

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

THE  
REVISED STATUTES

OF THE  
STATE OF MAINE,

PASSED JANUARY 25, 1871;

TO WHICH ARE PREFIXED  
THE CONSTITUTIONS

OF THE  
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

---

BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:  
PUBLISHED BY BAILEY & NOYES.

CHAP. 40. arms, he shall forfeit to the state not less than twenty, nor more than one hundred dollars, to be recovered by indictment.

## CHAPTER 40.

### FISH AND FISHERIES.

#### FISH.

- SEC. 1. Inspector general of fish, how appointed, term of office and bond.
2. Deputies may be appointed, their duties to continue in case of vacancy of inspector.
3. Deputies shall be sworn, and give bond. Their term of office.
4. Excise fees.
5. Annual return of inspector and publication of the same.
6. Parties injured by misdoings of inspector to have remedy on his bond.
7. What kind of fish may be inspected for barrelling, in what size casks to be packed, and weight of each, proportions of salt, different qualities and branding. Branding and inspection of mackerel. Inspector to have no interest in the cure or packing of fish.
8. Dimensions, materials and branding of casks for pickled fish.
9. In what casks small fish, whole, in dry salt, shall be packed, quantity of salt and how branded.
10. How smoked herrings shall be assorted.
11. Dimensions and materials of boxes therefor, to be filled with same kind of fish and branded. What herrings merchantable.
12. Owner of fish to furnish his own brand.
13. Penalty for selling or exporting uninspected or damaged fish. Exceptions.
14. On shipping, master or owner to furnish collector with inspector's certificate, and make oath. Form of oath.
15. Penalty for attempting to export uninspected fish; forfeiture and seizure thereof; to be taken to inspector for inspection and detained till charges paid. Penalty for refusing to aid in seizure.
16. Penalty for shifting or intermixing inspected fish; and for inspector marking fish out of his town, or not inspected by him, permitting others to use his brands or using them himself after his commission expires.
17. Penalties how recovered and appropriated.
18. Fees paid by seller at first, but repaid by buyer.

#### FISHERIES.

- SEC. 19. Penalty for non-residents taking certain fish in any way, for residents taking them with seine, for destroying shell fish, or setting nets across any stream. Exceptions.
20. Permits to take shell fish, menhaden, and lobsters for certain sum and with limitations. Inhabitants and fishermen may take shell fish, except oysters in June, July and August for their own use.
21. All craft and apparatus employed in unlawful fishing liable to seizure to satisfy all fines and costs, but to be released on payment.

- SEC. 22. Any inhabitant may, by consent, plant oyster beds and have exclusive right to take the same. Trespassers liable to damage and subject to penalty. CHAP. 40.
23. Application of the following sections.
  24. Definition of terms used in this chapter.
  25. Commissioner of fisheries to be appointed. His duties.
  26. Fishways.
  27. Commissioner may order fishways to be built.
  28. Penalty for not complying with order of commissioner.
  29. Commissioner to prescribe time when fishways shall be opened. To be opened from first day of May to the 15th day of July, if not otherwise ordered.
  30. Repairs and alteration of fishways.
  31. Fish wardens to be appointed. Term of office and compensation.
  32. Duties of fish wardens.
  33. From April 1st to July 15th, a weekly close time of forty-eight hours to be established.
  34. Limits of stationary fixtures for taking fish, exceptions.
  35. Taking of salmon, shad, alewives, &c., prohibited for a term of five years from March 12th, 1869.
  36. Between April and November, salmon and shad fishing prohibited within 200 yards of any fishway or mill race.
  37. Close time for salmon.
  38. Close time for land locked salmon, trout and togne.
  39. Penalty for violation of 17th and 18th sections.
  40. Use of weir, hedge, trap trowl in capture of fish restricted.
  41. The introduction of live fish or spawn of certain fish prohibited.
  42. Fish for purposes of science may be taken by fish commissioner or his permit.
  43. Any waters may be set apart by fish commissioner for cultivation of fish.
  44. Penalty for violation of foregoing provisions.
  45. Fines and forfeitures how recovered.
  46. Constables and police officers to prosecute for violations of this chapter.
  47. Implements used in illegal fishing may be seized.
  48. Commissioner of fisheries may delegate all his powers.
  - 49, 50. Waters and their tributaries exempt from the provisions of this chapter.
  51. Waters may be enclosed for the cultivation of fish.
  52. When and how taken by the owners.
  53. Penalty for taking fish unlawfully in waters of others.
  54. Penalty for setting any seine within three miles of shore for the purpose of taking menhaden or porgies.
  55. Penalty for throwing menhaden or herring offal into navigable waters.
  56. Penalties and forfeitures, how recovered. Vessels, boats and apparatus liable to seizure.
  57. Forfeiture for taking bass in April, May or June.
  58. Smelts when not to be taken otherwise than by hook and line, &c.
  59. Dip nets only to be used between the first day of March and first day of November.

## CHAP. 40.

## FISH.

Inspector general of fish, how appointed ed.—term of office.

—shall be sworn and give bond. 1862, c. 99, § 1.

—may appoint deputies. 1862, c. 99, § 2. Deputies of, continue in case of vacancy.

Deputies to be sworn.

—to give bond.

—terms of. 1862, c. 99, § 3.

