of every Board of Conservators, in such Form and with such Particulars as may be required by the Court of Quarter Sessions that appoints the Board, or in the Case of a Joint Board by the Court of Quarter Sessions of the Audit County, shall be laid annually before such Courts of Quarter Sessions as aforesaid, and the Justices assembled at such Courts may disallow any Item that they consider to be illegal.

Audit of
Accounts of
Board.

30. Any Conservator or Water Bailiff appointed under this Act may examine any Dam, Fishing Weir, Fishing Mill Dam, or fixed Engine within the Limits of his District, or any artificial Watercourse connected with a Salmon River in that District, and any Owner or Occupier of any such Dam, Weir, Engine, or artificial Watercourse refusing to any Conservator or Water Bailiff Access to such Dam, Weir, Engine, or Watercourse shall be liable to a Penalty not exceeding Five Pounds for each Offence.

Power of
Water
Bailiff for
Protection of
Fisheries.

A Conservator or Water Bailiff may search all Boats, Nets, Baskets, and other Instruments used in fishing in Salmon Rivers, he may seize all illegal Nets and other Instruments of fishing, and all Fish and other Articles forfeited in pursuance of the Salmon Fishery Acts, 1861, 1865, and generally may act as a Constable for the Enforcement of the Provisions of the said Salmon Fishery Acts, and when so acting shall be deemed to be a Constable, and have all the same Powers and Privileges, and be subject to the same Liabilities, as a Constable duly appointed now has or is subject to within his Constablewick by virtue of the Common Law of this Realm, or of any Statute.

The Production, with respect to a Conservator, of a Certificate of his being a Conservator under the Common Seal of the Board of which he is a Member, and with respect to a Water Bailiff the

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the Amount of Licence Duty to be paid under the Provisions of this Act, shall be entitled to receive the same without any Question or Objection whatsoever. But no Licence shall confer any Right to fish in any Place or at any Time in or at which the Licensee is not otherwise entitled to fish; nor shall the Grant of a Licence be held to make any Fishing Weir, Fishing Mill Dam, Putts, Putchers, Net, or other Instrument or Device legal that would otherwise be illegal, or to imply any Recognition of the Legality of any such Instrument:

- (6.) All Licences granted in pursuance of this Act shall be available only during the Fishing Season of the Year for which they are granted:
- (7.) Licences granted in pursuance of this Act shall be issued by the Conservators of each District in such Form as may be approved by the Secretary of State, and be distributed in such Manner as they may from Time to Time direct:
- (8.) The Conservators of a District shall, on their first Appointment, give Notice, by Advertisement in One or more Newspaper or Newspapers published or circulating in their District, of a Time, not being less than Three Months after such Appointment, at the Expiration of which it will be illegal to fish for Salmon in that District without a Licence, and shall state in the Notice a Place or Places within their District where Licences may be procured; and the Production of a Copy of a Newspaper containing any such Advertisement as aforesaid shall be conclusive Evidence, as respects a Fishery District, of due Notice having been given of the Time after which it will be illegal in that District to fish for Salmon without Licences.

Penalty on fishing with Rod without Licence.

35. From and after a Time to be appointed as aforesaid in a Fishery District, any Person fishing in that District with a Rod and Line for Salmon without a proper Licence shall be liable to a Penalty of not less than double the Amount to be paid for the requisite Licence, and not exceeding Five Pounds.

Penalty on fishing at Weirs or with Nets without Licence.

36. From and after a Time to be appointed as aforesaid in a Fishery District, any Person using within that District any Fishing Weir, Fishing Mill Dam, Putt, Patcher, Net, or other Instrument or Device, not being a Rod and Line, for catching Salmon, without having a proper Licence for the same, shall be liable to a Penalty of not less than double the Amount to be paid for the requisite Licence, and not exceeding Twenty Pounds.

Production of Licence.

37. Any Licensee under this Act on producing his Licence, any Conservator on producing a Certificate of his being a Conservator,
or

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or any Water Bailiff appointed in pursuance of this Act on producing the Instrument appointing him, or any Constable, if authorized so to do by the Justices in Quarter Sessions, may require any Person found fishing with a Rod and Line, Fishing Weir or Fishing Mill Dam, Net, or other Instrument, to produce his Licence; and the Person required to produce the same shall, if he do not produce the same, or make a reasonable Excuse for the Nonproduction thereof, be liable to a Penalty not exceeding One Pound.

