

# MAINE STATE LEGISLATURE

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THE  
**REVISED STATUTES**

OF THE  
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

**THE CONSTITUTIONS**

OF THE

*United States and of the State of Maine,*

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

**APPENDIX.**

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PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

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**Augusta:**

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

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1841.

CHAP. 60.

Measurer to give a ticket, under penalty. 1836, 239.

Penalties, how appropriated. 1821, 160, § 3, 5, 6.

How recovered. 1821, 160, § 9.

SECT. 12. If any measurer of wood, bark or charcoal, shall neglect or refuse to give a certificate of the contents of any load, to the owner or purchaser, he shall forfeit and pay for each offence five dollars.

SECT. 13. The penalties mentioned in this chapter shall accrue, one half to the town where the offence was committed, and one half to the prosecutor.

SECT. 14. Any pecuniary forfeiture mentioned in this chapter, may be recovered by action, or by complaint or indictment.

CHAPTER 61.

OF FISHERIES.

- SECT. 1. Persons from without the state, not to take fish with nets, &c.
- 2. No nets to be placed, crosswise of any river, &c.
- 3. Forfeitures therefor.
- 4, 5, 6. Penalty for destroying shell fish, unless under certain circumstances.
- 7. Of lobsters.
- 8. Vessels liable to seizure for breach of certain provisions.
- 9. Local and special laws, not affected by this chapter.
- 10. Jurisdiction of the county commissioners relative to fishways.

- SECT. 11. If owners neglect to open such ways, the commissioners to do so, at expense of owners.
- 12. Remedy by the county to recover such expense.
- 13. Commissioners to define limits in writing, and enter on the town records.
- 14. Penalty for taking certain fish within such limits, from May 1, to July 15.
- 15. All weirs to be stripped by the 15th July. Penalty for neglect.
- 16. Appeal from decision of the commissioners
- 17. Joint jurisdiction of commissioners in Hancock and Penobscot.

Persons from without the state, not to take fish with nets, &c. 1821, 178, § 6.

No nets to be placed crosswise of any river, &c. 1821, 178, § 4. 4 Pick. 165.

Forfeitures therefor. 1821, 178, § 8. 1823, 241, § 2.

Penalty for destroying shell fish, unless under certain circumstances. 1821, 197, § 2, 3.

SECTION 1. No person, living without this state, shall set or place any net, weir, seine or other machine in any of the rivers, streams, creeks, harbors, inlets or coves, in this state, for the purpose of taking salmon, shad, herrings or alewives.

SECT. 2. No person shall set or place any net crosswise of any river, stream, creek, harbor, inlet or cove, for the purpose of taking any of the said fish; but all such nets shall be set lengthwise of such waters.

SECT. 3. Whoever shall violate the provisions of either of the preceding sections, shall forfeit for each offence, a fine not exceeding fifty dollars, to the use of any person, who may sue therefor; and every net or other machine, set or placed, as prohibited in the said sections, shall also be forfeited to whomsoever may prosecute for the same, as forfeited goods, as provided in the one hundred and thirty second chapter.

SECT. 4. If any person shall take, or otherwise wilfully destroy, any oysters or other shell fish, or obstruct their growth in their beds, in any of the waters of this state, except as provided in the two following sections, he shall forfeit to the person suing therefor, not less than one dollar, nor more than two dollars, for each bushel thereof including the shells so taken or destroyed.

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SECT. 5. The selectmen of the town, or assessors of the plantation, wherein such oysters or other shell fish may be found, may, in writing, authorize any persons to take the same, at such times, in such quantities, and for such uses, as they shall think proper, and shall express in their permits; and any inhabitant of such town or plantation, or native indian within this state, may take the same without any permit, for the consumption of himself or family; provided, that no person, without such permit, shall be allowed to take oysters, for any purpose, in the month of June, July or August.

Same subject.  
1821, 179, § 2, 3.

SECT. 6. Any fisherman may, without such permit, take any shell fish, suitable for bait, necessary for his use, and in a quantity, not exceeding seven bushels, including the shells, at any one time.

Same subject.  
1821, 179, § 3.

SECT. 7. If any person, not living within the state, shall take or destroy any lobsters in any waters within the state, without a permit from the selectmen of the town, or assessors of the plantation, where the same may be, he shall forfeit not less than ten, nor more than fifty dollars, for each offence; one half to the use of such town, and the other half to the use of the person suing therefor.

Of lobsters.  
1828, 383, § 1, 2.

