

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1838.

EIGHTEENTH LEGISLATURE.

No. 24.

HOUSE.

STATE OF MAINE.

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

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

SECT. 1. *Be it enacted by the Senate and House*
2 *of Representatives in Legislature assembled, That*
3 the Governor, with advice of the Council, be and
4 he hereby is authorized and empowered, to appoint
5 and commission three suitable persons, one of whom
6 shall be a resident of each of the Counties of Pe-
7 nobscot, Hancock and Waldo, to be called County
8 Fish Wardens; to hold said office during four
9 years, unless sooner removed. And all vacancies
10 happening in said office shall be immediately sup-
11 plied by appointments to be made by the Governor
12 with advice of Council. And one of said persons
13 shall, in his commission, be designated as chair-
14 man. And before entering upon the duties of said
15 office, said County Fish Wardens shall be sworn,
16 as other civil officers, to the faithful discharge of
17 their respective trusts.

SEC. 2. *Be it further enacted,* That it shall be
 2 the duty of said board of County Fish Wardens
 3 to maintain a general superintendance over the fish-
 4 eries of salmon, shad and alewives in the waters
 5 of the Penobscot Bay, rivers and streams empty-
 6 ing into the same northward of the most southerly
 7 line of Sandy Point in Prospect, to the southerly
 8 line of the town of Orland, with a view to the pre-
 9 servation of said fish, and to adopt and enforce
 10 such regulations, and pursue such measures as may
 11 be authorized for that purpose by this or any sub-
 12 sequent enactments of law.

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

SEC. 4. *Be it further enacted,* That said Board
 2 shall have authority at such times as they deem
 3 proper to visit any mill-dam or dams now erected,
 4 or which may hereafter be erected across or upon
 5 any of the waters aforesaid, and examine and as-
 6 certain whether there be provided and opened a
 7 suitable and sufficient passage or fishway for the
 8 easy and safe passage of said fish through, over or
 9 around any such dam. And if said board shall

10 adjudge that there is not provided and opened a
11 suitable fishway for said purpose, it shall be their
12 duty to prescribe and define such fishway as they
13 may adjudge suitable and sufficient, and give writ-
14 ten notice thereof to some owner or owners, occu-
15 pant or occupants of said dam, and in said notice
16 to require the fishway to be made according to said
17 description, without delay. And if such fishway
18 shall not be provided and opened, to the satisfac-
19 tion of said board, within ten days from the giving
20 of such notice, any owner or owners, occupant or
21 occupants of said dam, or of any mill or machinery
22 benefitted by such dam, shall forfeit and pay a pen-
23 alty of not less than twenty dollars or more than
24 fifty dollars for each and every day during which
25 said neglect shall continue, to be reckoned from
26 the expiration of the ten days aforesaid. And
27 said board shall define and describe in writing the
28 extent and limits of such fishway, and cause the
29 same to be entered in the records of the city, town
30 or plantation in which the said fishway is situated.
31 And if any person shall take any of the fish afore-
32 said in any such fishway, or within thirty rods of
33 the same, or shall, by placing any impediments in
34 or near such fishway, or by any other means hin-
35 der or obstruct the passage of fish up, through or
36 over such fishway, between the first day of April
37 and the first day of August in each year, the per-
38 son so offending shall forfeit and pay a penalty of
39 not less than twenty dollars or more than fifty dol-

40 lars : *Provided*, That Cold Stream, on the Passa-
 41 dumkeag, and the Piscataquis River [from the foot
 42 and] above the great falls in the town of Dover,
 43 are exempt from the operation of this act.

SEC. 5. *Be it further enacted*, That said board
 2 shall appoint deputy Fish Wardens in such places
 3 as they deem proper, not exceeding three in
 4 any city, town or plantation, who shall be sworn
 5 to the faithful discharge of the trust, and shall give
 6 to said deputies immediate notice of their appoint-
 7 ment. And every person appointed a deputy as
 8 aforesaid, who shall neglect to take the oath of of-
 9 fice and return a certificate thereof to the County
 10 Fish Warden of his county within ten days from
 11 the time of being notified of his appointment, shall
 12 be considered as declining said appointment, and
 13 the County Fish Wardens shall thereupon forth-
 14 with proceed to appoint another person in his stead,
 15 and so on until all vacancies are filled. All depu-
 16 ties shall be removable at the pleasure of the Coun-
 17 ty Wardens, and it shall be the duty of said Coun-
 18 ty Wardens without delay to fill all vacancies in
 19 the office of deputy Wardens occasioned either by
 20 removal, death or otherwise.

