

MAINE STATE LEGISLATURE

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PUBLIC ACTS

OF THE

STATE OF MAINE,

PASSED BY THE

EIGHTEENTH LEGISLATURE,

JANUARY SESSION, 1838.

Published agreeably to the Resolve of June 28, 1820.

AUGUSTA:
LUTHER SEVERANCE, PRINTER.
1838.

urers of the several cities and towns in this State shall be and are hereby qualified and empowered to administer the oaths required in the Act relating to the bounty on wheat, passed March twenty-ninth, eighteen hundred thirty-seven.

Oaths administered by whom.

SECT. 7. *Be it further enacted*, That all parts of the Act to which this is additional, inconsistent with the provisions of this act, be and the same are hereby repealed.

Part of former act repealed.

[Approved by the Governor March 21, 1838.]

Chapter 335.

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

SECTION 1. *Be it enacted by the Senate and House of Representatives in Legislature assembled*, That the Governor, with advice of the Council, be and he hereby is authorized and empowered, to appoint and commission three suitable persons, one of whom shall be a resident of each of the Counties of Penobscot, Hancock and Waldo, to be called County Fish Wardens; to hold said office during four years, unless sooner removed. And all vacancies happening in said office shall be immediately supplied by appointments to be made by the Governor with advice of Council. And one of said persons shall, in his commission, be designated as chairman. And before entering upon the duties of said office, said County Fish Wardens shall be sworn, as other civil officers, to the faithful discharge of their respective trusts.

Governor and Council authorized to appoint certain fish wardens.
Where to reside.

Term of office.
Vacancies how filled.

To be sworn, &c.

Their duties.

SECT. 2. *Be it further enacted*, That it shall be the duty of said board of County Fish Wardens to maintain a general superintendence over the fisheries of salmon, shad and alewives in the waters of the Penobscot Bay, rivers and streams emptying into the same.

SECT. 3. *Be it further enacted*, That said County

Fish Wardens shall hold their regular meetings at Bangor, on the first Mondays of April, May, June and July in each year, with power to adjourn to such places and times as they may deem expedient. And a majority of said board shall constitute a quorum for the transaction of business; so that any act done by such majority shall be deemed and taken as the act of said board.

Meetings when and where to be held.

Majority shall constitute a quorum.

SECT. 4. *Be it further enacted,* That said Board shall have authority at such times as they deem proper to visit any mill-dam or dams now erected, or which may hereafter be erected across or upon any of the waters aforesaid, up which the fish have usually run, but Blackman's and Kenduskeag streams excepted, and examine and ascertain whether there be provided and opened a suitable and sufficient passage or fishway for the easy and safe passage of said fish through, over or around any such dam. And if said board shall adjudge that there is not provided and opened a suitable fishway for said purpose, it shall be their duty to prescribe and define such fishway as they may adjudge suitable and sufficient, not exceeding in width one foot in fifteen of the length of the dam, and give written notice thereof to some owner or owners, occupant or occupants of said dam, and in said notice to require the fishway to be made according to said description, without delay. And if such fishway shall not be provided and opened, to the satisfaction of said board, within ten days from the giving of such notice, any owner or owners, occupant or occupants, of said dam, or of any mill or machinery benefitted by such dam, shall forfeit and pay a penalty of not less than twenty dollars or more than fifty dollars for each and every day during which said neglect shall continue, to be reckoned from the expiration of the ten days aforesaid. But if the owner or owners of said dam or dams shall proceed without unnecessary delay, to make said sluiceway, and shall complete the same in a proper manner, they shall not incur the penalties of this Act,

Their powers and duties.

Penalty on the owners and occupants of dams in certain cases.

Certain dams excepted. Further duties of said board. Penalty for obstructing the passage of fish between first day of April and first day of August. Proviso.

if they shall not be able to accomplish them in the time aforesaid—and excepting the dams on the Stillwater branch. And said board shall define and describe in writing the extent and limits of such fishway, and cause the same to be entered in the records of the city, town or plantation in which the said fishway is situated. And if any person shall take any of the fish aforesaid in any such fishway, or within thirty feet of the same, or shall, by placing any impediments in or near such fishway, or by any other means hinder or obstruct the passage of fish up, through or over such fishway, between the first day of April and the first day of August in each year, the person so offending shall forfeit and pay a penalty of not less than twenty dollars or more than fifty dollars: *Provided*, That Cold Stream, on the Passadumkeag, and the Piscataquis river from the east line of the town of Dover, Sebec Stream, and Brewer Stream are exempt from the operation of this act.

Said board to appoint deputies who shall be sworn. Give notice of their appointment. Neglect to take oath within ten days. —how construed. Another to be appointed. Removable at pleasure. Vacancies to be filled without delay.

