



ANNO TRICESIMO SEPTIMO

VICTORIÆ REGINÆ.

A.D. 1873.

No. 13.

An Act to provide for the formation and protection of Oyster Beds, and to prevent the wanton destruction of Oysters.

[Assented to, 18th December, 1873.]

WHEREAS it is expedient to provide for the formation and protection of Oyster Beds, and to prevent the wanton destruction of Oysters—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 of the said Province, in this present Parliament assembled, as follows: Preamble.

1. This Act may be cited as the "Oyster Fishery Act, 1873." Title of Act.

2. The Act No. 15 of 1853, intituled "An Act to encourage the formation of Oyster Beds, and to protect the same," is hereby repealed: Provided that nothing herein shall affect any act or thing lawfully made or done under the authority of the said Act; and all offences committed and penalties incurred under the said Act, shall be prosecuted and enforced as if this Act had not been passed. Repeal of Act No. 15 of 1853.

3. Where no natural oyster beds at present exist, it shall be lawful for any person, with the permission in writing of the Marine Board, to form or plant any artificial oyster bed on the shore adjacent to any Crown lands bordering on the sea or any estuary, and also for the occupier of any lands bordering on the sea or any estuary, with the permission aforesaid, or for any other person with the consent of such occupier, and with the like permission, to form or plant any artificial oyster bed on the shore adjacent to such last-mentioned lands; and every such permission shall set forth the boundaries Permission to form and occupy artificial oyster beds.

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daries and limits within which such oyster bed may be formed, and every such permission shall be in the form contained in the Schedule to this Act, or to the like effect.

Person obtaining permission, to publish description of beds.

4. Every person to whom any such permission shall have been issued shall forthwith publish in the *South Australian Government Gazette*, a description of the situation, bearings, and boundaries of the oyster bed authorized by such permission, and unless, within twelve months from the issuing of the same, an oyster bed shall have been laid down and marked off, and stocked by the person holding such permission, or if such bed shall cease to be used as an oyster bed for twelve calendar months, the permission so issued shall cease and determine.

Rights of the occupier.

5. The person forming or planting any such artificial oyster bed, his executors, administrators, and assigns (paying to the Treasurer for the public uses of the said Province such yearly sum for the same as the said Marine Board shall in and by the said permission require), shall, subject to the provisions of this Act, be entitled to hold the same for such period, not exceeding twenty-one years, as the said Marine Board may think fit as tenant thereof; but the forming and planting of such artificial oyster bed as aforesaid shall not give any exclusive right or title to the occupation of the said shore or sea ground except for the purpose aforesaid, nor prevent the full and free exercise and enjoyment of any right whatsoever, subject to the provisions of this Act, in or along the said shore or sea ground.

Penalty for interfering with beds.

6. If any person shall interfere with, remove, or destroy oysters from any artificial oyster bed without the consent of the person having permission to form such bed as aforesaid, every such person shall forfeit and pay a penalty of not less than Twenty Shillings nor more than Fifty Pounds, and shall also in addition to such penalty forfeit and pay to the party aggrieved such sum of money, not exceeding One Hundred Pounds, as shall appear to the Special Magistrate or Justices before whom such person shall be convicted, to be a reasonable compensation for the damage and injury done, which compensation the said Special Magistrate or Justices are hereby authorized to assess and determine.

Compensation.

Oysters not to be caught or offered for sale during certain periods.

7. Every person who shall, during the months of September, October, and November, in any year, by any means whatsoever take or catch any oysters or oyster brood, or shall dredge for oysters or oyster brood, or use any oyster dredge, or any net, instrument, or engine whatsoever, for the purpose of taking or catching oysters or oyster brood, although no oysters or oyster brood shall be actually taken, or shall with any net, instrument, or engine, drag upon the ground or soil of any natural or artificial oyster bed, except for the purpose of cleaning any artificial oyster bed, and except as hereinafter mentioned, or shall sell, or offer for sale, any oysters or oyster brood shall, for each and every such offence, forfeit and pay a penalty of not exceeding Twenty Pounds.

8. If

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8. If any person shall knowingly deposit on any natural or artificial oyster bed any ballast, sand, mud, refuse, or injurious matter of any nature whatsoever, whether such ballast, sand, mud, refuse, or injurious matter shall have been raised from such natural or artificial oyster bed, or shall have been obtained elsewhere, every such person shall forfeit and pay a penalty of not exceeding Twenty Pounds, in addition to such reasonable compensation for the damage and injury done, not exceeding One Hundred Pounds, as the Special Magistrate or Justices adjudicating may determine.

Penalty for depositing injurious matter on beds.

