

# MAINE STATE LEGISLATURE

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(EMERGENCY)  
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 391

H.P. 305 House of Representatives, February 18, 1987  
Reference to the Committee on Energy and Natural  
Resources suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative CALLAHAN of Mechanic Falls.

Cosponsored by Representatives VOSE of Eastport, LORD of  
Waterboro and Senator WHITMORE of Androscoggin.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Assure that State Agencies follow  
2 the Requirements of the Maine  
3 Administrative Procedure Act prior to  
4 Adopting Fishery Restoration and  
5 Management Plans or Introducing new  
6 Species into Public Waters.  
7

8 Emergency preamble. Whereas, Acts of the Legis-  
9 lature do not become effective until 90 days after  
10 adjournment unless enacted as emergencies; and

11 Whereas, there is a need to assure that reason-  
12 able procedures be followed in fisheries management  
13 programs; and

14 Whereas, present agency interpretations are pre-  
15 venting certain communities from sound economic plan-  
16 ning; and

1           Whereas, in the judgment of the Legislature,  
2 these facts create an emergency within the meaning of  
3 the Constitution of Maine and require the following  
4 legislation as immediately necessary for the preser-  
5 vation of the public peace, health and safety; now,  
6 therefore,

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

9           Sec. 1. 12 MRSA §6252-A, sub-§6 is enacted to  
10 read:

11           6. Restoration and management plans. The com-  
12 mission may adopt Atlantic sea run salmon restoration  
13 or management plans for the inland waters of this  
14 State only after providing prior notice and holding a  
15 public hearing in accordance with the rule-making  
16 procedures of the Maine Administrative Procedure Act,  
17 Title 5, chapter 375. Any such rules, in addition to  
18 fisheries considerations, shall also consider the ec-  
19 onomic impact of any proposed fishery restoration or  
20 management plans.

21           Sec. 2. 12 MRSA §7015-A is enacted to read:

22           §7015-A. Fishery restoration and management plans

23           Prior to the adoption of any fishery restoration  
24 or management plans for any waters in this State, the  
25 Department of Inland Fisheries and Wildlife shall  
26 provide prior notice and hold a public hearing in ac-  
27 cordance with the rule-making procedures of the Maine  
28 Administrative Procedure Act, Title 5, chapter 375.  
29 Any such rules, in addition to fisheries considera-  
30 tions, shall also consider the economic impact of any  
31 proposed fishery restoration or management plans.

32           Sec. 3. 38 MRSA §464-A is enacted to read:

33           §464-A. Water quality certification

34           When issuing a water quality certification pursu-  
35 ant to the United States Clean Water Act, Section  
36 401, United States Code, Title 33, Section 1341, the

1 board may only adopt conditions which are necessary  
2 to reasonably ensure that the activity will be con-  
3 ducted in a manner which do not violate applicable  
4 water quality standards. In adopting the certifica-  
5 tion conditions, the board shall not require the con-  
6 struction, alteration or maintenance of, nor require  
7 studies relating to any facilities where another  
8 state or federal agency is empowered, by law or regu-  
9 lation, to require the construction, alteration or  
10 maintenance of the facilities. The board shall not  
11 adopt water quality certification conditions concern-  
12 ing the construction, alteration or maintenance of  
13 facilities on lands which abut waters into which the  
14 activity may discharge, except to the extent that  
15 discharges from the facilities may result in a viola-  
16 tion of applicable water quality standards.

17       Sec. 4. 38 MRSA §465, sub-§4, ¶D is enacted to  
18 read:

19       D. No regulations may be effective which impose  
20 limitations on discharges to Class C waters re-  
21 sulting from a determination that the waters are  
22 or will be designated as a cold water fishery un-  
23 less the designation occurred as part of a man-  
24 agement plan adopted pursuant to Title 12, sec-  
25 tion 6252-A or 7015-A.

26       Sec. 5. 38 MRSA §466, sub-§8, as enacted by PL  
27 1985, c. 698, §15, is amended to read:

28       8. Indigenous. "Indigenous" means supported in  
29 a reach of water or known to have been supported ac-  
30 cording to historical records compiled by State and  
31 Federal agencies or published scientific literature.  
32 Those historical records or published scientific lit-  
33 erature must demonstrate a significant, well estab-  
34 lished presence on or after November 28, 1975.

35       Sec. 6. 38 MRSA §467, sub-§1, ¶B, as enacted by  
36 PL 1985, c. 698, §15, is amended to read:

37       B. Little Androscoggin River Drainage.

38             (1) Little Androscoggin River, main stem,  
39 including all impoundments.