Excise fees. 1862, c. 99, § 4.

Inspector general, return of. 1862, c. 99, § 5.

—to be published.

Remedy of parties injured by misdoings of inspector. R. S. c. 40, § 3.

What kind of fish may be inspected for barreling, &c. R. S. c. 40, § 5.

SEC. 1. The governor with advice of the council shall appoint an inspector general of fish, removable at pleasure, who shall hold office not exceeding five years, and shall be sworn and give bond with sufficient sureties in the sum of six thousand dollars to the treasurer of state for the faithful discharge of his duties before entering thereon.

SEC. 2. He shall appoint one or more deputies in every town where pickled fish or smoked herring and alewives are cured or packed for exportation, and shall be responsible for their neglect or misconduct while acting under him, and when his office becomes vacant, they may continue to discharge their duties until a successor is appointed, and they shall be accountable to the state.

SEC. 3. Every deputy shall be duly sworn by the inspector general or by a justice of the peace, and give bond to the inspector general with sureties to his satisfaction for the faithful performance of his duty, and the bond shall be so expressed as to enure to the use of the state for the time the deputy exercises his duties during a vacancy in the office of inspector general.

SEC. 4. Each deputy shall pay to the inspector general one dollar as an excise fee for his bond and commission, and the inspector general may receive from each of his deputies for every cask of pickled fish inspected by him the following fees: for each tierce four cents; for each barrel one cent; and every smaller package one half cent.

SEC. 5. The inspector general shall in the month of January annually, make a return into the office of secretary of state, of all the fish inspected by him and his deputies during the year preceding the first day of said January, designating the quantities, kinds and qualities of pickled and smoked fish, and the secretary shall publish the same immediately after in the state paper; and the inspector general may require returns of his deputies as often as he sees fit.

SEC. 6. Any person injured by the neglect or misdoings of any inspector, on tendering to such treasurer a reasonable indemnity against the costs, shall be entitled to bring an action on such inspector's bond, in the name of the treasurer, for his own use, and to have a copy of the bond therefor; and, if judgment is rendered thereon for the plaintiff, execution shall issue for the sum found due to such person, and it shall be entered by the clerk of the court on the original bond, to remain in the custody of the treasurer.

SEC. 7. Every inspector who inspects any kind of fish pickled for barreling, shall see that they are in the first instance well struck with salt or pickle, and preserved sweet, free from rust, taint, or damage; and such of said fish, as are of good quality and in good order, shall

be packed in tierces, barrels, half barrels, quarter barrels, and tenths of barrels, or kids; each tierce containing three hundred pounds; each barrel two hundred, and so in that proportion; and the same shall be packed in good, clean, coarse salt at the rate of thirty-five pounds for every two hundred of fish; and each cask shall then be filled with clear, strong pickle and headed up; and, when the contents are free from taint, rust, or damage, shall be branded by the inspector with the name of the fish therein. Mackerel of the best quality, not mutilated, measuring not less than thirteen inches from the extremity of the head to the crotch of or fork of the tail, free from rust, taint, or damage, shall be branded number one. The next best quality, being not less than eleven inches, measuring as aforesaid, free from rust, taint, or damage, shall be branded number two. Those that remain after the above selections, free from taint, or damage, and not less than thirteen inches, measuring as aforesaid, shall be branded number three large. Those of the next inferior quality, free from taint or damage, not less than ten inches in length, as aforesaid, shall be branded number three. All other mackerel free from taint or damage, shall be branded number three small. The inspectors shall also brand in plain letters on the head of every such cask the weight, the initials of christian name and the whole of his surname, the name of his town, and the letters M.E., an abridgment of the month, and the year, in figures, when packed. The inspector general of fish shall have no interest directly or indirectly in cure or packing of pickled fish.

CHAP. 40.

Mackerel, regulating the inspection and branding of. R. S. c. 40, § 5. 1864, c. 260, § 1.

Inspector general shall have no interest, &c.

SEC. 8. All tierces, barrels, or casks, used for the purpose of packing pickled fish, shall be made of sound, well seasoned white oak, white ash, spruce, pine, or chestnut, staves of rift timber, with headings of either of such kinds of wood, sound, well planed and seasoned, and the heads, if of pine, free from sap; the same to be well hooped with at least three strong hoops on each bilge, and three also on each chime; the barrel staves to be twenty-eight inches in length, and the heads to be seventeen inches between the chimes, and made in a workmanlike manner to hold pickle; and branded on the side near the bung with the name of the maker or owner thereof. The tierces shall contain not less than forty-five nor more than forty-six gallons each; the barrels from twenty-nine to thirty gallons each; and the aliquot parts of a barrel in the same proportion.

Dimensions, materials and branding of casks for pickled fish. R. S. c. 40, § 6.

SEC. 9. All small fish usually packed whole with dry salt, shall be put in good casks of the size and materials aforesaid, packed closely therein, and well salted; the casks to be filled full with the fish and the salt; putting no more salt with the fish, than is necessary for their preservation; and the inspector shall brand all such casks with the name and quality of the inspected fish as aforesaid.

In what casks small fish, whole, in dry salt, shall be packed, &c. R. S. c. 40, § 7.

## CHAP. 40.

How smoked herrings shall be assorted.  
R. S. c. 40, § 8.

