



ANNO QUADRAGESIMO OCTAVO ET QUADRAGESIMO
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VICTORIÆ REGINÆ.

A.D. 1885.

No. 366.

An Act to promote the Breeding of Oysters and to regulate the Oyster Fishery.

[*Assented to, December 11th, 1885.*]

WHEREAS it is desirable to promote the breeding of oysters and to regulate the oyster fishery—Be it therefore Enacted by the Governor of the Province of South Australia, by and 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 called “The Oyster Fishery Act, 1885.” Short title.
2. This Act shall not apply to the Northern Territory. Not to apply to Northern Territory¹
3. The “Oyster Fishery Act, 1873,” is hereby repealed; but this repeal shall not affect— Repeal of 13, 1873.
 - (1.) Anything duly done or suffered under the said Act before the commencement of this Act; or
 - (2.) Any right or privilege acquired, or any liability incurred, under the said Act before the commencement of this Act; or
 - (3.) Any punishment or forfeiture incurred under the said Act before the commencement of this Act; or
 - (4.) The institution or prosecution to its termination of any proceeding for inflicting such punishment, recovering such forfeiture,

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forfeiture, or enforcing such liability; and any such proceeding may be instituted and carried on as if the said Act had not been repealed.

Interpretation.

4. In this Act the following words shall have the meanings respectively assigned to them by this section so far as is consistent with the context:—

“To fish” and “fishing” shall include any mode of taking oysters:

“Form” and “forming” shall include “plant” and “planting”:

“Oyster” and “oysters” shall include shore oysters, rock oysters, and mud oysters:

“Inspector” means the inspector of oyster fisheries to be appointed under this Act:

“Oyster brood” shall include spat, and any small oysters measuring less than two inches in their narrowest diameter:

“Prescribed” shall mean prescribed by this Act or by regulations to be made thereunder:

“This Act” shall include any regulations made thereunder:

“Vessel” includes any ship, vessel, or boat of any sort, tonnage, or construction, except any ship, vessel, or boat propelled by steam.

Divisions of Act.

5. This Act is divided into six parts, as follows—

PART I.—Administration:

PART II.—General Licences for Oyster Fishing:

PART III.—Natural Oyster Beds and exclusive Licences therefor:

PART IV.—Artificial Oyster Beds and exclusive Licences therefor:

PART V.—Oyster Beds generally:

PART VI.—Miscellaneous Provisions.

PART I.

PART I.

ADMINISTRATION.

Administration under Treasurer.

6. The general administration of this Act shall be under the control and direction of the Treasurer.

Treasurer may make regulations.

7. The Treasurer may from time to time make and publish regulations for regulating the powers and duties of all officers appointed under this Act, for providing for the more effectual protection and improvement of oysters, and the management of any waters in which oyster fishing may be carried on, and for the amount

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amount to be charged for licences for different classes of boats and persons engaged in oyster fishing, not exceeding the amounts respectively provided by this Act, and generally for carrying out the objects of this Act.

PART I.

8. Such regulations shall be published in the *Government Gazette*, the production whereof shall be conclusive evidence of them, and, within fourteen days after the making of such regulations, they shall be laid before both Houses of Parliament, if Parliament be then sitting, and, if Parliament be not then sitting, then within fourteen days after the beginning of the next session of Parliament, and shall have the force of law from the date of such publication, and shall continue to have such force if or so far as not disallowed by express resolution of either House of Parliament, within one month after being so laid before both Houses of Parliament.

Regulations to be published in *Gazette* and laid before Parliament.

9. The Governor may appoint an inspector of oyster fisheries at such salary as may be voted by Parliament, who shall act under the direction of the Treasurer in the discharge of his duties under this Act.

Governor may appoint inspector.

PART II.

PART II.

GENERAL LICENCES FOR OYSTER FISHING.

10. The Treasurer may at any time of the year issue annual licences, to endure from the thirtieth day of June in each year to the first day of July in the year following, for the following purposes and on receipt of the following fees, or such lesser fees as may be prescribed by the Treasurer.

