

## No. VI.

OYSTER FISHERIES

An Act for the amendment of the " Fisheries Act 1881 " the promotion of Oyster Culture and the Regulation of Oyster Fisheries. [21st July, 1884.]

Preamble.

WHEREAS in many tidal waters of the Colony the supply of Oysters both on the deep water-beds and on foreshores has by overdredging and other causes been either exhausted or greatly impaired And whereas the encouragement afforded to oyster culture by the existing law has been found to be insufficient and it is necessary to amend the " Fisheries Act 1881 " Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

Short title and interpretation.

1. This Act may be cited as the " Oyster Fisheries Act of 1884 " and for the purposes thereof the expression " Commissioners " means the Commissioners of Fisheries—" Governor " means the Governor with the advice of the Executive Council—" High-water-mark " means the mean line between high-water at spring and at neap tide—" Prescribed " means prescribed by this Act or by regulations made thereunder—" Foreshore " means the portion of Crown Lands situate between the line of high- and of low- water-mark—" Oyster " means every kind of oyster together with the spat brood and ware thereof—" Leased area " means any portion of land leased for oyster culture under this Act or the Acts hereby in part repealed—and " Lawful authority " means an authority the nature and effect whereof must be proved by the person who sets it up by way of exemption.

Repeal of enactments.

2. The enactments specified in the Schedule shall to the extent therein indicated be repealed but no act done offence committed or proceeding commenced before the passing of this Act under any such enactment shall (save as is hereinafter expressly enacted) be affected by the repeal thereof All regulations and proclamations made under the authority of any of such repealed enactments shall be and until rescinded by the Governor as hereinafter provided continue to be of the same force and effect as if this Act had not been passed And all dredging licenses issued before the passing of this Act shall subject to the leasing provisions of this Act have the like force and effect during their currency.

Special provision as to applications for leases made under repealed enactments.

3. Notwithstanding the repeal effected by the last preceding section all applications for leases of Crown Lands for oyster culture made before the passing of this Act and provisionally recommended by the Commissioners to be carried into effect shall be dealt with under the enactments hereby repealed so far as the same are applicable to the issue of such leases but all such leases shall as to payment of rent royalty and all other obligations and conditions be held under and subject to the provisions of this Act and the regulations made thereunder Provided that all such applications shall be subject to the following directions and conditions namely :—

- (1.) In any case where two or more persons have applied for the same area the application to be first dealt with shall be that which was first lodged and if several such applications were lodged

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lodged at the same time the right to priority shall be determined by lot in such manner as the Commissioners shall direct. If after the satisfaction of any application entitled to priority any residuary area remains such area may be allotted to the applicant next in order of time and so on.

- (II.) Any application may be withdrawn by the applicant who made it whereupon any sum deposited as payment of rent in advance shall be returned to the applicant.
- (III.) It shall not be an objection to the issue of a lease of Crown lands to any such applicant that the area applied for contains one or more natural oyster-beds within the meaning of the Acts hereinbefore in part repealed if such bed or beds be not situated on any public oyster reserve notified under the thirty-third section of the "Fisheries Act 1881" or under this Act.
- (IV.) Where the area applied for abutted at the date of application on Crown land above the line of high-water-mark which since such date has been alienated by the Crown the application shall not thereby be prejudiced nor shall the right of the applicant be defeated by the holder of the land so alienated.
- (V.) It shall not be an objection to the issue of a lease to any applicant that such applicant was not at the date of his application either an owner lessee or occupant of the land abutting on or bounded by the area applied for within the meaning of the "Fisheries Act 1881" as amended by the "Fisheries Act Amendment Act 1883" unless the owner or agent lessee or occupant of the land abutting on that described in the application for such lease shall within sixty days after the passing of this Act himself apply for a lease of the same under the fourth section of this Act.
- (VI.) Before any lease is issued to any such applicant or any authority is granted to him whereby he may be put in possession of the ground applied for there shall be lodged with the Commissioners by or on behalf of such applicant a Treasury receipt for the payment in advance of the full amount of the first year's rent pursuant to the respective enactments hereby repealed. And for the purposes of computing such payment the term shall be taken to have commenced on the day of the passing of this Act.