SECT. 8. If any vessel, boat or craft shall be found within the limits of any town or plantation, not owned therein, with any lobsters, oysters or other shell fish on board, taken in such town, against the provisions in this chapter, any inhabitant of such town may seize and detain such vessel, boat or craft, for a time not exceeding forty eight hours, in order that the same may be attached or arrested by due process of law, and secure the fines and forfeitures before mentioned, with costs; to which process such vessel, boat or craft is hereby declared to be liable, without further proof of the property in the parties liable to such fines; provided that if, before any such attachment, the owner or master of such vessel, boat or craft, shall pay the expense of such detention, and also pay to the treasurer of such town, and for the use thereof, the amount of fines incurred, it shall be released with the effects therein.

Vessels liable to seizure for breach of certain provisions.  
1821, 179, § 4.

SECT. 9. Nothing contained in this chapter shall be construed, as affecting the operation of any laws, of local application, now in force in any of the waters or places specially named or described in such laws, whether heretofore published as public, or as private and special, laws.

Local and special laws, not affected by this chapter.

SECT. 10. The county commissioners in their respective counties shall, from time to time, examine all dams and obstructions in rivers and streams, emptying into rivers, in which salmon, shad and alewives abound; and after notice, in writing, to one or more of the parties interested, and a hearing thereon, shall decide what would be a suitable fishway in such dam or obstruction; but such fishway shall not exceed one foot in fifteen of the width of the river or stream at that place: provided, that no such examination shall be made, except upon the written application of three or more responsible individuals, who shall be held to pay all the expenses of such examination, to said commissioners, if they shall decide that no alteration of said dam, or other obstruction, is demanded by the public good.

Jurisdiction of the county commissioners relative to fishways.  
1840, 16, § 1.  
3 Fairf. 232.  
16 Maine, 9, 303.

SECT. 11. After a decision, that such fishway shall be made, and twenty days notice thereof, published in a newspaper printed

If owner neglect to open such ways, the

**CHAP. 61.** in the county, if any, otherwise in the newspaper published by the printer to the state, requiring the owner of any such dam, or other obstruction, to build such fishway, and keep the same open, and a neglect of such owner for said twenty days to build the same, the county commissioners shall build such fishway, and notify the owner thereof, and of the expense of building the same.

Commissioners to do so, at expense of owners.  
1840, 16, § 1.

Remedy by the county to recover such expense.  
1840, 16, § 1.

**SECT. 12.** If said owner shall neglect to pay said expense to the treasurer of the county, for thirty days after said notice, the treasurer shall pay the same; and the county attorney shall recover the same in an action on the case against said owner, in the name of the county, together with costs, and twelve per cent. interest on the amount, so paid. And the county shall have a lien on the mills and other property situated on said dam, or other obstruction, whether belonging to said owner, or not, commencing from the time when said fishway is opened.

Commissioners to define limits in writing, and enter on the town records.  
1840, 16, § 2.

Penalty for taking certain fish within such limits, from May 1, to July 15.  
1840, 16, § 2.

**SECT. 13.** The county commissioners shall define, in writing, the extent and limits of any such fishway, and cause the same to be entered on the records of the town, where it is situated.

**SECT. 14.** If any person shall take any salmon, shad or alewives in any such fishway, or within twenty feet on each side thereof, extending and keeping the same width fifty feet above, or below, such dam or other obstruction, or shall, by placing impediments in, or near, such fishway, hinder the passage of said fish through the same, between the first day of May and the fifteenth day of July, in any year, he shall forfeit not less than five, nor more than ten dollars, for each offence.

All weirs to be stripped by the 15th July.  
Penalty for neglect.  
1840, 16, § 2.

**SECT. 15.** All weirs shall be stripped, so as to admit a free passage of fish through the same, by the fifteenth day of July, in each year. And the owner of any such weir, who shall neglect so to strip the same, shall forfeit not less than five, nor more than ten dollars for every day, until the same is stripped as aforesaid. The penalties named in this, and the preceding sections, shall be recovered in an action of debt, in the name, and to the use, of the county.

Appeal from decision of the commissioners.  
1840, 16, § 1.

**SECT. 16.** Any person, aggrieved by the decision of the commissioners, in the cases herein before specified, may appeal to the supreme judicial court, which may reverse, modify or confirm such decision. The party appealing shall recognize, as in other cases of appeal; and if he does not prosecute the same, the decision of the commissioners shall be final and in full force.

Joint jurisdiction of commissioners in Hancock and Penobscot.

**SECT. 17.** The county commissioners of Hancock and Penobscot shall have joint jurisdiction of the rivers and streams, within the limits of their respective counties; and in case said commissioners are equally divided in opinion, they shall certify that fact to the supreme judicial court, at the next term thereof, holden in the county where the dam or other obstruction complained of is situated; and the decision of said court thereon shall be final.