Licences for boats and fishermen.

For every vessel engaged in oyster fishing carrying two men, Three Pounds; carrying three or more men, Five Pounds:

For every person engaged in oyster fishing, Forty Shillings.

11. Every licence shall be numbered consecutively, and the licence-number shall be painted in the prescribed manner on the vessel, and marked on such one or more of its sails as may be prescribed.

Licence number to be painted on boats, &c.

12. Every person who shall fish for oysters in a vessel which is not licensed, or shall take part in the management of such vessel when so engaged, shall, on conviction for every such offence, pay a penalty not exceeding Five Pounds, and the fact that the licence-number is not painted or marked in the prescribed manner shall be *prima facie* evidence that the vessel is not licensed.

Penalty on fishing for oysters in unlicensed boat.

13. Every person fishing for oysters for the purposes of trade without being licensed for that purpose, shall, on conviction, for every such offence, pay a penalty not exceeding Two Pounds; and the fact of such person being on board any vessel engaged in fishing for oysters shall be conclusive evidence that such person was so engaged.

Penalty for fishing for oysters without licence.

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PART III.

PART III.

NATURAL OYSTER-BEDS AND EXCLUSIVE LICENCES THEREFOR.

Discoverer of oyster-bed may apply for exclusive licence.

14. Whenever any person shall, after the passing of this Act, have discovered on or near the coast of South Australia a natural oyster-bed, he may apply to the Treasurer for the issue to him of an exclusive licence for the use of such oyster-bed, or any part thereof, as hereinafter provided.

Notice of application to be advertised.

15. The applicant for such exclusive licence shall publish in the *Government Gazette* a notice of such application, describing therein the oyster-bed with reasonable certainty, and such notice shall be repeated once in each week for four consecutive weeks.

Notice of intention to oppose to be given.

16. Any person wishing to oppose the issue of an exclusive licence to any applicant shall give notice in writing of such objection to the Treasurer within one calendar month of the first publication of such notice.

Inquiry to be held in case of opposition.

17. Upon receiving notice of the intention to oppose the grant of an exclusive licence, the Treasurer, or some person appointed by him in writing, shall hold an inquiry concerning the justice of issuing an exclusive licence, and for that purpose the Treasurer, or the person so appointed, may administer oaths.

Inquiry to be held where no notice of opposition.

18. If no notice of an intention to oppose the issue of an exclusive licence is received within the time above provided in that behalf, the Treasurer, or some person appointed by him as aforesaid, shall inquire concerning the due publication of the notice, and the justice of issuing an exclusive licence.

Treasurer may issue licence.

19. Upon being satisfied that an exclusive licence ought to be granted, the Treasurer may issue to the applicant an exclusive licence to use the oyster-bed for such period, not exceeding five years from the date of the licence, as, having regard to the circumstances shall appear fit and proper, and such licence may be in the form given in the Schedule hereto, or such other form as may be necessary.

Licencee to have exclusive right to fish for oysters.

20. The licencee, his executors, administrators, and assigns shall, during the whole of the term in the said licence mentioned, have the sole and exclusive right by himself or themselves, or his or their servants, agents, or licencees, to fish for oysters in the oyster-bed for which the licence is granted.

Licence may be forfeited for unhusband-like management.

21. If, at any time during the currency of such licence, it shall be proved to the satisfaction of the Treasurer that the holder of such licence, or any person by his direction or permission, is managing or using the oyster-bed in such a manner that the same is likely to be exhausted or greatly reduced in value, the Treasurer, by
notice

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notice in the *Government Gazette*, may revoke such licence, which shall thereupon cease and determine, and the licensee shall not be entitled to any compensation for such revocation.

PART III.

PART IV.

PART IV.

ARTIFICIAL OYSTER-BEDS AND EXCLUSIVE LICENCES THEREFOR.

