

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1837.

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1837.

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SEVENTEENTH LEGISLATURE.

No. 10.

SENATE.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND, EIGHT HUNDRED
AND THIRTY-SEVEN.

AN ACT for the preservation of Fish in the Penobscot waters.

SECT. 1. *Be it enacted by the Senate and
2 House of Representatives in Legislature as-
3 sembled, That the Governor and Council, be
4 and he hereby is authorized and empowered to
5 appoint and commission three suitable persons,
6 one of whom shall be a resident of each of the
7 counties of Penobscot, Hancock, and Waldo,
8 to be called County Fish Wardens; to hold
9 said office during four years, unless sooner re-
10 moved. And all vacancies happening in said
11 office shall be immediately supplied by appoint-
12 ments to be made by the Governor with ad-
13 vice of Council. And one of said persons
14 shall, in his Commission be designated as Chair-
15 man. And before entering upon the duties of
16 said office, said County Fish Wardens shall be*

17 sworn, as other civil officers, to the faithful dis-
18 charge of their respective trusts.

SECT. 2. *Be it further enacted*, That it shall
2 be the duty of said board of County Fish
3 Wardens to maintain a general superintendence
4 over the fisheries of Salmon, Shad and Ale-
5 wives in the waters of the Penobscot Bay,
6 rivers and streams emptying into the same,
7 northward of a straight line extending from the
8 most southwardly point of Castine, to a point
9 called Moosehead in the town of Belfast, with
10 a view to the preservation of said Fish, and to
11 adopt and enforce such regulations and pursue
12 such measures as may be authorized for that
13 purpose by this or any subsequent enactment of
14 law.

SECT. 3. *Be it further enacted*, That said
2 County Fish Wardens shall hold their regular
3 meetings at Bangor, on the first Mondays of
4 April, May, June and July in each year, with
5 power to adjourn to such places and times as
6 they may deem expedient. And a majority of
7 said board shall constitute a quorum for the
8 transaction of business, so that any act done by
9 such majority shall be deemed and taken as the
10 act of said Board.

SECT. 4. *Be it further enacted*, That said
2 board shall have authority at such times as they
3 deem proper to visit any mill dam or dams now

4 erected, or which may hereafter be erected
5 across, or upon any of the waters aforesaid, and
6 examine and ascertain whether there be pro-
7 vided and opened a suitable and sufficient pas-
8 sage or fish-way for the easy and safe passage
9 of said fish, through, over, or around any such
10 dam. And if said board shall adjudge that there
11 is not provided and opened a suitable fish-way
12 for said purpose, it shall be their duty to pre-
13 scribe and define such fish-way as they may
14 adjudge suitable and sufficient, and give written
15 notice thereof to some owner or owners, occu-
16 pant or occupants of said dam, and in said notice
17 to require the fish-way to be made according to
18 said description without delay. And if such
19 fish-way shall not be provided and opened, to
20 the satisfaction of said board, within ten days
21 from the giving of such notice, any owner or
22 owners, occupant or occupants of said dam or
23 of any mill or machinery benefitted by such dam,
24 shall forfeit and pay a penalty of not less than
25 twenty dollars or more than fifty dollars for each
26 and every day during which said neglect shall
27 continue, to be reckoned from the expiration of
28 the ten days aforesaid. And said board shall
29 define and describe in writing the extent and
30 limits of such fish-way, and cause the same to
31 be entered in the records of the city, town, or
32 plantation in which the said fish-way is situated.

33 And if any person, shall take any of the fish
34 aforesaid in any such fishway, or within thirty
35 rods of the same, or shall by placing any imped-
36 iments in or near such fish-way, or by any other
37 means, hinder or obstruct the passage of fish up,
38 through or over such fish-way, between the first
39 day of April and the first day of August in each
40 year, the person so offending shall forfeit and
41 pay a penalty of not less than twenty dollars, or
42 more than fifty dollars.

SECT. 5. *Be it further enacted,* 'That said
2 Board shall appoint Deputy Fish-Wardens in
3 such places as they deem proper, not exceeding
4 three in any City, Town, or Plantation, who
5 shall be sworn to the faithful discharge of the
6 trust, and shall give to said Deputies immediate
7 notice of their appointment. And every person
8 appointed a Deputy as aforesaid, who shall
9 neglect to take the oath of office and return a
10 certificate thereof to the County Fish-Warden
11 of his County, within ten days from the time of
12 being notified of his appointment, shall be con-
13 sidered as declining said appointment, and the
14 County Fish-Wardens shall thereupon forth-
15 with proceed to appoint another person in his
16 stead, and so on until all vacancies are filled.
17 All Deputies shall be removable at the pleasure
18 of the County Wardens, and it shall be the
19 duty of said County Wardens without delay to

20 fill all vacancies in the office of Deputy War-
 21 dens, occasioned either by removal, death, or
 22 otherwise.