38. A County of a City or County of a Town shall for the Purposes of this Act be deemed to be a County; and any Act hereby authorized to be done by or to the Justices of a County in Quarter Sessions assembled shall, in the Case of a County of a City or County of a Town, be done by or to the Council of such City or Town assembled at any Meeting of Council; and any Act to be done by or to the Clerk of the Peace may be done by or to the Town Clerk or other like Officer; and Notice of a Meeting of the Council given in the usual Way shall be equivalent to the Notice of Quarter Sessions required to be given in the Case of the Justices of a County.

County of
City or
County of
Town in-
cluded under
the Term
County.

Fixed Engines.

39. "Fixed Engine" shall in this Act and the Salmon Fishery Act, 1861, include any Net or other Implement for taking Fish fixed to the Soil, or made stationary in any other Way, not being a Fishing Weir or Fishing Mill Dam: And whereas by the Eleventh Section of the Salmon Fishery Act, 1861, it is provided that the said Section shall not affect any ancient Right or Mode of fishing as exercised at the Time of the passing of the Act by virtue of any Grant or Charter or immemorial Usage: Be it enacted, That the said Provisions shall extend to exempt from the said Eleventh Section such fixed Engines only as were in use for catching Salmon during the Open Season of One thousand eight hundred and sixty-one, in pursuance of an ancient Right or Mode of fishing as lawfully exercised during such Open Season, by virtue of any Grant or Charter or immemorial Usage, which last-mentioned fixed Engines are herein-after referred to as privileged fixed Engines. But inasmuch as in certain Cases fixed Engines in use during the Four Years previous to 1861, or One of such Years, may from temporary Causes have been out of use during the Year 1861, and it is expedient to provide for such Cases, it is hereby declared, that if it is proved to the Satisfaction of the Special Commissioners appointed under this Act that any fixed Engine not in use during the Open Season of 1861 was in use during One of the said Four Years, Proof of its User during One

Amendment
of Provisions
relating to
fixed En-
gines.

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for each Offence, and any Person defacing, destroying, or removing any such Notice shall be liable to a Penalty not exceeding Forty Shillings; and a Notice shall be deemed to have been duly posted where the non-posting thereof has been occasioned by some Person obstructing or refusing Access to the Officer about to post the same.

The Production of a Copy of a Newspaper containing any Advertisement required by this Act shall, for the Purposes of this Act, be Evidence of such Advertisement having been given at the Time at which the Newspaper bears Date.

Hearing as
to Legality
of fixed
Engines.

44. On the Appearance of the Owner or other Persons for or against any Fishing Weir, Fishing Milldam, or fixed Engine, and after hearing what, if anything, is alleged by him or them, or on his or their Behalf, or in the Absence of any such Persons, if they or any of them do not appear, and the Commissioners are satisfied by Evidence on Oath that the Notices required by the Act have been given, the Commissioners shall decide as to the Legality or Illegality of the Fishing Weir, Fishing Milldam, or fixed Engine, and in the event of their Decision being in favour of its Illegality they may, by Warrant under their Hands, order the Owner to remove a Fishing Weir, or render incapable of catching Fish a Fishing Milldam, where the Law requires such Fishing Weir or fixed Engine to be removed, or such Fishing Milldam to be rendered incapable of catching Fish, to the Satisfaction of the Commissioners, within a reasonable Time to be prescribed in the Order, not being less than Three Months; and in case the Owner fails to comply with the Directions of the Order, then the Commissioners may, by Warrant under their Hands, authorize any Constable or other Person, at the Expense of the Owner, to carry their Order into effect. The Commissioners may sell any fixed Engine, or any Materials belonging to any Fishing Weir or Fishing Milldam, that are removed in pursuance of this Act, and apply the Proceeds of the Sale in defraying any Costs, Charges, and Expenses incident to carrying their Order into effect in reference to such Fishing Weir, Fishing Milldam, or fixed Engine, and shall render the Surplus, if any, to the Persons they may deem entitled thereto.

