



ANNO OCTAVO

GEORGII V REGIS.

A.D. 1917.

No. 1293.

An Act to consolidate and amend certain Acts for the Preservation and Protection of Fish, and certain Acts to promote the Breeding of Oysters and to regulate Oyster Fisheries.

[Assented to, November 15th, 1917.]

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

PART I.

PRELIMINARY.

1. This Act may be cited as the "Fisheries Act, 1917."
2. The provisions of this Act are arranged as follows:—

PART I.—Preliminary.

PART II.—Administration—

DIVISION I.—Powers of the Governor:

DIVISION II.—Powers of the Minister:

DIVISION III.—Inspectors and their Duties.

PART III.—Fisheries and Oyster Fisheries—

DIVISION I.—General Licences to take Fish and Oysters:

DIVISION II.—Registration of Boats:

DIVISION III.—Natural Oyster Beds:

DIVISION IV.—Artificial Oyster Beds:

DIVISION V.—Miscellaneous Provisions with respect to Oyster Fishing.

PART I.

Short title.

Arrangement of Act.

Fisheries Act.—1917.

PART I.

PART IV.—Miscellaneous.

PART V.—Offences and Penalties.

PART VI.—Regulations.

PART VII.—Evidence and Legal Procedure.

Repeal.

3. The Acts specified in the Schedule hereto are repealed.

Interpretation of terms.

Cf. 364, 1904, s. 3.

4. In this Act, unless some other meaning is clearly intended—

“Boat” includes every vessel, barge, or punt of any description:

“Close season” means the period of time during which waters are closed against the use of any device, or the taking of fish or oysters, or any species of fish or oysters:

“Crown lands” means Crown lands as defined in any Act or Acts for the time being in force relating to Crown lands, and includes any foreshore, as well as any land under the sea within the territorial limits of the State, or under any tidal or inland water, or under any river, lake, lagoon, or other water in the State, the property in which land is vested in the Crown:

“Device” means any implement, gear, contrivance, or engine used to take any fish or oysters:

“Fish” means every species of fish, shellfish, crabs, prawns, shrimps, mammals, crustacea, molluscs and sponges, or other marine products, including their spat, spawn, fry, and young; the term does not include oysters:

“Hand-line” means any line intended or used for catching fish, to which not more than three fishing hooks are attached:

“Hatchery” means any water used for the spawning, propagation, or culture of fish or oysters:

“Hauling” includes casting, shooting, fixing, setting, placing, or staking:

“Inspector” means Inspector of Fisheries, and includes Chief Inspector of Fisheries and any Inspector of Fisheries *ex officio*:

“Licence” means licence issued pursuant to this Act:

“Oysters” means oysters and all brood, ware, half-ware, spat, and spawn of oysters:

“Oyster culture” means the cultivation of oysters, and the taking of oysters for sale:

“Prescribed” means prescribed by this Act:

“Rod

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PART I.

“Rod and line” means a single rod and line to which not more than three fishing hooks are attached :

“Stocked waters” means any waters which have been artificially stocked with fish :

“Take”, with its derivatives, includes fish for, catch, kill, destroy, dredge for, raise, tong, collect, gather, obtain by any means, or carry away :

The verb to sell includes—

- I. to sell, barter, or exchange ;
- II. to agree to sell, barter, or exchange ;
- III. to offer, expose, store, have in possession, send, consign, or deliver for or on sale ;
- IV. to receive for sale ;
- V. to cause or suffer to be sold, bartered, or exchanged, or to be agreed to be sold, bartered, or exchanged ;
- VI. to cause or suffer to be offered, exposed, stored, had in possession, sent, consigned, or delivered for or on sale ;
- VII. to cause or suffer to be received for sale ; and
- VIII. to attempt to do any of such acts or things ;

and the word “sale” shall be construed accordingly.

The verb to buy includes to buy, to receive or accept under an agreement to sell, and to offer to receive or accept or cause or suffer to be received or accepted under an agreement to sell.

“This Act” includes any proclamations and regulations made under the provisions of this Act :

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

“Use” includes assist in the use of :

“Waters” includes the sea, and all bays, gulfs, and inlets of the sea, and every lake and lagoon, river, creek, and stream, and any waters on or over private land :

“Weight” includes length and size.

PART II.

PART II.

ADMINISTRATION.

DIVISION I.—POWERS OF THE GOVERNOR.

