

MAINE STATE LEGISLATURE

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Fifty-Seventh Legislature.

HOUSE

No. 98.

STATE OF MAINE.

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

AN ACT to regulate and protect fisheries, and the propagation of fish.

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

SECTION 1. The governor, with the advice of the council, 2 shall appoint one or two persons, as they may think best, 3 to be commissioners of fisheries, who shall hold office for 4 three years, unless sooner removed, and have a general 5 supervision of the fisheries, regulated by the preceding 6 and following sections. He or they shall examine dams 7 and all other obstructions existing in all rivers and 8 streams in the state, and determine the necessity of fish- 9 ways, and the location, form and capacity thereof; shall 10 visit those sections where fisheries regulated by this act 11 are carried on, and examine into the working of the laws; 12 shall introduce and disseminate valuable species of fish 13 into the waters of this state where they do not exist, 14 and perform all other duties prescribed by law. He 15 or they shall report annually, on or before the thirty-

16 first day of December, to the governor, who shall cause
17 three thousand copies to be printed. He or they shall
18 receive one thousand dollars and travelling and other ex-
19 penses necessarily incurred in connection with his or their
20 duties, which shall be audited by the governor and council,
21 and it shall be his or their duty to see that all violations
22 of the fish laws of the state are duly prosecuted.

SECT. 2. Every dam or other artificial obstruction in
2 any river or stream naturally frequented by salmon, shad
3 or alewives, shall be provided by the owner or occupant
4 thereof with a durable and efficient fish-way, of such form
5 and capacity, and in such location as may be determined
6 by the commissioners of fisheries. It shall also be incum-
7 bent on the owner or occupant of the dam to keep the fish-
8 ways in repair, and open and free from obstruction for the
9 passage of fish, during such times as may be prescribed
10 by law; provided that in case of disagreement between
11 the commissioners of fisheries and the owner of any dam,
12 as to the propriety and safety of the plan submitted to the
13 owners or occupant of such dam for the location and con-
14 struction of the fish-way, such owner or occupant may
15 appeal to the county commissioners of the county where
16 the dam is located, within twenty days after notice of the
17 determination of the commissioners, by giving to the com-
18 missioners notice in writing of such appeal within that
19 time, stating therein the reasons therefor, and at the re-
20 quest of the appellant or the commissioners, the senior
21 commissioners in office of any two adjoining counties shall
22 be associated with them, who shall appoint a time to view
23 the premises and hear the parties, and shall give due
24 notice thereof, and after such hearing they shall decide

25 the question submitted, and cause record to be made
26 thereof, and their decision shall be final as to the place
27 and location appealed from. If the requirements of the
28 commissioners are affirmed, the appellant shall be liable
29 for the costs arising after the appeal, otherwise the costs
30 shall be paid by the county.

SECT. 3. If a fish-way thus required to be built is not
2 completed to the satisfaction of the commissioners within
3 the time specified, any owner or occupant shall forfeit not
4 more than one hundred nor less than twenty dollars for
5 every day between the first day of May and the first day
6 of November, during which such neglect continues.

SECT. 4. On the completion of any fish-way 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 obstruc-
5 tion to the passage of fish each year, and a copy thereof
6 shall be served on the owner or occupant of the dam.
7 The commissioners may change the time as they see fit.
8 Unless otherwise provided, a fish-way shall be kept open
9 and unobstructed from the first day of May to the fifteenth
10 day of July of each year. The penalty for neglecting to
11 comply with the provisions of this section or any regula-
12 tions made in accordance herewith, shall be not less than
13 twenty nor more than one hundred dollars for every day
14 such neglect continues.

SECT. 5. In case the commissioners find any fish-way
2 out of repair or needing alterations, they may, as in case
3 of new fish-ways, require the owner or occupant to make
4 such repairs or alterations; and all the proceedings in
5 such cases, and the penalty for neglect, shall be as pro-

6 vided in the second, third and fourth sections, without
7 right of appeal.

