

MAINE STATE LEGISLATURE

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FORTY-EIGHTH LEGISLATURE.

SENATE.

No. 45.

STATE OF MAINE.

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

AN ACT to regulate the river and interior fisheries.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :

SECTION 1. The provisions of this act shall apply to
2 all the fresh waters of this state above the flow of the
3 tide, and to all the tidal waters that are included
4 within the limits of the fishery districts hereinafter
5 established, with such exceptions as may be herein-
6 after mentioned.

SECT. 2. For the purposes of this act the term
2 "salmon" shall mean the common migratory salmon
3 of the sea-coast and rivers ; the term "landlocked
4 salmon" shall mean any of the species or varieties of
5 salmon that do not periodically and habitually run to
6 the sea, being the same that are locally known as

7 “salmon trout” and “black-spotted trout”; the term
8 “alewife” shall mean the small species of migratory
9 fish commonly called “alewife,” but known also by
10 the local names of “herring” and “gaspereau,” and
11 shall also include the similar species found in tidal
12 waters and known as “blue-back”; the term “bass”
13 shall mean the striped bass of the tidal waters.

SECT. 3. The governor, with the advice of the coun-
2 cil, shall appoint three persons to be commissioners of
3 fisheries, who shall hold office for three years, unless
4 sooner removed, and have a general supervision of the
5 fisheries regulated by this act. They shall examine
6 dams and other obstructions existing in all rivers and
7 streams in the state and determine the necessity of
8 fishways, and the location, form and capacity thereof;
9 shall visit those sections where fisheries regulated by
10 this act are carried on and examine into the working
11 of the laws; shall introduce and disseminate valuable
12 species of fish; and perform all other duties prescribed
13 by law. They shall report annually on or before the
14 thirty-first day of December to the governor, who shall
15 cause three thousand copies of each report to be
16 printed. They shall be entitled to receive their trav-
17 elling and other expenses necessarily connected with
18 their duties, and such compensation for their services
19 as may be determined by the governor and council,

20 who shall audit their accounts ; *provided* that the total
21 amount of their pay and expenses shall not exceed
22 three thousand dollars annually.

SECT. 4. Every dam or other artificial obstruction
2 in any river or stream naturally frequented by salmon,
3 shad or alewives, shall be provided by the owner or
4 occupant thereof with a durable and efficient fishway,
5 of such form and capacity and in such location as may
6 be determined by the commissioners of fisheries or by
7 any person authorized by them to determine the same.
8 It shall also be incumbent on the owner or occupant of
9 the dam to keep the fishway in repair and open and
10 free from obstruction for the passage of fish during
11 such times as may be prescribed by law.

SECT. 5. In cases where they deem it expedient the
2 commissioners of fisheries may after notice in writing
3 to one or more of the owners or occupants of a dam,
4 and a hearing thereon, decide what would be a suitable
5 fishway or passage through such dam, consulting
6 as far as practicable the convenience and safety there-
7 of, and give written notice to some owner or occupant,
8 specifying the location, form and capacity of the re-
9 quired fishway, and requiring the same to be built
10 within a specified time.

SECT. 6. If a fishway thus required to be built is
2 not completed to the satisfaction of the commissioners

3 within the time specified, any owner or occupant shall
4 forfeit a sum not exceeding fifty nor less than ten dol-
5 lars for every day between the first day of May and
6 the first day of November during which such neglect
7 continues.

SECT. 7. On the completion of any fishway to the
2 satisfaction of the commissioners or at any subsequent
3 time, they shall prescribe in writing the time during
4 which the same shall be kept open and free from ob-
5 struction to the passage of fish each year, and a copy
6 of such prescription shall be served on some owner or
7 occupant of the dam. The commissioners may after-
8 wards change the time so fixed as they may see fit.
9 In the absence of any other regulation in the premises
10 a fishway shall be kept open and unobstructed from
11 the first day of May to the fifteenth day of July, of
12 each year. The penalty for neglecting to comply
13 with the provisions of this section or any regulations
14 made in accordance herewith, shall be not less than
15 five nor more than twenty dollars for each day that
16 said neglect continues.

SECT. 8. In case the commissioners find any fishway
2 out of repair or needing alterations to make it efficient,
3 they may, as in the case of new fishways, require the
4 owner or occupant to make such repairs or alterations ;
5 and all the proceedings in such cases, and the penalty

6 for neglect, shall be as provided in the fifth and sixth
7 sections of this act.

