

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 1080

6  
7 S.P. 359

In Senate, March 7, 1983

8 Referred to the Committee on Marine Resources. Sent down for  
9 concurrence and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Minkowsky of Androscoggin.

Cosponsors: Representative Carter of Winslow, Representative  
11 MacEachern of Lincoln and Representative Jacques of Waterville.

12 STATE OF MAINE  
13

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

17 AN ACT Concerning Fishways in Dams and  
18 Other Artificial Obstructions in Coastal  
19 Waters.  
20

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

23 Sec. 1. 12 MRSA §6121, as amended by PL 1979, c.  
24 127, §84, is repealed and the following enacted in  
25 its place:

26 §6121. Fishways in existing dams or artificial  
27 obstructions

28 1. Commissioner's authority. In order to con-  
29 serve, develop or restore anadromous fish resources,  
30 the commissioner may require a fishway to be erected,  
31 maintained, repaired or altered by the owners,  
32 lessors or other persons in control of any dam or  
33 other artificial obstruction within coastal waters

1 frequented by alewives, shad, salmon, sturgeon or  
2 other anadromous fish species.

3 2. Examination of dams. The commissioner shall  
4 periodically examine all dams and other artificial  
5 obstructions to fish passage within the coastal  
6 waters in order to determine whether fishways are  
7 necessary, sufficient or suitable for the passage of  
8 anadromous fish.

9 3. Initiation of fishway proceedings. The com-  
10 missioner shall initiate proceedings to consider  
11 construction, repair or alteration of fishways in  
12 existing dams or other artificial obstructions when-  
13 ever he determines that either of the following con-  
14 ditions may exist:

15 A. Fish passage at the dam or obstruction in  
16 issue, whether alone or in conjunction with fish  
17 passage at other upriver barriers, will improve  
18 access to sufficient and suitable habitat any-  
19 where in the watershed to support a substantial  
20 commercial or recreational fishery for one or  
21 more species of anadromous fish; or

22 B. Fish passage at the dam or obstruction in  
23 issue is necessary to protect or enhance rare,  
24 threatened or endangered fish species.

25 4. Adjudicatory proceedings.

26 A. A fishway proceeding shall be an adjudicatory  
27 proceeding under the Maine Administrative Proce-  
28 dure Act, Title 5, chapter 375, subchapter IV,  
29 but a hearing may not be required unless  
30 requested in accordance with paragraph B. Notice  
31 of the proceeding shall be given in accordance  
32 with Title 5, section 9052, and the following re-  
33 quirements:

34 (1) Personal notice shall be given to the  
35 dam owner, lessee or other person in control  
36 of the dam or artificial obstruction,  
37 informing that person that a proceeding has  
38 been undertaken and of his right to request  
39 a hearing; and

1                   (2) Notice to the public, in newspapers of  
2                   general circulation in the areas affected,  
3                   notifying the public of the initiation of  
4                   the proceedings and of the public's oppor-  
5                   tunity to request a hearing.

6                   B. If any interested person requests a public  
7                   hearing, the commissioner shall, within 30 days,  
8                   either notify the petitioners in writing of his  
9                   denial stating the reasons, or schedule a public  
10                   hearing. The commissioner shall hold a public  
11                   hearing whenever:

12                   (1) He is petitioned by 50 or more resi-  
13                   dents of a municipality or unorganized ter-  
14                   ritory in which the dam or other artificial  
15                   obstruction is located;

16                   (2) He is directed by the joint standing  
17                   committee of the Legislature having juris-  
18                   isdiction over marine resources to hold a  
19                   hearing; or

20                   (3) The owner, lessee or other person in  
21                   control of the dam or artificial obstruction  
22                   requests a public hearing.

23                   5. Decision. In the event the commissioner  
24                   decides that a fishway should be constructed,  
25                   repaired, altered or maintained, his final orders  
26                   shall be issued with specific plans and descriptions  
27                   of the fishway construction, alteration, repair or  
28                   maintenance requirements, the conditions of the use  
29                   of the fishway and the time and manner required for  
30                   fishway operation. The commissioner may issue a  
31                   decision requiring the owners, lessees or other per-  
32                   sons in control of the dam or obstruction to con-  
33                   struct, repair, alter or maintain a fishway. Such a  
34                   decision shall be supported by a finding based on  
35                   evidence submitted to the commissioner that either of  
36                   the following conditions exist:

37                   A. One or more species of anadromous or migra-  
38                   tory fish can be restored in substantial numbers  
39                   to the watershed by construction, alteration,  
40                   repair or maintenance of a fishway, and habitat  
41                   anywhere in the watershed above the dam or

1 obstruction is sufficient and suitable to support  
2 a substantial commercial or recreational fishery  
3 for one or more species of anadromous or migra-  
4 tory fish; or

5 B. The construction, alteration, repair or  
6 maintenance of a fishway is necessary to protect  
7 or enhance rare, threatened or endangered fish  
8 species.

9 6. Compliance.

10 A. The owner, lessee or other person in control  
11 of the dam or other artificial obstruction shall  
12 be jointly and severally liable for the costs of  
13 fishway design, construction, repair, alteration  
14 or maintenance and for full compliance with a  
15 decision issued pursuant to subsection 5. If the  
16 owner, lessee or other person in control of the  
17 dam or other artificial obstruction refuses to  
18 comply or does not fully comply with the commis-  
19 sioner's decision, the commissioner shall ini-  
20 tiate a civil action against the owner, lessee or  
21 other person in control of the dam or other arti-  
22 ficial obstruction for damages in the amount of  
23 fishway design, construction, repair, alteration  
24 or maintenance costs. Upon receipt of necessary  
25 funds through a court action, the commissioner  
26 shall construct, repair, alter or maintain the  
27 fishway in accordance with his decision.

28 B. The court may render judgment against and  
29 order the sale of the dam or other artificial  
30 obstruction, as well as surrounding lands, in  
31 order to secure the costs of fishway construc-  
32 tion, repair, alteration or maintenance and costs  
33 of the court-ordered sale. The purchaser of the  
34 dam or other obstruction shall be subject to all  
35 requirements concerning fish passage set forth in  
36 the commissioner's decision.

37 7. Privileged entry. The commissioner, his  
38 agents or subcontractors shall be privileged to enter  
39 upon any private land in order to construct, repair,  
40 alter or maintain a fishway or to periodically exam-  
41 ine fishways in dams or other artificial obstruc-  
42 tions. The commissioner shall notify the landowner,



1 eries and Wildlife and accomplish the following  
2 objectives.

3 1. They are consistent with federal statutes  
4 concerning financial liability of dam owners to pro-  
5 vide for fishway design, construction, repair, alter-  
6 ation and operation.

7 2. The proposed changes provide for standards  
8 which the agencies must apply in making decisions  
9 concerning fish passage.

10 3. The proposed changes provide for greater  
11 public involvement in the decision-making process  
12 regarding fishway needs.

13 Recent water quality improvement in Maine rivers  
14 has resulted in greatly improved habitat for the pro-  
15 duction of anadromous (sea-run) fish and other migra-  
16 tory fish species. Fish passage facilities con-  
17 structed through state, federal and private efforts  
18 have reopened hundreds of miles of rivers and streams  
19 for the production of Atlantic salmon, shad, alewives  
20 and other migratory fish species. Renewed interest  
21 in hydropower development throughout the State could  
22 have adverse impacts on important fishery resources  
23 if provisions are not made for adequate fish passage.  
24 The bill allows for determination of fish passage  
25 needs based on prescribed standards and assures pro-  
26 tection of important commercial and recreational  
27 fisheries.

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