SECT. 5. *Be it further enacted*, That said board shall appoint deputy Fish Wardens in such places as they deem proper, not exceeding one in any city, town or plantation, who shall be sworn to the faithful discharge of their trust, and shall give to said deputies immediate notice of their appointment. And all other fish wardens necessary shall be chosen by the towns in which they shall live. And every person appointed a deputy as aforesaid, who shall neglect to take the oath of office and return a certificate thereof to the County Fish Warden of his county within ten days from the time of being notified of his appointment, shall be considered as declining said appointment, and the County Fish Wardens shall thereupon forthwith proceed to appoint another person in his stead, and so on until all vacancies are filled. All deputies shall be removable at the pleasure of the County Wardens, and it shall be the duty of said County Wardens without delay to fill all vacancies in the office of deputy wardens occasioned either by removal, death or otherwise.

SECT. 6. *Be it further enacted,* That it shall be the duty of all County and all deputy Wardens, by all lawful means to prevent the taking or destroying of any of the fish aforesaid, in any of said waters in violation of law, and also to institute prosecutions for all such offences against this act as shall come to their knowledge, and prosecute the same to final judgment. And in such prosecutions any County or deputy Warden is hereby made a competent witness, and shall be allowed for travel and attendance as such, although he may be the prosecutor in the suit.

Duty of Wardens and deputies.

Made competent witnesses.

SECT. 7. *Be it further enacted,* That between the first day of April and the first day of July in each year, no person shall take or destroy, in any of said waters, any of the fish aforesaid, either by means of weirs, nets, or any other implements, apparatus or machinery whatever, except between sunrise on Monday and sunrise on Friday of any week. And any person committing any offence against this provision, or aiding or abetting in the same, shall forfeit and pay for every such offence the sum of ten dollars, and also a further penalty of one dollar for each and every salmon, and twenty-five cents for each and every shad, and two cents for each and every alewife so taken or destroyed.

Fish not to be taken between April 1 and 1.

Exception.

Penalty for violating provisions of this act or aiding and abetting in the same.

SECT. 8. *Be it further enacted,* That no person shall erect or continue any weir, for the purpose of taking or destroying any of said fish on any of the waters aforesaid, without the license of the Selectmen of the town in which or contiguous to which the same is to be erected. And no person shall erect or continue any weir across any stream of said waters, or within thirty rods of any fishway in any dam on said waters. And every person offending against any of the provisions of this section shall forfeit and pay a penalty of one hundred dollars.

No person erect or continue weir without license of Selectmen, nor within 30 rods of any fish way &c.

Penalty.

SECT. 9. *Be it further enacted,* That every weir shall be provided with a gate or passage way for said fish, at least three feet wide, and extending from the

Every weir how built—with gate &c.

bottom or floor thereof to the high-water line, which gate or door shall be in the pound, or apartment thereof where such fish are secured and taken. And said gate shall be left open and without impediment to the passage of said fish, from sunrise on Friday of each week to sunrise on the succeeding Monday, between the first day of April and the first day of July in each year. And if any weir shall be made without such gate or door, or if any such gate or door shall not be kept open, as herein required, the owner or occupant of such weir for each offence shall forfeit twenty dollars.

Said gate to be left open at certain times.

Penalty for neglect.

SECT. 10. *Be it further enacted*, That all weirs erected for the purpose of taking or destroying any of said fish in said waters shall be entirely removed or destroyed by the owner or occupant thereof, on or before the thirtieth day of July in each year. And in case of neglect so to remove or demolish such weir, any owner or occupant or person interested therein shall forfeit fifty dollars. And it shall be lawful for any County or deputy Warden to remove or demolish such weir after said thirtieth day of July, and to recover of the person licensed to erect or continue the same, or of any owner therein, double the expenses incurred in removing or demolishing the same as aforesaid.

Weirs when and by whom to be removed.

Penalty for neglect.

May be demolished by county or deputy wardens in certain cases.

What expenses to be recovered and of whom.

Authority of county or deputy wardens.

Further duties of deputy wardens.

SECT. 11. *Be it further enacted*, That any County or deputy Warden shall have right and authority to visit any dam, weir, boat, net, trap or other machine erected or placed for the purpose of taking or destroying any of said fish, at any time or place when or where the taking or destruction of said fish is prohibited by this Act. And in addition to the general superintending duty and care required of deputy Wardens in carrying into effect the purposes of this act, it is hereby made their special duty, on the Fridays and Saturdays of each week between the first of May and the first of August, to be diligent and faithful in visiting the waters aforesaid, and in detecting and bringing to punishment all offenders against this Act. And the pow-

er of each County and of each deputy Warden shall and is hereby made to extend equally to every portion of the waters above described, in every county, city, town or plantation into which said waters extend.