SEC. 10. All smoked herring shall be sorted by the inspector according to their quality as follows; scaled herrings shall consist of all the largest, fattest, and best cured fish of not less than seven inches in length; number one of well cured fish not less than six inches in length; and in both cases all those shall be taken out as refuse, which are belly broken, tainted, scorched, slack salted, or not sufficiently smoked.

Dimensions and materials of boxes, &c.  
R. S. c. 40, § 9.  
1870, c. 104.

SEC. 11. All boxes for packing smoked herrings, shall be made of sound boards sawed and seasoned; the top, bottom, and sides, of boards not less than three-eighths of an inch thick, and the ends, of boards three-quarters of an inch thick, securely nailed; and sixteen inches in length, eight inches in breadth, and five inches in depth, by outside measurement; provided, that any change in the dimensions above named shall not operate to reduce their capacity, which shall not be less than four hundred and sixty-four cubic inches in the clear for each box; and each box shall be filled with the same kind and quality of fish; and if the box contains Magdalen herring, that word shall be abridged if considered convenient; and no such fish shall be considered merchantable unless salted and smoked sufficiently to cure and preserve them, which shall then be closely packed, in boxes in clear dry weather.

Owner of fish to furnish brand.  
R. S. c. 40, § 10.

SEC. 12. The owner of all smoked and pickled fish, when required by the inspector, shall furnish a brand containing the initials of his christian, and the whole of his surname, for stamping the casks and boxes containing such fish.

Penalty for selling or exporting un-inspected or damaged fish. Exceptions.  
R. S. c. 40, § 11.

SEC. 13. If any person sells in this state, or exports therefrom any fish in casks or boxes, not inspected, packed and branded, as aforesaid, or any tainted or damaged fish, known to be such, except good and wholesome fish packed in kegs of less than ten gallons, or pickled, dry or smoked fish imported into this state from some other state or country lawfully inspected and branded there, he shall forfeit ten dollars for every hundred weight thus sold or exported.

On shipping, master or owner to furnish collector with inspector's certificate, &c.  
R. S. c. 40, § 12.

SEC. 14. No pickled fish in casks, and no smoked alewives or herrings in boxes, shall be shipped from this state, unless the master or owner of the vessel produces to the officer authorized to clear the same, a certificate from the inspector, that the same have been inspected, packed, and branded according to law; and the certificate shall express the number of tierces, or casks, and the number of boxes, thus shipped, the kind and quality of fish they contain, the name of the master and owner, and that of the vessel, into which such fish are received for exportation; and shall take and subscribe the following oath, before the officer as aforesaid:

"I, A. B., do swear, according to the best of my knowledge and belief, that the certificate hereunto annexed, contains the whole quantity of pickled fish packed in barrels or other casks, and of smoked alewives and herrings, on board the —, —, master; and that no pickled fish, or smoked alewives or herrings are shipped on board said vessel for the ship's company, or on freight or cargo, but what are inspected and branded according to the laws of this state, or exempted by the provisions thereof. So help me God."

SEC. 15. If any person lades or receives on board any vessel or other carriage, for transportation from this state, any pickled fish, or cured or salted whole fish, packed or not packed, not inspected and branded as aforesaid, except such as is described in the exception of section thirteen, he shall forfeit at the rate of not less than five, nor more than ten dollars for every hundred pounds thereof; and any justice of the peace may issue his warrant to the proper officer, directing him to seize and secure any such prohibited fish, and convey it to any inspector within a convenient distance for inspection; and every person refusing to give necessary aid in the service of such warrant, when required by the officer, shall forfeit five dollars to the person suing therefor in an action of debt; and such inspector shall open, inspect, pack, and brand such fish according to law and detain the same till all lawful charges of seizure and inspection are paid.

Penalty for attempting to export uninspected fish, &c.  
R. S. c. 40, § 13.

SEC. 16. If any person takes from a cask or box, any pickled, cured, or smoked fish, lawfully inspected and branded, and substitutes therefor or fraudulently intermixes other fish; or any inspector marks any cask or box out of his town, or which he has not inspected, packed, and prepared himself according to law; permits other persons unlawfully to use his brands; or willfully and fraudulently uses the same himself after the expiration of his commission, he shall forfeit twenty dollars for each cask or box so dealt with.

Penalty for intermixing inspected fish, &c.  
R. S. c. 40, § 14.

SEC. 17. All the penalties aforesaid, not otherwise herein appropriated, may be recovered in an action of debt, half to the use of the person suing therefor, and half to the town where the offence is committed.

Penalties, how recovered and appropriated.  
R. S. c. 40, § 16.

SEC. 18. The fees of inspectors in all cases shall be paid in the first instance by the owner of the fish; but he may recover the same of the person purchasing or receiving it, in addition to the price thereof.

Fees, by whom paid.  
R. S. c. 40, § 17.

#### FISHERIES.

SEC. 19. No person, not a resident of this state, shall set or use any net, weir, seine, or other machine, in any of the waters of the state, for the purpose of taking salmon, shad, mackerel, shell-fish, lobsters, herrings, alewives, menhaden or porgies; nor shall residents set or use any seine for the purpose of taking mackerel, menhaden or

Penalty for non-residents taking certain fish, &c.  
37 Me. 472.  
R. S. c. 40, § 18.



