

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

OF THE

FIFTY-SEVENTH LEGISLATURE

OF THE

STATE OF MAINE.

1878.

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1878.

PUBLIC LAWS
OF THE
STATE OF MAINE.
1878.

Chapter 75.

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 :

SECT. 1. The governor, with the advice of the council, shall appoint one or two persons, as they may think best, to be commissioners of fisheries, who shall hold office for three years unless sooner removed, and have a general supervision of the fisheries, regulated by the following sections. He or they shall examine dams and all other obstructions existing in all rivers and streams in the state, and determine the necessity of fish-ways and the location, form and capacity thereof; shall visit those sections where fisheries regulated by this act are carried on, and examine into the working of the laws; shall introduce and disseminate valuable species of fish into the waters of this state where they do not exist, and perform all other duties prescribed by law. He or they shall report annually on or before the thirty-first day of December, to the governor, who shall cause three thousand copies to be printed. He or they shall receive one thousand dollars and travelling and other expenses necessarily incurred in connection with his or their duties, which shall be audited by the governor and council, and it shall be his or their duty to see that all violations of the fish laws of the state are duly prosecuted.

Commissioners of fisheries to be appointed.

—term of office.

—duties.

—salary.

SECT. 2. Every dam or other artificial obstruction in any river or stream naturally frequented by salmon, shad or alewives, shall be provided by the owner or occupant thereof with a durable and efficient fish-way, of such form and capacity, and in such location as may be determined by the commissioners of fisheries. It shall also be incumbent on the owner or occupant of the dam to keep the fish-ways in repair, and open and free from obstruction for the passage of fish, during such times as may be prescribed by law; *provided*, that in case of disagreement between the commissioners of fisheries and the owner of any dam, as to the propriety and safety of the plan submitted to the owners or occupant of such dam for the location and construction of the fish-way, such owners or occupant may appeal to the county commissioners of the county where the dam is located, within twenty days after notice of the determination of the commissioners,

Fish-ways to be provided.

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by giving to the commissioners notice in writing of such appeal within that time, stating therein the reasons therefor, and at the request of the appellant or the commissioners, the senior commissioners in office of any two adjoining counties shall be associated with them, who shall appoint a time to view the premises and hear the parties, and shall give due notice thereof, and after such hearing they shall decide the question submitted, and cause record to be made thereof, and their decision shall be final as to the place and location appealed from. If the requirements of the commissioners are affirmed, the appellant shall be liable for the costs arising after the appeal, otherwise the costs shall be paid by the county.

Penalty for neglect to build fish-way.

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

Time during which fish-ways shall be kept open.

SECT. 4. On the completion of any fish-way to the satisfaction of the commissioners, or at any subsequent time, they shall prescribe in writing the time during which the same shall be kept open and free from obstruction to the passage of fish each year, and a copy thereof shall be served on the owner or occupant of the dam. The commissioners may change the time as they see fit. Unless otherwise provided, a fish-way shall be kept open and unobstructed from the first day of May to the fifteenth day of July of each year. The penalty for neglecting to comply with the provisions of this section, or any regulations made in accordance herewith, shall be not less than twenty nor more than one hundred dollars for every day such neglect continues.

—penalty.

Repairs and alterations of fish-ways.

SECT. 5. In case the commissioners find any fish-way out of repair or needing alterations, that may, as in case of new fish-ways, require the owner or occupant to make such repairs or alterations; and all the proceedings in such cases, and the penalty for neglect, shall be as provided in the second, third and fourth sections, without right of appeal.

Proceedings, where dam is owned by more than one person.

SECT. 6. In case the dam is owned or occupied by more than one person, each shall be liable for the cost of erecting and maintaining such fish-way, in proportion to his interest in the dam, and if any owner or occupant shall neglect or

refuse to join with the others in erecting or maintaining such fish-way, the other owner or owners or occupants shall erect or repair the same, and shall have an action of case against such delinquent owner or occupant for his share of the expenses thereof.

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

Proceedings, if owner resides out of state.