SECT. 9. Each of the following rivers with its
2 tributaries, and the adjoining sea-coast, as far as the
3 same is frequented by salmon, shad, alewives, bass or
4 smelts, shall constitute a fishery district: namely, the
5 Presumpscot, Androscoggin, Kennebec, Georges, Pe-
6 nobscot and St. Croix; the Androscoggin district shall
7 only extend to its junction with the Kennebec in
8 Merrymeeting bay. In cases of doubt, the commis-
9 sioners of fisheries may determine more exactly the
10 limits of any fishery district, and in case of dispute as
11 to jurisdiction of wardens appointed under this act, it
12 shall be their duty to examine as soon as practicable
13 and determine as aforesaid; any regulations made in
14 accordance with this clause, shall be submitted to the
15 governor and council, who may approve, amend or
16 reject the said regulations. Any regulations so ap-
17 proved or amended, shall, after publication two weeks
18 in the state paper, be deemed to have the full force
19 and effect of law.

SECT. 10. The governor, with the advice of the
2 council, shall appoint persons in each fishery district
3 to be fish wardens, as follows: One in the Presump-
4 scot district, one in the Androscoggin district, three
5 in the Kennebec district, one in the Georges district,

6 three in the Penobscot district, and one in the St.
7 Croix district. The wardens of the Kennebec and
8 and Penobscot districts shall have joint and several
9 jurisdiction over the fisheries of their respective dis-
10 tricts, and shall meet annually, on the first Tuesday
11 of April, at Augusta and Bangor respectively, with
12 power to adjourn to such time and place as they may
13 choose. The wardens thus appointed, shall hold office
14 for three years, unless sooner removed, and shall be
15 duly sworn. They shall make an annual report of
16 their doings to the commissioners of fisheries, on or
17 before the first day of November. They shall receive
18 three dollars for each day they are occupied in their
19 official duties ; their accounts shall be audited by the
20 governor and council and paid from the state treasury.

SECT. 11. Fish wardens shall endeavor to enforce
2 the laws in regard to the fisheries within their respec-
3 tive districts, shall prosecute for all offences that come
4 to their knowledge, shall be entitled to their pay as
5 witnesses in said cases although they are complainants,
6 and have a right at all times to visit any dam, or any
7 weir or other apparatus for taking fish ; and when they
8 are resisted in the discharge of their duties, they may
9 require the aid of as many persons as they deem neces-
10 sary, and any person neglecting or refusing to render
11 aid when thus required shall forfeit ten dollars.

SECT. 12. There shall be between the first day of
2 April and the fifteenth day of July each year, a weekly
3 closetime of forty-eight hours, from sunrise on each
4 Saturday morning to sunrise on the following Monday
5 morning, during which no salmon, shad, alewives or
6 bass, shall be taken from the waters covered by this
7 act. During the weekly closetime all seines, nets and
8 other movable apparatus, shall be removed from the
9 water. Every weir shall have, in that part thereof
10 where the fish are usually taken, an opening three feet
11 wide, extending from the bottom to the top of the
12 weir, and the netting or other material which closes
13 the same while fishing, shall be taken out, carried on
14 shore, and there remain during the weekly closetime.
15 In case the enclosure where the fish are taken is fur-
16 nished with a board floor, an opening extending from
17 the floor to the top of the weir shall be held equiva-
18 lent to extending from the bottom to the top. The
19 penalty for the violation of this section shall be twenty
20 dollars for each offence.

SECT. 13. No weir, hedge, set-net, or any other
2 contrivance for the capture of fish, which is stationary
3 while in use, shall extend into more than two feet
4 depth of water at ordinary low water, under a penalty
5 of not more than one hundred nor less than fifty dollars,
6 and forfeiture of all apparatus and material so unlaw-

7 fully used. This provision shall apply to any seine or
8 drift-net that shall at any time be attached to a
9 stationary object, but shall not apply to fykes or bag-
10 nets used in the winter fishery for smelts and tomcods,
11 nor to any implement that may be lawfully used in
12 waters above the flow of the tide, nor to any portion
13 of the Penobscot river, bay or tributaries.

SECT. 14. All fishing for salmon, shad, alewives, or
2 any other migratory fish, except by hook and line,
3 shall cease on the fifteenth day of July annually, and
4 shall be unlawful after that date, and within five days
5 thereafter all of the walls of that enclosure of a weir
6 in which fish are usually taken shall be removed, and
7 no contrivance shall be placed therein to hinder the
8 free passage of fish through the weir. The penalty
9 for the violation of this section shall be not more than
10 one hundred nor less than twenty dollars, and for-
11 feiture of apparatus and material so unlawfully used.
12 This section shall not apply to weirs for the taking of
13 smelts after the first day of October.

