CHAPTER cxxvi.

An Act to confirm an Order made by the Board of Trade under The Sea Fisheries Act, 1868, relating to Falmouth. A.D. 1877.

[23d July 1877.]

WHEREAS an Order made by the Board of Trade under The Sea Fisheries Act, 1868, is not of any validity or force whatever until the confirmation thereof by Act of Parliament: 31 & 32 Vict. c. 45.

And whereas it is expedient that the Order made by the Board of Trade under the said Act, and set out in the schedule to this Act, be confirmed by Act of Parliament:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Order set out in the schedule to this Act shall be and the same is hereby confirmed, and all the provisions thereof in manner and form as they are set out in the said schedule shall, from and after the passing of this Act, have full validity and force. Confirmation of Order in Schedule.

2. This Act may be cited as The Oyster and Mussel Fisheries Order Confirmation Act, 1877. Short title.

A.D. 1877.

Falmouth.

SCHEDULE.

FALMOUTH.

Order for the Regulation by the Corporation of the Borough of Falmouth of an Oyster and Mussel Fishery in part of the Harbour of Falmouth, in the County of Cornwall.

Undertakers.

1. The mayor, aldermen, and burgesses of the borough of Falmouth, acting by their council (in this Order called "the Corporation"), shall be the Undertakers of this Order.

Limits of fishery.

2. The following are the description and limits of the fishery comprised in this Order (as shown on plans deposited at the Board of Trade); namely,

All those parts of the harbour of Falmouth, bounded as follows, that is to say, on the north by an imaginary straight line drawn from the point known as Messack Point, situate in the parish of St. Just in Roseland, in the said county of Cornwall, to a certain other point called Tarra Point, in the parish of Mylor, in the said county; on the east and south-east by the line of ordinary low-water mark from the said point known as Messack Point to a certain other point known as Castle Point, situate in the parish of St. Just in Roseland, in the said county, thence by an imaginary straight line drawn from the said point known as Castle Point to a certain other point known as Carricknath Point, situate in the parish of St. Anthony, in the said county, thence by the line of ordinary low-water mark from the said point known as Carricknath Point to a certain other point known as Zoze Point, situate in the parish of St. Anthony aforesaid; on the south side by an imaginary straight line drawn from the said point known as the Zoze Point to a certain other point called Pendennis Point, situate in the parish of Budock, in the said county; and on the west and north-west partly by the line of ordinary low-water mark from the said point known as Pendennis Point to a spot on the western side of Boyers Cellars, situate in the parish of Budock, in the said county, (exclusive of the property of the Falmouth Docks Company, and the limits thereof defined by the sixtieth section of the Falmouth Docks Act, 1874,) partly by an imaginary straight line drawn from the said last-mentioned spot to Sailors Creek, in the said parish of Mylor, and partly by the line of ordinary low-water mark from Sailors Creek aforesaid to the said point called Tarra Point, in the parish of Mylor aforesaid.

37 & 38 Vict. c. clxxviii.

Nothing in this clause contained shall in anywise affect or prejudice any question as to the true line of boundary between the boroughs of Falmouth and Truro respectively.

Dredging in certain months prohibited.

3. Subject to the provisions contained in Article 6 of this Order, no person shall dredge, fish for, or take oysters or mussels within the said fishery during the months of May, June, July, and August in any year.

4. The Corporation may from time to time make byelaws for closing any portion or portions of the said fishery, so far as relates to the fishing for oysters or mussels, for such periods as they may deem necessary, but subject to the conditions following :

Power to close portions of fishery.

(1.) After the first twelve months, during which time it is proposed that the fishery shall be altogether closed, that no portion shall be closed for a longer continuous period than two years :

(2.) No greater extent in the whole than one third of the oyster beds and one third of the mussel beds respectively shall be closed at any one time, except that during the second and third years after the passing of the Act confirming this Order one half of the oyster beds and one half of the mussel beds respectively may be closed :

(3.) One month's previous notice at least of the portion or portions to be closed shall be given by an advertisement in the "London Shipping and Mercantile Gazette," and in some local newspaper, and by affixing such notice on the Town Hall at Falmouth, and in some conspicuous place or places in or adjoining the portion or portions of the fishery proposed to be closed :

(4.) A certificate in writing, signed by a secretary or by an assistant secretary of the Board of Trade, stating whether any portion or portions is or are, or is not or are not, or have been or have not been duly closed under the provisions of this Order, shall be taken as conclusive evidence of the fact stated in such certificate :

Subject to the provisions contained in Article 6 of this Order, no person shall dredge, fish for, or take any oysters or mussels within the said fishery in contravention of any byelaw of the Corporation whereof notice has been given as aforesaid.

