

MAINE STATE LEGISLATURE

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FORTY-NINTH LEGISLATURE.

HOUSE.

No. 105.

STATE OF MAINE.

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

AN ACT additional to chapter seventy of the public laws of eighteen hundred sixty-nine, 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 and the act to 2 which this is additional, shall apply to all the fresh 3 waters of this state above the flow of the tide, and to 4 all the tidal waters frequented by the various species 5 of fresh water and migratory fishes, with such excep- 6 tions as may be hereinafter mentioned.

SECT. 2. For the purposes of this act and the act to 2 which this act is additional, the term "migratory" 3 shall be restricted in its application to salmon, shad,

4 alewives, bass and smelts ; the term “smelt” shall
5 mean the migratory smelt of the rivers and tidal waters.

SECT. 3. The commissioner of fisheries may appoint
2 deputies, who shall have authority to perform any and
3 all of the acts which the commissioner is authorized to
4 perform ; and their pay shall be fixed by the commis-
5 sioner, subject to the approval of the governor and
6 council, who shall audit their accounts and cause them
7 to be paid out of any moneys appropriated for that pur-
8 pose, or for the use of the commissioner.

SECT. 4. The commissioner of fisheries shall appoint
2 fish wardens wherever the same shall be necessary, and
3 shall fix their pay subject to the approval of the gov-
4 ernor and council, who shall audit their accounts and
5 cause the same to be paid, *provided* that not more than
6 one thousand dollars annually shall be thus expended.

SECT. 5. It shall be the duty of the commissioner of
2 fisheries and of the fish wardens to enforce the provis-
3 ions of this act and the act to which this is additional ;
4 they shall have the right to visit and examine any fish-
5 way or any dam or other obstruction to the passage of
6 fish, and any boat, structure or implement for the cap-
7 ture of fish ; they may seize anything which is forfeit-
8 able by the provisions of the said acts ; in the discharge
9 of these and all other duties assigned them they may
10 enter upon and pass through or over private property,

11 without rendering themselves liable in an action for
12 trespass ; when resisted in the discharge of their duties
13 they may require the aid of as many persons as they
14 deem necessary, and any person neglecting or refusing
15 to render aid when thus required shall forfeit ten dol-
16 lars.

SECT. 6. The commissioner of fisheries may remove
2 any artificial obstruction to the passage of migratory
3 fishes illegally used, except dams, mills and machinery,
4 at the expense of the person using or maintaining the
5 same, to be recovered by the commissioner in an action
6 of debt.

SECT. 7. The commissioner of fisheries may require
2 alterations to be made in a fishway in the same man-
3 ner as provided in the case of building a new fishway,
4 and the penalty for non-compliance shall be the same
5 as provided in said case. After a fishway has once
6 been built in accordance with the provisions of this
7 act and the act to which this is additional, and has
8 been accepted by the commissioner as a sufficient fish-
9 way, the commissioner shall not require the alteration
10 of the same by the owner or occupant of the dam within
11 ten years from its completion, unless such alteration
12 be rendered necessary by some change in the dam or
13 adjacent works, or in the flow of water in the vicinity;
14 but the commissioner may at any time make altera-

15 tions in a fishway at the public expense from any
16 moneys appropriated for his use.

SECT. 8. If the owner or occupant of a dam or other
2 obstruction shall neglect, after the expiration of the
3 time allowed by the commissioner of fisheries, to build
4 or alter a fishway as required, or shall at any time
5 neglect to keep the same in repair and free from ob-
6 struction, the commissioner may, at his discretion,
7 cause a fishway to be built, altered or repaired, and
8 obstructions removed, and the cost thereof shall be a
9 charge upon said owner or occupant, to be recovered
10 by action of debt in the name of the commissioner for
11 the use of the state, with costs and interest.

SECT. 9. The land of a person not liable to build a
2 fishway may be taken for the purpose of building the
3 same, whenever in the opinion of the commissioner of
4 fisheries it is necessary, *provided* that compensation
5 shall be awarded in the manner provided for lands
6 taken for highways; and the amount of compensation
7 so awarded shall be paid by the owner or occupant of
8 any dam or mills by which said fishway is rendered
9 necessary, to be recovered by the owner of the land so
10 taken, in an action of debt.

SECT. 10. The commissioner of fisheries may at
2 any time determine what fixtures are necessary to
3 prevent fishes being hindered or disturbed, while ap-

4 proaching or passing through a fishway, by persons in
5 the vicinity, and if, after a reasonable time, the per-
6 son liable to maintain the fishway does not provide
7 such fixtures, the commissioner may erect the same,
8 and recover the expense thereof from the said person
9 in a action of debt, with costs and interest.