SEC. 6. *Be it further enacted*, That it shall be the
 2 duty of all County and all deputy Wardens, by
 3 all lawful means to prevent the taking or destroy-
 4 ing of any of the fish aforesaid, in any of said wa-
 5 ters in violation of law, and also to institute pro-
 6 secutions for all such offences against this act as

7 shall come to their knowledge, and prosecute the
 8 same to final judgment. And in such prosecutions
 9 any County or deputy Warden is hereby made a
 10 a competent witness, and shall be allowed for tra-
 11 vel and attendance as such, although he may be
 12 the prosecutor in the suit.

SEC. 7. *Be it further enacted,* That between the
 2 first day of April and the first day of July in each
 3 year, no person shall take or destroy, in any of
 4 said waters, any of the fish aforesaid, either by
 5 means of weirs, nets, or any other implements, ap-
 6 paratus or machinery whatever, except between
 7 sunrise on Monday and sunrise on Friday of any
 8 week. And any person committing any offence
 9 against this provision, or aiding or abetting in the
 10 same, shall forfeit and pay for every such offence
 11 the sum of ten dollars, and also a further penalty
 12 of one dollar for each and every salmon, and twen-
 13 ty-five cents for each and every shad, and two cents
 14 for each and every alewife so taken or destroyed,
 15 and shall forfeit all boats, nets, implements, appa-
 16 ratus or machines (except weirs) which may be
 17 employed in the business or for the purpose of tak-
 18 ing or destroying any of said fish as aforesaid, to
 19 be libelled and proceeded against in the mode pre-
 20 scribed by law.

SEC. 8. *Be it further enacted,* That no person
 2 shall erect or continue any weir, for the purpose of
 3 taking or destroying any of said fish on any of the
 4 waters aforesaid, without the license of the Select-

5 men of the towu in which or contiguous to which
 6 the same is to be erected. And no person shall
 7 erect or continue any weir across any stream of
 8 said waters, or within thirty rods of any fishway in
 9 any dam on said waters. And every person of-
 10 fending against any of the provisions of this sec-
 11 tion shall forfeit and pay a penalty of one hundred
 12 dollars.

SEC. 9. *Be it further enacted,* That every weir
 2 shall be provided with a gate or passage way for
 3 said fish, at least three feet wide, and extending
 4 from the bottom or floor thereof to the high water
 5 line, which gate or door shall be in the pound, or
 6 apartment thereof where such fish are secured and
 7 taken. And said gate shall be left open and with-
 8 out impediment to the passage of said fish, from
 9 sunrise on Friday of each week to sunrise on the
 10 succeeding Monday, between the first day of April
 11 and the first day of July in each year. And if any
 12 weir shall be made without such gate or door, or if
 13 any such gate or door shall not be kept open, as
 14 herein required, the owner or occupant of such
 15 weir for each offence shall forfeit twenty dollars.

SEC. 10. *Be it further enacted,* That all weirs
 2 erected for the purpose of taking or destroying any
 3 of said fish in said waters shall be entirely remov-
 4 ed or destroyed by the owner or occupant thereof,
 5 on or before the thirtieth day of July in each year.
 6 And in case of neglect so to remove or demolish
 7 such weir, any owner or occupant or person inter-

8 ested therein shall forfeit fifty dollars. And it
 9 shall be lawful for any County or deputy Warden
 10 to remove or demolish such weir after said thirtieth
 11 day of July, and to recover of the person licensed
 12 to erect or continue the same, or of any owner there-
 13 in, double the expenses incurred in removing or
 14 demolishing the same as aforesaid.

