## MAINE STATE LEGISLATURE

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	FIRST REGULAR SESSION
ONE HUN	DRED AND ELEVENTH LEGISLATURE
Legislative Docume	nt No. 1253
S.P. 405	In Senate, March 17, 1983
Referred to the C concurrence and order	ommittee on Fisheries and Wildlife. Sent down for ed printed.
	JOY J. O'BRIEN, Secretary of the Senato
	esentative Clark of Millinocket, Representative Vose of tative Erwin of Rumford.
	STATE OF MAINE
NINET	IN THE YEAR OF OUR LORD EEN HUNDRED AND EIGHTY-THREE
	ACT Concerning Fishways in Dams and Other tificial Obstructions in Inland Waters.
Be it enacted b	y the People of the State of Maine as
Sec. 1. 12 420, §1, is rep	MRSA §7701, as enacted by PL 1979, c. ealed:
Sec. 2. 12	MRSA §7701-A, is enacted to read:
	ays in dams and other artificial uctions
serve, develop	ioner's authority. In order to con- or restore anadromous or migratory the commissioner may require a fish- ed, maintained, repaired or altered by

1 the owners, lessors or other persons in control of any dam or other artificial obstruction within inland 3 waters frequented by alewives, shad, salmon, sturgeon 4 or other anadromous or migratory fish species.

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- 2. Examination of dams. The commissioner shall periodically examine all dams and other artificial obstructions to fish passage within the inland waters in order to determine whether fishways are necessary, sufficient or suitable for the passage of anadromous or migratory fish.
- 3. Initiation of fishway proceedings. The commissioner shall initiate proceedings to consider construction, repair or alteration of fishways in existing dams or other artificial obstructions whenever he determines that one or more of the following conditions may exist:
  - A. Fish passage at the dam or obstruction in issue, whether alone or in conjunction with fish passage at other upriver barriers, will improve access to sufficient and suitable habitat anywhere in the watershed to support a substantial commercial or recreational fishery for one or more species of anadromous or migratory fish; or
  - B. Fish passage at the dam or obstruction in issue is necessary to protect or enhance rare, threatened or endangered fish species.
  - 4. Adjudicatory proceedings.
    - A. A fishway proceeding shall be an adjudicatory proceeding under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, but a hearing shall not be required unless requested in accordance with paragraph B. Notice of the proceeding shall be given in accordance with Title 5, section 9052 and the following requirements:
      - (1) Personal notice shall be given to the dam owner, lessee or other person in control of the dam or artificial obstruction, informing that person that a proceeding has been undertaken and their right to request a hearing; and

1 (2) Notice to the public, in newspapers of general circulation in the areas affected 2 3 shall be given notifying the public of the initiation of the proceedings and of the 4 5 public's opportunity to request a hearing. B. If any interested person requests a public 6 7 hearing, the commissioner shall, within 30 days, either notify the petitioners in writing of his denial stating the reasons therefor, or schedule 8 9 a public hearing. The commissioner shall hold a 10 11 public hearing whenever: 12 (1) He is petitioned by 50 or more residents of a municipality or unorganized ter-13 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 diction over inland fisheries and wildlife to hold a hearing; or 19 20 (3) The owner, lessee or other person in 21 control of the dam or artificial obstruction requests a hearing. 22 23 5. Decision. In the event that the commissioner decides that a fishway should be constructed, 24 25 repaired, altered or maintained, his final orders 26 shall be issued with specific plans and descriptions of the fishway construction, alteration, repair or 27 maintenance requirements, the conditions of the use 28 of the fishway and the time and manner required for 29 fishway operation. The commissioner may issue a 30 31 decision requiring the owners, lessees or other persons in control of the dam or obstruction to construct, repair, alter or maintain a fishway. Such a 32 33 decision shall be supported by a finding based on 34 evidence submitted to him that either of the follow-35 36 ing conditions exist:

A. One or more species of anadromous or migra-

tory fish can be restored in substantial numbers

to the watershed by construction, alteration,

repair or maintenance of a fishway and habitat

anywhere in the watershed above the dam or

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- obstruction is sufficient and suitable to support a substantial commercial or recreational fishery for one or more species of anadromous or migratory fish; or
  - B. The construction, alteration, repair or maintenance of a fishway is necessary to protect or enhance rare, threatened or endangered fish species.

