

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1836

H. P. 1523

House of Representatives, April 21, 1975

Reported by Mr. Mills from Committee on Marine Resources. Printed under Joint Rules No. 18.

EDWIN H. Pert, Clerk

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 artificial obstructions

1. Fishways required. 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 in any dams or other artificial obstructions within tidewater in any waterways historically or presently frequented by alewives, shad, salmon, sturgeon or any other anadromous fish species.

2. Commissioner's authority. The Commissioner of Marine Resources shall cause to be examined all dams and other artificial obstructions to fish passage within tidewater to determine whether fishways are sufficient and suitable for the passage of anadromous fish.

If the commissioner determines that changes for improvement, repair or construction are necessary in existing dams or obstructions, he shall prescribe by written order, in reasonable detail, specific plans and description of the fishway he proposes and the conditions of its use, including when, how and where the fishway shall be constructed or changed and at what times the same shall be kept open.

The owner or owners of such dam or artificial obstruction shall be given an opportunity to carry out the changes for improvement ordered by the com-

missioner. If the owner or owners fail or refuse to comply with the order of the commissioner, the commissioner may proceed to have the fishway constructed or changes in an existing fishway carried out with funds appropriated to the department for that specific purpose.

3. Public hearing. The commissioner shall hold a public hearing on the order for the proposed fishway. A copy of the order and notice of the hearing shall be sent by registered mail, 14 days prior to the hearing, to the owner or owners of such dam or artificial obstruction, if the same shall be known or determined by the records of the municipality in which the dam or obstruction is located. The order and notice of the public hearing shall be published once a week for 2 successive weeks next prior to the hearing in the state paper and a newspaper of general circulation in the area where the dam or artificial obstruction is located.

After hearing, the commissioner may amend the order. Certified copies of the final written order shall be mailed to the owner or owners of the dam or artificial obstruction. Said owner or owners shall have 30 days to reply to the order of the commissioner, stating that he or they will carry out the changes specified in the order within the time specified.

4. Failure to carry out order. If said owner or owners fail to reply or refuse to comply with the order or have not completed the specified changes within the specified time stated in the final written order, the commissioner may cause said improvements, repairs or construction to be carried out.

In order to carry out the changes in a dam or other artificial obstruction as provided in the final order, the commissioner may enter upon lands necessary to reach the dam or other artificial obstruction whether owned by the owner of the dam or other artificial obstruction or another. If the commissioner must enter upon the land of another, he shall notify that owner of the purpose of such entry and the duration of time necessary to complete the changes provided in the final order. Every effort shall be made to preserve the land on which the commissioner enters. The land entered upon shall be restored to the grade and condition found prior to said entry as near as practicable.

5. Tampering with, destroying or injuring fishways. Whoever, without authority from the commissioner, tampers with a fishway, closes a fishway to fish migration, introduces foreign objects into a fishway, or damages or destroys a fishway, shall be subject to the penalties provided in section 4504.

6. Notice to commissioner of building a dam. No person shall build any dam or other obstruction within any of the tidewaters of the State without filing written notice with the commissioner accompanied by the plans for construction, the location and time when such dam or other obstruction will be built. The commissioner shall reply to said person within 30 days of receipt of such notice stating whether or not he will require a fishway to be provided in the dam or other obstruction. If the commissioner has determined that he will require a fishway to be provided in any dam or other obstruction, he shall, within 60 days of said notice, specify to the person building such dam or other artificial obstruction how and where such fishway shall be provided and the times it shall be kept open.

STATEMENT OF FACT

This bill will allow the Commissioner of Marine Resources to require fish passage facilities in certain tidewater dams where such facilities will enhance and restore sea-run fish populations.