Provided that if it is proved to the Satisfaction of the Commissioners that any Posts or other Materials belonging to an illegal Fishing Weir or fixed Engine ordered to be removed may be capable of being used by any Person as Evidence of Title to any Foreshore or other Land, the Commissioners shall, instead of ordering the entire Removal of such Posts or Materials, require the Fishing Weir or fixed Engine to be destroyed so far only as they may in their Discretion think necessary in order to prevent its being used for Fishing Purposes.

45. If

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45. If any Person feels aggrieved with any Decision of the Commissioners the Person aggrieved may appeal as follows ; that is to say,

Appeal from
Decision of
Special Com-
missioners.

1. The Appeal shall be to One of Her Majesty's Superior Courts of Law at *Westminster*.
2. The Appeal shall be by Special Case stating the Facts and the Grounds for the Decision.
3. The Special Case shall be settled by the Commissioners upon the Application of the Appellant to be made in Writing within Fourteen Days after the Delivery of the Decision, and not afterwards ; and if the Appellant be dissatisfied with the special Case as settled by the Commissioners, he may have the same settled by a Judge of One of the said Superior Courts, on Summons, at Chambers.
4. Before the Delivery of the Case to the Appellant he shall enter into a Recognizance before the said Commissioners or a Justice of the Peace, with or without Sureties, and in such Sum as the Commissioners or the Justice think fit, conditioned to prosecute without Delay the Appeal, and to submit to the Judgment of the Appellate Court, and to pay such Costs as may be awarded.
5. The Special Case shall be signed by the Commissioners, and shall be delivered to the Appellant by the Commissioners.
6. On the Receipt of the Special Case the Appellant shall within Fourteen Days transmit by Post or otherwise the original Case to the proper Officer of the Appellate Court.
7. When a Party gives in good Faith Notice of an Appeal under this Section, but omits through Mistake to do some Act necessary to perfect the Appeal, the Appellate Court may permit an Amendment on such Terms as it thinks just.
8. After the Decision of the Appellate Court has been given on a Case stated as aforesaid, the Commissioners shall have the same Powers to enforce that Decision, when affirmed or amended, as they would have had to have enforced their original Decision if it had not been appealed from.
9. Save as herein-before varied, the Provisions of the Summary Jurisdiction Act of the Twentieth and Twenty-first Years of Her Majesty's Reign, Chapter Forty-three, as to the Powers of the Superior Court, as to directing a Special Case to be stated, as to the enforcing of Recognizances, and as to all other Matters, shall apply to an Appeal under this Section in the same Manner as if the Words " Justice or Justices " in the said Summary Jurisdiction Act included the Special Commissioners appointed under this Act.

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in any such Case of Death or Transmission or Change of Interest it shall be lawful for the Commissioners, when they see fit, to require Notices to be given to Persons becoming interested, or to make any Orders for continuing, suspending, or carrying on the Proceedings, or otherwise in relation thereto, which to the Commissioners appears just.

Miscellaneous.

Power in certain Cases to award Imprisonment with Hard Labour instead of Penalty.

56. Where any Person has been convicted twice of an Offence under any of the following Sections of the Salmon Fishery Act, 1861, that is to say, Sections Eight, Nine, Fourteen, Seventeen, and Nineteen, he may, on being convicted a Third Time of an Offence against any of the said Sections, instead of being fined in a pecuniary Penalty, be sentenced to Imprisonment with or without Hard Labour for any Period not exceeding Six Months, and, if a Licensee, he shall on being convicted a Second Time of an Offence against the Salmon Fishery Acts, 1861, 1865, forfeit his Licence.

Minimum Penalties.

57. The Penalty in respect of any Offence under the Salmon Fishery Acts, 1861–1865, shall on a Conviction for a Second Offence be not less than One Half the greatest Penalty capable of being imposed in respect of such Offence; and on a Conviction for a Third or any subsequent Offence the greatest Amount of Penalty mentioned in the said Acts shall be imposed; but nothing herein contained shall affect the Provisions of the Salmon Fishery Act, 1865, in respect of the Discretion of imposing the Punishment of Hard Labour as therein mentioned.