CHAP. 40. porgies; but a net for meshing menhaden of only one hundred and twenty-five meshes deep, shall not be deemed a seine; nor shall any person take, or otherwise willfully destroy any shell fish, or obstruct their growth in their beds; or set any net crosswise of said waters but only lengthwise, under a penalty of not less than twenty, nor more than five hundred dollars; except as hereinafter provided.

Permits to take shellfish, menhaden, and lobsters, &c.  
R. S. c. 40, § 19.

SEC. 20. The municipal officers of towns may grant written permits to residents of the state, to take, within their towns, shell-fish, menhaden or porgies, and to those not residents, to take the same and also lobsters, on the payment of an agreed sum for the use of their town, specifying therein the quantity to be taken, or the time to fish, the number of persons to be employed, and the purposes for which the fish may be used; but without any such permit any inhabitant within his own town, may take shell fish, except oysters in June, July, and August, for the consumption of his family; and any fisherman may take, any where, such fish, except oysters in said three months, suitable for bait, and necessary for his use, not exceeding seven bushels in the shell.

All craft and apparatus employed in unlawful fishing liable to seizure, &c.  
R. S. c. 40, § 20.

SEC. 21. All vessels, boats, craft, and apparatus of every kind, employed in unlawful fishing, or having on board any such fish unlawfully taken, shall be liable for any fines and costs herein provided for; and any person may seize and detain said property not exceeding twenty-four hours, in order that it may be attached, and taken by due process of law to satisfy any judgment that may be recovered; but it shall, at any time, be released on payment, by the owner or master, of the fine, costs, and reasonable expenses.

Any inhabitant, may by consent, plant oyster beds and have exclusive right to the same, &c.  
R. S. c. 40, § 21.

SEC. 22. Any inhabitant of this state, by obtaining the consent of the adjacent riparian proprietors, may plant oysters below low water mark, in any of the navigable waters of the state, in places where there is no natural oyster bed; enclose such ground with stakes, set at suitable distances, and extending at least two feet above high water mark, but so as not to obstruct the free navigation of such waters, and have the exclusive right of taking such oysters; and if any person trespasses on such enclosure, or in any way injures such oyster beds, he shall be liable in an action of trespass for all the damage; or if he takes any oysters therein without the consent of the owner, he shall forfeit not exceeding twenty-five dollars, or be confined in jail not exceeding three months.

The following provisions not applicable to certain waters.

SEC. 23. The provisions of the following sections shall apply to all the fresh waters of this state above the flow of the tide, and to all the tidal waters frequented by the various species of fresh water and migratory fishes, excepting to the capture of salmon, shad and alewives in Denny's river and its tributaries, and Pinmaguan river and its tributaries, and also excepting waters as provided in section fifty; but prior to the first day of May eighteen hundred and seventy-two,

no salmon shall be taken or fished for in any manner in the Aroostook, Presque Isle, and Meduxnakeag rivers, under a penalty of not more than twenty nor less than ten dollars, and a further penalty of ten dollars for every salmon so taken.

CHAP. 40.  
1869, c. 70, § 1.  
1870, c. 171,  
§§ 2, 13.

SEC. 24. For the purpose of said following sections the term "salmon" shall mean the common migratory salmon of the sea-coast and rivers; the term "landlocked salmon" shall mean any of the species or varieties of salmon that do not periodically and habitually run to the sea, being the same that are locally known as "salmon trout" and "black-spotted trout"; the term "alewife" shall mean the small species of migratory fish commonly called "alewife," but known also by the local names of "herring" and "gaspereau," and shall also include the similar species found in tidal waters and known as "blue-back;" the term "bass" shall mean the striped bass of the tidal waters.

Definition of terms as used in this chapter.  
1869, c. 70, § 2.

SEC. 25. The governor, with the advice of the council, shall appoint one person to be commissioner of fisheries, who shall hold office for three years, unless sooner removed, and have a general supervision of the fisheries regulated by the two preceding and following sections.

A commissioner of fisheries to be appointed.  
1869, c. 70, § 3.

He shall examine dams and other obstructions existing in all rivers and streams in the state and determine the necessity of fishways, and the location, form and capacity thereof; shall visit those sections where fisheries regulated by this chapter are carried on and examine into the working of the laws; shall introduce and disseminate valuable species of fish; and perform all other duties prescribed by law. He shall report annually on or before the thirty-first day of December to the governor, who shall cause three thousand copies of each report to be printed. He shall be entitled to receive his traveling and other expenses necessarily connected with his duties, and such compensation for his services as may be determined by the governor and council, who shall audit his accounts; but the total amount of his pay and expenses shall not exceed two thousand dollars annually.

His duties.

SEC. 26. Every dam or other artificial obstruction in any river or stream naturally frequented by salmon, shad or alewives, shall be provided by the owner or occupant thereof with a durable and efficient fishway, of such form and capacity and in such location as may be determined by the commissioner of fisheries or by any person authorized by him to determine the same. It shall also be incumbent on the owner or occupant of the dam to keep the fishway in repair, and open, and free from obstruction for the passage of fish during such times as may be prescribed by law; provided that in case of a disagreement between the commissioner of fisheries and the owner of any dam as to the propriety and safety of the plan submitted to the owners of such dam for the location and construction of the fishway, such owner may appeal to the county commissioners of the county where the dam

Fishways.  
1869, c. 70, § 4.  
1870, c. 158, § 1.