SECT. 11. Whoever shall stand or go upon a fish-
2 way at a time when the same is required to be open
3 for the passage of fish, except by permission of the
4 commissioner of fisheries, a fish warden or the person
5 liable to maintain such fishway, or shall, at such a
6 time, without permission of such commissioner, in any
7 manner hinder or disturb fishes in their approach to or
8 passage through a fishway, shall forfeit ten dollars for
9 the first offence, and twenty dollars for each subse-
10 quent offence.

SECT. 12. Between the first day of May and the
2 first day of November of each year no salmon, shad,
3 alewife or other migratory fish shall be taken or killed
4 within four hundred yards of any fishway, or within
5 two hundred yards of any dam, mill-race or natural
6 fall, except by hook and line ; nor shall any structure
7 or implement except hook and line be used for taking
8 any kind of fish during the above time and within the
9 above limits in any waters frequented by migratory
10 fishes ; nor hook and line be used within fifty yards

11 of a fishway during the time when such fishway is
12 required to be open for the passage of fish, under a
13 penalty of not more than twenty nor less than five dol-
14 lars for each offence, and a further penalty of ten dol-
15 lars for each salmon, one dollar for each shad, and
16 twenty cents for each alewife so taken or killed ; *pro-*
17 *vided* that the commissioner of fisheries may permit
18 the capture of any fish during the time, within the
19 limits and in the manner forbidden by this section,
20 where in his opinion such capture will be consistent
21 with the public good.

SECT. 13. No person shall take or destroy, buy, sell
2 or have in possession any young salmon less than one
3 foot in length, under a penalty of ten dollars for each
4 offence, and a further penalty of one dollar for each
5 young salmon so taken, bought, sold or had in posses-
6 sion.

SECT. 14. The thirteenth section of the act to which
2 this is additional shall be subject to the following limi-
3 tation : in the Kennebec and Androscoggin rivers and
4 tributaries, any weir, hedge, pound or other structure
5 for taking fish may extend into water deeper than two
6 feet at ordinary low water, under the following condi-
7 tions, namely : that no such structure, which in any
8 part thereof extends into water deeper than two feet at
9 ordinary low water, shall extend further than seventy-

10 five feet from low water mark toward the middle of the
11 channel on which it is situated, nor shall occupy more
12 than one eighth part of the breadth of the river, stream
13 or channel at low water, under a penalty of not more
14 than one hundred nor less than fifty dollars.

SECT. 15. Every weir, hedge, pound or other struc-
2 ture for taking fish used after the fifteenth day of July
3 of each year, in waters where young shad or alewives
4 swim, shall be provided with such contrivances to
5 facilitate the escape of young fish as the commissioner
6 of fisheries may determine to be necessary. Any per-
7 son neglecting to provide such contrivances shall forfeit
8 twenty dollars for every offence and two dollars for
9 every hundred or less number of said young fish taken
10 or destroyed by such structure or implement, during
11 such neglect.

SECT. 16. No smelts shall be taken or fished for in
2 any other manner than by hook and line or dip-net,
3 between the first day of March and the first day of
4 November of each year, under a penalty of not more
5 than fifty nor less than ten dollars for each offence.

SECT. 17. No net, other than a dip-net, whose meshes
2 are smaller than one inch square in the clear, shall be
3 used in any waters frequented by migratory fishes, be-
4 tween the first day of March and the first day of No-

5 vember in any year, under a penalty of not more than
6 twenty nor less than ten dollars for each offence.

SECT. 18. Whoever shall take or try to take any
2 black bass during the months of April, May and June,
3 or at any time from their spawning beds, shall forfeit
4 for each offence not more than twenty nor less than
5 five dollars, and a further penalty of one dollar for
6 each black bass so taken.

SECT. 19. Previous to the year eighteen hundred
2 seventy-four no black bass shall be taken or destroyed
3 at any time or in any manner, from waters in this
4 state, under a penalty of not more than twenty nor
5 less than ten dollars, and a further penalty of three
6 dollars for each black bass so taken or destroyed.

SECT. 20. Prior to the first day of May eighteen
2 hundred seventy-two, no salmon shall be taken or fished
3 for in any manner in the Aroostook, Presque Isle and
4 Meduxnakeag rivers, under a penalty of not more than
5 twenty nor less than ten dollars, and a further penalty
6 of ten dollars for every salmon so taken.