Extent of the powers of county and deputy wardens.

SECT. 12. *Be it further enacted,* That if any County or deputy Warden shall be forcibly resisted in the discharge of any duty or in the exercise of any right prescribed by the Act, he is hereby authorized to require of any person or persons the assistance which may be requested for his protection, and to enable him to discharge the duty or exercise the right aforesaid. And if any person who shall be by him called upon for that purpose shall unreasonably refuse or neglect to render the required assistance, shall be liable to forfeit and pay a penalty of ten dollars.

In case of resistance, warden or deputy may require aid.

Penalty for refusal.

SECT. 13. *Be it further enacted,* That no net or string of nets for the taking of any of said fish shall ever be used in any of said waters, extending more than eighty fathoms in length or more than fifteen feet in depth. And every person violating this provision shall forfeit ten dollars.

No net, &c., to extend more than 80 fathoms in length or 15 feet in depth.

Penalty.

SECT. 14. *Be it further enacted,* That no person or persons shall, by any way or means whatever, take or destroy any of the fish aforesaid, in any part of said waters, between the first day of July in one year and the first day of April in the succeeding year. And each and every person violating this provision shall forfeit and pay the sum of twenty dollars, and also the further sum of two dollars for each and every salmon, one dollar for each and every shad, and twenty-five cents for each and every alewife so taken or destroyed.

No person to take or destroy any fish between 1st of July and 1st of April.

Penalties.

SECT. 15. *Be it further enacted,* That all forfeitures prescribed by this Act, exceeding twenty dollars, shall be recoverable by indictment in the Supreme Judicial Court or Court of Common Pleas, 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 of-

Forfeitures-how recoverable.

Justice empow-
ered to impose
certain penalties
—to commit to
jail in certain
cases.

Right of appeal
reserved.

Complaints—by
whom made.

Forfeitures and
penalties—how
appropriated.

Compensation of
Warden.

—how paid.

Proviso.

Compensation of
Deputy Warden

—how paid.

Proviso.

fence shall have been committed. And such Justice is hereby empowered, on conviction, to impose said penalties to an amount not exceeding said sum of twenty dollars, and in case any person convicted and sentenced by such Justice shall neglect or refuse to pay said 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 of appeal to the Court of Common Pleas, 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.

SECT. 16. *Be it further enacted*, That each County Warden, for his services, shall be entitled to receive the sum of two and a half dollars for each and every day by him actually occupied in any of the duties or employments devolved upon him in virtue of said office, to be paid from the treasury of the county in which he resides: *Provided, however*, that said County Warden shall first make oath to the truth and correctness of his account, which shall then be presented to the County Commissioners to be audited and allowed. And each deputy Warden, for his services, shall be allowed one dollar and fifty cents for each and every day by him actually occupied in any of the duties or employments devolved upon him in virtue of said office, to be paid by the city, town or plantation in which he resides: *Provided*, that said deputy Warden shall first make oath to the truth and correctness of his account, which shall then be presented to the Selectmen or Assessors for allowance.

SECT. 17. *Be it further enacted*, That in all that part of Penobscot Bay or river lying below a line from

Sandy Point in Prospect, to the south line of Orland, fish may be taken any time between the first day of April and the twentieth day of July in each year, agreeably to the provisions of this Act.

Certain parts of Penobscot Bay exempted from operation of this act.

SECT. 18 *Be it further enacted*, That all acts now existing and in force at the time of the passing of this act, in relation to said fisheries, be and the same are hereby repealed, excepting and reserving for all cases in which suits or prosecutions may be proceeded in to final judgment and execution as if this act had not been passed.

Former acts repealed.—not to affect suits, &c. already commenced.

[Approved by the Governor March 21, 1838.]

Chapter 336.

AN ACT further regulating Judicial proceedings.

SECTION 1. *Be it enacted by the Senate and House of Representatives in Legislature assembled*, That on the first day of each term of the Supreme Judicial Court and of the Court of Common Pleas holden in the respective Counties in this State the docket shall be called over by the Clerk, and all actions entered at any previous terms which are not at such call suffered to be defaulted, but are further answered to shall be entered upon a trial docket to be made by the Clerk of such Court; and travel at each term and attendance shall be taxed in such action, until the defendant shall allow the same to be disposed of, unless otherwise directed by the Court: *Provided*, That not more than ten days attendance at any one term shall be taxed in any action in any case.

Clerk S. J. Court and C. C. Pleas to call over docket on first day of each term.

Actions not defaulted to be entered on trial docket.

Cost, how taxed.

SECT. 2. *Be it further enacted*, That all Acts and parts of Acts inconsistent with the foregoing Act be and the same are hereby repealed.

Former acts repealed.

[Approved by the Governor March 21, 1838.]