DIVISION I.

5. The Governor may, subject to the provisions and for the purposes of this Act, appoint a Chief Inspector of Fisheries and such other Inspectors and officers as may be necessary.

Governor may
appoint officers.

Ibid., s. 4 (part).

6. (1) The

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DIVISION I.

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General powers of
the Governor.

Cf. *ibid.*, s. 4 (part).

Hatchery.

Limits of water.

Close season.

Unlawful devices.

Lawful devices.

May prescribe
minimum weights
of fish.

Exempt jetties, &c.

6. (1) The Governor may, by proclamation—

- i. declare any waters to be reserved for a hatchery:
- ii. declare the limits of any waters within which any specified devices are not to be used, or within which it shall not be lawful to take fish or oysters:
- iii. declare close seasons for the protection of fish or oysters, or any species of fish or oysters:
- iv. declare any specified device, or any specified device which is used in any other than the prescribed manner, to be illegal and liable to forfeiture:
- v. prescribe what shall be the lawful length and depth of any device and the size of mesh which may be lawfully used for the whole or any part of any device, and also the lengths of hauling lines which may be attached thereto, and the number of devices that may be attached to each other:
- vi. prescribe the minimum weight at which any prescribed species of fish or oysters may be taken or had in possession or sold, and from time to time vary any such weights, or add to the list of the species of fish or oysters already prescribed any additional species of fish or oysters, and the minimum weight at which such additional species may be taken or had in possession or sold:
- vii. exempt any jetty, pier, or wharf from the provisions of paragraph vi. of subdivision (a) of section 53.

(2) Every proclamation made under this section shall have effect according to the tenor thereof.

DIVISION II.

DIVISION II.—POWERS OF THE MINISTER.

Special powers of the
Minister.

Cf. *ibid.*, s. 5.

Disposal of forfeited
device.

Enter and seize
forfeited device or
fish.

Permits.

7. The Minister may—

- (a) appoint persons (in addition to the persons appointed by this Act) to issue licences under this Act to take fish and oysters:
- (b) direct the manner in which any forfeited boat or device, or fish or oysters, may be disposed of:
- (c) empower any Inspector to enter any place at all times to search for and take any forfeited boat or device, or fish or oysters, and to search for and seize any device which, in his opinion, is used, or intended to be used, contrary to the provisions of this Act:
- (d) issue permits for taking fish or oysters from closed waters for scientific purposes, or for stocking other waters:

(e) direct

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DIVISION II.

- (e) direct the carrying out of experiments in methods of culture, propagation, and catching of fish or oysters, and take steps for the discovery of spawning places, trawling grounds, and oyster beds, and grant permits for any of such purposes: Minister may institute experiments.
- (f) cancel any licence or permit under this Act: Cancellation of licence or permit.
- (g) establish any hatchery on or over any waters: Provided that if such waters are on or over any private land, a hatchery may be established only with the consent of the owner or lessee of such land, on such terms and conditions as may be agreed: Establish hatcheries.
- The establishment of a hatchery by the Minister shall have the effect of vesting in the Minister the exclusive right during the continuance thereof to stock such hatchery with fish or oysters, and to take therefrom any fish or oysters, and to sell or otherwise dispose of fish or oysters from such hatchery: Minister's rights with respect to hatcheries.
- (h) do all things which he is by this Act empowered or required to do, or which may be necessary or convenient for carrying into effect the objects of this Act. General powers.

DIVISION III.—INSPECTORS AND THEIR DUTIES.

DIVISION III.

8. All members of the Police Force shall be *ex officio* Inspectors. Ex officio Inspectors.
Ibid., s. 6.
9. An Inspector may at any time— General powers
of Inspectors.
Cf. ibid., s. 8.
- (a) destroy any fish or oysters which are unfit for human consumption:
- (b) enter upon any waters, and pass through or along the banks or borders of the same, and examine all tributaries, sluices, and watercourses communicating therewith:
- (c) board any fishing-boat or oyster fishing-boat:
- (d) examine any device:
- (e) demand the production of any licence or permit:
- (f) seize any device which, in his opinion, is used, or intended to be used, contrary to the provisions of this Act:
- (g) seize any fish or oysters which he has reasonable grounds for suspecting to have been illegally taken:
- (h) seize any boat containing any illegal device, or any boat which is being used for the purpose of taking fish or oysters contrary to this Act: and
- (i) do all other acts and things which he is by this Act required or authorised to do. 10. Every

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DIVISION III.

