

MAINE STATE LEGISLATURE

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September 24, 1974

Maynard F. Marsh, Commissioner

Inland Fisheries & Game

Leon V. Walker, Jr., Assistant

Attorney General

You have asked two questions regarding fishways:

1. In an instance where a fishway may be required, should a hearing be held following public notice? The answer is a qualified yes.

12 M.R.S.A. § 2201, provides in the first paragraph, "Whenever the Commissioner shall deem it expedient, he may require a fishway" This provision gives the Commissioner complete discretion in deciding whether a fishway should be erected. There is no provision requiring him to hold a hearing after notice, if his decision is on his own initiative.

Hearings are required, following notice, in these three instances:

1. By petition of 200 citizens
2. By petition of county commissioners
3. When directed by the Fish and Game Legislative Committee.

An opportunity for a hearing, following notice, is deemed advisable, however, even when the commissioner is proceeding solely upon his own initiative, because of the fact that the owner or occupant of the dam or other artificial obstruction may become civilly liable for the expense of the fishway should the commissioner order it to be erected.

2. Is a so-called "fish trap" a fishway? The answer is No.

The dictionary definition of fishway is "any contrivance to enable fish to pass around a fall or dam in a stream; a fish ladder." No definition of "fish trap", such as the one at Union River, or any of the others in existence in the State, can be found. However, the purpose of these facilities is to trap fish for purposes of the department, and is the very opposite of the purpose of a fishway.

LW/mf