5. The Corporation, with the approval of the Board of Trade, may also make byelaws and regulations for regulating the fishery generally, in terms not inconsistent with this Order. Such byelaws and regulations shall be revised from time to time when and as required by the Board of Trade; and any byelaw or regulation not so revised may at any time be cancelled by the Board of Trade, and shall then cease to have effect.

Power to make byelaws with approval of Board of Trade.

6. The Board of Trade may from time to time, by a certificate under the hand of one of their secretaries or assistant secretaries, repeal, alter, or vary the prohibition contained in Articles 3, 4, and 10 of this Order.

Power reserved to cancel or vary prohibitions.

7. No person shall dredge, fish for, or take oysters or mussels within the said fishery in any boat not licensed in that behalf by the Corporation. Licenses in that behalf shall be granted by the Corporation to any person applying for the same, on his paying the tolls in this Order specified; and every such license shall include both oyster and mussel fishing.

Dredging boats to be licensed.

8. The office for granting licenses shall be the office (for the time being) of the town clerk of the borough of Falmouth, who shall be entitled to a fee of one shilling for preparing every such license.

Office for granting licenses.

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Tolls and fees payable on licenses.

9. There shall be paid in respect of such licenses, and before they are granted, the following tolls:

	s.	d.
For a license for one season (being a period of eight months), for every registered ton the licensed boat is capable of carrying -	3	0
And for every dredge used in a rowing boat, the sum of -	7	6
And for every dredge used in a sailing boat, the sum of - -	10	0

On all boats so employed in dredging, fishing for, or taking oysters or mussels for the period of one calendar month at any time during the open season:

For every ton the boat is capable of carrying, the sum of -	1	0
And for every dredge used in a rowing boat, the sum of -	5	0
And for every dredge used in a sailing boat, the sum of -	7	6

Provided that every license for a smack or skiff shall include the use of one row boat, such row boat to be used when fishing only by the regular crew of the smack or skiff, and fishing shall not be carried on by the crew of the row boat and smack or skiff independently at the same time. Where a license has been lost or accidentally destroyed a new license by way of substitution may be issued on the payment of a fee of one shilling. The person in charge of any boat (not being a row boat belonging to a smack or skiff) fishing within the limits of the fishery shall, when required by any water bailiff, produce the license of such boat, or else desist from fishing till the same is produced.

Taking of small mussels and oysters prohibited.

10. Save as in this Order expressly provided, and subject to the provisions contained in Article 6 of this Order, no person shall at any time remove from the said fishery or from one portion of the fishing grounds to another any mussels of less size than two inches in length, or any oysters which will pass through a circular ring of such diameter as the Corporation shall from time to time direct: Provided always, that no such ring shall be of less diameter than two inches measured in the inside, or of greater diameter than two and a half inches measured in the inside.

Power reserved to remove brood of mussels and oysters.

11. For the purpose only of better cultivating the fishery, the Corporation, or any person or persons duly authorised by them, may remove any brood of mussels and any spat or small sized oysters from one portion of the fishery to another, at such times as the Corporation may direct.

Power to appoint water bailiff.

12. The Corporation may from time to time appoint, suspend, or remove, and again appoint a water bailiff or bailiffs to enforce the provisions of this Order, and the byelaws and regulations made under this Order, and generally to regulate the fishery.

Every such water bailiff shall have and may exercise all the powers and authorities of a constable for regulating and protecting the fishery, and shall have the following powers; that is to say, he may enter any smack, fishing boat, or row boat within the limits of the fishery; he may examine the catches, dredges, nets, and fishing implements and gear of any such boats; he may seize oysters or mussels illegally taken within the limits of the fishery; and he may do all other lawful acts for giving effect to the provisions of this Order, and the byelaws and regulations made under this Order.

Any person considered by a water bailiff to have offended against any such provisions, byelaws, or regulations shall, when required by such water bailiff, state correctly his christian name, surname, and place of abode.

Any person refusing or omitting when required to state correctly his name and place of abode, or wilfully continuing to offend after having been required by a water bailiff to desist, may be apprehended by a water bailiff or any person acting by order of a water bailiff, and conveyed before a justice of the peace to be dealt with according to law. Any person resisting, obstructing, or assaulting a water bailiff in performance of his duty may be apprehended and conveyed before a justice of the peace, and upon conviction shall be liable to a penalty not exceeding ten pounds, in addition to any other penalty or punishment incidental to his offence.