4. Oyster culture leases of Crown Lands in any tidal waters or in any lake or lagoon communicating therewith may be granted by the Governor. Such leases shall be subject to the conditions and provisions following:—

Leases of Crown Lands for oyster-beds or layings.

- (I.) The term of any such lease shall not exceed fifteen years renewable from time to time on the application of the lessee during the twelfth year of the term if the Governor shall be satisfied after report by an Inspector to the Commissioners that the area leased is fairly stocked with oysters and has been properly worked in accordance with the conditions of the lease and the regulations.
- (II.) No leased area measured along the foreshore shall exceed two thousand linear yards unless upon special recommendation of the Commissioners the Governor shall think fit to enlarge such length. But nothing in this section contained shall prevent the Governor from granting leases according to prescribed dimensions and areas provided that no such area shall exceed twenty-five acres or be leased at a less annual rental than two pounds per acre.

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- (III.) The annual rent shall be at the rate of twenty shillings for every linear hundred yards measured along the foreshore in the prescribed manner and in any case where the foreshore on both sides of a tidal water is included in a lease such foreshore shall be measured on both sides for the purpose of ascertaining the rent. Such rent shall be paid at the times and places and to the persons prescribed.
- (IV.) Such leases may be granted on application or be disposed of by auction or tender as the Governor may from time to time direct and shall be held subject to the payment of a royalty to Her Majesty of three shillings per bag containing not more than three bushels of oysters.
- (V.) Occupation under any such lease shall not give any right to the lessee to occupy or use any portion of Crown lands abutting on but not included in his lease except for such purposes and during such times as may be prescribed.
- (VI.) Any leased area may be described in the lease by reference to posts stakes buoys marks or natural features showing the limits of such leased area in a manner sufficient to allow of their identification.
- (VII.) Every such lease shall vest in the lessee his executors administrators and assigns the exclusive right during the currency of the lease of laying and planting oysters on and of dredging and taking oysters from the area leased but subject always to the right of any inspector or authorized officer to enter upon such area for any authorized purpose.
- (VIII.) The Governor may if recommended by the Commissioners accept a surrender after the third year of its currency of any lease granted under this section in any case where it shall appear to the satisfaction of the Commissioners that oyster culture cannot be carried on upon the leased area with any reasonable hope of success or where from any other reason the Commissioners shall report in favour of such surrender.
- (IX.) Every such lease shall be subject to such conditions and provisions as may be prescribed by the regulations or approved by the Governor.

Every leased area shall be subject to all reclamation rights conferred by the ninth section of the "Crown Lands Alienation Act of 1861" or any Act amending the same. Provided that the owner or his agent lessee or occupant of the land abutting on that described in any application for a lease or in any notice offering a lease for disposal by auction or tender shall have priority of claim if he shall within sixty days after the passing of this Act himself apply for a lease hereunder.

Notice before  
granting lease.

5. Before any such lease applied for after the passing of this Act shall be granted the Commissioners shall cause a notice of the application to be inserted in the *Gazette* and in some newspaper circulating in the Police District within which the land applied for is situated. And any person may by memorial to the Commissioners within thirty days after the date of such notice pray that the lease applied for be not granted on grounds to be therein stated.

Penalties in respect  
of certain injuries &c.  
to leases.

6. It shall not be lawful for any person other than the lessee his agents and servants within the limits of any leased area to do any of the following acts viz. :—

- (I.) To take or in any way disturb or interfere with any oysters without the consent of the holder of the lease
- (II.) To deposit any stone ballast rubbish or substance
- (III.) To dredge or drag with any implement unless by direction of the Commissioners or the proper officer of the Department of Harbours and Rivers or the Marine Board and in any such case on payment of compensation for damage done (if any)
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- (iv.) To use any implement of fishing except a line and hook  
 (v.) To place any implement or thing likely to injure oysters except for a lawful purpose of navigation or anchorage

And if any person does any act in contravention of this section he shall be liable for the first offence to a penalty not exceeding five pounds and for the second offence to a penalty not exceeding ten nor less than five pounds and for a third or subsequent offence to a penalty of twenty pounds. And shall be liable to make compensation to the lessee for all damage sustained by such lessee by reason of such person's unlawful act and in default of payment the same may be recovered by the lessee in any Court not incompetent by statute in respect to the amount or nature of the claim and whether such person has been convicted of an offence under this section or not.

