



ANNO QUARTO

GEORGII V REGIS.

A.D. 1913.

No. 1128.

An Act to amend "The Oyster Fishery Act, 1885,"
and for other purposes.

[*Assented to, December 18th, 1913.*]

BE it Enacted by the Governor of the State of South Australia,
with the advice and consent of the Parliament thereof, as
follows:

1. (1) This Act may be cited alone as "The Oyster Fishery Act Short titles.
Amendment Act, 1913."

(2) "The Oyster Fishery Act, 1885" (hereinafter called "the No. 366 of 1885.
principal Act"), and this Act may be cited together as "The Oyster
Fishery Acts, 1885 and 1913."

2. This Act is incorporated with the principal Act, and that Act Incorporation.
and this Act shall be read as one Act.

3. In this Act the expression "Crown lands" includes any Interpretation—
"Crown lands."
Cf. N.S.W., 119,
1902, s. 3.
foreshore, as well as any land under the sea within the territorial
limits of the said State, or under any tidal or inland water, or under
any river, lake, lagoon, or other water in the said State, the pro-
perty in which is vested in the Crown.

4. (1) Wherever the word "Treasurer" occurs in the principal Administration of
the Acts.
Act, except in section 34, the word "Minister" is hereby substituted
therefor.

(2) In the principal Act as thus amended, and in this Act,
"Minister" means the Minister of the Crown to whom the adminis-
tration of the said Acts is committed by the Governor.

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Amendment of section 7. Power to make regulations.

5. (1) Section 7 of the principal Act is amended by inserting after the word "on" in the fifth line thereof the following words:—"including the complete or partial closing of any waters against fishing and limiting the use which may be made of any waters."

Validation of certain regulations.

(2) The regulations dated the sixteenth day of May, nineteen hundred and twelve, published in the *Government Gazette* on the twenty-third day of May aforesaid, and purporting to be made pursuant to the provisions of the principal Act, are hereby validated as from the date of such publication, and section 8 of the principal Act shall apply thereto; and section 7 of the principal Act, as amended by this section, shall be held to give power to make similar regulations as to any waters.

No. 864 of 1904.

(3) Section 22 of "The Fisheries Act, 1904," shall not apply within any waters wholly or partially closed against fishing by any regulation hereby validated or made under the principal Act as hereby amended, except in so far (if at all) as provided by such regulation.

Amendment of section 9.

6. (1) Section 9 of the principal Act is amended so as to read as follows:—

Chief and other inspectors.

The chief inspector of fisheries under "The Fisheries Act, 1904," or under any Act substituted therefor, shall be chief inspector of oyster fisheries, and the Governor may appoint a senior inspector of oyster fisheries, and such inspectors of oyster fisheries as he deems necessary.

Amendment of section 4 of the principal Act.

(2) The definition of inspector in section 4 of the principal Act is repealed, and the following definition is enacted and substituted in lieu thereof:—"Inspector" means inspector of oyster fisheries, and includes chief inspector of oyster fisheries, and senior inspector of oyster fisheries.

Sections 11 and 12 repealed and other provisions substituted.

7. Sections 11 and 12 of the principal Act are repealed, and the following provisions are hereby enacted and substituted in lieu thereof:—

Registration and marking of vessels for oyster fishing.

Cf. Fisheries Act, 1909, s. 16 (2).

11. (1) Any person who desires to obtain the registration of a vessel to be used for oyster fishing shall make application therefor to the chief inspector in the prescribed manner; whereupon the chief inspector shall, if the vessel is licensed under this Act, issue to the applicant a certificate of registration in the prescribed form and assign a registration number to such vessel.

Duration of registration.

(2) The registration of a vessel may be effected at any time, and shall remain in force whilst the vessel is licensed under this Act.

How registration number to be marked on vessel.

Oyster Fishery Act, 1885, s. 11.

(3) A registered vessel shall be marked in the following manner, namely:—The registration number thereof shall be painted thereon in the prescribed manner and position, and shall be marked in the prescribed manner on such one or more of its sails as is or are prescribed in that behalf.

12. Any

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12. Any person who fishes for oysters in a vessel, or uses a vessel for fishing for oysters, or manages or takes part in the management of a vessel when the same is so used, shall, unless at the time such vessel is—

- (a) licensed under this Act, and
- (b) registered under this Act, and
- (c) marked as required by section 11 of this Act,

be guilty of an offence against this Act, and shall be liable therefor to a penalty not exceeding Five Pounds.