SECT. 15. For the period of five years from the
2 passage of this act, no salmon, shad, alewives, or any
3 other migratory fish, shall be taken, nor shall any
4 structure or implement for their capture be used above
5 the flow of the tide in the Presumpscot, Androscoggin,
6 Kennebec, Georges, or St. Croix rivers, nor above the

7 flow of the tide in any tributary of either of said
8 rivers, under penalty of not more than fifty nor less
9 than ten dollars for each offence, and ten dollars for
10 each salmon, one dollar for each shad, and twenty
11 cents for each alewife so taken.

SECT. 16. No salmon, shad, alewives, or other migra-
2 tory fish, shall be taken within two hundred yards of
3 any fishway, or within one hundred yards of any dam
4 or mill-race, nor shall any structure or implement
5 except hook and line be used for taking any fish
6 within the above limits, between the first day of April
7 and the first day of November, without the written
8 permission of the wardens of the district in which it is
9 situated, approved by one of the commissioners of
10 fisheries; nor shall hook and line be used within fifty
11 yards of any fishway. The penalty for the violation
12 of this section shall be a fine of not more than fifty
13 nor less than ten dollars for each offence, and a further
14 fine of ten dollars for each salmon, one dollar for each
15 shad, and twenty cents for each alewife or other fish
16 so taken.

SECT. 17. There shall be a yearly closetime for
2 salmon from the first day of September of each year
3 to the first day of April following, during which no
4 salmon shall be taken or killed in any manner, under
5 a penalty of not more than fifty nor less than ten

6 dollars, and a further penalty of ten dollars for each
7 salmon so taken or killed.

SECT. 18. There shall be a yearly closetime for
2 land-locked salmon, trout and togue during the months
3 of October, November, December and January, during
4 which none of the fish mentioned above shall be taken
5 or killed in any manner under a penalty of not more
6 than thirty nor less than ten dollars, and a further fine
7 of one dollar for each fish so taken or killed; *provided*,
8 that this section shall not apply to the taking of blue-
9 back trout in Franklin and Oxford counties, nor to any
10 person taking fish on his own premises for the purpose
11 of cultivation.

SECT. 19. Any person who shall have in his posses-
2 sion any fish taken in violation of the seventeenth and
3 eighteenth sections of this act, shall be punished by a
4 like penalty as if he had taken them; and any person
5 having in possession any fresh salmon between the
6 fifth day of September of any year and the first day of
7 April following, or any fresh land-locked salmon, trout
8 or togue between the fifth day of October of any year
9 and the first day of February following, shall be
10 deemed guilty of a violation of this section, and shall
11 be held to prove that the fish in his possession were
12 not taken unlawfully.

SECT. 20. No weir, hedge, trap, trawl, or any net

2 other than a dip-net shall be used for the capture of
3 any fresh water fish under a penalty of not more than
4 fifty nor less than ten dollars, and a further penalty of
5 one dollar for every fish so taken. And such structure
6 or implement used in any fresh water above the flow
7 of the tide, shall be deemed to be used in violation of
8 this section unless it shall be shown to be authorized
9 by some special act or to have been used in a *bona-*
10 *fide* fishery for salmon, shad or alewives.

SECT. 21. No mascallonge, pickerel, pike, sunfish
2 or bream, yellow perch or black bass shall be intro-
3 duced, by means of the live fish or spawn, to any
4 waters where they do not now severally exist, except
5 as hereinafter provided, under a penalty of not more
6 than two hundred nor less than fifty dollars.

SECT. 22. The commissioners of fisheries may take
2 fish of any kind at such time and place and in such
3 manner as they may choose, for the purposes of science
4 and of cultivation and dissemination ; and they may
5 grant permits to other persons to take fish for the same
6 purposes, and may introduce or cause or permit to be
7 introduced any kind of fish to any waters they may
8 see fit ; anything in this or any other act to the con-
9 trary notwithstanding.

SECT. 23. The commissioners of fisheries may set
2 apart any waters for the purpose of cultivation of fish ;

3 and after three weeks' notice, published in the state
4 paper, no person shall take or kill any fish therein
5 under a penalty of not more than one hundred nor less
6 than ten dollars, and a further penalty of two dollars
7 for each fish so taken or killed.

SECT. 24. All boats, implements and materials used
2 in violation of this act, and all fish taken in violation
3 of the same shall be forfeited.