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Powers of Inspectors
to enter and search
and seize.

Cf. 864, 1904, s. 7.

10. Every Inspector, in addition and without prejudice to any other power vested in him, may go on board any boat, or enter any fish market or other place where fish or oysters are, or are suspected by him to be, sold, or packed or prepared for sending to any market or shop or to any agent, fish salesman, or auctioneer, or to any person or place for sale, and therein search for and examine any device, or fish or oysters, and may seize and take away any fish or oysters which are under the prescribed size, or any parcel, box, or bag of fish or oysters in which such undersized fish or oysters, or any fish or 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 fish or oysters and things so seized.

Inspectors to
apprehend certain
offenders.

977, 1909, s. 5 (part).

11. Inspectors are hereby required to apprehend any person offending against any of the provisions of this Act who, on being thereunto required by an Inspector, refuses to give his name or address, or gives a false name or a false address.

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

366, 1885, s. 30.

12. No person shall, without the consent of the Minister, be competent to be, or to continue, an Inspector under this Act who has, or after his appointment shall have, any interest, direct or indirect, in the sale of fish or oysters, or in any fishery or oyster fishery, or in any boat used in fishing or oyster fishing, or who acts as agent for any person so interested.

PART III.

PART III.

FISHERIES AND OYSTER FISHERIES.

DIVISION I.

DIVISION I.—GENERAL LICENCES TO TAKE FISH AND OYSTERS.

Fishermen's licences.
Cf. *ibid.*, s. 10.
Cf. 864, 1904, 12.

13. (1) Licences to take fish and oysters shall be issued in the prescribed form and upon payment of the prescribed fee.

(2) Such licences shall be either half-yearly or yearly licences, and may be issued at any time: Provided that every half-yearly licence shall expire on the last day of June or the last day of December (whichever is the earlier day), and every yearly licence shall expire on the last day of December, next after the same is issued.

Licence sufficient for
licensee and one
member of family.

Ibid., s. 15.

14. (1) One such licence as referred to in section 13 shall be sufficient for the person named therein as licensee, and also for one member of his family under the age of twenty-one years whilst such member is working with the same plant as such licensee.

(2) For the purposes of this section the following persons and no others shall be deemed to be members of the licensee's family, namely, his sons, daughters, stepsons, and step-daughters.

15. Every

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15. Every member of the Police Force who is for the time being in charge of any waterside police station is hereby appointed and authorised, for the period whilst he is in charge of such station, to issue licences under section 13, and to receive the prescribed fees therefor.

Certain police officers
ex officio issuers of
licences.

New.

DIVISION II.—REGISTRATION OF BOATS.

DIVISION II.

16. (1) No person shall take any fish or oysters for sale in any boat, or use any boat in the taking of fish or oysters for sale, or otherwise for any purpose of the trade or calling of a fisherman, or manage or take part in the management of a boat when the same is so used, unless such boat is—

Registration and
marking of boats.

Cf. 804, 1904, s. 16;
1128, 1913, s. 7.

- i. registered as herein provided; and
- ii. marked as prescribed by regulation.

(2) Any person desiring to obtain the registration of a boat for the purposes of this section, and to have a mark allotted to him for such purposes, shall make application therefor to the Chief Inspector in the prescribed form, whereupon the Chief Inspector shall issue to the applicant a certificate of registration in the prescribed form, and shall allot to him a distinguishing number or mark, which shall be painted or otherwise marked on such boat in the prescribed manner and position.

(3) Registration of a boat may be effected at any time, but shall expire upon the person to whom the certificate of registration is issued ceasing to take fish or oysters as aforesaid in such boat, or to use such boat in the taking of fish or oysters as aforesaid, or to manage or take part in the management of such boat when the same is so used.

DIVISION III.—NATURAL OYSTER BEDS.

DIVISION III.

17. Any person who discovers on or near the coast of South Australia a natural oyster-bed may apply to the Minister for the issue to him of an exclusive licence for the use of such oyster-bed, or any part thereof, and the Minister may, without any such consent as is required by section 67 of the Harbors Act, 1913, issue to the applicant an exclusive licence to use such oyster-bed, or any specified part thereof, for such period, upon payment of such fees, and upon such terms, conditions, and restrictions, as the Minister thinks fit.

