

Oyster Fisheries

WESTERN AUSTRALIA

ANNO QUADRAGESIMO QUINTO

VICTORIÆ REGINÆ

No. 4

An Act for the protection of Oysters and encouragement of Oyster Fisheries.

[Assented to 16th September, 1881.]

WHEREAS it is necessary to protect the Oysters and Oyster beds in Western Australia and to encourage the formation and improvement of Oyster beds, layings, and fisheries: Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

INTERPRETATION

Interpretation
'Owner of lands'
'Oysters'

1. In the construction of this Act 'owner of lands' shall mean any person entitled to the possession or receipt of the rents and profits of lands for an estate for his own life, or for years determinable on his own life, or for any greater estate, exclusive of any person entitled to such lands by virtue of any lease for lives or years at a rack-rent. 'Oysters' shall include the brood, ware, half-ware, spat, and spawn of oysters.

PRIVATE FISHERIES

Power to Governor to grant licenses

2. It shall be lawful for the Governor to grant a license to the owner of any land bordering on the sea or any estuary, or to any person or persons with the consent of such owner, or, in case of Crown Land, without any such consent, to form or plant any oyster bed or laying, whether above or below low water mark: Provided always that the forming and planting of such oyster beds shall not give any exclusive right or title to the occupancy of the shore, except for the purpose aforesaid.

Form of license
Schedule A

3. Every such license shall be in the form in the Schedule A hereto annexed, or to the like effect, and under the hand of the Governor, and shall, by reference to a map or otherwise as to the Governor seems best, define the position and limits of such oyster bed or laying; and may be made subject to such conditions and limitations, and may specify the seasons during which oysters may be fished, and may be for such period, not exceeding Twenty-one years, as to the Governor seems proper.

Notice of application for license to be given in 'Gazette'

4. Previously to granting any such license as aforesaid, a notice stating the application of such license shall be inserted three times in the 'Gazette.'

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5. When any such license is granted, notice thereof shall be given in like manner as aforesaid in respect to the application for any such license; and a true copy of every such license so granted shall be lodged with the Police or Resident Magistrate of the District within which such license shall operate; and a copy of such license, certified under the hand of such Police or Resident Magistrate, shall be admitted in evidence in all courts of justice in the same manner as if the said copy was the original license of which it purports to be a copy.

Like notice to be given when license granted

Copy of license to be received in evidence

6. At any time within the period of one month after the granting of such license it shall be lawful for any person or persons dissatisfied with the same to apply by way of memorial to the Governor that such license may be vacated; and notice of every such memorial by way of appeal shall be given to the licensee; and the Governor shall adjudicate upon the matter of such memorial, and either confirm or vacate such license as to him appears expedient.

Appeal against the issue of such license may be made to Governor

7. Every such license so granted as aforesaid, if unappealed from as aforesaid, or if confirmed on such appeal, shall be binding and conclusive on all persons whomsoever, including Her Majesty the Queen, and shall operate to vest in the licensee or licensees, and their heirs, executors, administrators, and assigns, such rights and privileges as are thereby given according to the tenor of the same, free from all prior or other rights, titles, estates, or interests whatsoever.

Effect of such license

8. Notwithstanding anything in any license or authority hereafter to be granted by the Governor, the same shall be determinable by a Proclamation by the Governor in the 'Gazette' (which Proclamation he is hereby empowered to make) declaring that the Governor is not satisfied that the licensee is properly cultivating the oyster ground within the limits and according to the conditions of such license: and on any such Proclamation being made, the right by such license conferred shall by virtue of this Act and of the Proclamation as aforesaid be absolutely determined, and all the provisions of this Act shall cease to operate in relation to such license as an oyster fishery or otherwise; and for the purposes of this provision the Governor may from time to time with respect to such license or oyster fishery make such inquiries and examinations by an inspector or otherwise, and require from such licensee such information as the Governor may think necessary or proper; and the licensee shall afford all facilities for such inquiries and examinations, and give such information accordingly.