22. Where, at the passing of this Act, no natural oyster-beds exist, the occupier of any lands bordering on the sea or any estuary thereof, or any person with the consent of such occupier, may apply to the Treasurer for a licence to form an artificial oyster-bed on or near the shore adjacent to such lands, and the Treasurer may grant such licence to the applicant upon such terms as shall appear fit and proper, and such licence may be in the form given in the Schedule hereto, or in such other form as may be necessary.

Licence to form and occupy artificial oyster-beds.

Any person may, by a like application, obtain from the Treasurer, upon such conditions as shall appear fit and proper, a licence to form an artificial oyster-bed on or near the shore adjacent to any Crown lands bordering on or near to the sea or any estuary.

The licence shall be conditioned to be void if, within a time to be therein named and not exceeding one year, the licensee shall not have formed and planted the oyster-bed for which the licence is granted.

The licensee shall forthwith publish in the *Gazette* a notice of the situation and limits of the oyster-bed, and of the length of time for which the licence is granted to him.

23. The person who, in pursuance of such licence, forms or plants any such artificial oyster-bed, his executors, administrators, and assigns, shall hold the same for such period, not exceeding twenty-one years, as shall be expressed in the licence.

Rights of the occupier.

But the forming of such artificial oyster-bed shall not give any exclusive right to the occupation of any shore or sea-ground, except for the purpose aforesaid, or prevent the full and free exercise of any right whatever in or along any shore or sea-ground, subject to the provisions of this Act.

PART V.

PART V.

OYSTER-BEDS GENERALLY.

24. The provisions in this part of this Act shall apply to every licence for any natural oyster-bed, or for forming any artificial oyster-bed:—

General provisions affecting licences for oyster-beds.

(1.) Every

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PART V.

- (1.) Every licence shall set forth as near as may be the limits of the area to which such licence extends, and shall continue in force for such time, and be subject to such conditions and restrictions, and the payment of such fees and in such manner, as shall be prescribed therein :
- (2.) It shall be subject to a condition that any part of the area affected thereby may at any time, after not less than three months' notice, be resumed, if needed for the purpose of the construction of any public works, without the licensee being entitled to any compensation in respect of such resumption :
- (3.) It shall not include within the area described any part of a public reserve, or any land reserved for public purposes.

Licence not to warrant trespass upon lands.

25. No licence shall confer a right of entry upon the lands of any person or body politic without the consent of such person or body.

Persons entitled to shore may form oyster-beds without licence.

26. Nothing in this Act contained shall make it necessary for any person who, under a grant from the Crown, is seized of or entitled to the soil in any part of the shore of the sea, or of any estuary or navigable river, to obtain any permission under this Act to form oyster-beds on such shore.

Boundaries of oyster-beds to be indicated by marks on shore or afloat.

27. The occupier of every artificial oyster-bed, and the occupier of every natural oyster-bed, whereof any person or persons shall have the exclusive licence, shall set up on some convenient part of the adjacent shore, not being private property, distinguishing posts or marks, to be approved by the inspector, for indicating the limits of such oyster-bed.

Where any such oyster-bed cannot be conveniently marked by posts or otherwise on the shore, the same may be indicated by buoys or other floating marks approved as aforesaid.

PART VI.

PART VI.

MISCELLANEOUS PROVISIONS.

Treasurer may close natural oyster-beds.

28. The Treasurer may from time to time, by one calendar month's notice published in the *Government Gazette*, fix a term, not exceeding four years, during which any natural oyster-bed, not being on private property nor the subject of an exclusive licence, shall be closed, and upon the expiration of such notice the same shall be closed accordingly during the term fixed by such notice. Every person fishing for oysters on any such closed oyster-bed shall, on conviction, pay a penalty not exceeding Twenty Pounds, or suffer imprisonment, with or without hard labor, for not more than three calendar months.

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PART VI.

Inspector may board vessels.

29. The inspector may at any time board any vessel licensed under this Act, or engaged in oyster fishing, and see whether the provisions of this Act are complied with; and any person resisting or impeding the inspector in the discharge of his duties under this section shall, on conviction for every such offence, pay a penalty not exceeding Ten Pounds.

