

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1191

H.P. 835

House of Representatives, March 26, 2013

An Act To Strengthen the Fishing Laws

Submitted by the Department of Inland Fisheries and Wildlife pursuant to Joint Rule 204.
Reference to the Committee on Inland Fisheries and Wildlife suggested and ordered
printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative ESPLING of New Gloucester.
Cosponsored by Senator DUTREMBLE of York and
Representatives: BRIGGS of Mexico, DAVIS of Sangerville, EVANGELOS of Friendship,
KUSIAK of Fairfield, MARKS of Pittston.

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

2 **Sec. 1. 12 MRSA §12461, sub-§6**, as enacted by PL 2009, c. 214, §7, is amended
3 to read:

4 **6. Exceptions.** Notwithstanding the stocking restrictions set forth in subsection 4,
5 the commissioner may:

6 A. Stock Big Reed Pond in T.8, R.10, W.E.L.S. with native fish species. If sufficient
7 brook trout from Big Reed Pond are not available, brook trout from Reed Brook and
8 its tributaries in T.8, R.10, W.E.L.S. may be used for restocking. If arctic charr from
9 Big Reed Pond are not available, arctic charr from an endemic arctic charr water in
10 the State may be used for restocking. If northern redbelly dace need to be restocked
11 in Big Reed Pond, northern redbelly dace from Reed Brook and its tributaries in T.8,
12 R.10, W.E.L.S. may be used for restocking; and

13 B. Stock Big Wadleigh Pond in T.8, R.15, W.E.L.S. with native fish species. If
14 sufficient brook trout from Big Wadleigh Pond are not available, brook trout from
15 Wadleigh Stream in T.8, R.15, W.E.L.S. and T.7, R.15, W.E.L.S. or Poland Pond in
16 T.7, R.15 W.E.L.S. may be used for restocking. If arctic charr from Big Wadleigh
17 Pond are not available, arctic charr from an endemic arctic charr water in the State
18 may be used for restocking. If northern redbelly dace need to be restocked in Big
19 Wadleigh Pond, northern redbelly dace from the nearest source may be used for
20 restocking.

21 **Sec. 2. 12 MRSA §12504**, as amended by PL 2005, c. 495, §1, is further amended
22 to read:

23 **§12504. Fishing derby permits**

24 **1. Permit required.** Except as provided in sections 12504-A and 12505, a person
25 may not conduct a fishing derby ~~or fishing tournament~~ without a valid permit issued
26 under this section.

27 Each day a person violates this subsection, that person commits a Class E crime for which
28 a minimum fine of \$50 and an amount equal to twice the applicable license fee must be
29 imposed.

30 **2. Application.** A person wishing to conduct a fishing derby ~~or fishing tournament~~
31 shall first make application for and obtain a permit from the commissioner. ~~A bass~~
32 ~~tournament sponsored by a bass club in waters free of ice falls under the provisions of~~
33 ~~section 12505.~~ A completed application for a permit must include the proposed rules,
34 targeted fish species, requested dates, places, times and prize structure for the derby ~~or~~
35 ~~tournament.~~

36 **2-A. Conditions; restrictions.** The commissioner may place conditions and
37 restrictions on a derby permit.

38 A. The commissioner may revoke a derby permit issued to or refuse to issue a permit
39 to a club or group that violates a condition or restriction placed on a derby permit or

1 disallow the participation of an individual who violates a condition or restriction
2 placed on a derby permit.

3 B. A derby permit does not allow a participant to keep fish alive for entry into the
4 derby. A fish caught as part of the derby must be killed at once and becomes part of
5 the participant's daily bag limit.

6 **3. Rules.** The commissioner shall adopt all necessary rules relative to permits to
7 ensure that derbies ~~and tournaments~~ are conducted only at such times and places and in
8 such a manner as are consistent with the fisheries management objectives of the
9 department. Such rules must include:

10 A. Specifying the number of derbies ~~or tournaments~~ that may be conducted in a
11 given body of water and the dates within which they may be conducted. These rules
12 must be reviewed periodically; and

13 B. Fixing the maximum total value of prizes that may be awarded at each derby ~~or~~
14 ~~tournament~~, except that for a derby held on Sebago Lake in Cumberland County and
15 in conjunction with the department's fisheries management objectives, the maximum
16 total value of prizes may not exceed \$100,000.

17 **3-A. Violation of rules, conditions or restrictions; penalty.** Except as provided in
18 section 12602, the following penalties apply to violations of rules, conditions or
19 restrictions adopted under this section.

20 A. A person who violates a rule adopted under subsection 3 or a condition or
21 restriction placed on a derby permit under subsection 2-A commits a civil violation
22 for which a fine of not less than \$100 nor more than \$500 may be adjudged.