Governor may revoke license by proclamation in 'Gazette'

And may order examination of fishery by an inspector

9. It shall not be lawful for any person other than the licensee or licensees, or his or their assigns, agents, servants, and workmen within the limits of any oyster bed or laying, described in his or their license in this behalf, knowingly to do any of the following things:—

Offences declared

To use any implement of fishing except a line and hook, or a net adapted solely for catching floating fish, and so used as not to disturb or injure in any manner any oyster bed or oysters or the oyster fishery.

To dredge for any ballast or other substance, except under a lawful authority for improving the navigation.

To deposit stone, ballast, rubbish, or other substance.

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To place any implement, apparatus, or thing prejudicial, or likely to be prejudicial to any oyster bed or oysters, or brood or spawn thereof, or to the oyster fishery, except for a lawful purpose of navigation or anchorage.

To disturb or injure in any manner, except as last aforesaid, any oyster bed or oysters, or brood or spawn thereof, or the oyster fishery.

To interfere with or take away any of the oysters from such bed without the consent of the licensees or owners or occupiers of such bed.

Penalty therefor And if any person does any act in contravention of this section, he shall, on conviction, be liable to the following penalty, namely: to a penalty not exceeding Two pounds for the first offence, and not exceeding Five pounds for the second offence, and not exceeding Ten pounds for the third and every subsequent offence; and also such further sum of money as appears to the Justices to be a reasonable compensation for the damage sustained, not exceeding the sum of Ten pounds, which last-mentioned sum of money shall be paid to the party aggrieved; and if such sums of money, together with the costs (if ordered), are not paid either immediately after the conviction or within such period as the Justices at the time of the conviction appoint, the Justices may commit the offender to any gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, as the Justices think fit, for any term not exceeding two months, unless such sums and costs are sooner paid.

Power to the Governor to revoke licenses in certain cases

10. In any case where any such license is granted by the Governor, if it appears to the Governor that the licensee under such license or his assigns, within the period of three years from the date of such license, has not taken steps proper in his opinion to form the oyster bed or laying in such license mentioned, then and in such case it shall be lawful for the Governor, by an order in writing under his hand, to revoke such license, and thereupon all the rights and privileges created by such license shall cease and determine: Provided always, that previously to the making of such order the Governor shall cause a notice in writing, stating his intention to make such order, to be served upon the person for the time being entitled to such license, or in case such person cannot be found, the Governor shall cause such notice to be inserted twice in the 'Gazette,' and no such order shall be made until after the expiration of one month from the service of such notice or from the date of the last of such notices in the 'Gazette.'

PUBLIC OYSTER FISHERIES

Regulations in respect of public oyster fisheries

11. The Governor in Council may make regulations for any of the following purposes relating to public oyster fisheries:—

- (1) To determine the seasons during which oysters may be fished, taken, and sold.
- (2) To regulate the manner of fishing and the size of oysters that may be taken.
- (3) From time to time to close and open any beds, or supposed beds, for such time as he thinks fit.

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- (4) To restrain persons from fishing and taking oysters who are not licensed, and to prescribe the mode for issuing such licenses, and the fees to be paid for such licenses, not exceeding Ten pounds in any case; and also to make such licenses subject to such limitations and conditions as he thinks fit.

- (5) Generally to regulate the oyster fisheries of this Colony.

And such regulations shall be forthwith published in the 'Gazette,' and shall thereupon have the force of law; and if any person does any act in contravention of any such regulations, he shall, on conviction, be liable to forfeit and pay a penalty not exceeding Ten pounds.

Penalty for
breach thereof

12. Licenses granted under this part of the Act shall be in the form in Schedule B hereto annexed, or to the like effect, and shall in each district be signed by such person as the Governor shall appoint, by the regulations to be made hereunder, to issue licenses for such district.

Form of license
Schedule B

LEGAL PROCEEDINGS AND MISCELLANEOUS PROVISIONS

13. All oysters being within, or which shall have been taken from, the limits of any land comprised in any license, shall be the absolute property of the licensee for all purposes, civil or criminal; and all oysters being within, or which shall have been taken from, the limits of any public fishery, shall be deemed to be the property of the inspector of the district within which such fishery is situate, for the purpose of any penal or criminal proceedings only, which may be instituted under the provisions of this Act, or by way of indictment.