- 1 (a) From the outlet of Bryant Pond to  
2 a point located 0.25 mile above the  
3 bridge at West Paris - Class B.
- 4 (b) From a point located 0.25 mile  
5 above the bridge at West Paris to its  
6 confluence with Andrews Brook - Class  
7 C.
- 8 (c) From its confluence with Andrews  
9 Brook to the Route 26 bridge in South  
10 Paris - Class B.
- 11 (d) From the Route 26 bridge in South  
12 Paris to its confluence with the  
13 Androscoggin River - Class C.
- 14 (2) Little Androscoggin River, tributaries.
- 15 (a) Bird Brook (Norway) - Class C.
- 16 (b) Davis Brook (Poland) - Class C.
- 17 (c) Outlet of Thompson Lake (Oxford) -  
18 Class C.
- 19 (d) Pennesseewassee Lake Outlet (Nor-  
20 way) - Class C.
- 21 (e) Unnamed Brook (Auburn) which en-  
22 ters the Little Androscoggin River from  
23 the north about 1.3 miles east of Minot  
24 Village - Class C.
- 25 (3) The Legislature recognizes that, at  
26 certain times, portions of the waters in the  
27 impoundment created by Hackett Mills Dam,  
28 have not and may continue not to meet the  
29 Class C requirements for aquatic life due to  
30 elevated water temperatures. The Legisla-  
31 ture further recognizes that these waters,  
32 as receiving waters for clean industrial  
33 process and cooling water, provide a signif-  
34 icant contribution to the economic develop-  
35 ment and general welfare of the citizens of  
36 the State. Accordingly, in the opinion of  
37 the Legislature, the use of this impoundment

1 as receiving waters for clean industrial  
2 process and cooling water is its highest and  
3 best designated use. The board shall con-  
4 sider the value and importance to the people  
5 of the State of this impoundment's use as  
6 receiving waters for clean industrial pro-  
7 cess and cooling water when considering wa-  
8 ter discharge licenses which effect this im-  
9 poundment and shall grant licenses if it  
10 feels that:

11 (a) All reasonable efforts to attain  
12 Class C water quality standards have  
13 been made; and

14 (b) That the discharge of clean indus-  
15 trial process and cooling water will  
16 not have a significant adverse impact  
17 on the impoundments and other desig-  
18 nated uses.

19 Emergency clause. In view of the emergency cited  
20 in the preamble, this Act shall take effect when ap-  
21 proved.

22 STATEMENT OF FACT

23 Recently, certain state fishery agencies have  
24 taken the position that long-term management and res-  
25 toration plans may be adopted without providing mem-  
26 bers of the public, who may be affected by plans,  
27 prior notice and an opportunity for a hearing. This  
28 is contrary to the intent of the existing provisions  
29 of the fishery agency laws and fundamental fairness.  
30 The purpose of this bill is to assure adequate oppor-  
31 tunity for public comment and involvement with re-  
32 spect to the adoption of fish restoration or manage-  
33 ment on any state waters and the introduction of new  
34 species into those waters.

35 The adoption of fish restoration and management  
36 plans or the introduction of new species into public  
37 waters invariably has direct and long-term impacts on  
38 uses and users of the waters targeted for plans and  
39 species. The general public and industrial users are

1 affected. Furthermore, state environmental agencies,  
2 with licensing jurisdiction over proposed and exist-  
3 ing activities making use of or discharging into the  
4 waters, are required to take fish management plans  
5 and existing species into account when considering  
6 the issuance of licenses. In discharging this re-  
7 sponsibility, agencies have attached conditions to  
8 licenses which require special protection for certain  
9 species which may be the subject of a management plan  
10 which has never been subject to public comment.  
11 Clearly, fundamental fairness requires prior notice  
12 to persons and companies who will be affected by the  
13 adoption of a fishery management plan or the intro-  
14 duction of a new species. This is already the intent  
15 of the existing fishery agency laws and is clearly  
16 expressed in the Department of Marine Resources law,  
17 in the Maine Revised Statutes, Title 12, section  
18 6171, subsection 2-A. Because there is some indica-  
19 tion that other fishery agencies may be ignoring the  
20 requirements of the Maine Administrative Procedure  
21 Act, Title 5, chapter 375, in adopting management  
22 plans or introducing new species, this bill is neces-  
23 sary to make certain that the rule-making require-  
24 ments of the Maine Administrative Procedure Act, Ti-  
25 tle 5, chapter 375, are followed.

26 This bill also contains provisions to assure  
27 that: (1) the Department of Environmental Protection  
28 regulations limiting waterbody use in discharges on  
29 the basis of the presence of a certain fish species  
30 be tied into a proper public proceeding relating to  
31 the existence of those species; (2) Hackett Mills Dam  
32 impoundment receive similar treatment to certain oth-  
33 er impoundments; (3) water quality certification deal  
34 only with water quality issues; and (4) some bounda-  
35 ries be placed on the definition of "indigenous" for  
36 purposes of protecting fish species.

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