CHAP. 40. is located, if he does so within thirty days after notice of the determination of the commissioner or person authorized by him and not otherwise, and at the request of the commissioner of fisheries the senior commissioners in office of any two adjoining counties shall be associated with them, who shall appoint a time to view the premises and hear the parties, and shall give due notice thereof; and after such hearing they shall decide the question submitted, and cause record to be made thereof, and their decision shall be final as to the place and location appealed from. If they decide against the owner their cost shall be paid by him; otherwise by the county.

Commissioner may order fishways to be built. 1869, c. 70, § 5.

SEC. 27. In cases where he deems it expedient the commissioner of fisheries may after notice in writing to one or more of the owners or occupants of a dam, and a hearing thereon, decide what would be a suitable fishway or passage through such dam, consulting as far as practicable the convenience and safety thereof, and give written notice to some owner or occupant, specifying the location, form and capacity of the required fishway, and requiring the same to be built within a specified time.

Penalty for not complying with order of commissioner. 1869, c. 70, § 6.

SEC. 28. If a fishway thus required to be built is not completed to the satisfaction of the commissioner within the time specified, any owner or occupant shall forfeit a sum not exceeding fifty nor less than ten dollars for every day between the first day of May and the first day of November, during which such neglect continues.

Commissioner to prescribe the time when the fishways shall be open. 1869, c. 70, § 7.

SEC. 29. On the completion of any fishway to the satisfaction of the commissioner, or at any subsequent time, he shall prescribe in writing the time during which the same shall be kept open and free from obstruction to the passage of fish each year, and a copy thereof shall be served on some owner or occupant of the dam. The commissioner may afterwards change the time as he sees fit. Unless otherwise provided, a fishway shall be kept open and unobstructed from the first day of May to the fifteenth day of July, of each year. The penalty for neglecting to comply with the provisions of this section or any regulations made in accordance herewith, shall be not less than five nor more than twenty dollars for each day that said neglect continues.

To be from May to fifteenth July, if not otherwise ordered.

Penalty for neglecting to comply.

Repairs and alterations of fishways. 1869, c. 70, § 8.

SEC. 30. In case the commissioner finds any fishway out of repair or needing alterations, he may, as in the case of new fishways, require the owner or occupant to make such repairs or alterations; and all the proceedings in such cases and the penalty for neglect, shall be as provided in the twenty-seventh and twenty-eighth sections.

Fish wardens to be appointed. 1869, c. 70, § 9. 1870, c. 171, § 9.

SEC. 31. The governor with the advice of the council shall appoint fish wardens wherever the same may be necessary, who shall enforce the provisions of all public laws relating to fisheries; and shall have all the powers given to fish wardens by the following sec-

tion. Each person so appointed shall hold office three years unless sooner removed, and his pay shall be fixed by the governor and council, who shall audit his accounts and cause the same to be paid from the state treasury; provided, that the total amount paid to all the wardens shall not exceed one thousand dollars annually.

CHAP. 40.

Term of office and compensation.

SEC. 32. Fish wardens shall prosecute for all offences that come to their knowledge, and have a right at all times to visit any dam, or any weir or other apparatus for taking fish; and when they are resisted in the discharge of their duties, they may require such aid as they deem necessary, and any person neglecting to render it when thus required shall forfeit ten dollars.

Duties of fish wardens. 1869, c. 70, § 11.

SEC. 33. There shall be between the first day of April and the fifteenth day of July each year, a weekly closetime of forty-eight hours, from sunrise on each Saturday morning to sunrise on the following Monday morning, during which no salmon, shad, alewives or bass, shall be taken from the waters covered by the provisions hereof. During the weekly closetime all seines, nets and other movable apparatus, shall be removed from the water. Every weir shall have, in that part thereof where the fish are usually taken, an opening three feet wide, extending from the bottom to the top of the weir, and the netting or other material which closes the same while fishing, shall be taken out, carried on shore, and there remain during the weekly closetime, to the intent that during said weekly closetime the fish may have a free and unobstructed passage through such weir or other structure, and no contrivance shall be placed in any part of such structure which shall tend to hinder such fish. In case the enclosure where the fish are taken, is furnished with a board floor, an opening extending from the floor to the top of the weir shall be held equivalent to extending from the bottom to the top. The penalty for the violation of this section shall be twenty dollars for each offence.

From April to July 15, a weekly closetime of forty-eight hours, to be established. 1869, c. 70, § 12. 1870, c. 171, § 11.

SEC. 34. No weir, hedge, set-net, or any other contrivance for the capture of fish, which is stationary while in use, shall extend into more than two feet depth of water at ordinary low water, under a penalty of not more than one hundred nor less than fifty dollars, and forfeiture of all apparatus and material so unlawfully used. This provision shall apply to any seine or drift-net that shall at any time be attached to a stationary object, but shall not apply to fykes or bag-nets used in the winter fishery for smelts and tomcods, nor to any implements that may be lawfully used in waters above the flow of tide, nor to any portion of the Penobscot river, bay or tributaries.

Limit of stationary fixtures for taking fish. 1869, c. 70, § 13.