SECT. 6. In case the dam is owned or occupied by more
2 than one person, each shall be liable for the cost of erect-
3 ing and maintaining such fish-way, in proportion to his
4 interest in the dam, and if any owner or occupant shall
5 neglect or refuse to join with the others in erecting or
6 maintaining such fish-way, the other owner or owners or
7 occupants shall erect or repair the same, and shall have an
8 action of case against such delinquent owner or occupant
9 for his share of the expenses thereof.

SECT. 7. If the owner or occupant of such dam resides
2 out of the state, said penalties may be recovered by a libel
3 against the dam and land on which it stands, to be filed in
4 the supreme judicial court in the county where the same
5 is located, in the name of the commissioners of fisheries
6 or any fish warden, who shall give to the owner or occu-
7 pant of the dam, and all persons interested therein, such
8 notice as the court or any justice thereof in vacation shall
9 order, and the court may render judgment therein against
10 said dam and lands for said penalties and costs, and order
11 a sale thereof to satisfy such judgment and costs of sale,
12 subject however to all said requirements for the erection,
13 maintainance or repair of the fish-way.

SECT. 8. The governor, with the advice of the council,
2 shall appoint fish wardens where the same may be neces-
3 sary, who shall enforce the provisions of all public laws
4 relating to fisheries; prosecute for all offences that come
5 to their knowledge; and they shall have a right at all
6 times to visit any dam, or any weir or other apparatus for
7 taking fish; and in the exercise of their duties shall have

8 the same right to require aid that sheriffs and their depu-
9 ties have in executing the duties of their office, and any
10 person neglecting to render it when required shall forfeit
11 ten dollars. Each person so appointed shall hold office
12 three years, unless sooner removed, and his pay shall be
13 fixed by the governor and council, who shall audit his
14 accounts and cause the same to be paid from the state
15 treasury: provided that the whole amount paid to all
16 wardens shall not exceed fifteen hundred dollars annually.

SECT. 9. No salmon, shad, or other migratory fish, ex-
2 cept alewives, shall be taken within two hundred yards of any
3 fish-way, dam or mill-race, between the first day of April
4 and the first day of November, in each year, except by
5 the ordinary mode of angling with single hook and line,
6 or artificial flies; nor shall hook and line or artificial flies
7 be used at any time within one hundred yards of any fish-
8 way, dam or mill-race. The penalty for violation of this
9 section shall be a fine of not more than fifty nor less than
10 ten dollars for each offence, and a further fine of ten dol-
11 lars for each salmon, one dollar for each shad, so taken.

SECT. 10. There shall be a close-time for salmon from
2 the fifteenth day of July of each year to the first day of
3 April following, during which no salmon shall be taken or
4 killed in any manner, under a penalty of not more than
5 fifty nor less than ten dollars, and a further penalty of ten
6 dollars for each salmon so taken or killed.

SECT. 11. No smelts shall be taken or fished for in any
2 of the tidal waters of this state, in any other manner than
3 by hook and line, between the first day of April and
4 the first day of November, in each year, under a penalty of
5 not less than ten dollars nor more than thirty dollars for

6 each offence and a further penalty of twenty cents for each
7 smelt so taken ; and all weirs for the capture of smelts
8 shall be opened, and so remain, and all nets of any kind
9 used in the smelt and tomcod fishery shall be taken from
10 the water on or before the said fifteenth day of March in
11 each year, under a penalty of not less than twenty nor
12 more than fifty dollars, and a further fine of five dollars
13 per day for each day that any such weir or net remains in
14 violation of law ; but weirs which have catch-pounds cov-
15 ered with net, the meshes of which are one inch square in
16 the clear, or greater, shall not be subject to the provisions
17 of this section.

SECT. 12. Any inhabitant of this state, by obtaining the
2 consent of the adjacent riparian proprietors, may plant
3 oysters below low water mark, in any of the navigable
4 waters of the state, in places where there is no natural
5 oyster bed ; enclose such ground with stakes, set at suit-
6 able distances, and extending at least two feet above high
7 water mark, but so as not to obstruct the free navigation
8 of such waters, and have the exclusive right of taking such
9 oysters ; and if any person trespasses on such enclosure,
10 or in any way injures such oyster beds, he shall be liable
11 in an action of trespass for all the damage ; or if he takes
12 any oysters therein without the consent of the owner, he
13 shall forfeit not less than twenty nor more than fifty dol-
14 lars, or be confined in jail not exceeding three months.

