

# 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)

1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 502

6  
7 H.P. 419

House of Representatives, February 1, 1983

8 Received by the Clerk of the House on February 1, 1983. Referred to the  
9 Committee on Marine Resources, and ordered printed pursuant to Joint Rule  
10 14.

EDWIN H. PERT, Clerk

Presented by Representative Carter of Winslow.

Cosponsors: Senator Dutremble of York and Representative Crowley of  
Stockton Springs.

11  
12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-THREE  
16

17 AN ACT to Clarify the Authority of the  
18 Commissioner of Marine Resources Regarding  
19 Fishways.  
20

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

23 Sec. 1. 12 MRSA §6121, sub-§4, as enacted by PL  
24 1977, c. 661, §5, is amended to read:

25 4. Procedure for notice and hearing. Prior to  
26 issuing a final written order, the commissioner shall  
27 give notice to the owner and the public and an oppor-  
28 tunity for a hearing. At the request of any inter-  
29 ested person, a hearing shall be held in the manner  
30 required for an adjudicatory proceeding under the  
31 Maine Administrative Procedure Act, Title 5, chapter  
32 375, subchapter IV. ~~After the notice or hearing, the~~  
33 ~~commissioner may issue a final written order estab-~~  
34 ~~lishing the specific plans and description of the~~

1 fishway, the conditions of its use, and the time for  
2 carrying out its requirements.

3 Sec. 2. 12 MRSA §6121, sub-§5, as enacted by PL  
4 1977, c. 661, §5, is repealed.

5 Sec. 3. 12 MRSA §6121, sub-§§5-A, 5-B and 5-C  
6 are enacted to read:

7 5-A. Commissioner's order.

8 A. After hearing, the commissioner by written  
9 order may:

10 (1) Require the owners or occupants of the  
11 dam or obstruction to provide, erect, main-  
12 tain, repair or alter a suitable fishway,  
13 and he shall further prescribe the time  
14 during which the fishway shall be kept open  
15 for the passage of fish, under the condi-  
16 tions specified in the written order; and

17 (2) Amend the order, changing the time  
18 during which the fishway shall be kept open.

19 B. Certified copies of the orders and any amend-  
20 ments shall be mailed to the owners or occupants  
21 of the dam or obstruction.

22 5-B. Delinquent owners or occupants.

23 A. If any owner or occupant neglects or refuses  
24 to join in proportion to his interest in a dam or  
25 obstruction in erecting, maintaining, repairing  
26 or altering a fishway as ordered and required,  
27 the other owners or occupants shall do so and  
28 shall have a civil action against the delinquents  
29 for their proportion of the expense of doing so.

30 B. If all owners and occupants refuse or neglect  
31 to erect, maintain, repair or alter a fishway as  
32 ordered and required:

33 (1) The commissioner may do so and shall  
34 have a civil action against all delinquents  
35 for their proportion of the expense of doing  
36 so; or

1                    (2) The commissioner may petition the Super-  
2                    rior Court in the county where the dam or  
3                    other artificial obstruction exists to  
4                    enforce any such order or to restrain any  
5                    violation of such an order.

6                    C. Whenever delinquent owners or occupants  
7                    reside out of the State, the expenses of erect-  
8                    ing, maintaining, repairing or altering the fish-  
9                    way may be recovered as penalties by libel  
10                   against the dam or obstruction and the land on  
11                   which it stands, filed in the name of the commis-  
12                   sioner in Superior Court in the county where the  
13                   land is located.

14                   (1) Notice of the pendency of the proceed-  
15                   ings shall be as the court orders.

16                   (2) The court may render judgment against  
17                   the dam, obstruction and lands for penalties  
18                   and costs and order a sale of the dam,  
19                   obstruction and lands to satisfy the judg-  
20                   ment and costs, including costs of sale,  
21                   subject to all requirements for the erection,  
22                   maintenance and repair of the fishway.

23                   5-C. Appeal. Any owner or occupant may, within  
24                   14 days after any order of the commissioner, appeal  
25                   to the Superior Court from any such order.

26                   A. The appellant shall, when the appeal is  
27                   taken, include in the complaint a statement sub-  
28                   stantially setting forth the facts of the case.

29                   B. If the appeal is denied, full costs may be  
30                   taxed against the appellant.

31                                    STATEMENT OF FACT

32                    The purpose of this bill is to grant to the Com-  
33                    missioner of Marine Resources the same enforcement  
34                    powers that the Commissioner of Inland Fisheries and  
35                    Wildlife already has regarding the construction,  
36                    alteration and maintenance of fishways. Both commis-  
37                    sioners have jurisdiction over the installation and  
38                    maintenance of fishways, yet the Commissioner of

1 Marine Resources has much less authority than the  
2 Commissioner of Inland Fisheries and Wildlife to have  
3 his orders enforced. This bill corrects this over-  
4 sight.

5

0961011883