Exception:

SEC. 35. For the period of five years from the twelfth day of March, 1869, no salmon, shad, alewives, or any other migratory fish, shall be taken, nor shall any structure or implement for their capture be used above the flow of the tide in the Presumpscot, Androscoggin,

For period of five years salmon and shad fishing prohibited in certain rivers. 1869, c. 70, § 15.

**CHAP. 40.** Kennebec, Georges, or Saint Croix rivers, nor above the flow of the tide in any tributary of either of said rivers, under penalty of not more than fifty nor less than ten dollars for each offence, and ten dollars for each salmon, one dollar for each shad, and twenty cents for each alewife so taken.

Between April and November, salmon and shad fishing prohibited, within two hundred yards of any fishery or mill-race. 1869, c. 70, § 16.

**SEC. 36.** No salmon, shad, alewives, or other migratory fish, shall be taken within two hundred yards of any fishway, or within one hundred yards of any dam or mill-race, nor shall any structure or implement except hook and line be used for taking any fish within the above limit, between the first day of April and the first day of November, without the written permission of the wardens of the district in which it is situated, approved by the commissioner of fisheries; nor shall hook and line be used within fifty yards of any fishway. The penalty for the violation of this section shall be a fine of not more than fifty nor less than ten dollars for each offence, and a further fine of ten dollars for each salmon, one dollar for each shad, and twenty cents for each alewife or other fish so taken.

Penalty.

Closetime for salmon. 1869, c. 70, § 17.

**SEC. 37.** There shall be a closetime for salmon from the first day of September of each year to the first day of April following, during which, no salmon shall be taken or killed in any manner, under a penalty of not more than fifty nor less than ten dollars, and a further penalty of ten dollars for each salmon so taken or killed.

Closetime for landlocked salmon, trout and togue. 1869, c. 70, § 18.

**SEC. 38.** There shall be a yearly closetime for landlocked salmon, trout and togue during the months of October, November, December and January, during which, none of the fish mentioned above shall be taken or killed in any manner, under a penalty of not more than thirty nor less than ten dollars, and a further fine of one dollar for each fish so taken or killed; but this section shall not apply to the taking of blueback trout in Franklin and Oxford counties, nor to any person taking fish on his own premises for the purpose of cultivation.

Penalty for a violation of above sections. 1869, c. 70, § 19.

**SEC. 39.** Any person who shall have in his possession any fish taken in violation of the two preceding sections of this chapter, shall be punished by a like penalty as if he had taken them; and any person having in possession any fresh salmon between the fifth day of September of any year and the first day of April following, or any fresh land-locked salmon, trout or togue between the fifth day of October of any year and the first day of February following, shall be deemed guilty of a violation of this section, and shall be held to prove that they were not taken unlawfully.

No weir, hedge trap or trawl to be used in capture of fresh water fish. 1869, c. 70, § 20.

**SEC. 40.** No weir, hedge, trap, trawl, or any net other than a dip net shall be used for the capture of any fresh water fish under a penalty of not more than fifty nor less than ten dollars, and a further penalty of one dollar for every fish so taken. And such structure or implement used in any fresh water above the flow of the tide, shall be deemed to be used in violation of this section unless it shall be shown

to be authorized by some special act or to have been used in a bona-fide fishery for salmon, shad or alewives. CHAP. 40.

SEC. 41. No mascallonge, pickerel, pike, sunfish or bream, yellow perch or black bass shall be introduced, by means of the live fish or spawn, to any waters where they do not now severally exist, except as hereinafter provided, under a penalty of not more than two hundred nor less than fifty dollars. The introduction by means of live fish or spawn of certain fish, prohibited. 1869, c. 70, § 21.

SEC. 42. The commissioner of fisheries may take fish of any kind at such time and place and in such manner as he may choose, for the purposes of science and of cultivation and dissemination; and he may grant permits to other persons to take fish for the same purposes, and may introduce or cause or permit to be introduced any kind of fish to any waters he may see fit. Fish for purposes of science may be taken by fish commissioner or his permit. 1869, c. 70, § 22.

SEC. 43. The commissioner of fisheries may set apart any waters for the purpose of cultivation of fish; and after three weeks' notice, published in the paper nearest the locality where such waters are set apart, no person shall take or kill any fish therein under a penalty of not more than one hundred nor less than ten dollars, and a further penalty of two dollars for each fish so taken or killed. Any waters may be set apart by fish commissioner for cultivation of fish. 1869, c. 70, § 23.

SEC. 44. All boats, implements and materials used in violation of this chapter, and all fish taken in violation of the same shall be forfeited. Penalty for violation of this chapter. 1869, c. 70, § 24.

SEC. 45. All fines and forfeitures provided for herein, may be recovered before any competent tribunal by complaint, indictment or action of debt. In cases where the offence is committed in any river or stream forming a boundary between two counties, or in any lake or other body of standing water lying partly in two or more counties, the action may be brought in either county. One-half of all fines and forfeitures recovered shall be for the benefit of the person prosecuting therefor. Fines and forfeitures, how recovered. 1869, c. 70, § 25.

SEC. 46. It shall be the duty of constables and police officers to prosecute for all offences against this chapter that come to their knowledge. Constables and police officers to prosecute for violation of this chapter. 1869, c. 70, § 26.