Penalty for fishing with vessel unless licensed, registered, and marked.

Fisheries Act, 1909, s. 16 (1).

Artificial Oyster Beds and Leases thereof.

8. Part IV. of the principal Act is repealed, and sections 9 to 22 of this Act are hereby enacted and substituted therefor.

Part IV. repealed and new provisions substituted.

9. (1) The Governor may, on the recommendation of the chief inspector, lease any Crown lands for oyster culture for any term not exceeding fifteen years at a yearly rental not exceeding One Pound for two hundred lineal yards of frontage: Provided that no area which has less than four hundred lineal yards frontage shall be so leased to any person who is not already the holder of a lease under this Act.

Governor may lease Crown lands for oyster culture.

N.S.W. Fisheries Act, 119, 1902, s. 33.

(2) On the application of the lessee during the last year but one of the currency of any such lease, the Governor may, on the like recommendation, renew the term for a like or shorter period at the same rental and with such limitations in other respects as he may approve.

10. The Governor may, on the recommendation of the chief inspector, offer, by auction or tender, for any term not exceeding fifteen years, the lease of any area of Crown lands for oyster culture, at a rental calculated on the area of such lands, or at a rental recommended by the chief inspector; and, on the application of the lessee during the last year but one of the currency of any such lease, the Governor may, on the like recommendation, renew the term for a like period, but at such rent and subject to such limitations in other respects as he may approve.

Lease for oyster culture.

Ibid., s. 34.

11. The lessee or purchaser of any area under this Act shall, upon payment of the rent therefor for the first year, be deemed to be in actual and absolute possession of the area comprised therein for all purposes of this Act, notwithstanding that the lease may not have been issued; and such lessee or purchaser or any inspector may seize any oysters removed therefrom without lawful authority; and any person found unlawfully dredging, taking, or attempting to take oysters in or from such area shall be liable to a penalty not exceeding Twenty-Five Pounds, and all oysters found at the time in possession of such person shall be deemed to have been unlawfully taken by him, and may be forthwith seized and returned to such area.

Lessee deemed to be in possession on payment of first year's rent.

Ibid.

12. Every

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Property and rights conferred by lease.

Ibid., s. 35.

12. Every lease issued under sections 9 or 10 of this Act shall vest in the lessee, his executors, administrators, and assigns, all oysters within the area leased, and the exclusive right during the currency of the lease, or any renewal thereof, of laying and planting oysters on, and of dredging and taking oysters from, the area leased, but subject always to the several provisions of this Act and of any regulations, and the rights of any inspector or authorised officer to enter upon such area.

Abutting land not included in lease.

Ibid., s. 36.

13. Occupation under any such lease shall not give any right to the lessee to occupy or to use any portion of any Crown lands abutting on but not included in his lease, except for such purposes and during such times as are prescribed.

Leased area, how described.

Ibid., s. 37.

14. Any leased area may be described in the lease by reference to posts, stakes, buoys, marks, connections or natural features showing the boundaries of such leased area in a manner sufficient to allow of their identification; and the boundaries of any leased area shall be marked by the lessee in manner prescribed.

Surrender of lease.

Ibid., s. 38.

15. The Governor may, on the recommendation of the chief inspector, accept a surrender of any such lease, after the second year of its currency, in any case where it appears, to the satisfaction of the chief inspector, that oyster culture cannot be carried on upon the leased area with any reasonable hope of success, or where, for any other reason, the chief inspector reports in favor of such surrender.

Conditions of leases.

Ibid., s. 39.

16. Every leased area shall be subject to all such conditions, provisions, and limitations as are prescribed or as are approved by the Minister, and shall also be subject to the rights of the Crown to carry out all public works upon the area or its immediate vicinity without compensation.

Resumption of leases.

Ibid., s. 40.