## 6. Compliance.

- A. The owner, lessee or other person in control of the dam or other artificial obstruction shall be jointly and severally liable for the costs of fishway design, construction, repair, alteration or maintenance, and for full compliance with a decision issued pursuant to subsection 5. If the owner, lessee or other person in control of the dam or other artificial obstruction refuses to comply or does not fully comply with the commissioner's decision, the commissioner shall initiate a civil action against the owner, lessee or other person in control of the dam or other artificial obstruction in damages in the amount of fishway design, construction, repair, alteration or maintenance costs. Upon receipt of necessary funds through a court action, the commissioner shall construct, repair, alter or maintain the fishway in accordance with his decision.
- B. The court may render judgment against and order the sale of the dam or other artificial obstruction, as well as surrounding lands, in order to secure the costs of fishway construction, repair, alteration or maintenance and costs of the court-ordered sale. The purchaser of the dam or other obstruction shall be subject to all requirements concerning fish passage set forth in the commissioner's decision.
- 7. Privileged entry. The commissioner, his agents or subcontractors shall be privileged to enter upon any private land in order to construct, repair, alter or maintain a fishway or to periodically examine fishways in dams or other artificial obstructions. The commissioner shall notify the landowner,

- lessee or other person in control of the dam when the construction or examination will take place and time required to complete the construction or examination. The commissioner shall make every effort to preserve private land surrounding fishway construc-tion sites and shall restore surrounding lands to the grade and condition existing prior to entry, if eco-nomically feasible.
  - Sec. 3. 12 MRSA §7701-A is enacted to read:

- 10 §7701-A. Construction of new dams or other artifi-11 cial obstructions
  - 1. Notice required. Prior to construction or prior to authorizing construction of a new dam or other obstruction in the inland waters, the owner shall provide written notice to the commissioner, supplying information on construction plans, proposed location and date of construction of the dam or other artificial obstruction.
  - 2. Initiation of fishway proceedings. Within 30 days of receipt of the construction notice, the commissioner shall review the plans in order to determine whether fishway construction or alteration of proposed fishway construction plans may be required pursuant to the criteria set forth in section 7701, subsection 3. If the commissioner determines that the construction or alteration may be necessary, he shall initiate fishway proceedings and follow the procedures prescribed in section 7701.

## 29 STATEMENT OF FACT

The Department of Inland Fisheries and Wildlife and Department of Marine Resources have jointly developed revisions to their existing fishway statutes. These revisions provide for greater consistency in the application of their respective fishway laws to dams within inland and tidal waters. The proposed amendments to Title 12, sections 7701 and 7701-A are essentially identical to the revisions proposed by the Department of Marine Resources and accomplish the following objectives.

1. They are consistent with federal statutes concerning financial liability of dam owners to provide for fishway design, construction, repair, alteration and operation.

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- 2. The proposed amendments provide for standards which the agencies shall apply in making decisions concerning fish passage.
- 3. The proposed amendments provide for greater public involvement in the decision-making process regarding fishway needs.

Recent water quality improvement in Maine rivers has resulted in greatly improved habitat for the production of anadromous (sea-run) fish and other migratory fish species. Fish passage facilities constructed through state, federal and private efforts have reopened hundreds of miles of rivers and streams for the production of Atlantic salmon, shad, alewives and other migratory fish species. Renewed interest in hydropower development throughout the State could adverse impacts on important fishery resources have if provisions are not made for adequate fish passage. This bill allows for determination of fish passage needs based on prescribed standards and assure protection of important commercial and recreational fisheries.