Discoverer of oyster
bed may apply for
exclusive licence.

366, 1885, s. 14.

No. 1149 of 1913.

18. The licensee, his executors, administrators, and assigns shall, subject to the provisions of this Act, during the whole of the period in the said licence mentioned have the sole and exclusive right by himself or themselves, or his or their servants, agents, or licensees, to fish for oysters in the oyster-bed or part for which the licence is issued.

Licensee to have
exclusive right
to fish for
oysters.

Ibid., s. 20.

19. If at any time during the currency of such licence it is proved to the satisfaction of the Minister that the holder of such licence, or any person by his direction or permission, is managing

Licence may be
forfeited for
unhusbandlike
management.

Ibid., s. 21.

OR

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or using the oyster-bed or part with respect to which the licence is issued in such a manner that the same is likely to be exhausted or greatly reduced in value, the Minister may, by notice published in the *Government Gazette*, revoke such licence, which shall thereupon cease and determine, and the licensee shall not be entitled to any compensation for such revocation.

Boundaries of oyster-beds to be indicated by marks on shore or afloat.
Ibid., s. 27.

20. The holder of an exclusive licence for the use of any natural oyster-bed, or any part thereof, shall set up on some convenient part of the adjacent shore, not being private property, distinguishing posts or buoys or other floating marks, to be approved by an Inspector, for indicating the limits of such oyster-bed or part.

Penalty for depositing injurious matter on beds.
Ibid., s. 31.

21. Every person who knowingly deposits on any natural oyster-bed any ballast, sand, mud, refuse, or injurious matter of any kind whatsoever, shall be liable to 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.

Minister may close natural oyster-beds.
Ibid., s. 28.

22. (1) The Minister may from time to time, by one 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 land 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.

(2) Every person fishing for oysters on any such closed oyster-bed shall be liable to a penalty not exceeding Twenty Pounds, or to imprisonment for any period not exceeding three months.

DIVISION IV.

DIVISION IV.—ARTIFICIAL OYSTER BEDS.

Minister may lease Crown lands for oyster culture.
1128, 1913, s. 9.

23. (1) The Minister may, on the recommendation of the Chief Inspector, lease any Crown lands for oyster culture for any term not exceeding fifteen years, at such rental, and subject to such conditions and restrictions, as the Chief Inspector recommends.

(2) On the application of the lessee made at least three months before the date of expiry of the lease, the Minister may, on the like recommendation, renew the term for a like or a shorter period at the same rental, and with such limitations in other respects as the Chief Inspector recommends.

Lease for oyster culture.
Ibid., s. 10.

24. The Minister may, on the recommendation of the Chief Inspector, offer, by auction or tender, for any term not exceeding fifteen years, the lease of any Crown lands for oyster culture, at such rental, and subject to such conditions and restrictions, as the Chief Inspector recommends; and, on the application of the lessee made at least three months before the date of expiry of the lease, the Minister 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 the Chief Inspector recommends.

25. The

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25. The lessee, or the purchaser of the lease, of any Crown lands 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 taking oysters in or from such lands shall be liable to a penalty not exceeding Fifty 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., s. 11.

26. Every lease issued under this Act shall vest in the lessee, his executors, administrators, and permitted 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 provisions of this Act and to the right of any Inspector or authorised officer to enter upon such area.

Property and rights conferred by lease.
Ibid., s. 12.

27. 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.

Abutting land not included in lease.
Ibid., s. 13.

28. 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 aforesaid.

Leased area, how described.
Ibid., s. 14.

29. The Minister 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 recommends such surrender.

Surrender of lease.
Ibid., s. 15.

30. 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.

Conditions of leases.
Ibid., s. 16.

31. The Minister may, on the recommendation of the Chief Inspector, resume wholly or in any 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

Resumption of leases.
Ibid., s. 17.

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No. 1199 of 1915.

determined in manner provided by subsection (2) of section 56 of the Crown Lands Act, 1915, with reference to leases granted after the twenty-third day of December, eighteen hundred and ninety-three: 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. 18.

32. 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.

Cancellation of lease in certain cases.

Ibid., s. 19.

33. (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 Minister to cancel his lease.

(2) The Minister 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.

Cancellation for mismanagement.

Ibid., s. 20.

34. (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 33, 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.