Forfeiture of Nets, &c.

58. Where any Person has been convicted of an Offence under Section Seventeen of the Salmon Fishery Act, 1861, he shall, in addition to the Penalties thereby incurred, forfeit any Net or moveable Instrument used in committing such Offence, and the convicting Justices shall direct the same to be sold or destroyed, and the Proceeds of such Sale shall be paid to the Conservators of the District.

Limit of Time for Compensation for Fish Pass.

59. Whereas by the Twenty-third Section of the Salmon Fishery Act, 1861, any Person sustaining Loss by reason of a Person or Body of Persons affixing a Fish Pass to a Dam, in pursuance of that Section, may recover Compensation for such Injury in a summary Manner from the Person or Body of Persons by whom such Fish Pass has been affixed: Be it enacted, That no such Compensation shall be recovered unless Proceedings for the Recovery of the same are instituted within Two Years after the Time at which the Fish Pass was first affixed to the Dam.

60. Where

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60. Where any Person, under the Salmon Fishery Act, 1861, is exempted from a Penalty in respect of using or having in his Possession Salmon Roe on the Ground that he uses or has it in his Possession for artificial Propagation or other scientific Purposes, or is upon the same Ground exempt from a Penalty in respect of taking or having in his Possession unclean or unseasonable Salmon, or catching or attempting to catch Salmon when spawning or near their Spawning Beds, he shall not, if within a District where a Board of Conservators is established, be exempt in any of the above Cases from such Penalty unless the Consent of the Board has been given in Writing to such Use or Possession of Salmon Roe, or to such taking Possession of unclean or unseasonable Salmon.

Consent of Conservators necessary for artificial Propagation of Salmon.

61. No Justice of the Peace shall be disqualified from hearing any Case arising under the Salmon Fishery Acts, 1861, 1865, or either of them, by reason of his being a Conservator or a Member of a Board of Conservators, or a Subscriber to any Society for the Protection of Salmon or Trout; provided that no Justice shall be entitled to hear any Case in respect of an Offence committed on his own Land.

As to Disqualification of Justices.

62. Where any Penalty is recovered on the Complaint of a Board of Conservators or of any Officer of or Person authorized by a Board of Conservators, the Court shall, unless for special Reason they think it inexpedient so to do, direct the whole of the Penalty and the Proceeds of any Forfeiture to be paid to the said Board, to be applied by them for the Purposes of the Salmon Fishery Acts, 1861, 1865.

Payment of Penalties to Conservators in certain Cases.

63. The River *Esk*, together with its Banks and Tributary Streams up to their Source, shall be deemed to be within the Limits of the Salmon Fishery Acts, 1861 and 1865: Provided that all Offences against the said Acts committed within *Scotch* Jurisdiction shall be prosecuted and punished in manner directed by the "Salmon Fisheries (*Scotland*) Act, 1862."

River *Esk* within Limits of Act.

64. The Sections of the Salmon Fishery Act, 1861, that apply to fishing with Lights, Spears, and other prohibited Instruments, and to using Roe as a Bait, and which are numbered respectively Eight and Nine, as amended by this Act, shall apply to Trout in a Salmon River situate in a Fishery District which is subject to a Board of Conservators appointed under this Act; and in any such River no Person shall fish for, catch or attempt to catch, or kill any Trout between the Second Day of *November* and the First Day of *February* following, both inclusive; and any Person wilfully killing any Trout in any such River as aforesaid during

Partial Application of Salmon Acts to Trout in Salmon Rivers.

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FORM B.

NOTICE.

To the Owner of the _____, and all other
Persons interested therein.

Take notice, you are required to appear before us, the Special Commissioners for English Fisheries,

and thenceforward from Day to Day until discharged, in order that there may be then and there an Inquiry by us touching the Legality of _____ and that a Decision may be made by us with respect to their Removal, or that such other Order may be made by us in the Premises as the Facts of the Case may appear to us to warrant.

Given under our Hands and under the Common Seal of the said Commissioners this _____ Day of _____ 186

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