7. If it shall appear to the Commissioners that any lessee has not within a period of two years from the date of his lease taken proper measures to carry out the conditions of his lease or that upon any such inspection as is mentioned in the fourth section of this Act the condition of the leased area is such as to disentitle the lessee to a renewal of the lease they may recommend the Governor to revoke the lease. And the Governor shall have power to revoke the same accordingly by notification in the *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. Provided always that before making such recommendation the Commissioners shall cause a notice in writing stating their intention to make such recommendation to be served on the holder of the lease or in case such person cannot be found they shall cause such notice to be inserted at least three times in a newspaper circulating in the Police District nearest to the area leased and also to be published once in the *Gazette*. No such recommendation shall be made until after the expiration of one calendar month from service or the publication of such notice in the *Gazette*.

Commissioners may recommend revocation of lease in certain cases.

8. The Governor by notification in the *Gazette* may declare any portion of Crown Lands whether applied for before the passing of this Act as an oyster lease or not containing deposits of oysters to be a public oyster reserve and to be exempt from the power of leasing conferred by this Act either absolutely or for a limited period and on the recommendation of the Commissioners in like manner may cancel any such notification wholly or in part.

Portions of certain Crown Lands may be exempt from leasing or be declared public oyster reserves.

9. If any person without lawful authority shall dredge for or otherwise take from any public oyster reserve or leased area any oysters or shall be found dredging for or attempting to take oysters within the limits of such reserve or leased area he shall incur a penalty not exceeding twenty pounds and not less than five pounds and all oysters found in his possession shall be deemed to be oysters unlawfully taken by him and shall on his conviction be forfeited to the use of Her Majesty or be returned to the rightful owner as the circumstances of the case shall require.

Penalty for unlawful dredging for oysters.

10. If any person shall dredge for or take oysters from any leased area or from any beds or deposits on Crown Lands at any time between sunset and sunrise except under special permit he shall incur a penalty for every offence not exceeding fifty pounds.

Oysters not to be dredged between sunset and sunrise.

11. All oysters within the limits of any leased area shall be the absolute property of the lessee and shall for all purposes whatsoever be deemed to be in the actual possession of such lessee. And all oysters removed without lawful authority by any person from any such area shall be deemed to be the property of such lessee and he shall be deemed to have the right to the possession thereof for all purposes whatsoever. Oysters on a public oyster reserve or on Crown Land not under lease and oysters taken therefrom without lawful authority shall be deemed to be the property of Her Majesty.

Property in oysters &c.

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Penalty on burning  
live oysters for lime.

12. Every person who shall gather or burn live oysters for the purpose of converting their shells into lime shall whether he be the holder of a lease under this Act or not incur for every such offence a penalty not exceeding fifty pounds.

As to collection of  
Royalties.

13. All Royalties to be collected under the authority of this Act or the Regulations shall be collected and the payment thereof enforced by the Collector of Customs in the same manner as any Customs duty imposed by law.

When natural  
oyster-beds may be  
closed.

14. Whenever the Commissioners report that any bed or deposit of oysters on Crown Lands not under lease 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 the Governor may prohibit by proclamation in the *Gazette* for any term not exceeding three years the taking of oysters from the bed or deposit. And if any person shall without lawful authority at any time during the period mentioned in such proclamation take or attempt to take oysters from any bed or deposit described in such proclamation such person shall incur a penalty not exceeding twenty pounds nor less than five pounds. And all oysters and the bags containing them together with all dredging or other appliances for the taking of oysters found in the possession of any person so offending may be seized and upon conviction of the offender shall be forfeited to Her Majesty. And the Governor may in like manner rescind any such proclamation or any proclamation made under the hereinbefore in part repealed Acts relating to the opening or closing of oyster-beds.