(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 Minister may thereupon, by notification published in the *Government Gazette*,
cancel

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cancel such lease. Upon such publication all rights and privileges granted by such lease, and the unexpired term thereof, shall cease and determine.

35. (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:—

Protection of leased areas.
Ibid., s. 22.

- (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 remove from any leased area any mangroves or other timber, shells, tiles, slates, shingles or other substances suitable as spat-catchers, or to dredge or drag upon any leased area with any implement unless by direction or authority of the Chief Inspector; or
- (d) to place upon any leased area any implement or thing likely to injure oysters, except for a lawful purpose of navigation or anchorage.

(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.

Penalties.

(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 30.

DIVISION V.—MISCELLANEOUS PROVISIONS WITH RESPECT TO
OYSTER FISHING.

DIVISION V.

36. The Minister may, by notification in the *Government Gazette*, declare any Crown lands to be a public oyster reserve and to be exempt from any power of licensing or leasing conferred by this Act, and, on the recommendation of the Chief Inspector, may in like manner cancel such notification wholly or in part.

Portions of Crown lands may be declared public oyster reserves.
Ibid., s. 23.

37. (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 Minister to prohibit the taking of oysters from such area.

When oyster-bearing areas may be closed.
Ibid., s. 21.

(2) Thereupon

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

(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 oysters from such area, he shall be liable to a penalty not exceeding Fifty 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 Minister may release the lessee of such area from payment of rent for the period of the prohibition.

Penalties for
unlawful dredging
or taking
of oysters.

Ibid., s. 24.

38. (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.

(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 oysters within the limits of any such reserve, Crown lands, or area, he shall be liable to a penalty not exceeding Fifty Pounds; and all oysters found in his possession shall be deemed to be taken unlawfully by him, and shall be seized, and, on his conviction, shall become forfeited to His Majesty.

PART IV.

PART IV.

MISCELLANEOUS.

Selling, etc., under-
weight fish.

864, 1904, s. 16.

Minister may
remove natural
obstructions.

Cf. ibid., s. 17.

39. No person shall take or have in his possession or sell any fish or oysters of less than the prescribed weight.

40. (1) If in any waters any natural or artificial obstruction prevents the free passage of any fish, the Minister or any person authorised by him may remove the obstruction and secure a free passage to the fish.

(2) Anything done by the Minister or any such authorised person as aforesaid in the exercise of the power hereby conferred, or which is incidental thereto, shall not render the Minister or such person liable to any action or other proceeding at the suit of any person.

41. (1) All

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41. (1) All fish with respect to which any offence against this Act has been committed, and all boats and devices used or intended to be used contrary to this Act, shall be forfeited to His Majesty, and may be disposed of by sale or otherwise as the Minister directs.

Fish illegally taken and device taken.

Cf. *ibid.*, s. 18.

(2) The proceeds of any sale under this section shall be paid to the Treasurer for the purposes of the General Revenue of the State.

42. If more than one-tenth of the fish contained in any receptacle are under weight, the receptacle may be seized and, together with the whole of the fish therein, forfeited.

Fish receptacles may be forfeited.

Ibid., s. 19.

43. Every Inspector and officer under this Act, without any authority other than this Act, may seize any boat or device, or any fish or oysters, which he may have reason to believe is forfeited or liable to forfeiture.

Devices may be seized.

Cf. *ibid.*, s. 20.

44. No compensation shall be payable to any person on account of fish or oysters destroyed as unfit for human consumption.

No compensation for destroyed fish or oysters.

Cf. *ibid.*, s. 9.

45. If any person who has unintentionally taken any fish or oysters contrary to the provisions of this Act immediately returns the same to the water with as little injury as possible to the fish or oysters so taken, such person shall not be liable to any penalty under this Act.

Fish or oysters taken unintentionally to be returned to water.

Cf. *ibid.*, s. 23.

46. No person shall be entitled by virtue of any lease or licence or permit under this Act—

Lease or licence not to warrant trespass.

Cf. 366, 1885, s. 25.

(a) to enter upon any private land; or

(b) to take any fish or oysters in or from any waters on or over such land

without the consent of the owner or occupier of such land.

47. (1) Notwithstanding anything contained in section 39, or paragraph i. of subdivision (a) of section 53 —

Exemption from operation of Act.

Cf. 864, 1904, s. 22.

