

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 268

H. P. 213

House of Representatives, January 22, 1975

Referred to Committee on Marine Resources. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Mills of Eastport.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Concerning Construction and Repair of Fishways.

Be it enacted by the People of the State of Maine, as follows:

12 MRSA, § 3709 is enacted to read:

§ 3709. Commissioner authorized to require fishways in dams or other artificial obstructions

For the purpose of conserving, developing and restoring anadromous fish resources of the State of Maine, the Commissioner of Marine Resources may require a fishway to be erected, maintained, repaired or altered at the expense of the owners or occupants of any dams or other artificial obstructions within or above tidewater in any waters historically or presently frequented by alewives, shad, salmon, sturgeon or any other anadromous fish species.

Before the commissioner makes any such order for the construction or alteration of any fishway in inland waters, as provided in this section, he must receive the written concurrence of the Commissioner of Inland Fisheries and Game.

The Commissioner of Marine Resources shall cause to be examined all dams and other artificial obstructions to fish passage in brooks, streams and rivers which flow into coastal waters, where in his judgment, fishways are needed and shall determine through his agents whether existing fishways, if any, are suitable and sufficient for the passage of anadromous fish or whether a new fishway is needed for passage of fish over such dams or obstructions and he shall prescribe by written order what changes or repairs, if any, shall be made therein and where, how and when a new fishway shall be built and at what times the same shall be kept open and shall serve a copy of such

order upon the owners or occupants maintaining any dam or other artificial obstruction.

If the owners or occupants of such dams or other artificial obstructions refuse or neglect to repair or construct a fishway after written order has been received from the commissioner, the commissioner may, after such time as he may deem sufficient, enter with workmen and material upon the premises of such owners or occupants required to construct or maintain such fishway and may, at the expense of such owners or occupants, improve an existing fishway or cause one to be constructed if none exists.

The commissioner shall have a civil action against all delinquent owners or occupants for their proportion of the expense thereof or the commissioner may petition the Superior Court, in the county where said dam or other artificial obstruction exists, to enforce any such order or to restrain any violation thereof.

Whenever delinquent owners or occupants reside out of state, said amounts may be recovered as penalties by libel against said dam or obstruction and the land on which it stands, filed in the Superior Court in the county where said land is located, in the name of the commissioner, such notice to be given of the pendency thereof as the court orders. The court may render judgment therein against said dam, obstruction and lands for said penalties and costs and order a sale thereof to satisfy such judgment and costs, including costs of sale, subject to all said requirements for the erection, maintenance and repair of said fishway.

Any owners or occupants may, within 14 days after any order of the commissioner, appeal to the Superior Court from any such order. The appellant shall include in the complaint a statement setting forth the facts of the case. If any such appeal is denied, full costs may be taxed against the appellant.

STATEMENT OF FACT

This bill will allow the Commissioner of Marine Resources to require fish passage facilities in certain tidal and freshwater dams where such facilities will enhance and restore searun fish populations. Provisions of this bill specify that any proposed fishways for inland water dams must meet with prior approval of the Commissioner of Inland Fisheries and Game.