SECT. 11. *Be it further enacted*, That any Coun-
 2 ty or deputy Warden shall have right and authori-
 3 ty to visit any dam, weir, boat, net, trap or other
 4 machine erected or placed for the purpose of tak-
 5 ing or destroying any of said fish, at any time or
 6 place when or where the taking or destruction of
 7 said fish is prohibited by this Act. And in addi-
 8 tion to the general superintending duty and care re-
 9 quired of deputy Wardens in carrying into effect
 10 the purposes of this act, it is hereby made their
 11 special duty, on the Fridays and Saturdays of each
 12 week between the first of May and the first of Au-
 13 gust, to be diligent and faithful in visiting the wa-
 14 ters aforesaid, and in detecting and bringing to
 15 punishment all offenders against this act. And the
 16 power of each County and of each deputy Warden
 17 shall and is hereby made to extend equally to eve-
 18 ry portion of the waters above described, in every
 19 county, city, town or plantation into which said wa-
 20 ters extend.

SECT. 12. *Be it further enacted*, That if any Coun-
 2 ty or deputy Warden shall be forcibly resisted in
 3 the discharge of any duty or in the exercise of any

4 right prescribed by the act, he is hereby authorised
 5 to require of any person or persons the assistance
 6 which may be requested for his protection, and to
 7 enable him to discharge the duty or exercise the
 8 right aforesaid. And if any person who shall be
 9 by him called upon for that purpose shall unrea-
 10 sonably refuse or neglect to render the required as-
 11 sistance, shall be liable to forfeit and pay a penal-
 12 ty of ten dollars.

SECT. 13. *Be it further enacted,* That no net or
 2 string of nets for the taking of any of said fish shall
 3 ever be used in any of said waters, extending more
 4 than eighty fathoms in length or more than fifteen
 5 feet in depth. And every person violating this
 6 provision shall forfeit ten dollars, and also forfeit
 7 the said net or nets, together with the boat and tools
 8 employed for and in the using of this net or string
 9 of nets.

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

SECT. 15. *Be it further enacted,* That all for-

2 forfeitures prescribed by this act, exceeding twenty
 3 dollars, shall be recoverable by indictment in the
 4 Supreme Judicial Court or Court of Common
 5 Pleas, and all forfeitures not exceeding twenty dol-
 6 lars shall be recoverable by complaint, in behalf of
 7 the State, before a Justice of the Peace for the coun-
 8 ty in which the offence shall have been committed.
 9 And such Justice is hereby empowered, on convic-
 10 tion, to impose said penalties to an amount not ex-
 11 ceeding said sum of twenty dollars, and in case
 12 any person convicted and sentenced by such Jus-
 13 tice shall neglect or refuse to pay said penalty with
 14 costs of prosecution, the Justice by his mittimus
 15 may cause said offender to be committed to the jail
 16 of the county there to be detained till discharged
 17 by order of law, reserving, however to every per-
 18 son accused the right of appeal to the Court of Com-
 19 mon Pleas, on entering into recognizance, as in
 20 other cases of appeal from Justices of the Peace in
 21 criminal suits. Complaints for any of the offences
 22 mentioned in this act may be made by any County
 23 or deputy Warden, or any other person; and all
 24 forfeitures and penalties recovered for any such of-
 25 fences shall go, one half to the use of the county
 26 and one half to the use of the town in which the
 27 same were committed.

SECT. 16. *Be it further enacted,* That each Coun-
 2 ty Warden, for his services, shall be entitled to re-
 3 ceive the sum of two and a half dollars for each and
 4 every day by him actually occupied in any of the

5 duties or employments devolved upon him in vir-
 6 tue of said office, to be paid from the treasury of
 7 the county in which he resides: *Provided, howev-*
 8 *er,* That said County Warden shall first make oath
 9 to the truth and correctness of his account, which
 10 shall then be presented to the County Commission-
 11 ers to be audited and allowed. And each deputy
 12 Warden, for his services, shall be allowed one dol-
 13 lar and fifty cents for each and every day by him
 14 actually occupied in any of the duties or employ-
 15 ments devolved upon him in virtue of said office, to
 16 be paid by the city, town or plantation in which he
 17 resides: *Provided,* That said deputy Warden shall
 18 first make oath to the truth and correctness of his
 19 account, which shall then be presented to the Se-
 20 lectmen or Assessors for allowance.

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

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
MARCH 5, 1838. }

Laid on the table and three hundred copies ordered to be
printed for the use of the Legislature.

(Extract from the Journal.)

GEO. C. GETCHELL, Clerk.