(a) any person may, without any licence, take fish (whether under the prescribed weight or not) with a rod and line or hand-line or a hand crab-net, except from stocked waters wherein fishing is prohibited by proclamation; and

(b) any person may, without any licence, take oysters from any natural oyster-bed which is not subject to any exclusive licence under this Act:

Provided that any fish or oysters so taken are not sold.

(2) Any person taking fish or oysters under this section shall in so doing observe all the provisions of this Act in the same manner as if he were taking such fish or oysters by virtue of a licence issued to him under this Act.

48. Nothing

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Special exemptions.

Cf. *ibid.***48.** Nothing in this Act shall apply to—

- (a) any full-blooded aboriginal inhabitant of this State taking fish for his household consumption: provided that no explosive or noxious matter is used in the taking of such fish; nor
- (b) any person taking fish or oysters with a lawful device and not during close season in waters on or over land whereof he is the owner or occupier, or with the consent or authority of such owner or occupier; nor
- (c) any person with the written consent of the Minister taking fish *bona fide* for the purpose of removing them to stock other waters, or for such other purpose as is approved by the Minister.

Taking fish for bait.

Cf. *ibid.***49.** Any person licensed under this Act to take fish may, subject to the provisions of this Act, take any fish for bait with a lawful device, whether such fish are under the prescribed weight or not: Provided that—

- i. such fish are not taken from closed waters, and
- ii. the waters wherein such fish are taken are not closed against the device used in such taking.

Rents, fees, etc., may be recovered by the Chief Inspector.

864, 1904, s. 31.

50. (1) All rents, fees, and other moneys due and payable under this Act, or any lease or licence 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.

Fees, &c., to be paid to Treasurer.

New.

51. All rents, fees, and other moneys due and payable under this Act shall, when received, be paid by the person receiving the same to the Treasurer for the purposes of the General Revenue of the State.

How moneys provided for purposes of Act.

864, 1904, s. 32.

52. The moneys required for the purposes of this Act shall be supplied by the Treasurer out of moneys provided by Parliament for such purposes.

PART V.

PART V.

OFFENCES AND PENALTIES.

Offences.

Cf. *ibid.*, s. 24.**53.** Every person shall be guilty of an offence against this Act who—

Unlawfully taking fish or oysters.

(a) takes any fish or oysters—

- i. without a licence in that behalf:
- ii. during any close season without a permit:
- iii. from any closed waters:
- iv. with

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- iv. with any illegal device:
- v. under the prescribed weight, without forthwith returning the same to the water:
- vi. within one hundred yards of any jetty, pier, or wharf, except with a rod and line, hand-line, or hand crab-net :
- (b) uses any device in any other than the prescribed manner: Using device unlawfully.
- (c) refuses, upon demand by an Inspector or other officer appointed by or under this Act, to give his name or address, or gives a false name or a false address: Refusing name.
- (d) refuses, upon demand as aforesaid, to produce his licence: Licence.
- (e) refuses to deliver up to an Inspector any forfeited boat or device, or any forfeited fish or oysters: Forfeited fish or oysters.
- (f) stakes, fixes, or otherwise sets across the mouth of any waters, or across or substantially across any channel, creek, stream, or river, any device: Obstruct waters.
- (g) uses any device which is Unlawful device.
- i. larger than the prescribed dimensions: or
- ii. of smaller mesh than is prescribed: or
- iii. set in such a manner as to delay, injure, or strand any fish, or to impede the free passage of fish:
- (h) buys or sells any roe not being roe taken for artificial propagation or other scientific purpose, except roe in the fish: Roe.
- (i) drags or draws ashore any device in such a manner, or to such a distance from the water, as to prevent under-weight fish from escaping into the water: Preventing escape of under-weight fish.
- (j) neglects to return to the water any fish or oysters under the prescribed weight or taken from closed waters: Neglect to release under-weight fish.
- (k) sells or has in his possession any fish or oysters under the prescribed weight or taken from closed waters: Selling under-weight fish, &c.
- (l) sells any fish unfit for human consumption: Selling unwholesome fish.
- (m) sells any fish known as "crayfish" of a size less than prescribed, or any female of such fish, of whatsoever size, having eggs or spawn attached: Crayfish.
- (n) wilfully or maliciously drives or places any thing whatsoever in any place or position whereby any device may be injured or damaged: Damaging lawful devices by placing obstacles.
- (o) places a boat in such a position as to obstruct any fisherman from hauling a lawful device to shore, on any recognised hauling ground, or, when requested, neglects to remove such obstruction: Obstructing fishermen.
- (p) carries

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Carrying explosives,
etc., in boat.