SECT. 8. The governor, with the advice of the council, shall appoint fish wardens where the same may be necessary, who shall enforce the provisions of all public laws relating to fisheries; prosecute all offenses that come to their knowledge; and they shall have a right at all times to visit any dam, or any weir or other apparatus for taking fish; and in the exercise of their duties shall have the same right to require aid that sheriffs and their deputies have in executing the duties of their office, and any person neglecting to render it when required shall forfeit ten dollars. Each person so appointed shall hold office three years, unless sooner removed, and his pay shall be fixed by the governor and council, who shall audit his accounts and cause the same to be paid from the state treasury; *provided* that the whole amount paid to all wardens shall not exceed fifteen hundred dollars annually.

Fish wardens to be appointed where necessary.

—duties and powers.

—term of office and pay.

Proviso.

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

Restrictions in regard to taking certain fish.

—penalty.

CHAP. 75. offense, and a further fine of ten dollars for each salmon, one dollar for each shad, so taken.

Close-time for salmon.

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

—penalty.

Restrictions in regard to taking smelts.

SECT. 11. No smelts shall be taken or fished for in any of the tidal waters of this state, in any other manner than by hook and line, between the first day of April and the first day of November, in each year, under a penalty of not less than ten dollars nor more than thirty dollars for each offense, and a further penalty of twenty cents for each smelt so taken ; and all weirs for the capture of smelts shall be opened, and so remain, and all nets of any kind used in the smelt and tomcod fishery shall be taken from the water on or before the said first day of April in each year, under a penalty of not less than twenty nor more than fifty dollars, and a further fine of five dollars per day for each day that any such weir or net remains in violation of law ; but weirs which have catch-pounds covered with net, the meshes of which are one inch square in the clear, or greater, shall not be subject to the provisions of this section. *Provided, however,* that dip nets may be used from the first day of April to the twentieth day of May.

—penalty.

Proviso.

Oyster beds may be planted.

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

—penalty for trespass.

Close-time.

SECT. 13. There shall be an annual close-time for land-locked salmon, commonly so called, trout, togue, black bass, Oswego bass and white perch, in the waters of this state, as

follows, viz: For land-locked salmon, trout and togue, from the twenty-first day of September to the first day of February following, excepting on the St. Croix river and its tributaries, in which the close-time shall be from the fifteenth day of September to the first day of February following, and on Moosehead lake, and the ponds and lakes tributary to the Penobscot river and bay, and all waters east of the Penobscot river not otherwise specified, on which the close-time shall be from the twenty-first day of September to the first day of January following; and for black bass, Oswego bass and white perch, from the first day of April to the first day of July following.

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Land-locked salmon, trout and togue.

—bass and perch.

SECT. 14. No person shall at any time catch, take, kill, or fish for any land-locked salmon, trout, togue, black bass, Oswego bass, or white perch, by means of any grapnel, spear, trawl, weir, net, seine, trap, spoon, set line, or with any device or in any other way than by the ordinary mode of angling with a single baited hook and line, or with artificial flies, under a penalty of not less than ten nor more than thirty dollars for each offense, and a further fine of one dollar for each fish so caught, taken or killed. And all set lines, grapnels, spears, trawls, weirs, nets, seines, traps, spoons, and devices other than fair angling as aforesaid, are hereby prohibited on the fresh water lakes, ponds and streams of this state; and when found in use or operation on said lakes, ponds or streams, they are hereby declared forfeit and contraband, and any person finding them in use in said waters is hereby authorized to destroy the same.

Taking fish with grapnel, spear, net, seine, &c., prohibited.

—penalty.

Nets, seines, &c., forfeited and liable to be destroyed.

SECT. 15. No person shall take, catch, kill or fish for in any manner, any land-locked salmon, trout or togue, in any of the waters aforesaid, between said twenty-first day of September and the first day of May following, except as provided in section thirteen of this act, or black bass, Oswego bass, or white perch, between the first day of April and the first day of July following, under a penalty of not less than ten dollars nor more than thirty dollars, and a further fine of one dollar for each fish thus caught, taken or killed, as aforesaid.

Penalty for taking certain fish during close-time.

SECT. 16. No person shall sell, expose for sale, or have in possession with intent to sell, or transport from place to place in this state, any land-locked salmon, trout or togue, between the twenty-third day of September and the first day

Sale and transportation of certain fish during close-time, prohibited.