No person apprehended under this section of this Order shall be detained in custody more than twenty-four hours without being brought before a justice, but at the expiration of that time, if not previously brought before a justice, shall, on correctly stating his name and place of abode, be discharged, without prejudice to further proceedings by summons or warrant.

Tolls and fees to be applied in maintaining and improving fishery, or in repayment of advances by undertakers. 31 & 32 Vict. c. 45.

13. The whole of the money received by the Corporation from licenses, tolls, or otherwise under this Order shall, after the repayment to the Corporation of all expenses incurred in and incidental to the obtaining this Order, be applied to the maintenance and improvement of the fishery in accordance with these regulations, under the powers and provisions of "The Sea Fisheries Act, 1868," or in repayment to the Corporation of such sums as they may expend in putting or endeavouring to put the fishery into a more profitable state.

Marking of limits.

14. The limits of the said fishery shall be marked out in manner described in Article 2 of this Order, or in such other manner as the Board of Trade may from time to time direct.

No works to be commenced without sanction of Board of Trade.

15. No buildings, erections, embankments, or other works shall at any time be commenced or executed within the limits above described without the previous sanction and approval in writing of the Board of Trade.

Undertakers to give accounts of expenditure and income and other information.

16. The Corporation shall render annually to the Board of Trade, on the 31st of August in every year, accounts of their expenditure and income under this Order, and all other information required by the Board of Trade with reference to the subject of this Order, in such form as the Board of Trade may from time to time require; and shall allow the Board of Trade, or any person appointed by the Board of Trade, to inspect the fishery, and all books, accounts, and other documents in the possession of the Corporation relative to the fishery, and shall give to such Board or person all such information relating thereto as he or they may require.

Power reserved to grant several oyster and mussel fishery within limits of Order.

17. The Board of Trade may at any time make a grant or grants of a several oyster and mussel fishery of any ground within the limits comprised in this Order, and all the powers and provisions contained in this Order shall be subject to the power of the Board of Trade to make such grant, and to any alteration which may be consequent on such grant, or on any Order made in pursuance of such grant.

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Falmouth.

Duration of Order.

18. This Order shall continue in operation for sixty years from its confirmation by Act of Parliament and no longer.

Power of Board of Trade to repeal or amend Order. 31 & 32 Vict. c. 45.

19. The Board of Trade may, under the 39th section of "The Sea Fisheries Act, 1868," from time to time or at any time make an Order or Orders repealing, amending, altering, or adding to all or any of the provisions of this Order.

Power to revise tolls with consent of Board of Trade.

20. The Corporation may, but not without the consent of the Board of Trade, from time to time revise the tolls leviable under this Order, either by increasing or diminishing the amount thereof, or by varying the mode and times in and for which the same are levied, or otherwise; provided that public notice of such revised tolls shall be given, either by advertisement or otherwise, in such manner as the Board of Trade shall direct.

Saving rights under "The Crown Lands Act, 1866." 29 & 30 Vict. c. 62.

21. This Order shall not be taken as a consent to the surrender of any rights, interest, powers, authorities, or privileges transferred to the management of the Board of Trade by "The Crown Lands Act, 1866."

Saving rights of Duchy of Cornwall.

22. The consent of His Royal Highness the Prince of Wales in right of his Duchy of Cornwall signified to this Order shall not be taken as a consent to the surrender of, and nothing in this Order contained shall prejudice or affect any property, rights, powers, authorities, or privileges of His Royal Highness, or of the possessor of the Duchy of Cornwall for the time being.

Saving rights of Earl of Kimberley and others.

23. Nothing in this Order contained shall prejudice or affect any property, rights, powers, or privileges of the Right Honourable John Earl of Kimberley, his heirs, successors, or assigns, or of Gustavus Lambart Basset, Esquire, his heirs or assigns, or of the Right Honourable Charles Henry Rolle Baron Clinton, his heirs, successors, or assigns, or other the person or persons claiming title through or under the Right Honourable Charles Rudolph Baron Clinton, deceased, or of the mayor, aldermen, and burgesses of the borough of Penryn, in the county of Cornwall, their successors or assigns.

Saving rights of Harbour Commissioners. 33 & 34 Vict. c. clviii.

24. Nothing in this Order contained shall prejudice or affect the powers conferred on the Falmouth Harbour Commissioners by the Falmouth Harbour Order, 1870, or any other rights or powers vested in or exerciseable by them.

Short title.

25. This Order may be cited as "The Falmouth Fishery Order, 1877."

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