17. The Governor may, on the recommendation of the chief inspector, resume wholly or in part any area a lease whereof has been granted under this Act, but subject to the payment by the Crown to the lessee thereof of compensation for the loss of such area or part; which compensation shall, in case of dispute, be determined in manner provided by section 59 of "The Crown Lands Act, 1903," with reference to leases granted after the passing of "The Crown Lands Amendment Act, 1893": Provided that the Crown shall not be liable to pay compensation for the resumption of any lease that has been issued with a provision relieving the Crown or the Government of the said State from liability for any damage or injury that might be done to the area leased or to the oysters thereon by the carrying out of public works.

Lessees in arrear in rent not to take oysters or be granted further leases.

Ibid., s. 41.

18. Any lessee who is at any time in arrear with the rent of any one or more leased areas shall not be entitled to take oysters from any such area, or to obtain a lease of a further area until all such rent due has been paid; and any lease shall be liable to forfeiture if the rent is not paid within the time prescribed.

19. (1) If

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19. (1) If it appears to the chief inspector that any lessee has not within a period of one year from the date of his lease taken proper measures to carry out the conditions of his lease and to cultivate the area leased, he may recommend the Governor to cancel the lease.

Cancellation of lease
in certain cases.

Ibid., s. 42.

(2) The Governor shall have power to cancel the same accordingly by notification in the *Government Gazette*, and upon the publication of such notification all rights and privileges granted by such lease and the unexpired term thereof shall cease and determine.

(3) Before making any such recommendation the chief inspector shall cause a notice in writing stating his intention to make such recommendation to be given to the lessee. Such notice may be given to the lessee personally, or, in case the lessee cannot be found, by inserting it once in the *Government Gazette*, and at least three times in a daily newspaper published in Adelaide. No such recommendation shall be made until after the expiration of one month from the giving of such notice.

20. (1) Upon the receipt of a report from any inspector that a leased area is being so stripped of oysters or otherwise mismanaged by the lessee thereof, that the production of oysters thereon has been so reduced as to threaten its partial or total destruction as an oyster-bearing area, or that proper steps for cultivation have not after the first year been taken, the chief inspector may, by notice given as provided by section 19 hereof, prohibit the further dredging of, or removal of oysters from such leased area, and may by the same or a like notice call upon the lessee to show cause why the lease of such area should not be cancelled.

Cancellation for
mismanagement.

Ibid., s. 43.

(2) After the expiration of one month from the service or publication of the last-mentioned notice, the chief inspector may recommend the cancellation of such lease, and the Governor may thereupon by notification published in the *Government Gazette* cancel such lease. Upon such publication all rights and privileges granted by such lease, and the unexpired term thereof, shall cease and determine.

21. (1) Whenever the chief inspector upon the report of any inspector, or by his own inspection, is satisfied that the whole or any part of an oyster-bearing area, whether under lease or not, has by over-dredging, or from any other cause, been reduced to such a state that the taking of oysters therefrom ought to be suspended, or that the oysters thereon are in such a condition as to be not fit for consumption as food, the chief inspector may recommend the Governor to prohibit the taking of oysters from such area.

When oyster-bearing
areas may be closed.

Ibid., s. 44.

(2) Thereupon the Governor may, by notification in the *Government Gazette*, prohibit for any term not exceeding three years the taking of oysters from such area. The Governor may in like manner rescind wholly or in part any such notification.

(3) If

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(3) If any person without lawful authority at any time during the period mentioned in such notification, unless the same has been rescinded as aforesaid, takes or attempts to take oysters from such area he shall be liable to a penalty not exceeding Twenty Pounds. All oysters and the bags and packages containing them found in the possession of any person so offending may be seized, and upon the conviction of the offender shall become forfeited to His Majesty.

(4) Notwithstanding anything in this section, when on an area under lease for oyster culture the reduction to the state mentioned in subsection (1) of this section has, in the opinion of the chief inspector, resulted from natural causes only, such as floods or disease, the Governor may release the lessee of such area from payment of rent for the period of the prohibition.

(5) The provisions of this section and sections 19 and 20 hereof shall apply to every lease issued under this Act.

Protection of leased areas.

Ibid., s. 48.

Cf. principal Act S.A.), s. 31.

22. (1) It shall not be lawful for any person other than the lessee, his agents, or servants to do any of the following acts, namely:—

(a) To take or in any way disturb or interfere with any oysters upon any leased area without the consent of the lessee:

(b) To cut, or lop, or remove mallee or any other timber from any leased area:

(c) To deposit upon or to remove from any leased area any stone, ballast, rubbish, or substance, or to dredge or drag upon any leased area with any implement unless by direction or authority of the chief inspector:

(d) To place upon any leased area any implement or thing likely to injure oysters, except for a lawful purpose of navigation or anchorage.

