

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND ELEVENTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 1982 to June 24, 1983
Chapters 1-452

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH
IN ACCORDANCE WITH MAINE REVISED STATUTES
ANNOTATED, TITLE 3, SECTION 164, SUBSECTION 6.

J.S. McCarthy Co., Inc.
Augusta, Maine
1983

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND ELEVENTH LEGISLATURE

1983

CHAPTER 374

S.P. 405 - L.D. 1253

AN ACT Concerning Fishways
in Dams and Other
Artificial Obstructions in
Inland Waters.

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

Sec. 1. 12 MRSA §7701, as enacted by PL 1979, c. 420, §1, is repealed:

Sec. 2. 12 MRSA §7701-A, is enacted to read:

§7701-A. Fishways in dams and other artificial obstructions

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

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

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

B. If any interested person requests a public hearing, the commissioner shall, within 30 days, either notify the petitioners in writing of his denial stating the reasons therefor, or schedule a public hearing. The commissioner shall hold a public hearing whenever:

(1) He is petitioned by 50 or more Maine residents; or

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

C. The commissioner shall accept testimony from the owner, lessee or other person in control of the dam or artificial obstruction on alternate fishway designs to those proposed by the commissioner for that dam or artificial obstruction.

5. Decision. In the event that the commissioner decides that a fishway should be constructed, repaired, altered or maintained, his final orders shall be issued with specific plans and descriptions of the fishway construction, alteration, repair or maintenance requirements, the conditions of the use of the fishway and the time and manner required for fishway operation. The commissioner may issue a 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 decision shall be supported by a finding based on

evidence submitted to him that either of the following conditions exist:

A. One or more species of anadromous or migratory 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 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.

In the event that the commissioner decides that no fishway should be constructed, he shall specify in that decision a period subsequent to that decision during which no fishway may be required to be constructed. That period may not exceed 5 years.

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 to enjoin the owner, lessee or person in control of the dam to comply fully with the commissioner's order or to restrain the violation of an order. In the proceeding, the court shall not review the legality of the commissioner's order, except when the owner, lessee or person in control of the dam or artificial obstruction has brought a timely petition for judicial review pursuant to Title 5, chapter 375, subchapter VII.

B. The court may render judgment against and order the sale of the dam or other artificial obstruction, the land on which it stands and a right-of-way to the dam or artificial obstruction, in order to secure the costs of fishway construction, repair, alteration or maintenance and costs of the court-ordered sale and the costs incurred by the department for fishway design. The purchaser of the dam or other obstruction shall be subject to 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 periodically examine fishways in dams or other artificial obstructions and the examination of dams provided in subsection 2. The commissioner shall notify the landowner, lessee or other person in control of the dam when the examination will take place and the time required to complete the examination. The commissioner shall make every effort to preserve private land and shall restore surrounding lands to the grade and condition existing prior to entry, if economically feasible.

Sec. 3. 12 MRSA §7701-B is enacted to read:

§7701-B. Construction of new dams or other artificial 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, lessee or other person in control of the dam or other artificial obstruction, 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.

Effective September 23, 1983.

CHAPTER 375

S.P. 525 - L.D. 1548

AN ACT Relating to Forest Practice.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, there are numerous islands in the State that have timber that has been harvested and that needs to be harvested; and