

## VII.—DRAUGHT OF LAW PROPOSED FOR THE CONSIDERATION OF AND ENACTMENT BY THE LEGISLATURES OF MASSACHUSETTS, RHODE ISLAND, AND CONNECTICUT.\*

### A BILL TO REGULATE THE USE OF STATIONARY APPARATUS IN THE CAPTURE OF FISH.

SEC. 1. The commissioners on inland fisheries are hereby empowered to license individuals and corporations to erect, establish, and use, in the waters of this commonwealth, whether navigable or unnavigable, fixed nets, traps, pounds, pots, fykes, weirs, or other stationary apparatus, for the purpose of capturing fish, upon application for such license, duly made as hereinafter conditioned and provided.

SEC. 2. All persons seeking such licenses shall make written application to said commissioners, specifying the locality in which they desire to use stationary apparatus as aforesaid, the exact character of the said apparatus which the applicant proposes to use, including, if of netting, the proposed sizes of mesh, as also the proposed length of the leader, or fence, together with all other details and particulars necessary for an exact understanding of said apparatus; and upon examination of such applications, and after public hearing, if they deem necessary, the said commissioners shall grant the license desired, provided the application be made on or before the first day of March in each year, subject to the conditions hereinafter mentioned, it being understood that parties last in lawful possession of any fishing-station shall have preference in its assignment, unless barred by a violation of this act.

SEC. 3. The license shall be in writing, signed by a majority of said commissioners, and shall state clearly and minutely the locality within which the same shall have effect, and no license shall have effect in any locality other than that mentioned and described therein, and, if for netting, the minimum size of the mesh of the different parts of the net, and the length of the leader, and shall prescribe such other limitations and directions as said commissioners shall deem proper; and no license shall take effect until the same shall be left for record with the clerk of the town or city within which the same is to have effect, nor until the recording fee of said clerk, being the same as that established by law for recording mortgages of personal property of equal length, shall be fully paid.

SEC. 4. The said licenses may embrace any period not exceeding one year; but, whenever given, they shall expire on the first day of January next following their date, and the clerk of each city or town in

\* The draught, as originally prepared, was first discussed at the conference with the commissioners of Massachusetts and Rhode Island, and then submitted to several eminent legal gentlemen for consideration; among others, to Mr. Henry Williams and Mr. Geo. H. Palmer, of Boston, from whom important criticisms and suggestions were received and incorporated.

which said licenses have been recorded shall, on the first day of April in each year, make return to said commissioners of the said licenses then in force and the localities to which the same relate.

SEC. 5. Every person who shall have received a license in the manner herein provided shall, before the first day of January following the date of said license, make accurate return to said commissioners of the numbers and the kinds of fish captured by him during each day of the season by virtue of said license, and shall furnish accurate information of all other facts relating to said license which said commissioners may require, and no license shall be renewed until said report shall have been made to the satisfaction of said commissioners.

SEC. 6. No person enjoying such license shall take, or allow to be taken, any fish by means of stationary apparatus from the twentieth day of April until the fifteenth day of June in each year in the interval of time between the hours of six o'clock on Friday evening and six o'clock on the following Monday morning; and every person enjoying such license shall lift up at least twenty yards of the outer or seaward end of the leader or fence of his apparatus, or otherwise open it, so as to secure a free passage for the fish from the surface of the water to the very bottom, and shall at the same time place a gateway of netting over the "heart" or entrance into the inclosure, and, in general, take whatever precautions may be necessary to prevent the entrance of fishes into the same during the period of time aforesaid; and, generally, shall comply with any and all regulations made by the commissioners for the purpose of securing the accomplishment of the object of this section, namely, to allow and secure an unobstructed passage of the fish through or by the apparatus in question during the time specified.

SEC. 7. No license granted under the provisions of this act shall be construed as authorizing the grantee of the same to enter upon the land of individuals without their permission, nor to interfere in any way with private property.

SEC. 8. Whoever sets or uses, or causes to be set or used, in the waters of this commonwealth, whether the same are navigable or unnavigable, any weir, pot, pound, yard, trap, or other stationary apparatus whatsoever, for the purpose of capturing fish, except by virtue of a license duly issued, and for that particular locality, under the provisions of this act, shall forfeit and pay for each day during any part of which said apparatus is so set or used a sum not less than two hundred dollars nor more than five hundred dollars, and shall forfeit all apparatus so used, including nets, stakes, boats, &c., which shall be sold, and the proceeds of such sale placed in the treasury of the commonwealth.

SEC. 9. Whoever, having received a license under the provisions of this act, shall neglect or refuse to comply with the provisions of the same, or of his license, shall forfeit and pay for each offense a sum not less than two hundred dollars nor more than five hundred dollars, except that, in case of his violation of section six of this act, he shall forfeit and pay for each day during any part of which his offense is committed the sum of five hundred dollars, and shall forfeit all apparatus used in violation of said section, which shall be sold, and the proceeds of such sale be placed in the treasury of the commonwealth.

SEC. 10. All actions and prosecutions under this act shall be commenced within six months after the offense is committed, and one-half of the fine or penalty recovered in any action or prosecution aforesaid shall be paid to the person who shall first bring an action of tort therefor, in his own name, or shall make complaint in any criminal case, and the

remaining half in either case shall be paid into the treasury of the commonwealth.

SEC. 11. Whenever a person who has received a license hereunder shall be convicted of any offense under this act, or of violation of his license, he shall be forever disqualified from receiving another license within this commonwealth, and the license then held by him shall become void; and the said commissioners, on re-issuing a license in place of the same, shall prefer the party furnishing the evidence or making complaint against the party so offending, unless they shall see good reason to the contrary.

SEC. 12. No apparatus for capturing fish shall be set in such manner or in such place as to obstruct navigation with boats or vessels; but no one shall be permitted wantonly to destroy fishing apparatus lawfully set and managed, and for which the required license has been given, under penalty of not less than fifty nor more than five hundred dollars, to be recovered as aforesaid.

SEC. 13. It shall be at the discretion of the commissioners to revise or annul a license to establish fixed apparatus for capturing fish, when, in their opinion, and that of the governor of the State, the establishment or continuance of such apparatus may interfere with the passage of salmon, shad, herring, or alewives into fresh water for the purpose of spawning.

SEC. 14. This act shall take effect from and after its passage.