23 B. A person who violates a rule adopted under subsection 3 or a condition or
24 restriction placed on a derby permit under subsection 2-A after having been
25 adjudicated as having committed 3 or more civil violations under this Part within the
26 previous 5-year period commits a Class E crime.

27 **4. Issuance.** The commissioner, following a determination that an applicant has
28 complied with all rules adopted pursuant to this section, may issue a permit to the
29 applicant authorizing the conduct of the derby ~~or tournament~~. Applicants who have
30 conducted derbies ~~or tournaments~~ in the requested body of water in the past that have
31 conformed with all rules, conditions and restrictions must be given preference in the
32 issuance of permits.

33 **5. Fee.** The fee for a permit to conduct a fishing derby ~~or fishing tournament~~ is \$24.

34 **Sec. 3. 12 MRSA §12505, sub-§2-A** is enacted to read:

35 **2-A. Conditions; restrictions.** The commissioner may place conditions and
36 restrictions on a bass tournament permit.

37 A. The commissioner may revoke a bass tournament permit issued to or refuse to
38 issue a permit to a bass club that violates a condition or restriction placed on a bass
39 tournament permit or disallow the participation of an individual who violates a
40 condition or restriction placed on a bass tournament permit.

1 **Sec. 4. 12 MRSA §12505, sub-§6**, as enacted by PL 2003, c. 655, Pt. B, §252
2 and affected by §422, is amended to read:

3 **6. Violation of rules, conditions or restrictions; penalty.** Except as provided in
4 section 12602, the following penalties apply to violations of rules adopted under
5 subsection 5 and violations of conditions or restrictions placed on a bass tournament
6 permit pursuant to subsection 2-A.

7 A. A person who violates a rule adopted under subsection 5 or a condition or
8 restriction placed on a bass tournament permit pursuant to subsection 2-A commits a
9 civil violation for which a fine of not less than \$100 nor more than \$500 may be
10 adjudged.

11 B. A person who violates a rule adopted under subsection 5 or a condition or
12 restriction placed on a bass tournament permit pursuant to subsection 2-A after
13 having been adjudicated as having committed 3 or more civil violations under this
14 Part within the previous 5-year period commits a Class E crime.

15 **Sec. 5. 12 MRSA §12760**, as amended by PL 2011, c. 612, §1, is further amended
16 to read:

17 **§12760. Fishways in dams and other artificial obstructions**

18 **1. Commissioner's authority.** In order to conserve, develop or restore anadromous
19 or migratory fish resources, the commissioner ~~and the Commissioner of Marine~~
20 ~~Resources jointly~~ may require a fishway to be erected, maintained, repaired or altered by
21 the owners, lessors or other persons in control of any dam or other artificial obstruction
22 within inland waters frequented by alewives, shad, salmon, sturgeon or other anadromous
23 or migratory fish species.

24 The ~~commissioners~~ commissioner may not require or authorize a fishway or fish bypass
25 structure at a dam on the outlet of Sebec Lake in the Town of Sebec or at a dam on the
26 Sebec River in the Town of Milo or at a dam on the outlet of Schoodic Lake in Lake
27 View Plantation or at a dam on the outlet of Seboeis Lake in Township 4, Range 9 NWP
28 that would allow the upstream passage of an invasive fish species known to be present
29 downstream in the Piscataquis River or Penobscot River drainage. For the purposes of
30 this section, "invasive fish species" means those invasive fish species identified in the
31 action plan for managing invasive aquatic species developed pursuant to Title 38, section
32 1872.

33 **2. Examination of dams.** The commissioner ~~and the Commissioner of Marine~~
34 ~~Resources~~ shall periodically examine all dams and other artificial obstructions to fish
35 passage within the inland waters in order to determine whether fishways are necessary,
36 sufficient or suitable for the passage of anadromous or migratory fish.

37 **3. Monitoring program.** The commissioner ~~and the Commissioner of Marine~~
38 ~~Resources~~ shall, in cooperation with the Department of Marine Resources, establish a
39 program to ensure fishways are functioning properly and remain sufficient or suitable for
40 the passage of anadromous or migratory fish. The ~~commissioners have~~ commissioner has
41 sole authority to take corrective action at fishways as prescribed under this section.

1 **4. Initiation of fishway proceedings.** The commissioner ~~and the Commissioner of~~
2 ~~Marine Resources~~ shall initiate proceedings to consider construction, repair or alteration
3 of fishways in existing dams or other artificial obstructions whenever the ~~commissioners~~
4 ~~determine~~ commissioner determines that one or more of the following conditions may
5 exist:

6 A. Fish passage at the dam or obstruction in issue, whether alone or in conjunction
7 with fish passage at other upriver barriers, will improve access to sufficient and
8 suitable habitat anywhere in the watershed to support a substantial commercial or
9 recreational fishery for one or more species of anadromous or migratory fish; or

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

12 **5. Adjudicatory proceedings.** A fishway proceeding must conform to the following
13 requirements.