(p) carries any explosive substance, or any poisonous or noxious thing, in any registered fishing boat without a permit:

Explosives, &c., not
to be used.

- (q) I. by the explosion of any substance, or by means of any poisonous or noxious thing, destroys or takes fish; or
II. explodes any substance in, under, or immediately above any waters; or
III. places or causes to flow into any waters any poisonous or noxious thing; or
IV. assists the person committing any of such offences:

Provided that the Minister may consent, in writing, to any person exploding torpedoes or dynamite in any waters:

Not to lend or
improperly use
licence.

(r) lets out, lends, or hires any licence, or uses or has in his control or possession any licence not issued to him, or represents himself to be the person mentioned in any such licence:

Wrongful possession
of fish or oysters.

(s) following the trade or calling of a fisherman, whether as his only trade or calling or not, and not

- I. having a licence to take fish, has any fish in his boat or in his possession or uses any boat in taking fish, or
- II. being authorised by lease or licence under this Act to take oysters, has any oysters in his boat or in his possession, or uses any boat in taking oysters:

Removing eggs or
spawn of crayfish.

(t) detaches or otherwise removes the eggs or spawn, or the hair or fibre to which the eggs or spawn naturally attach, from any fish known as "crayfish", or knowingly has in his possession or control any crayfish from which the eggs or spawn or such hair or fibre has been detached or otherwise removed:

Using unregistered
boat.

(u) whether or not authorised by lease or licence under this Act to take fish or oysters, takes any fish or oysters for sale in an unregistered boat, or uses an unregistered boat in the taking of fish or oysters for sale or otherwise for any purpose of the trade or calling of a fisherman, or manages or takes part in the management of an unregistered boat when the same is so used.

Penalty for
interfering
with beds.
366, 1885, s. 32.

54. Every person who takes, or in any way disturbs or interferes with, oysters in any oyster-bed held under lease or licence under this Act without the consent of the lessee or licensee thereof, or in any oyster-bed upon private land without the consent of the owner or occupier thereof, shall be liable to a penalty not exceeding 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.

55. Any

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PART V.

55. Any person who—

- (a) obstructs or hinders any Inspector, or
- (b) in any way interferes with or prevents the exercise of any of the powers conferred or the discharge of any of the duties imposed by this Act upon Inspectors, or
- (c) disobeys any lawful order or direction of an Inspector,

shall be guilty of an offence against this Act.

Obstructing
Inspectors.

Cf. 977, 1909, s. 8.

56. (1) Any contravention of or failure to observe any provision of this Act, whether by act or omission, shall be an offence against this Act.

Offences.

(2) Any person guilty of an offence against this Act for which no specific punishment is prescribed shall be liable to a penalty for a first offence of not more than Twenty Pounds, and for any subsequent offence of not more than Fifty Pounds.

Penalties.

57. If any person holding any lease or licence or permit under this Act is convicted of a second or subsequent offence against the provisions of this Act, he shall, if the Special Magistrate or Justices adjudicating so determine, in addition to suffering the penalty for such second or subsequent offence, forfeit such lease or licence or permit, and be for three years disqualified from obtaining any other lease or licence or permit under this Act.

On second conviction
licence may be
forfeited.

Cf. 366, 1885, s. 33.

58. Section 148 of the Criminal Law Consolidation Act, 1876, is amended by substituting for the passage "named in any licence as is mentioned in 'The Oyster Fisheries Act, 1873,' of this Province" the passage "described in any lease or exclusive licence under the Fisheries Act, 1917."

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

Cf. *ibid.*, s. 35.

PART VI.

REGULATIONS.

PART VI.

59. In addition to any power by any other section of this Act conferred on the Governor to make regulations as to any matter (which power shall in every case be implied for the purposes of any section in which the word "prescribed" is used), the Governor may make any regulations which may be necessary or convenient for carrying out any of the provisions of this Act, or for better effecting the objects of this Act, and in particular (without limiting the effect of this section) for all or any of the following purposes, namely:—

Governor may make
regulations.

Cf. 864, 1904, s. 36.