SECT. 6. *Be it further enacted*, That it
 2 shall be the duty of all County, and all Deputy
 3 Wardens by all lawful means to prevent the
 4 taking or destroying of any of the fish aforesaid,
 5 in any of said waters, in violation of law, and
 6 also to institute prosecutions for all such offen-
 7 ces against this Act as shall come to their knowl-
 8 edge, and prosecute the same to final judgment.
 9 And in such prosecutions any County or Deputy
 10 Warden is hereby made a competent witness
 11 and shall be allowed for travel and attendance,
 12 as such, although he may be the prosecutor in
 13 the suit.

SECT. 7. *Be it further enacted*, That be-
 2 tween the first day of April and the first day of
 3 July in each year, no person shall take or destroy
 4 in any of said waters any of the fish aforesaid,
 5 either by means of weirs, nets, or any other
 6 implements, apparatus or machinery whatever
 7 except between sunrise on Monday, and sunrise
 8 on Saturday of any week. And any person
 9 committing any offence against this provision, or
 10 aiding or abetting in the same, shall forfeit and
 11 pay for every such offence the sum of ten dol-
 12 lars, and also a further penalty of one dollar for
 13 each and every salmon, and twenty-five cents

14 for each and every shad, and two cents for each
15 and every alewife so taken or destroyed, and
16 shall forfeit all boats, nets, implements, appa-
17 tus or machines (except weirs) which may be
18 employed in the business or for the purpose of
19 taking or destroying any of said fish as aforesaid,
20 to be libelled and proceeded against in the mode
21 prescribed by law.

SECT. 8. *Be it further enacted*, That no per-
2 son shall erect or continue any weir for the pur-
3 pose of taking or destroying any of said fish on
4 any of the waters aforesaid, without the license
5 of the Selectmen of the town in which, or con-
6 tiguous to which, the same is to be erected.
7 And no person shall erect or continue any weir
8 across any stream of said waters, or within
9 thirty rods of any fish way in any dam on said
10 waters. And every person offending against
11 any of the provisions of this section shall forfeit
12 and pay a penalty of one hundred dollars.

SECT. 9. *Be it further enacted*, That every
2 weir shall be provided with a gate or passageway
3 for said fish, at least three feet wide, and ex-
4 tending from the bottom or floor thereof to the
5 highwater line, which gate or door shall be in
6 the ground, or apartment thereof where such fish
7 are secured and taken. And said gate shall be
8 left open and without impediment to the passage
9 of said fish, from sunrise on Saturday, of each

10 week, to sunrise on the succeeding Monday, be-
 11 tween the first day of April and the first day of
 12 July in each year. And if any weir shall be
 13 made without such gate or door, or if any such
 14 gate or door shall not be kept open as herein
 15 required, the owner or occupant of such weir,
 16 for each offence shall forfeit twenty dollars.

SECT. 10. *Be it further enacted,* That all
 2 weirs erected for the purpose of taking or de-
 3 stroying any of said fish in said waters shall be
 4 entirely removed or destroyed by the owner or
 5 occupant thereof on or before the thirtieth day of
 6 July in each year. And in case of neglect so
 7 to remove or demolish such weir, any owner or
 8 occupant or person interested therein shall for-
 9 feit fifty dollars. And it shall be lawful for any
 10 County or Deputy Warden to remove or
 11 demolish such weir after said thirtieth day of
 12 July, and to recover of the person licensed to
 13 erect or continue the same or of any owner
 14 therein, double the expenses incurred in remov-
 15 ing or demolishing the same as aforesaid.

SECT. 11. *Be it further enacted,* That any
 2 County or Deputy Warden shall have right and
 3 authority to visit any dam, weir, boat, net, trap,
 4 or other machine erected or placed for the pur-
 5 pose of taking or destroying any of said fish,
 6 at any time or place when or where the taking or
 7 destruction of said fish is prohibited by this Act.

