

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1528

S.P. 551

March 20, 2007

An Act To Protect Native Diadromous Fish during Their Migration

Reference to the Committee on Marine Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator DAMON of Hancock.

Cosponsored by Representative WATSON of Bath and Senators: MITCHELL of Kennebec, ROTUNDO of Androscoggin, Representatives: BERRY of Bowdoinham, CRAVEN of Lewiston, PERCY of Phippsburg, SIMPSON of Auburn, WAGNER of Lewiston, WALCOTT of Lewiston.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 38 MRSA §465, sub-§5** is enacted to read:

3 5. All waters. Dams in all classifications of fresh and estuarine surface waters must
4 provide safe and effective upstream and downstream passage for indigenous anadromous
5 and catadromous migratory fish, including eels. For every day this fish passage is not in
6 effect, the dam owner may be automatically fined not less than \$1,000 by the department
7 or other appropriate state agency.

8 A. Passage does not include any method such as "trap and truck" in which fish or
9 eels are removed from the vicinity of the dam for any period of time.

10 B. For the purpose of this section, "safe" means that diadromous fish migrating
11 upstream can pass the dam and are not killed or severely injured by dams when
12 migrating downstream. "Safe" may not be construed to include passage through
13 operating turbines or to include remedial measures that continue to kill or severely
14 injure fish.

15 **Sec. 2. 38 MRSA §465, sub-§6** is enacted to read:

16 6. Citizen suit provision. A person may commence a civil action on that person's
17 own behalf against any person, including any governmental instrumentality or agency,
18 who is alleged to be in violation of this section. The Superior Court has jurisdiction to
19 enforce this section and impose penalties of up to \$10,000 per day per violation. The
20 Superior Court, in issuing any final order in any action brought pursuant to this section,
21 may award costs of litigation, including reasonable attorney and expert witness fees, to
22 any prevailing or substantially prevailing party seeking to enforce this section against a
23 violation, whenever the court determines the award is appropriate. For the purpose of this
24 section, "citizen" means a person or persons having an interest that is or may be adversely
25 affected and "person" means an individual, corporation, partnership, association,
26 including an unincorporated association, state agency, municipality, commission or
27 political subdivision of the State.

28 **Sec. 3. 38 MRSA §465-B, sub-§4** is enacted to read:

29 4. All waters. Dams in all classifications of fresh and estuarine surface waters must
30 provide safe and effective upstream and downstream passage for indigenous anadromous
31 and catadromous migratory fish, including eels. For every day this fish passage is not in
32 effect, the dam owner may be automatically fined not less than \$1,000 by the department
33 or other appropriate state agency.

34 A. Passage does not include any method such as "trap and truck" in which fish or
35 eels are removed from the vicinity of the dam for any period of time.

36 B. For the purpose of this section, "safe" means that diadromous fish migrating
37 upstream can pass the dam and are not killed or severely injured by dams when
38 migrating downstream. "Safe" may not be construed to include passage through
39 operating turbines or to include remedial measures that continue to kill or severely
40 injure fish.