Person interested in oyster fishing, &c., not to act as inspector.

30. No person shall be competent to be or continue an inspector under this Act who has, or after his appointment shall have, any interest, direct or indirect, in any oyster fishery, or in any vessel used in oyster fishing, or in the sale of oysters, or who shall act as agent for any person so interested, and if any person disqualified as aforesaid shall act as inspector, he shall, for every such offence, pay a penalty of Fifty Pounds.

Penalty.

Penalty for depositing injurious matter on beds.

31. Every person who shall knowingly deposit on any natural or artificial oyster-bed any ballast, sand, mud, refuse, or injurious matter of any nature whatsoever, except dredge refuse, shall forfeit and pay a penalty not exceeding Twenty Pounds, in addition to such reasonable compensation for the damage done, not exceeding One Hundred Pounds, as the Special Magistrate or Justices adjudicating may determine.

Penalty for interfering with beds.

32. Every person who shall interfere with, remove, or destroy oysters or oyster-brood from any oyster-bed held under licence under this Act without the consent of the licencees thereof, or from any oyster-bed upon private property without the consent of the proprietors thereof, shall, on conviction for every such offence, forfeit and pay a penalty of not less than One Pound nor more than Fifty Pounds, in addition to such reasonable compensation for the damage done, not exceeding One Hundred Pounds, as the Special Magistrate or Justices adjudicating may determine.

Compensation.

33. If any person holding any licence under this Act be convicted of a second or subsequent offence under the provisions of the Act, he shall, in addition to the penalty for such second or subsequent offence, forfeit such licence, and be for three years disqualified from obtaining any other licence under this Act.

On second conviction licence to be forfeited and licencee disqualified for three years.

34. 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 as part of the public fund of the province.

Half of penalties to informer unless compensation awarded.

35. The

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PART VI.

Provisions of 38, 1876,
as to larceny of oysters,
&c., to apply to oysters,
&c., under this Act.

35. The 148th section of the Criminal Law Consolidation Act, 1876, shall be read as if the words "The Oyster Fishery Act, 1885," were inserted therein instead of the words "The Oyster Fishery Act, 1873."

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

WILLIAM C. F. ROBINSON, Governor.

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THE SCHEDULE.

Licence to Discoverer of Natural Oyster-bed for the exclusive use thereof.

Whereas A. B., of _____ has discovered a natural oyster-bed, situate and bounded as follows [*here set out situation and boundaries*]: and has applied for the issue to him of an exclusive licence for the use of such oyster-bed. Now, in consideration of such discovery, the Treasurer of South Australia, by virtue of the Oyster Fishery Act, 1885, hereby licenses the said A. B., his executors, administrators, and assigns, to the exclusion of all other persons, to fish for oysters in the said oyster-bed for the term of [*five*] years*: Provided that any part of the area to which this licence applies may at any time, after not less than three months' notice, be resumed, if needed for the construction of any public works, without any compensation in respect of such resumption. Dated the _____ day of _____ 188

L.S.

* If any rent is to be paid here set it forth, beginning "Paying yearly on the _____ day of _____."

Licence to two to form an Artificial Oyster-bed.

These are to license A. B. and C. D. to form and plant an artificial oyster-bed on the shore or sea-ground hereinafter described, namely [*here set out situation and boundaries*], and they, the said A. B. and C. D., and each of them, their and each of their executors, administrators, and assigns, forming and planting the said oyster-bed within [*one year*] from the date hereof, but not otherwise, shall continue to enjoy the exclusive use of the same for [*twenty-one*] years, paying at the office of the Treasurer of South Australia, at Adelaide, the yearly rent of £ _____ on the _____ day of _____ in every year in advance (the first payment being made on the _____ day of _____ next): Provided that any part of the area to which this licence applies may at any time, after not less than three months' notice, be resumed, if needed for the construction of any public works, without any compensation in respect of such resumption. Dated the _____ day of _____ 188

L.S.