Property in
oysters

14. When two or more oyster beds or fisheries comprised within separate licenses are contiguous to each other, or when the same are contiguous to any public fishery or fisheries, and any proceeding by indictment or otherwise is taken against any person for stealing oysters from the same, it shall be sufficient, in alleging and proving the property and lawful possession of the oysters, and the place from which they were stolen, to allege and prove that they were the property of and in the lawful possession of one or other of the licensees as aforesaid, or of such inspector, as the case may be, and were stolen from one or other of such contiguous beds or fisheries.

Oysters stolen
from one or
other of con-
tiguous beds

15. All penalties for offences against this Act, or against any regulation made and issued thereunder, may be recovered by summary proceedings before any two or more Justices of the Peace, according to an Act passed in the fourteenth year of Her Majesty, No. 5, intituled 'An Ordinance to facilitate the performance of the duties of Justices of the Peace out of Sessions within the Colony of Western Australia, with respect to summary convictions and orders,' and according to any other Act or Acts relating to summary proceedings before Justices of the Peace which may be in force for the time being.

Summary juris-
diction

16. If any party shall feel aggrieved by any determination or adjudication of any Justice or Justices with respect to any penalty under the provisions of this Act, or under any regulation made thereunder, such party may appeal from such determination or adjudication

Appeal

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to the Supreme Court. Provided always that notice of such appeal shall be given to the convicting Justice or Justices within three weeks, and that such appeal shall be entered for hearing within two months after such determination or adjudication.

Governor may appoint officers 17. The Governor may from time to time appoint and remove inspectors and such other officers as he may deem necessary for the purpose of carrying out the provisions of this Act.

Shortening Ordinance 18. The sections in the schedule of 'The Shortening Ordinance, 1853,' lettered therein respectively A, E, F, G, and H shall be incorporated with and taken to form part of this Act to all intents and purposes, and in as full and ample a manner as if the said sections had been introduced and fully set forth in this Act.

Commencement of Act 19. This Act shall come into force on such day as the Governor by Proclamation in the 'Government Gazette' shall notify.

Repeal 20. From and after the coming into force of this Act, an Act intituled 'An Ordinance for protecting the Oyster Fisheries on the Coasts of this Colony,' passed in the twenty-eighth year of Her Majesty, No. 4, and 'The Oyster Fishery Amendment Act, 1871,' shall be repealed, except so far as regards any penalties which may have been incurred thereunder before the coming into operation of this Act.

Title 21. This Act may be cited for all purposes as 'The Oyster Fisheries Act, 1881.'

WILLIAM C. F. ROBINSON,
GOVERNOR.

SCHEDULES

SCHEDULE A

Section 3 Know all men by these presents that A.B. of his executors, administrators, and assigns, is, and are hereby licensed, by himself and themselves, and his and their servants, agents, and licensees, to form and plant an oyster bed or fishery within the limits described in the map or plan attached hereto, and to dredge for and take oysters from the same for the term of years from the date hereof, he and they paying to the Police (or Resident) Magistrate of the district the yearly sum of £ on the day of in every year without deduction.

Provided always, that if the said annual sum or any part thereof shall at any time be in arrear for twenty-one days, or if the said licensee, his executors, administrators, or assigns shall, in the management or use of the said oyster bed or fishery, commit any breach of the conditions hereinunder specified, this license may be determinable in accordance with the provisions of 'The Oyster Fisheries Act, 1881.'

[Conditions under which the oyster bed or fishery above mentioned shall be managed or used.]

Issued under 'The Oyster Fisheries Act, 1881.'

(Signed)

Dated the day of 188 .

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SCHEDULE B

Whereas (*insert the name, place of abode, and calling of licensee*) has applied Section 12
to me to grant him a license to fish for oysters, and has paid into my hands the
sum of _____ for the same: Now therefore I do hereby license the
said _____ to fish for oysters in the public oyster beds situate
within (*here state the limits*) during this present year, at all lawful times, and for
all lawful purposes, and subject to the Regulations made under 'The Oyster
Fisheries Act, 1881.'

Dated at _____ the _____ day of _____ 188 .
(Signed)