8 And in addition to the general superintending
 9 duty and care required of Deputy Wardens, in
 10 carrying into effect the purposes of this Act, it is
 11 hereby made their special duty on the Satur-
 12 days of each week between the first of May and
 13 the first of August to be diligent and faithful in
 14 visiting the waters aforesaid, and in detecting and
 15 bringing to punishment all offenders against this
 16 Act. And the power of each County and of each
 17 Deputy Warden shall and is hereby made to ex-
 18 tend equally to every portion of the waters above
 19 described, in every county, city, town, or plan-
 20 tation into which said waters extend.

SECT. 12. *Be it further enacted*, That if
 2 any county or Deputy Warden shall be forcibly
 3 resisted in the discharge of any duty, or in the
 4 exercise of any right prescribed by this Act, he
 5 is hereby authorised to require of any person or
 6 persons, the assistance which may be requested
 7 for his protection, and to enable him to discharge
 8 the duty, or exercise the right aforesaid. And
 9 if any person who shall be by him called upon
 10 for that purpose, shall unreasonably refuse or
 11 neglect to render the required assistance, shall
 12 be liable to forfeit and pay a penalty of ten dol-
 13 lars.

SECT. 13. *Be it further enacted*, That no
 2 net or string of nets for the taking of any of
 3 said fish shall ever be used in any of said waters

4 extending more than eighty fathoms in length
 5 or more than fifteen feet in depth. And every
 6 person violating this provision shall forfeit ten
 7 dollars, and also forfeit the said net or nets,
 8 together with the boat and tools employed for
 9 and in the using of said net or string of nets.

SECT. 14. *Be it further enacted*, That no
 2 person or persons shall by any way or means
 3 whatever, take or destroy any of the fish afore-
 4 said in any part of said waters, between the first
 5 day of July, in one year, to the first day of
 6 April in the succeeding year. And each and
 7 every person violating this provision shall forfeit
 8 and pay the sum of one hundred dollars, and
 9 also the further sum of two dollars for each and
 10 every salmon, one dollar for each and every
 11 shad, and twenty-five cents for each and every
 12 alewife so taken or destroyed.

SECT. 15. *Be it further enacted*, That all
 2 forfeitures prescribed by this Act, exceeding
 3 twenty dollars, shall be recoverable by indict-
 4 ment in the Supreme Judicial Court or Court
 5 of Common Pleas, and all forfeitures not ex-
 6 ceeding twenty dollars, shall be recoverable by
 7 complaint, in behalf of the State, before a Jus-
 8 tice of the Peace for the County in which the
 9 offence shall have been committed. And such
 10 Justice is hereby empowered, on conviction, to
 11 impose said penalties to an amount not exceed-

ing said sum of twenty dollars, and in case any person convicted and sentenced by such Justice shall neglect or refuse to pay said penalty, with costs of prosecution, the Justice by his mittimus may cause said offender to be committed to the jail of the County, there to be detained till discharged by order of law. Reserving however to every person accused the right of appeal to the Court of Common Pleas on entering into recognisance as in other cases of appeal from Justices of the Peace in criminal suits. Complaints for any of the offences, mentioned in this Act, may be made by any County or Deputy Warden or any other person; and all forfeitures and penalties recovered for any such offences shall go, one half to the use of the County, and one half to the use of the Town in which the same were committed.

SECT. 16. *Be it further enacted*, That each County Warden for his services, shall be entitled to receive the sum of two and a half dollars for each and every day by him actually occupied in any of the duties or employments devolved upon him in virtue of said office; to be paid from the Treasury of the County in which he resides: *Provided however*, That said County Warden shall first make oath to the truth and correctness of his account, which shall then be presented to the County Commissioners to be

12 audited and allowed. And each Deputy War-
 13 den for his services, shall be allowed one dollar
 14 and fifty cents for each and every day by him
 15 actually occupied in any of the duties or em-
 16 ployments devolved upon him in virtue of said
 17 office, to be paid by the city, town, or plantation
 18 in which he resides: *Provided*, That said
 19 Deputy Warden shall first make oath to the
 20 truth and correctness of his account, which shall
 21 then be presented to the Selectmen or Assessors
 22 for allowance.

SECT. 17. *Be it further enacted*, That all
 2 Acts, now existing and in force at the time of
 3 the passing of this Act in relation to said fish-
 4 eries, be and the same are hereby repealed, ex-
 5 cepting and reserving for all cases, in which
 6 suits or prosecutions may be proceeded in to
 7 final judgment and execution as if this Act had
 8 not been passed.

STATE OF MAINE.

IN SENATE, JANUARY 31, 1837.

Ordered, That 500 copies of the foregoing Bill be printed for the use of the Legislature.

[Extract from the Journal.]

Attest, WILLIAM TRAFTON, *Secretary*.