14 A. A fishway proceeding must be an adjudicatory proceeding under Title 5, chapter
15 375, subchapter 4, but a hearing is not required unless requested in accordance with
16 paragraph B. Notice of the proceeding must be given in accordance with Title 5,
17 section 9052 and the following requirements:

18 (1) Personal notice must be given to the dam owner, lessee or other person in
19 control of the dam or artificial obstruction, informing that person that a
20 proceeding has been undertaken and informing that person of that person's right
21 to request a hearing; and

22 (2) Notice to the public, in newspapers of general circulation in the areas
23 affected, must be given notifying the public of the initiation of the proceedings
24 and of the public's opportunity to request a hearing.

25 B. If any interested person requests a public hearing, the commissioner ~~and the~~
26 ~~Commissioner of Marine Resources~~ shall, within 30 days, either notify the petitioners
27 in writing of the ~~commissioners'~~ commissioner's denial, stating the reasons for the
28 denial, or schedule a public hearing. The ~~commissioners~~ commissioner shall hold a
29 public hearing whenever:

30 (1) The ~~commissioners are~~ commissioner is petitioned by 50 or more residents of
31 the State; or

32 (2) The owner, lessee or other person in control of the dam or artificial
33 obstruction requests a hearing.

34 C. The commissioner ~~and the Commissioner of Marine Resources~~ shall accept
35 testimony from the owner, lessee or other person in control of the dam or artificial
36 obstruction on alternate fishway designs to those proposed by the ~~commissioners~~
37 commissioner for that dam or artificial obstruction.

38 **6. Decision.** In the event that the commissioner ~~and the Commissioner of Marine~~
39 ~~Resources decide~~ decides that a fishway should be constructed, repaired, altered or
40 maintained pursuant to this section, the ~~commissioners~~ commissioner shall issue final
41 orders with specific plans and descriptions of the fishway construction, alteration, repair
42 or maintenance requirements, the conditions of the use of the fishway and the time and

1 manner required for fishway operation. The ~~commissioners~~ commissioner may issue a
2 decision requiring the owners, lessees or other persons in control of the dam or
3 obstruction to construct, repair, alter or maintain a fishway. Such a decision must be
4 supported by a finding based on evidence submitted to the ~~commissioners~~ commissioner
5 that either of the following conditions exist:

6 A. One or more species of anadromous or migratory fish can be restored in
7 substantial numbers to the watershed by construction, alteration, repair or
8 maintenance of a fishway and habitat anywhere in the watershed above the dam or
9 obstruction is sufficient and suitable to support a substantial commercial or
10 recreational fishery for one or more species of anadromous or migratory fish; or

11 B. The construction, alteration, repair or maintenance of a fishway is necessary to
12 protect or enhance rare, threatened or endangered fish species.

13 In the event that the ~~commissioners decide~~ commissioner decides that a fishway should
14 not be constructed, the ~~commissioners~~ commissioner shall specify in that decision a
15 period not to exceed 5 years subsequent to that decision during which a fishway may not
16 be required to be constructed.

17 **7. Compliance.** The owner, lessee or other person in control of a dam or other
18 artificial obstruction is jointly and severally liable for the costs of fishway design,
19 construction, repair, alteration or maintenance, and for full compliance with a decision
20 issued pursuant to subsection 6.

21 A. If the owner, lessee or other person in control of a dam or other artificial
22 obstruction refuses to comply or does not fully comply with the commissioner's
23 decision issued pursuant to subsection 6, the commissioner ~~and the Commissioner of~~
24 ~~Marine Resources~~ shall initiate a civil action to enjoin the owner, lessee or person in
25 control of the dam to comply fully with the ~~commissioners'~~ commissioner's order or
26 to restrain the violation of an order. In the proceeding, the court may not review the
27 legality of the ~~commissioners'~~ commissioner's order, except when the owner, lessee
28 or person in control of the dam or artificial obstruction has brought a timely petition
29 for judicial review pursuant to Title 5, chapter 375, subchapter 7.

30 B. The court may render judgment against and order the sale of the dam or other
31 artificial obstruction, the land on which it stands and a right-of-way to the dam or
32 artificial obstruction, in order to secure the costs of fishway construction, repair,
33 alteration or maintenance, the costs of the court-ordered sale and the costs incurred
34 by the department for fishway design. The purchaser of the dam or other obstruction
35 is subject to the decision issued pursuant to subsection 6.