CHAP. 75. of May following, or any black bass, Oswego bass or white perch, between the first day of April and the first day of July following, under a penalty of not less than ten dollars nor more than fifty dollars for each offense. *Provided, however,* that persons having fish legally in their possession under the provisions of section thirteen, may convey them to their own homes in this state, but not otherwise.

Penalty.

Proviso.

Having in possession or transporting fish during close-time, presumptive evidence of violation of law.

SECT. 17. Any person or persons having in possession, except alive, any land-locked salmon, trout or togue, between the twenty-third day of September and the first day of May following, or any black bass, Oswego bass, or white perch, between the first day of April and the first day of July following, or who shall transport from place to place within this state any land-locked salmon, trout or togue, between the twenty-third day of September and the first day of May following, or black bass, Oswego bass, or white perch, between the first day of April and the first day of July following, shall be deemed to have killed, caught, or transported the same contrary to law, and be liable to the penalties aforesaid, but he shall not be precluded from producing proof in defence.

Act not to apply to white perch in tide waters.

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

Penalty for unlawful introduction of fish.

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

Commissioners may take fish at any time for cultivation, &c.

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

—may introduce fish into any waters.

Commissioners may set apart waters for cultivation of fish.

SECT. 21. The commissioners of fisheries may set apart, with the consent of the owners or occupants thereof, any waters for the purpose of cultivation of fish, and after notice published three weeks successively in some newspaper published in the county where such waters are located, no person shall take or kill any fish therein, under a penalty

of not less than ten nor more than one hundred dollars, and a further penalty of one dollar for each fish so taken or killed.

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Penalty for taking fish therefrom.

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

When and how fish may be taken by owner.

—penalty for selling for food at certain seasons.

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 offense. But the provisions of this section shall not apply to cases in which the fish-culture is conducted for public purposes by permission of the commissioners of fisheries of this state, who may affix such conditions to their permits as they may see fit, but requiring in no case less than twenty-five per cent. of the young fish to be returned as provided in this section.

Provisions for artificial propagation of trout and salmon.

—penalty for violation.

—not to apply to fish-culture for public purposes.

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.

Penalty for fishing in water where fish are artificially cultivated.

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 offense, either by making complaint before

Sheriffs, constables, police officers and fish wardens, to prosecute for violations.

—proceedings.

CHAP. 75. some trial justice, municipal or police judge, or by giving information to the county attorney of the county in which the offense is committed. Said sheriffs, deputy sheriffs, constables, fish wardens, deputy fish wardens and police officers, shall be allowed for said services the same fees as are now prescribed by law for sheriffs and their deputies.

Fees.

Fines and penalties, how recovered.

SECT. 26. All fines and penalties provided for in this act, unless otherwise provided, may be recovered before any competent tribunal by complaint, indictment, or action of debt; and in all actions of debt commenced in the supreme judicial court, or in the superior court for the county of Cumberland, the plaintiff recovering shall recover full cost, without regard to amount recovered. Judges of municipal and police courts, and trial justices, shall have concurrent jurisdiction of all offenses described in this act, when the penalty for the offense complained of does not exceed thirty dollars. In cases where the offense described in this act is alleged to have been committed in any river, stream, pond or lake forming a boundary between two counties, or where the fish are caught in one county and carried to another county, the action, complaint, or indictment may be commenced and prosecuted in either county. One-half of all fines and penalties recovered or imposed, when not otherwise provided, shall be for the benefit of the party prosecuting or making complaint, and the other half to the county in which the proceedings are commenced and prosecuted.

Jurisdiction of municipal courts and trial justices.

Act not to apply to blue-back trout

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

Inconsistent acts repealed.
Proviso.

SECT. 28. All acts and parts of acts inconsistent with this act are hereby repealed; *provided, however*, that nothing in this section shall repeal the laws relating to the St. Croix, Denny, Pemmaquam, Cobscook, East Machias and Narraguagus rivers. And this act shall not apply to fish taken in the weirs on St. Croix river.

SECT. 29. This act shall take effect when approved.

Approved February 21, 1878.