SECT. 13. There shall be an annual close-time for land-
2 locked salmon, commonly so called, trout, togue, black
3 bass, Oswego bass and white perch, in the waters of this
4 state, as follows, viz : For land-locked salmon, trout and
5 togue, on all the rivers and streams from the first day of

6 September to the first day of May following; on all the
7 ponds and lakes from the first day of October to the first
8 day of May following; excepting on Moosehead lake, and
9 on the ponds and lakes tributary to the Penobscot river,
10 and east thereof, on which the close-time shall be from
11 the first day of October to the first day of January fol-
12 lowing; and for black bass, Oswego bass and white
13 perch, from the first day of April to the first day of July
14 following.

SECT. 14. No person shall at any time catch, take, kill,
2 or fish for any land-locked salmon, trout, togue, black
3 bass, Oswego bass, or white perch, by means of any grap-
4 nel, spear, trawl, weir, net, seine, trap, spoon, set line,
5 or with any device or in any other way than by the ordi-
6 nary mode of angling with a single baited hook and line,
7 or with artificial flies, under a penalty of not less than ten
8 nor more than thirty dollars for each offence, and a fur-
9 ther fine of one dollar for each fish so caught, taken or
10 killed. And all set lines, grapnels, spears, trawls, weirs,
11 nets, seines, traps, spoons, and devices other than fair
12 angling as aforesaid, are hereby prohibited on the fresh
13 water lakes, ponds and streams of this state; and when
14 found in use or operation on said lakes, ponds or streams,
15 they are hereby declared forfeit and contraband, and any
16 person finding them in use in said waters is hereby author-
17 ized to destroy the same.

SECT. 15. No person shall take, catch, kill or fish for
2 in any manner, any land-locked salmon, trout or togue, in
3 any of the rivers and streams aforesaid, between said first
4 day of September and said first day of May; nor shall
5 any person take, catch, kill or fish for in any manner, any

6 land-locked salmon, trout or togue, in any other waters of
7 this state, between the first day of October and the first
8 day of May following; with the exception as provided in
9 section thirteen of this act, or black bass, Oswego bass, or
10 white perch, between the first day of April and the first
11 day of July following, under a penalty of not less than
12 ten dollars, nor more than thirty dollars, and a further fine
13 of one dollar for each fish thus caught, taken or killed,
14 as aforesaid.

SECT. 16. No person shall sell, expose for sale, or
2 have in possession with intent to sell, or transport from
3 place to place in this state, any land-locked salmon,
4 trout or togue, between the third day of October and the
5 first day of May following, or any black bass, Oswego
6 bass or white perch, between the first day of April and
7 the first day of July following, under a penalty of not
8 less than ten dollars nor more than fifty dollars for each
9 offence.

SECT. 17. Any person or persons having in possession,
2 except alive, any land-locked salmon, trout or togue, be-
3 tween the third day of October and the first day of May
4 following, or any black bass, Oswego bass, or white perch
5 between the first day of April and the first day of July
6 following, or who shall transport from place to place
7 within this state any land-locked salmon, trout or togue,
8 between the third day of October and the first day of May
9 following, or black bass, Oswego bass, or white perch,
10 between the first day of April and the first day of July
11 following, shall be deemed to have killed, caught, or trans-
12 ported the same contrary to law, and be liable to the pen-

13 alties aforesaid, but he shall not be precluded from pro-
14 ducing proof in defence.

SECT. 18. The provisions of this act shall not apply to
2 white perch taken in any of the tide waters of this state.

SECT. 19. No person shall introduce fish of any kind,
2 except trout, fresh and salt water salmon, fresh water
3 smelts, blue-back trout, and minnows, by means of the
3 live fish or otherwise, to any waters now frequented by
4 trout or salmon, except as hereinafter provided, under a
5 penalty of not less than fifty nor more than five hundred
6 dollars.