SEC. 47. Any fish warden, constable or police officer may seize any implement used in illegal fishing, and may render any weir, built or maintained contrary to law, incapable of taking fish. Any such officer may, on view, appropriate to his own use or gift any fish taken or possessed in violation of law. Implements used in illegal fishing may be seized. 1869, c. 70, § 27.

SEC. 48. The commissioner of fisheries can delegate to any fish warden or other lawful officer of fisheries any of the powers given to said commissioner in relation to the construction of fishways. Commissioner of fisheries may delegate all his powers over fishways. 1869, c. 70, § 28.

SEC. 49. That portion of the St. John river and its tributaries lying above Grand Falls in New Brunswick, shall be exempt from all the provisions of this chapter. Certain waters exempted. 1869, c. 70, § 30.

## CHAP. 40.

Other exemp-  
tions.  
1870, c. 171,  
§ 12.

SEC. 50. The following waters and their tributaries are exempt from the operation of the provisions of this chapter relating to the migratory fishes, and the supervision of fishways by the commissioners, that is to say: Royall's river in North Yarmouth; Sewall's pond or its outlet in Arrowsic; Nequasset stream in Woolwich; Damariscotta river; Duck trap stream in Lincolnville and Belmont; the Eastern Penobscot river in Orland; Winslow's and Leach's streams in Penobscot; all waters in Vinalhaven, Bluehill, Tremont, Mount Desert, Eden, Franklin and Sullivan; Tunk river in Steuben; Pleasant river in Washington county; East Machias river, and Cobscook or Orange river in Whiting.

Waters may  
be enclosed for  
cultivation of  
fish.  
1870, c. 171, § 6.

SEC. 51. Any riparian proprietor may, within the limits of his own premises, enclose the waters of a stream not navigable, for the cultivation of useful fishes; provided, he furnishes suitable passages for migratory fishes naturally frequenting such waters, and does not obstruct the passage of boats and other craft and materials in places where the same have a right to pass.

When and  
how taken by  
the owner.  
1870, c. 171, § 7.

SEC. 52. Any person legally engaged in the artificial culture and maintenance of fishes, may take them in his own waters as and when he pleases, and may at all times sell them for these purposes, but shall not sell them for food at seasons when the capture of such fish is prohibited by law.

Penalty for  
taking fish  
unlawfully  
in waters of  
others.  
1870, c. 171, § 8.

SEC. 53. Whoever fishes in that portion of a pond, stream or other water in which fishes are lawfully artificially cultivated or maintained as aforesaid, without the permission of the proprietor, shall forfeit not more than fifty nor less than ten dollars, and one dollar for every fish so taken.

Penalty for  
setting any  
seine within  
three miles of  
shore for the  
purpose of  
taking men-  
haden or  
porgies.  
1869, c. 36, § 1.  
1870, c. 120, § 1.  
53 Me. 496.

SEC. 54. No person shall use or set any seine more than one hundred and forty meshes deep, within three miles of the shore, in any waters, for the purpose of taking menhaden or porgies, under a penalty of not less than one hundred nor more than five hundred dollars for each offence, and the forfeiture of all vessels, boats, crafts and apparatus employed in such unlawful pursuit.

Penalty for  
throwing men-  
haden or her-  
ring offal into  
navigable wa-  
ters.  
1869, c. 36, § 2.  
1870, c. 120, § 2.

SEC. 55. Any person who shall cast or deposit, or cause to be thrown or deposited into any of the navigable waters of this state, any pumice, scraps or other offal arising from the making of oil or slivers for bait from menhaden or herring, shall pay a fine of not less than fifty, nor more than one thousand dollars for each offence.

Penalties and  
forfeitures,  
how recov-  
ered.  
1870, c. 120, § 3.

SEC. 56. All penalties and forfeitures named in the two preceding sections may be recovered by indictment or action of debt in the name and to the use of the county in which the offence was committed; and there shall be a lien on all boats, vessels, crafts and apparatus of any kind in the possession of any persons violating any of the provisions of the two preceding sections, whether owned by them or not; and they may be attached in such action, and held to respond to

the judgment for the penalties, forfeitures and costs as in other cases, and any trial justice on complaint, may cause the arrest of the accused, and seizure of the property alleged to be forfeited, and detain the same until a trial may be had in the proper courts; and in case of conviction, the said property shall be decreed forfeited to the uses aforesaid, to be sold in the manner as goods taken on execution, and except on the offence specified in section fifty-five, the balance, after deducting fines and costs, shall be paid to the person legally entitled to receive it.

CHAP. 40.

Vessels, boats and apparatus liable to seizure for violation of foregoing provisions.

SEC. 57. Whoever shall take any black bass during the months of April, May and June, or at any time from their spawning beds, shall forfeit for each offence not more than twenty nor less than five dollars, and a further penalty of one dollar for each black bass so taken.

Forfeiture for taking bass in April, May or June.  
1870, c. 171, § 3.

SEC. 58. No smelts shall be taken or fished for in any other manner than by hook and line or dip-net, between the first day of March and the first day of November of each year, under a penalty of not more than fifty nor less than ten dollars for each offence.

Smelts when not to be taken otherwise than by hook and line.  
1870, c. 171, § 4.