SECT. 25. All fines and forfeitures provided for in
2 this act may be recovered before any competent tribu-
3 nal by complaint, indictment or action of debt. In
4 cases where the offence is committed in any river or
5 stream forming a boundary between two counties, or
6 in any lake or other body of standing water lying
7 partly in two or more counties, the action may be
8 brought in either county. One-half of all fines and
9 forfeitures recovered shall be for the benefit of the
10 person prosecuting therefor.

SECT. 26. It shall be the duty of constables and
2 police officers to prosecute for all offences against this
3 act that come to their knowledge.

SECT. 27. Any fish warden, constable or police offi-
2 cers may seize any implement used in illegal fishing,
3 and may render any weir, built or maintained contrary
4 to law, incapable of taking fish. Any such officer

5 may, on view, appropriate to his own use or gift any
6 fish taken or possessed in violation of this act.

SECT. 28. The commissioners of fisheries can dele-
2 gate to any fish warden or other lawful officer of
3 fisheries any of the powers given to the said commis-
4 sioners in relation to the construction of fishways.

SECT. 29. That portion of the Saint John river and
2 its tributaries lying above Grand falls in New Bruns-
3 wick, shall be exempt from all the provisions of this
4 act.

SECT. 30. The following named waters and their
2 tributaries are exempt from the operation of the pro-
3 visions of this act relating to the migratory fishes, and
4 the supervision of fishways by the commissioners, that
5 is to say : Royall's river in North Yarmouth ; Sewall's
6 pond or its outlets in Arrowsic ; Nequasset stream in
7 Woolwich ; Damariscotta river ; Duck trap stream in
8 Lincolnville and Belmont ; the Eastern Penobscot
9 river in Orland ; Winslows and Leach's streams in
10 Penobscot ; the stream from Walker's pond in Brooks-
11 ville ; all waters in Vinalhaven, Bluehill, Tremont,
12 Mount Desert, Eden, Franklin and Sullivan ; Tunk
13 river in Steuben ; Pleasant river in Washington
14 county ; East Machias river and Cobscook or Orange
15 river in Whiting.

SECT. 31. The following named waters with their

2 tributaries are subject to this act only so far as relates
3 to the construction of fishways, namely : Harraseekit
4 and Little rivers in Freeport ; the stream from Gray's
5 pond in Sedgwick and Brooksville ; Denny's river and
6 Pinmaquan river.

SECT. 32. No provisions of this act shall interfere
2 with any rights and privileges granted to persons en-
3 gaged in the cultivation of fish.

SECT. 33. The following acts, parts of acts, and
2 resolves are hereby repealed, namely : all acts and
3 parts of acts relating to the fisheries for salmon, shad,
4 alewives and bass in the Presumpscot, Kennebec, An-
5 droscoggin, Georges, Penobscot and St. Croix rivers,
6 and their tributaries, except an act entitled " an act
7 to regulate the shad and alewife fisheries in the town
8 of Warren," passed March sixth, eighteen hundred
9 and two, and an act amendatory thereto, approved
10 February twenty-four, eighteen hundred and sixty-
11 eight, which shall remain in full force so far as their
12 provisions are not inconsistent with the provisions of
13 this act. There are further repealed the twenty-
14 second to the twenty-sixth sections inclusive of chap-
15 ter forty of the revised statutes ; " an act to regulate
16 certain fisheries," approved February twenty-sixth,
17 eighteen hundred sixty eight ; " an act giving certain
18 powers to the commissioners of fisheries," approved

19 February twenty-nine, eighteen hundred sixty-eight ;
20 a “ resolve relative to the restoration of sea-fish to
21 the rivers and inland waters of Maine,” approved
22 January twenty-eight, eighteen hundred sixty-seven ;
23 a “ resolve to continue in force and amendatory of
24 chapter seventy-eight of the resolves of eighteen hun-
25 dred and sixty-seven, in relation to the restoration of
26 sea-fish to the rivers and inland waters of Maine,”
27 approved March sixth, eighteen hundred and sixty-
28 eight, and all other acts and parts of acts inconsistent
29 with the provisions of this act.

SECT. 34. Section thirteen of this act, and section
2 twelve, so far as it applies to weirs that have no floor
3 in that enclosure in which the fish are usually taken,
4 shall take effect on the first day of September, eigh-
5 teen hundred sixty-nine. All other parts of this act
6 shall take effect when approved by the governor.

STATE OF MAINE.

IN SENATE, February 26, 1869.

Reported by Mr. MATHEWS, from the Committee on Fisheries,
and printed under the Joint Rule.

THOMAS P. CLEAVES, *Secretary.*