

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
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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

It shall be unlawful for any person, firm or corporation to sell, offer for sale or transfer in any manner herring which are between 4 1/2 and 9 inches in length or longer when measured from one extreme to the other to any person, firm or corporation, other than for human consumption or bait purposes, unless such herring are not desirable for processing for human consumption; provided there is a buyer of herring for processing for human consumption within a reasonable distance of the place where such herring are caught and available at the time they are offered for sale, ready and willing to purchase at a price acceptable to the seller. No person, firm or corporation shall can, pack or otherwise process such herring except for human consumption except as provided in this section.

Effective September 23, 1983.

CHAPTER 388

S.P. 359 - L.D. 1080

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

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

Sec. 1. 12 MRSA §6121, as amended by PL 1979, c. 127, §84, is repealed and the following enacted in its place:

§6121. Fishways in existing dams or artificial obstructions

1. Commissioner's authority. In order to conserve, develop or restore anadromous 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 coastal waters frequented by alewives, shad, salmon, sturgeon or other anadromous fish species.

2. Examination of dams. The commissioner shall periodically examine all dams and other artificial obstructions to fish passage within the coastal waters in order to determine whether fishways are necessary, sufficient or suitable for the passage of anadromous 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 either 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 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 may 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 of his right to request a hearing; and

(2) Notice to the public, in newspapers of general circulation in the areas affected, 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, 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 public hearing.

C. The commissioner shall accept testimony from the dam 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 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 the commissioner 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 immediately 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. 2. 12 MRSA §6122, as enacted by PL 1977, c. 661, §5, is repealed and the following enacted in its place:

§6122. 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 coastal 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 6121, subsection 3. If the commissioner determines that such construction or alteration may be necessary, he shall initiate fishway proceedings and follow the procedures prescribed in section 6121.

Effective September 23, 1983.

CHAPTER 389

S.P. 502 - L.D. 1518

AN ACT to Clarify the Authority
of the Superintendent of the Bureau of
Consumer Credit Protection.

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

9-A MRSA §6-108, sub-§1, as amended by PL 1983, c. 212, §10, is further amended to read:

1. After notice and hearing, the administrator may order any person to cease and desist from engaging in violations of this Act or any lawful regulation issued by the administrator and may further order that the person take appropriate corrective action to reimburse consumers in cases where consumers have been charged amounts in excess of those permitted by this Act. Notice and hearing need not be provided prior to issuance of an order to cease and desist, when, in the opinion of the administrator, immediate action is required to protect the public interest, and:

A. The creditor has not complied with section 6-202; or

B. The creditor does not maintain a permanent place of business in this State.

A respondent aggrieved by an order of the administrator may obtain judicial review of the order in the Superior Court. The proceeding for review is initiated and conducted in accordance with Title 5, chapter 375, subchapter VII.

Effective September 23, 1983.