

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)

DOCUMENTS

PRINTED BY ORDER OF

THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1843.

AUGUSTA:

WM. R. SMITH & Co., PRINTERS TO THE STATE.



1843.

TWENTY-THIRD LEGISLATURE.

No. 25.]

[HOUSE.

A N A C T

IN RELATION TO THE

PRESERVATION OF FISH.

[WM. R. SMITH & Co....Printers to the State.]

STATE OF MAINE.

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

AN ACT for the preservation of Salmon, Shad, and
Alewives in Penobscot river and bay and their tribu-
tary streams.

*Be it enacted by the Senate and House of Representa-
tives in Legislature assembled*—as follows :

3 SECTION 1. The governor with advice of council
4 shall appoint and commission three suitable persons,
5 one of whom shall be a resident of each of the coun-
6 ties of Penobscot, Hancock and Waldo, to be called
7 County Fish Wardens ; to hold said office three years
8 unless sooner removed. And all vacancies happening
9 in said office shall be immediately filled by appoint-
10 ments, to be made by the governor with advice of
11 council. And one of said persons shall be designated
12 in his commission as chairman. Before entering upon
13 the duties of said office, said county fish wardens
14 shall be sworn as other civil officers to the faithful dis-
15 charge of their respective trusts.

SEC. 2. It shall be the duty of said board of
2 county fish wardens to maintain a general supervis-
3 ion over the fisheries of salmon, shad and alewives

4 in the waters of Penobscot bay, river and streams
5 emptying into the same.

SEC. 3. The said county fish wardens shall hold an
2 annual meeting at Bangor on the first Monday of
3 April, with power to adjourn to such places and times
4 as they may think expedient. And a majority of said
5 board shall constitute a quorum for the transaction of
6 business.

SEC. 4. The said county fish wardens shall from
2 time to time examine all dams and obstructions in said
3 Penobscot river and the streams emptying into the
4 same, in which salmon, shad and alewives abound, and
5 after notice in writing to one or more of the parties
6 interested and a hearing thereon, shall decide what
7 would be a suitable fish way by or through such dams
8 or obstructions, and in deciding thereon the said fish
9 wardens shall consult as far as practicable the conve-
10 nience, and also the safety of the structures by or
11 through which said fish way shall pass; and said fish
12 wardens shall define and prescribe such fish way as
13 they may judge suitable and sufficient, not exceeding
14 one foot in width in fifteen of the length of the dam,
15 and give written notice thereof to some owner or
16 owners, occupant or occupants of said dam, and in
17 said notice to require the fish way to be made accord-
18 ing to said description without delay. And if such
19 fish way shall not be made and opened to the satisfac-
20 tion of said board within twenty days from the giving

21 of said notice, any owner or owners, occupant or
22 occupants of said dam, or of any mills or machinery
23 benefitted by such dam shall forfeit and pay a penalty
24 of not less than five dollars or more than ten dollars
25 for each and every day during which said neglect shall
26 continue, to be reckoned from the expiration of the
27 twenty days aforesaid. And the said board shall de-
28 fine and describe in writing the extent and limits of
29 such fish way, and the distance from said fish way at
30 which fish shall be taken, and cause the same to be
31 entered upon the records of the city, town or planta-
32 tion in which said fish way is situated. And if any
33 person shall take any of the fish aforesaid in any such
34 fish way or within the distance prescribed by said fish
35 wardens, or shall by placing any impediment in or
36 near such fish way, or by any other means hinder or
37 obstruct the passage up through or over such fish way
38 between the first day of May and the fifteenth day of
39 July in each year, the person so offending shall forfeit
40 and pay a penalty of twenty dollars for each and ev-
41 ery offence. *Provided*, that nothing in this section
42 shall be so construed, as to prevent any person or per-
43 sons, who may be sued for any penalty or forfeiture
44 incurred on account of any neglect or omission to
45 open or make any fish way prescribed by said fish
46 wardens, from showing in defence thereto, that the
47 existing fish way, if there be one, is amply sufficient,

48 or the fish way prescribed as aforesaid, to be unne-
49 cessary for the preservation of the fish in said river.

SEC. 5. Said board of county fish wardens shall ap-
2 point deputy fish wardens in such places as they may
3 deem proper, not exceeding one in any city, town or
4 plantation, who shall be sworn to the faithful discharge
5 of the trust, and shall forward a certificate of said oath
6 to the county fish warden of his county within ten
7 days from the time of being notified of his appoint-
8 ment. All deputies shall be removable at the pleasure
9 of the county fish wardens, and it shall be the duty of
10 said county fish wardens without delay to fill all va-
11 cancies in the office of deputy wardens occasioned by
12 death, removal or otherwise.