- (a) regulating the powers and duties of all officers appointed by or under this Act:
- (b) fixing the fees to be paid for licences by persons engaged in fishing or oyster fishing:
- (c) providing

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- (c) providing for the more effectual protection and improvement of fish or oysters, and the management of any waters in which fishing or oyster fishing may be carried on, including the complete or partial closing of any waters against fishing or oyster fishing, and limiting the use which may be made of any waters:
- (d) imposing any penalty not exceeding Twenty Pounds for any breach of the same or any other regulation.

PART VII.

PART VII.

EVIDENCE AND LEGAL PROCEDURE.

60. In any proceedings for an offence against this Act—

Onus of proof.

Cf. 977, 1909, s. 17.

- (a) the possession or occupancy by any person of a boat containing any fish or oysters or any fishing net, device, or other thing ordinarily used in taking fish or oysters, shall be *prima facie* evidence that such person uses such boat in taking fish or oysters for sale:
- (b) the possession by any person on any particular day of any illegal device shall, until the contrary is proved to the satisfaction of the Special Magistrate or Justices adjudicating, be sufficient evidence that such person used such device on such day in taking fish or oysters:
- (c) the failure by any person to produce his licence when required by an Inspector or other officer appointed by or under this Act so to do shall be *prima facie* evidence that such person is unlicensed:
- (d) the onus of proving that an accused person, who is alleged to follow or to have followed the trade or calling of a fisherman, did not at the time of the alleged offence follow that trade or calling, shall be on such accused person:
- (e) any fish or oysters proved to have been taken shall, until the contrary is proved to the satisfaction of the Special Magistrate or Justices adjudicating, be deemed to have been taken for sale:
- (f) the fact that on any particular day there were in any boat any fish or oysters shall be *prima facie* evidence that the person who on such day was in possession or occupancy of such boat took such fish or oysters on such day:
- (g) the fact that any person charged with unlawfully taking oysters on any particular day was on such day on board any boat engaged in taking oysters shall be conclusive evidence that such person was so taking oysters:

New.

366, 1885, s. 13.

(h) if

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(h) if any person is found in possession of, or has in his boat, any explosive substance immediately after an explosion in the vicinity of such boat, it shall be *prima facie* evidence that such person caused such explosion.

864, 1904, s. 28.

61. When an offence against this Act has been committed by a person employed on or in connection with a boat, the master or other person for the time being in charge of such boat shall also be guilty of the offence unless he proves—

Master of boat *prima facie* liable for offences of employees.
New.

(a) that he issued proper orders for the observance, and used all proper means to enforce the observance, of this Act, and

(b) that the offence in question was actually committed by some other person without his connivance.

62. The production of the *Gazette* containing any proclamation, regulation, or notice purporting to have been made or given under this Act shall be *prima facie* evidence of such proclamation, regulation, or notice, and that the same is in force.

Gazette prima facie evidence.
864, 1904, s. 20.

63. Any Special Magistrate or Justices before whom any proceedings are taken in respect of any offence against the provisions of this Act for which a pecuniary penalty only is imposed may, in lieu of such pecuniary penalty, impose a term of imprisonment not exceeding six months.

Imprisonment may be imposed in lieu of pecuniary penalty.
Ibid., s. 30.

64. All actions to be brought against the Minister or any Inspector, officer, or other person for anything done under this Act shall be commenced within six months after the act complained of was committed.

Limitation of actions.
Cf. *ibid.*, s. 35.

65. All proceedings in respect of offences against this Act shall be disposed of summarily.

Summary proceedings for offences

66. There shall be an appeal from any proceedings in respect of offences against this Act.

Appeal.

67. In the event of an appeal in respect of proceedings in respect of offences against this Act, a special case may be stated.

Special case.

68. The Treasurer may cause to be paid the costs or charges of any action brought by or against the Minister or any Inspector, officer, or other person acting under the authority or in the execution of this Act.

Treasurer may provide for costs of legal proceedings.

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

H. L. GALWAY, Governor.

THE

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Section 4.

THE SCHEDULE.

ACTS REPEALED.

Reference to Acts.	Short Titles of Acts.
No. 366 of 1885	The Oyster Fishery Act, 1885.
No. 864 of 1904	The Fisheries Act, 1904.
No. 977 of 1909	The Fisheries Act Amendment Act, 1909.
No. 1128 of 1913.....	The Oyster Fishery Act Amendment Act, 1913.