SEC. 59. No net other than a dip-net, the meshes of which are smaller than one inch square in the clear, shall be used in any waters frequented by migratory fishes, between the first day of March and the first day of November in any year, under a penalty of not more than twenty nor less than ten dollars for each offence.

Dip nets only to be used between the first day March, and the first day of November.  
1870, c. 171, § 5.

NOTE. The following named acts relating to the taking of fish, are yet in force though not incorporated in this chapter, being not of a general but local interest only, viz:

An act for protection of trout in Goose pond, approved March 21st, 1864, being chap. 377 of the special laws of that year.

An act to amend chapter 40, sec. 52, of the revised statutes, relating to fish in ponds in Kennebec and Somerset counties, approved March 14th, 1859, being chapter 65, of the public laws of that year.

An act to amend chapter 40, sec. 53, of the revised statutes, relating to the taking of fish from Moosehead lake, approved March 19th, 1858, being chapter 20, of the public laws of that year.

An act to regulate the taking of trout in certain lakes in Oxford and Franklin counties, approved Feb. 18th, 1867, being chap. 86, of the public laws of that year.

As to fish in Schoodiac waters, see special laws of 1857, chap. 59; in Bryant's pond in Woodstock, special laws of 1857, chap. 64; in North pond in Mercer, special laws of 1857, chap. 65; in Pennamaquon and Borden's lake and tributary waters, special laws of 1857, chap. 66; in Sewall's pond or its outlets, special laws of 1858, chap. 147; in Jackson pond, in Concord, special laws of 1858, chap. 150; in St. Croix river, special laws 1858, chap. 206; in Sebago lake, Brandy pond, Long pond, Crooked river, Thompson pond, Saturday pond, Moose pond, special laws of 1858, chap. 232; in Low's mill stream, or waters of St. Croix river, special laws of 1859, chap. 258; in East Machias waters, special laws of 1859, chap. 317, and 1867, chap. 186; in Chandler's river, special laws 1860, chap. 470, and of 1865, chap. 434; in Middle river, in Marshfield, special laws of 1860, chap. 461; in Cobbossee Contee Great pond, special laws of 1862, chap. 142; in Copsuptic or Mooselamagantic lakes in Franklin county, special laws of 1863, chap. 260; in Johnson's bay, Lubec, special laws of 1864, chap. 384, 1866, chap. 23 and chap. 29, 1867, chaps. 173, 175; in Winnegance creek, special laws of 1865, chap. 472; in Boot cove, Lubec, special laws of 1865, chap. 427; in ponds and streams in Orneville, special laws of 1866, chap.



CHAP. 41.**CHAPTER 41.****SURVEY AND SALE OF WOOD, BARK, COAL, HOOPS, STAVES AND LUMBER.****WOOD AND BARK.**

- SEC. 1. Towns may regulate sale and measure of wood. Dimensions of a cord of wood.
2. Penalty for selling wood or bark before survey unless otherwise agreed.
  3. How cord wood, brought by water, shall be piled and measured, and penalty for carrying it from wharf before measured.
  4. Ticket stating quantity and name of driver, required before wood carried from wharf; penalty for carrying away without ticket, refusing to exhibit it, or to have the wood re-measured.
  5. Penalty for fraudulent stowage of wood, bark or charcoal.

**CHARCOAL.**

- SEC. 6. How charcoal may be measured and sold.
7. Coal baskets to be sealed; dimensions thereof.
  3. Penalty for measuring coal in baskets of less dimensions, or not sealed.
  9. Seizure of unlawful baskets.
  10. Penalty for measurer refusing to give certificate. Penalties, how recovered and appropriated.

**HARD COAL.**

- SEC. 11. Hard coal to be sold by weight, and 2000 pounds a ton.
12. Weighers of hard coal to be appointed by municipal officers, and sworn.
  13. Coal, unless the parties otherwise agree, or it is sold by the cargo, to be weighed by a sworn weigher, or pay not recovered.

**BOARDS, PLANK AND OTHER LUMBER.**

14. Towns to elect surveyors of boards, plank, timber, joist, shingles, clapboards, staves, hoops, and two or more cullers of staves and hoops. Municipal officers may appoint surveyors of logs. All to be sworn.
- SEC. 15. All boards, plank, timber and joist to be surveyed before delivery on sale. Mode of measuring and marking same, and allowances. What kind of pine boards are merchantable, and what may be shipped out of the United States.

---

121; in Piscataqua river, special laws of 1866, chap. 136; in Range and Trip ponds, in Poland, special laws of 1866, chap. 137; in Pushaw lake, special laws of 1866, chap. 109; in Winthrop pond, special laws of 1866, chap. 110; in Jonesport, special laws of 1866, chap. 60; in Maguerrawock or Beaver lakes, special laws of 1867, chap. 333; in Cathance lake, special laws of 1867, chap. 179; in Grand lake stream, special laws of 1867, chap. 304; in Damariscotta river, special laws of 1867, chap. 190, and 320; in Carrying Place Cove, in Lubec, special laws of 1867, chap. 211; in Pigeon Hill bay, in Steuben, special laws of 1867, chap. 196; in West Quoddy bay, special laws of 1867, chaps. 193, 197; in flats between Great and Little Deer island, in the town of Deer Isle, special laws of 1867, chap. 217.