9. The Commissioner of Crown Lands and Immigration may, from time to time, by one calendar month's notice, published in the *South Australian Government Gazette*, fix a term not exceeding three years during which any natural oyster bed shall be closed, whereupon the same shall be closed accordingly for the term specified in such notice, and every person who shall by any means whatsoever take, catch, or dredge for, or attempt to take, catch, or dredge for any oysters or oyster brood from any closed natural oyster bed during such term, shall, for each and every such offence, forfeit and pay a penalty of not exceeding Twenty Pounds.

Commissioner may close natural oyster beds.

10. Notwithstanding the provisions hereinbefore contained, it shall be lawful for any person having such permission as aforesaid, and for any person claiming under him, or authorized in writing by him, during the months of September, October, and November, in any year, to take, catch, and dredge for oysters and oyster brood from any unclosed natural oyster bed lying below the level of the lowest water of spring tides, for the purpose of supplying and replenishing any such artificial oyster bed as aforesaid, and for no other purposes whatsoever: Provided that notice in writing of the intention so to dredge for and take oysters and oyster brood, and of the beds from and to which the same are intended to be removed, shall have been given to the said Marine Board and printed in some newspaper published in the neighbourhood of the said beds respectively, if any there be, and if not, then in one of the Adelaide newspapers fourteen days before dredging for or taking such oysters and oyster brood.

Power during close season to replenish artificial oyster beds.

11. If any person, whilst lawfully taking, catching, or dredging for oysters, on or from any natural oyster bed, shall happen to raise, take, or catch any oyster brood, spat, or cultch, or any small oysters the shells of which are less than six inches in circumference, and shall not within six hours thereafter return such brood, spat, cultch, or small oysters as aforesaid to such natural oyster bed, every such person shall forfeit and pay a penalty not exceeding Ten Pounds.

Oyster brood, cultch, and small oysters to be returned to place from whence taken.

12. The provisions hereinbefore contained shall not apply to any person raising, taking, or catching such oyster brood, spat, cultch, or small oysters as aforesaid for the purpose only of supplying or replenishing any such artificial oyster bed as hereinbefore mentioned, but the proof of such purpose shall lie on the defendant.

Except in certain cases.

13. Any

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Discoverers of natural oyster beds to have exclusive right thereto for two years.

13. Any person who shall discover any natural oyster bed, shall, upon application to the Commissioner of Crown Lands and Immigration, and upon proof to his satisfaction that such person is the first discoverer of such oyster bed, be entitled to receive a licence entitling him to the exclusive use of such oyster bed, within the boundaries and limits within such licence mentioned, for the purpose of taking, catching, or dredging for oysters therefrom for the period of two years from the date of such licence, subject to the provisions of this Act.

On second conviction permission to be forfeited.

14. If any person holding a permission under this Act shall be convicted of a second or subsequent offence against the provisions of this Act, such person shall, in addition to any penalties which may be imposed upon him under the provisions hereinbefore contained, forfeit any permission he may have obtained under the authority hereof, and shall be incapable of holding any similar permission for the period of three years, from the date of such conviction.

Who may lay informations.

15. 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.

Summary procedure.

Appeal.

16. 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.

Half of penalties to informer, unless compensation awarded.

17. One half part 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.

18. The

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18. The provisions of Act No. 4 of 1859, intituled "An Act for consolidating the Statute Law in force in South Australia, relating to indictable offences against property by larceny and other offences connected therewith" shall apply to the stealing of any oysters, oyster brood, or oyster spat, from any natural or artificial oyster bed, and the eighth section of the said Act shall be read and construed as applying to any oyster bed named in any licence or permission granted or issued under the authority of this Act.

Act No. 4 of 1859, to apply to stealing under this Act.

19. This Act shall not apply to that portion of the said Province commonly known as the Northern Territory.

Act not to apply to Northern Territory.

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

A. MUSGRAVE, Governor.

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SCHEDULE REFERRED TO.

These are to permit A. B. and C. D. to form and plant an artificial oyster bed on the shore or sea ground adjacent to _____ and commencing at _____ and continuing thence in a [*northerly*] direction to _____ and extending between the limits aforesaid to a distance of _____ from high water mark [*or such other description as may be necessary*], and in consideration of the payment by them, their executors, administrators, or assigns, of the annual rent of _____ on the _____ day of _____ in every year in advance (the first payment being made on the _____ day of _____ next), they, their executors, administrators, or assigns, may hold the said oyster bed for the term of _____ commencing from the _____ day of _____ next, but only for the purpose aforesaid.

Dated at Port Adelaide the _____ day of _____

President of Marine Board.