

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND TWELVE

S.P. 643 - L.D. 1849

**An Act To Protect Landlocked Salmon Fisheries in Schoodic and Seboeis  
Lakes from Invasive Fish Species**

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

**Sec. 1. 12 MRSA §12760**, as amended by PL 2011, c. 24, §§1 and 2, is further amended to read:

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

**1. Commissioners' authority.** In order to conserve, develop or restore anadromous or migratory fish resources, the commissioner and the Commissioner of Marine Resources jointly 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.

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

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

**4. Initiation of fishway proceedings.** The commissioner and the Commissioner of Marine Resources shall initiate proceedings to consider construction, repair or alteration of fishways in existing dams or other artificial obstructions whenever the ~~commissioner determines~~ commissioners determine 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.

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

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

- (1) Personal notice must 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 informing that person of that person's right to request a hearing; and
- (2) Notice to the public, in newspapers of general circulation in the areas affected, must 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 and the Commissioner of Marine Resources shall, within 30 days, either notify the petitioners in writing of the ~~commissioner's~~ commissioners' denial, stating the reasons for the denial, or schedule a public hearing. The ~~commissioner~~ commissioners shall hold a public hearing whenever:

- (1) The ~~commissioner is~~ commissioners are petitioned by 50 or more residents of the State; or
- (2) The owner, lessee or other person in control of the dam or artificial obstruction requests a hearing.

C. The commissioner and the Commissioner of Marine Resources 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~~ commissioners for that dam or artificial obstruction.

**6. Decision.** In the event that the commissioner ~~decides~~ and the Commissioner of Marine Resources decide that a fishway should be constructed, repaired, altered or maintained pursuant to this section, the ~~commissioner~~ commissioners shall issue final orders 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~~ commissioners 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 must be supported by a finding based on evidence submitted to the ~~commissioner~~ commissioners 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~~ commissioners decide that ~~no a~~ a fishway should not be constructed, the ~~commissioner~~ commissioners shall specify in that decision a period not to exceed 5 years subsequent to that decision during which ~~no a~~ a fishway may not be required to be constructed.

**7. Compliance.** The owner, lessee or other person in control of a dam or other artificial obstruction is 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 6.

A. If the owner, lessee or other person in control of a dam or other artificial obstruction refuses to comply or does not fully comply with the ~~commissioner's~~ decision issued pursuant to subsection 6, the commissioner and the Commissioner of Marine Resources shall initiate a civil action to enjoin the owner, lessee or person in control of the dam to comply fully with the ~~commissioner's~~ commissioners' order or to restrain the violation of an order. In the proceeding, the court may not review the legality of the ~~commissioner's~~ commissioners' 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 7.

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, the costs of the court-ordered sale and the costs incurred by the department for fishway design. The purchaser of the dam or other obstruction is subject to the ~~commissioner's~~ decision issued pursuant to subsection 6.

**8. Privileged entry.** The commissioner and the Commissioner of Marine Resources, the ~~commissioner's~~ commissioners' agents or subcontractors may enter upon any private land in order to examine, at least annually, fishways in dams or other artificial obstructions and dams as provided in subsection 2. The ~~commissioner~~ commissioners 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~~ commissioners 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.

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

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

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

**Sec. 2. 12 MRSA §12761**, as affected by PL 2003, c. 614, §9 and amended by c. 655, Pt. B, §305 and affected by §422, is further amended to read:

**§12761. 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, and the Commissioner of Marine Resources 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 pursuant to subsection 1, the commissioner and the Commissioner of Marine Resources 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 12760, subsection 4. If the ~~commissioner determines~~ commissioners determine that the construction or alteration may be necessary, the ~~commissioner~~ commissioners shall initiate fishway proceedings and follow the procedures prescribed in section 12760.

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

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

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

**Sec. 3. 38 MRSA §480-Q, sub-§27**, as enacted by PL 2009, c. 75, §3, is amended to read:

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

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In House of Representatives, ..... 2012

Read twice and passed to be enacted.

..... Speaker

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In Senate, ..... 2012

Read twice and passed to be enacted.

..... President

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Approved ..... 2012

..... Governor