Limitation of  
penalty.

15. Nothing in this Act shall render liable to a penalty any person who takes oysters from the foreshore above low-water mark from Crown Lands not leased under this Act for his own consumption and not for the purpose of sale.

Regulations may be  
made and rescinded.

16. The Governor may from time to time make regulations for the purpose of giving effect to the provisions of this Act in all matters of detail whatsoever. And among such purposes shall be included the following namely:—

- (I.) For taking oysters from Crown Lands not under lease under such limitations as to number of licensed dredgers as the Commissioners shall deem fit and subject to the payment of the prescribed license fees and royalties and inspection and for the seizure and disposal of oysters unlawfully removed from Crown Lands
- (II.) For marking the boundaries of and periodically inspecting public oyster reserves and leased areas. And to give due effect to the intent of this sub-section every inspector and every officer duly authorized by the Commissioners shall have a right of entry on all lands whatever for purposes of survey or of erecting and maintaining beacons or other marks for or in connection with the boundaries of leased areas or Public Oyster Reserves
- (III.) For the allotment or sale of young or foreshore oysters on public oyster reserves to the holders of leased areas
- (IV.) For determining the size of marketable oysters and the penalties for selling or exposing for sale undersized oysters and for disposing of or selling oysters seized or forfeited under this Act
- (V.) For the protection and regulation of Public Oyster Reserves for the limitation and regulation of dredging by divers on such reserves and for the protection and regulation of all boundary beacons buoys or other marks

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- (VI.) For compelling lessees and other persons to return all undersized oysters together with all dead shells cultch and substances dredged up from beds in such a manner as may be most beneficial for the preservation of such beds
- (VII.) For preventing the destruction of oysters by refuse from saw-mills paper-mills gas-works or by any other deleterious matter and for prohibiting such matter from being deposited in tidal waters
- (VIII.) For prescribing the amount of penalties for breaches of any such regulations
- (IX.) For preventing lessees and others from disposing of cultch or any dredged refuse so as to impede the access by water to Crown or private land abutting on leased areas.

Provided that no such penalty shall exceed fifty pounds And all such regulations shall be published in the *Gazette* and when so published shall have the force of law and a copy thereof shall be laid before each House of Parliament within fourteen days after the making thereof if Parliament be then in session and if not then within fourteen days after the commencement of the then next ensuing session The Governor may in like manner rescind any regulation made or purporting to be made under the authority of any of the enactments hereinbefore repealed which he may consider inconsistent with the meaning or intent of this Act.

17. The adjudicating Justices shall have power to award to the informer seizing officer or prosecutor an amount out of every penalty fine or forfeiture not exceeding in the aggregate thereof one moiety and the remainder shall be paid into the Consolidated Revenue Fund and the Commissioners may order that oysters seized and forfeited shall be laid down upon a public oyster reserve.

18. The sections and parts of sections of the "Fisheries Act 1881" hereunder specified shall be applied to this Act with as full effect as if they had been herein specially enacted—namely as to procedure and appeal—sections fifty-eight and sixty—as to the protection of officers and others in the execution of their duty section sixty-one—as to the apprehension and disposal of offenders section sixty-two—as to assistance to officers in the execution of their duty section sixty-four—as to evidence section sixty-six—and as to the search for and seizure of oysters section sixty-seven And wherever in the sections so declared to be applied the words "this Act" occur such words shall be taken to include this present Act and any regulations made under it.

## SCHEDULE.

Year and number of Act.	Extent of Repeal.
44 Vic. No. 26 ...	So much of section 2 as defines the words "Oyster" and "Natural Oyster-bed" So much of section 9 sub-section (iv.) as relates to oyster-dredging The whole of sub-sections (v.) (vi.) (vii.) (viii.) (ix.) (x.) (xi.) and (xiii.) The whole of sections 26 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 and 47 except so far as any of such sections relate to private fisheries or oysters being therein or taken therefrom.
46 Vic. No. 25 ...	The whole of sections 3 and 4.