36 **8. Privileged entry.** The commissioner and the ~~Commissioner of Marine Resources,~~
37 ~~the commissioners'~~ commissioner's agents or subcontractors may enter upon any private
38 land in order to examine, at least annually, fishways in dams or other artificial
39 obstructions and dams as provided in subsection 2. The ~~commissioners~~ commissioner
40 shall notify the landowner, lessee or other person in control of the dam when the
41 examination will take place and the time required to complete the examination. The
42 ~~commissioners~~ commissioner shall make every effort to preserve private land and shall
43 restore surrounding lands to the grade and condition existing prior to entry, if
44 economically feasible.

1 **9. Certain lakes, rivers and streams; fishways prohibited.** Notwithstanding any
2 other provision of law to the contrary, the owners, lessors or other persons in control of a
3 dam on the outlet of Sebec Lake in the Town of Sebec, of Schoodic Lake in Lake View
4 Plantation or of Seboeis Lake or a dam on the Sebec River in the Town of Milo may not
5 construct or authorize the construction of a fishway or fish bypass structure that would
6 allow the upstream passage of an invasive fish species known to be present downstream
7 in the Piscataquis River or Penobscot River drainage.

8 A. A person who violates this subsection commits a civil violation for which a fine
9 of not less than \$500 or more than \$1,000 may be adjudged.

10 B. A person who violates this subsection after having been adjudicated as having
11 committed 3 or more civil violations under this Part within the previous 5-year period
12 commits a Class E crime.

13 **Sec. 6. 12 MRSA §12761**, as amended by PL 2011, c. 612, §2, is further amended
14 to read:

15 **§12761. Construction of new dams or other artificial obstructions**

16 **1. Notice required.** Prior to construction or prior to authorizing construction of a
17 new dam or other obstruction in the inland waters, the owner, lessee or other person in
18 control of the dam or other artificial obstruction shall provide written notice to the
19 commissioner ~~and the Commissioner of Marine Resources~~, supplying information on
20 construction plans, proposed location and date of construction of the dam or other
21 artificial obstruction.

22 **2. Initiation of fishway proceedings.** Within 30 days of receipt of the construction
23 notice pursuant to subsection 1, the commissioner ~~and the Commissioner of Marine~~
24 ~~Resources~~ shall review the plans in order to determine whether fishway construction or
25 alteration of proposed fishway construction plans may be required pursuant to the criteria
26 set forth in section 12760, subsection 4. If the ~~commissioners determine~~ commissioner
27 determines that the construction or alteration may be necessary, the ~~commissioners~~
28 commissioner shall initiate fishway proceedings and follow the procedures prescribed in
29 section 12760.

30 **3. Unlawful building of dam.** A person may not build any dam or other obstruction
31 in any of the rivers, streams or brooks of this State without first filing written notice with
32 the commissioner ~~and the Commissioner of Marine Resources~~ pursuant to subsection 1.

33 A. A person who violates this subsection commits a civil violation for which a fine
34 of not less than \$100 nor more than \$500 may be adjudged.

35 B. A person who violates this subsection after having been adjudicated as having
36 committed 3 or more civil violations under this Part within the previous 5-year period
37 commits a Class E crime.

38 **Sec. 7. 38 MRSA §480-Q, sub-§27**, as amended by PL 2011, c. 612, §3, is
39 further amended to read:

1 **27. Fishways.** Erection, maintenance, repair or alteration of a fishway in a dam or
2 other artificial obstruction when required by the Commissioner of Inland Fisheries and
3 Wildlife ~~and the Commissioner of Marine Resources~~ pursuant to Title 12, section 12760
4 or by the Commissioner of Marine Resources pursuant to Title 12, section 6121;

5 **SUMMARY**

6 This bill makes changes to strengthen the fishing laws as follows.

7 The bill separates provisions governing bass fishing tournaments and provisions
8 governing fishing derby permits.

9 The bill also gives the Commissioner of Inland Fisheries and Wildlife the authority to
10 place conditions and restrictions on derby permits and bass tournament permits. The bill
11 makes the violation of any condition or restriction placed on a derby permit or a bass
12 tournament permit a civil violation. The bill also authorizes the commissioner to revoke
13 a permit, refuse to issue a permit or refuse to allow the participation of any person in
14 cases involving a violation of a condition or restriction placed on a derby permit or a bass
15 tournament permit.

16 The bill also clarifies that any fish caught for a fishing derby must be killed
17 immediately and becomes part of the participant's daily bag limit.

18 The bill revokes the Commissioner of Marine Resources' authority over fishways in
19 dams and other artificial obstructions in inland waters but retains the commissioner's
20 authority over fishways in dams and other artificial obstructions in tidal waters under the
21 Maine Revised Statutes, Title 12, section 6121.

22 The bill also authorizes the Commissioner of Inland Fisheries and Wildlife to stock
23 native fish species in Big Wadleigh Pond in Piscataquis County.