SEC. 6. It shall be the duty of all county and all
2 deputy wardens, by all lawful means, to prevent the
3 taking or destroying any of the fish aforesaid, in any
4 of said waters in violation of law, and also to institute
5 prosecutions for all such offences against this act as
6 shall come to their knowledge, and prosecute the same
7 to final judgment. And in such prosecutions any
8 county or deputy fish warden is hereby made a com-
9 petent witness, and shall be allowed for travel and
10 attendance as such, although he may be a prosecutor
11 in the suit. And any county or deputy warden shall
12 have right and authority to visit any dam, wier, boat,
13 net, trap, or other machine erected or placed for the
14 purpose of taking or destroying any of said fish, at

15 any time or place where or when the taking or de-
16 struction of said fish is prohibited by law. And
17 the power of each county, and of each deputy
18 warden shall and is made to extend equally to every
19 portion of the waters before described in every county,
20 city, town or plantation into which said waters extend.

SEC. 7. Between the first day of April and the fif-
2 teenth day of July in each year, no person shall take
3 or destroy in any of said waters any of the fish afore-
4 said either by means of wiers, nets, or any other im-
5 plement, apparatus or machinery whatever, except
6 between sunrise on Monday, and sunrise on Saturday
7 of any week. And any person committing any offence
8 against this provision, or aiding or abetting the same,
9 shall forfeit and pay for every such offence the sum of
10 ten dollars.

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

SEC. 9. All wiers shall be stripped so as to admit
2 the free passage of fish through the same, on or be-
3 fore the fifteenth day of July in each year. And the
4 owner or owners of any wier who shall neglect so to
5 strip the same, shall forfeit five dollars for every day
6 until the same is stripped as aforesaid.

SEC. 10. Any county or deputy fish warden who
2 shall be forcibly resisted in the discharge of any duty,
3 or in the exercise of any right prescribed by this act,
4 is hereby authorized to require of any person or per-
5 sons the assistance which may be requisite for his pro-
6 tection to enable him to discharge the duty or exer-
7 cise the rights aforesaid. And if any person who
8 shall be by him called upon for that purpose, shall
9 unreasonably refuse, or neglect to render the required
10 assistance, he shall be liable to forfeit and pay a pen-
11 alty of ten dollars.

SEC. 11. No net, or string of nets for the taking
2 of any of said fish, shall ever be used in any of said
3 waters extending more than eighty fathoms in length,
4 or more than fifteen feet in depth; and every person
5 violating this provision shall forfeit ten dollars.

SEC. 12. No person or persons shall take or destroy
2 any of the fish aforesaid in any of said waters, be-
3 tween the fifteenth day of July, in one year, and the
4 first day of April, in the succeeding year. And each
5 and every person violating this provision shall forfeit
6 and pay the sum of twenty dollars for each offence.

SEC. 13. All forfeitures prescribed by this act exceeding twenty dollars, shall be recoverable by indictment in the supreme judicial court, or district court, and all forfeitures not exceeding twenty dollars, shall be recoverable by complaint in behalf of the State, before a justice of the peace for the county in which the offence shall have been committed. And such justice is hereby empowered, on conviction, to impose said penalties to an amount not exceeding the sum of twenty dollars, and in case any person convicted and sentenced by such justice shall neglect or refuse to pay such 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 to appeal to the district court on entering into recognizance 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.

SEC. 14. Each county warden, for his services, shall be entitled to receive the sum of two dollars for each and every day by him actually occupied in any of the duties and employments devolving upon him

5 by virtue of said office, to be paid from the treasury
6 of the county in which he resides. Provided howev-
7 er, that said county warden shall first make oath to
8 the truth and correctness of his account, which shall
9 then be presented to the county commissioners to be
10 audited and allowed.

11 And each deputy warden, for his services, shall be
12 allowed one dollar for each and every day by him ac-
13 tually employed in any of the duties devolving upon
14 him in virtue of said office, to be paid by the city,
15 town or plantation in which he resides. Provided,
16 that said deputy warden shall first make oath to the
17 truth and correctness of his account, which shall be
18 presented to the selectmen or assessors for allowance.

SEC. 15. The mill privileges on the river Piscata-
2 quis and its tributaries, Blackman's, Kenduskeag,
3 Brewers's and Cold streams, and the towns of Castine
4 and Brooksville, are hereby exempt from the provis-
5 ions of this act.

SEC. 16. All acts or parts of acts inconsistent with
2 this act, are hereby repealed.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
February 11, 1843. }

Laid upon the table, and 200 copies ordered to be printed for
the use of the House.

WM. T. JOHNSON, *Clerk.*