

MAINE STATE LEGISLATURE

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AUGUSTA, MAINE

SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2164

H.P. 1586 House of Representatives, February 1, 1988
Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Fisheries and Wildlife
suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative MCGOWAN of Canaan.

Cosponsored by Senator USHER of Cumberland,
Representatives CLARK of Millinocket and JACQUES of Waterville.

STATE OF MAINE

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

1 **AN ACT to Amend the Endangered Species Act to**
2 **Provide for Injunctive Relief and Other**
3 **Enforcement Remedies.**
4

5 Be it enacted by the People of the State of Maine as
6 follows:

7 12 MRSA §§7758 and 7759 are enacted to read:

8 §7758. Judicial enforcement

9 1. General. In the event of a violation of this
10 subchapter, of any rule promulgated pursuant to this

1 subchapter or of any license or permit granted under
2 this subchapter, the Attorney General may institute
3 injunctive proceedings to enjoin any further
4 violation, a civil or criminal action, or any
5 appropriate combination of those proceedings without
6 recourse to any other provision of law administered by
7 the Department of Inland Fisheries and Wildlife.

8 2. Restoration. The court may order restoration
9 of any area affected by any activity found to be in
10 violation of this subchapter, of any rule promulgated
11 pursuant to this subchapter or of any license or
12 permit granted under this subchapter, to its condition
13 prior to the violation or as near to that condition as
14 may be possible. When the court finds that the
15 violation was willful, the court shall order
16 restoration under this subchapter unless the
17 restoration would result in:

18 A. A threat to public health and safety;

19 B. Environmental damage; or

20 C. A substantial injustice.

21 3. Request for injunctive proceedings. If the
22 commissioner finds that an activity poses a
23 significant risk to the well-being of any species of
24 fish, wildlife or plants in the State, the
25 commissioner shall request the Attorney General to
26 initiate immediate injunctive proceedings to prevent
27 that activity.

28 §7759. Citizen suits

29 1. Commencement. Except as provided in
30 subsection 2, any person may commence a civil suit on
31 that person's own behalf:

32 A. To enjoin any person, including the State or
33 any of its subdivisions, any state agency or
34 municipality, who is alleged to be in violation of
35 this subchapter or rule promulgated under the
36 authority of this subchapter;

1 B. To compel the commissioner to apply the
2 prohibitions set forth in section 7756; or

3 C. To compel the commissioner to perform any
4 nondiscretionary acts under section 7753.

5 The Superior Court may enforce this subsection or any
6 rule promulgated under this subsection, or may order
7 the commissioner to perform any such act or duty.

8 2. Notice. Notice for actions under this section
9 shall be as follows.

10 A. No action may be commenced under subsection 1,
11 paragraph A or B:

12 (1) Prior to 60 days after written notice of
13 the violation has been given to the
14 commissioner and to any alleged violator of
15 any such provision or rule;

16 (2) If the commissioner has commenced action
17 to enforce section 7756 or to impose a
18 penalty pursuant to section 7901; or

19 (3) If the State has commenced and is
20 diligently prosecuting a criminal action in a
21 court of this State to redress a violation of
22 any such provision or rule.

23 B. No action may be commenced under subsection 1,
24 paragraph C:

25 (1) Prior to 60 days after written notice
26 has been given to the commissioner; or

27 (2) If the commissioner has published notice
28 of rulemaking under section 7035 or 7753,
29 subsection 2, paragraph C.

30 3. Attorney General; intervention. In any suit
31 under this subchapter in which the State is not a

1 party, the Attorney General, at the request of the
2 commissioner, may intervene on behalf of the State.

3 4. Awards; costs. The court, in issuing any
4 final order in any suit brought pursuant to subsection
5 1, may award costs of litigation, including reasonable
6 attorney and expert witness fees, to any party if the
7 court determines the award appropriate.

8 5. Effect of injunction. The injunctive relief
9 provided by this subchapter does not restrict any
10 right which any person or class of persons may have
11 under any law or common law to seek enforcement of any
12 standard or limitation or to seek any other relief,
13 including relief against the commissioner or a state
14 agency.

15 STATEMENT OF FACT

16 This bill permits the Attorney General to bring
17 injunctive proceedings to prevent the harm, misuse or
18 harassment of endangered species and in emergencies
19 where species of animals or plants in the State are in
20 serious jeopardy, requires the Commissioner of Inland
21 Fisheries and Wildlife to request that an injunctive
22 proceeding be initiated. This parallels the general
23 injunctive authority of the Attorney General to
24 enforce laws administered by the Department of
25 Environmental Protection.

26 The bill creates a new enforcement mechanism to
27 permit citizen injunctive proceedings, provided that
28 certain requirements are met.

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