SECT. 21. The commissioner of fisheries may set
2 apart any waters for the natural or artificial breeding
3 of fish and the maintenance of the same for the pub-
4 lic benefit; and after three weeks' notice published in
5 a paper in the county where such waters are situated,
6 if any, otherwise in the state paper, specifying the

7 kinds of fish to be bred or maintained therein, no person shall take or kill any such fish in the waters so set apart, nor shall fish therein, without the consent of the commissioner, under a penalty of not more than fifty nor less than ten dollars, and three dollars for each fish so taken or killed.

SECT. 22. The riparian proprietors of any pond, the superficial area of which is not more than one hundred acres, and the proprietors of any pond or parts of a pond created by artificial flowage, shall have exclusive right to fish therein, subject to the laws regulating such fisheries; but this shall not abridge any rights heretofore granted to fisheries in such ponds.

SECT. 23. The fishery of any pond, the superficial area of which is more than one hundred acres shall be public, except such as may have been specially granted by law, and all persons shall, for the purpose of fishing, be allowed reasonable means of access to the same, without rendering themselves liable to prosecution or action for trespass.

SECT. 24. Any riparian proprietor may, within the limits of his own premises, inclose the waters of a stream not navigable, for the cultivation of useful fishes; *provided* he furnishes a suitable passage for migratory fishes naturally frequenting such waters.

SECT. 25. Fishes artificially propagated or maintained shall be the absolute property of the person propagating or maintaining them.

SECT. 26. Whoever fishes in that portion of a pond, stream or other water in which fishes are lawfully artificially cultivated or maintained, 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.

SECT. 27. Any person legally engaged in the artificial culture and maintenance of fishes, may take them in his own waters how 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 kind of fish is prohibited by law.

SECT. 28. Chapter seventy of the public laws of eighteen hundred sixty-nine is hereby amended by striking out sections one, eight, nine, ten, eleven, fourteen, sixteen, twenty-three, twenty-four, twenty-six, twenty-seven and twenty-eight.

SECT. 29 Said chapter is further amended in the twelfth section by inserting after the word "closetime" in the twelfth line the words "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

7 of such structure which shall tend to hinder such
8 fish."

SECT. 30. Said chapter is further amended in the
2 seventeenth section by striking out the words "first
3 day of September," and inserting instead thereof the
4 words "fifteenth day of July."

SECT. 31. Said chapter is further amended in the
2 thirtieth section by striking out the words "the
3 stream from Walker's pond in Brooksville," and the
4 words "that portion of the Penobscot river and its
5 tributaries below Orphan's island, also the Kennebec
6 river below Lee's island."

SECT. 32. Said chapter is further amended in the
2 thirty-first section by striking out the words "the
3 stream from Gray's pond in Sedgwick and Brooksville."

SECT. 33. Nothing in this act shall be so construed
2 as to prevent the taking and use of fish for the pur-
3 pose of fish culture or of scientific observation as pro-
4 vided in section twenty-two of the act to which this
5 is additional.

SECT. 34. Section twenty of the act to which this
2 is additional shall be so construed as not to forbid the
3 erection of structures for the capture of eels after the
4 fifteenth day of September, in places where such
5 structures will not interfere with the passage to and
6 fro of salmon, fresh water salmon and trout.

SECT. 35. The twenty-ninth, thirtieth and thirty-
2 first sections of the act to which this is additional
3 shall, as hereinbefore amended, apply to the provisions
4 of this act.

SECT. 36. All boats, implements and materials used
2 in violation of the provisions of this act and the act to
3 which this is additional, and all fish taken, bought,
4 sold or had in possession in violation of the same,
5 shall be forfeited; any such fish may, on view, be
6 seized and appropriated to his own use or gift, by the
7 commissioner of fisheries, any fish warden, or any
8 sheriff, deputy sheriff, constable or police officer.

SECT. 37. All fines and forfeitures provided for in
2 this act may be recovered as provided in the twenty-
3 fifth section of the act to which this is additional.

SECT. 38. All acts relating to fisheries in the stream
2 from Gray's pond or Walker's pond in the towns of
3 Sedgwick and Brooksville, and all other acts and parts
4 of acts inconsistent with the provisions of this act are
5 hereby repealed.

SECT. 39. This act shall take effect twenty days
2 after its approval.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
March 2, 1870. }

Reported from the Committee on Fisheries, by Mr. STOVER, and printed under the
rules. S. J. CHADBOURNE, Clerk.