SECT. 20. The commissioners of fisheries may take fish
2 of any kind at such time and place as they may choose,
3 and in such manner, for the purposes of science and of
4 cultivation and dissemination, and they may grant written
5 permits to other persons to take fish for the same pur-
6 poses, and they may introduce or permit to be introduced
7 any kind of fish to any waters they may see fit.

SECT. 21. The commissioners of fisheries may set apart,
2 with the consent of the owners or occupants thereof,
3 any waters for the purpose of cultivation of fish, and after
4 notice published three weeks successively in some news-
5 paper published in the county where such waters are
6 located, no person shall take or kill any fish therein,
7 under a penalty of not less than ten nor more than one
8 hundred dollars, and a further penalty of one dollar for
9 each fish so taken or killed.

SECT. 22. Any person legally engaged in the artificial
2 culture and maintenance of fishes, may take them in his
3 own enclosed waters, wherein the same are so cultivated
4 and maintained, as and when he pleases, and may at all

5 times sell them for the purpose of cultivation and propagation, but shall not sell them for food at seasons when the taking of such fish is prohibited by law, under a penalty of not less than ten nor more than one hundred dollars, and a further penalty of not less than one dollar for each fish so sold.

SECT. 23. Any person engaged in the artificial propagation of fish known as trout, fresh and salt water salmon, on any water in this state when the parent fish are taken from public waters in this state, shall retain not less than twenty-five per cent. of all eggs taken from said parent fish, and cause the same to be properly cared for and hatched, and when hatched and in proper condition, to be returned to a suitable place for such young fish, in the original waters from which the parent fish were taken, and to cause said parent fish to be returned to safe locations in the waters from which they were taken, under a penalty of not less than fifty nor more than five hundred dollars for each offence.

SECT. 24. No person shall fish in that portion of a pond or other water in which fish are artificially cultivated or maintained by the written permission of the fish commissioners, without the permission of the proprietor, under a penalty of not less than ten nor more than one hundred dollars, and an additional penalty of two dollars for each fish so taken or killed.

SECT. 25. It shall be the duty of all sheriffs, deputy sheriffs, constables and police officers, as well as fish wardens and their deputies, to cause any person or persons violating any of the provisions of this chapter to be promptly prosecuted for said offence, either by making

6 complaint before some trial justice, municipal or police
7 judge, or by giving information to the county attorney of
8 the county in which the offence is committed. Said
9 sheriffs, deputy sheriffs, constables, and police officers,
10 shall be allowed for said services the same fees as are now
11 prescribed by law for sheriffs and their deputies.

SECT. 26. All fines and penalties provided for in this
2 act, unless otherwise provided, may be recovered be-
3 fore any competent tribunal by complaint, indictment,
4 or action of debt; and in all actions of debt commenced
5 in the supreme judicial court, or in the superior court for
6 the county of Cumberland, the plaintiff recovering shall
7 recover full cost, without regard to amount recovered.
8 Judges of municipal and police courts, and trial justices,
9 shall have concurrent jurisdiction of all offences described
10 in this act, when the penalty for the offence complained
11 of does not exceed thirty dollars. In cases where the offence
12 described in this act is alleged to have been commit-
13 ted in any river, stream, pond or lake forming a boundary
14 between two counties, or where the fish are caught in one
15 county and carried to another county, the action, complaint,
16 or indictment may be commenced and prosecuted in either
17 county. One half of all fines and penalties recovered or
18 imposed, when not otherwise provided, shall be for the
19 benefit of the party prosecuting or making complaint, and
20 the other half to the county in which the proceedings are
21 commenced and prosecuted.

SECT. 27. The provisions of this act shall not apply to
2 the taking of blue-back trout.

SECT. 28. All acts and parts of acts inconsistent with
2 this act are hereby repealed.

STATE OF MAINE.

IN HOUSE OF REPRESENTATIVES, }
February 1, 1878. }

Reported from the Committee on Fisheries by Mr. KIMBALL
of Bath, and ordered printed under the Joint Rule.

ORAMANDAL SMITH, *Clerk.*