Penalties.

(2) Any person who does any act in contravention of this section shall be liable to a penalty not exceeding Twenty Pounds, and shall also upon conviction of any offence under this section be liable to make such reasonable compensation, not exceeding One Hundred Pounds, to the lessee for the damage sustained by him by reason of the unlawful act, as the Special Magistrate or Justices adjudicating may determine, and in default of payment the same may be recovered by the lessee in any court of competent jurisdiction.

(3) In case any such act as mentioned in subdivision (c) of subsection (1) of this section is lawfully done, reasonable compensation shall be made therefor, subject, however, to the provisions of section 16 of this Act.

Oyster Reserves.

Portions of Crown lands may be declared public oyster reserves.

23. The Governor may, by notification in the *Government Gazette*, declare any Crown land to be a public oyster reserve and to be exempt

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exempt from any power of licensing or leasing conferred by the principal Act or this Act, and, on the recommendation of the chief inspector, may in like manner cancel such notification wholly or in part.

N.S.W., 119, 1902,
s. 46.

24. (1) All oysters on every public oyster reserve, or on Crown lands, or on any area from which the taking of oysters is prohibited under this Act, and all oysters taken therefrom without lawful authority, shall be the property of His Majesty.

Penalty for unlawful dredging or taking of oysters.

Ibid., s. 46.

(2) If any person without lawful authority dredges for or otherwise takes any oysters from any such reserve, Crown lands, or area, or is found dredging for or taking or attempting to take oysters within the limits of any such reserve, Crown lands, or area, he shall be liable to a penalty not exceeding Twenty Pounds; and all oysters found in his possession shall be deemed to be unlawfully taken by him, and shall be seized, and, on his conviction, shall become forfeited to His Majesty.

25. Nothing in the principal Act or this Act shall render liable to a penalty any person who takes oysters from any public oyster reserve or any Crown land for his own personal or household consumption: Provided that if any such oysters are in a spawning condition or have spat attached to them it shall be lawful for any inspector to prohibit the taking of oysters from such reserve or Crown land; and any person who thereafter takes any oysters therefrom shall be liable to a penalty not exceeding Five Pounds.

Persons may take oysters for their own consumption.

Miscellaneous.

26. Any inspector may enter any fish market, premises, place, or dwelling, or go on board any boat or vessel, and seize and take away any oysters which are under the size prescribed by regulations for marketable oysters, or any parcel, box, or bag of oysters in which such unmarketable oysters, or any oysters diseased or unwholesome are found: Provided that the chief inspector may, in his discretion, order the restoration to the owner thereof of any or all of the oysters and things so seized.

Inspector may enter premises and boats and vessels and seize unmarketable oysters.

Ibid., s. 51.

27. Sections 24 and 27 of the principal Act shall hereafter apply only in respect of natural oyster beds and licences therefor and the occupiers thereof.

Amendment of sections 24 and 27 of the principal Act.

28. Section 31 of the principal Act is amended by striking out the words "or artificial" in the second line, and the words "except dredge refuse" in the third line.

Amendment of section 31.

29. Section 35 of the principal Act is amended by inserting after the figures "1885" the words "or any Act amending or substituted for that Act."

Amendment of section 35.

30. The schedule to the principal Act is amended by striking out the form headed "Licence to two to form an Artificial Oyster-bed."

Amendment of the schedule.

31. (1) All

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Rents may be recovered by the chief inspector.

N.S.W., 119, 1902, s. 57.

Cf. S.A., Act 750, 1900, s. 15. *

How moneys provided for purposes of the Acts.

31. (1) All rents and fees due and payable under the principal Act, or this Act, or the regulations, or any licence or lease granted thereunder, may be sued for and recovered by and in the name of the chief inspector on behalf of the Crown.

(2) The proceedings in any such case may be conducted by any inspector.

32. The moneys required for the purposes of the principal Act and this Act shall be supplied by the Treasurer out of moneys provided by Parliament for the purposes of the said Acts.

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

DAY H. BOSANQUET, Governor.