

**§6121. Fishways in existing dams or artificial obstructions**

**1. Commissioner's authority.** In order to conserve, develop or restore anadromous fish resources, the commissioner and the Commissioner of Inland Fisheries and Wildlife 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 river herring, shad, salmon, sturgeon or other anadromous fish species.

[PL 2013, c. 358, §1 (AMD).]

**2. Examination of dams.** The commissioner and the Commissioner of Inland Fisheries and Wildlife shall annually 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.

[PL 2013, c. 358, §1 (AMD).]

**3. Initiation of fishway proceedings.** The commissioner and the Commissioner of Inland Fisheries and Wildlife shall initiate proceedings to consider construction, repair or alteration of fishways in existing dams or other artificial obstructions whenever the commissioners determine 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 [PL 1983, c. 388, §1 (RPR).]

B. Fish passage at the dam or obstruction in issue is necessary to protect or enhance rare, threatened or endangered fish species. [PL 1983, c. 388, §1 (RPR).]

[PL 2013, c. 358, §1 (AMD).]

**4. Adjudicatory proceedings.**

A. A fishway proceeding is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4, but a hearing may not be 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 of that person's 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. [PL 2013, c. 358, §1 (AMD).]

B. If any interested person requests a public hearing, the commissioner and the Commissioner of Inland Fisheries and Wildlife shall, within 30 days, either notify the petitioners in writing of the commissioners' denial stating the reasons or schedule a public hearing. The commissioners shall hold a public hearing whenever:

(1) The commissioners are 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. [PL 2013, c. 358, §1 (AMD).]

C. The commissioner and the Commissioner of Inland Fisheries and Wildlife 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 commissioners for that dam or artificial obstruction. [PL 2013, c. 358, §1 (AMD).]

[PL 2013, c. 358, §1 (AMD).]

**5. Decision.** In the event the commissioner and the Commissioner of Inland Fisheries and Wildlife decide that a fishway should be constructed, repaired, altered or maintained, their final orders must 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 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 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 [PL 1983, c. 388, §1 (RPR).]

B. The construction, alteration, repair or maintenance of a fishway is necessary to protect or enhance rare, threatened or endangered fish species. [PL 1983, c. 388, §1 (RPR).]

In the event that the commissioners decide that no fishway should be constructed, the commissioners 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.

[PL 2013, c. 358, §1 (AMD).]

#### **6. Compliance.**

A. The owner, lessee or other person in control of the 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 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 commissioners' decision, the commissioners shall initiate a civil action to enjoin the owner, lessee or person in control of the dam to comply fully with the commissioners' order or to restrain the violation of an order. In the proceeding, the court shall not review the legality of the 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. [PL 2013, c. 358, §1 (AMD).]

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 is subject to the commissioners' decision. [PL 2013, c. 358, §1 (AMD).]

[PL 2013, c. 358, §1 (AMD).]

**7. Privileged entry.** The commissioner and the Commissioner of Inland Fisheries and Wildlife, the commissioners' agents or subcontractors are privileged to enter upon any private land in order to examine, at least annually, fishways in dams or other artificial obstructions and the examination of dams provided in subsection 2. The 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 and the Commissioner of Inland Fisheries and Wildlife 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.

[PL 2013, c. 358, §1 (AMD).]

#### SECTION HISTORY

PL 1977, c. 661, §5 (NEW). PL 1979, c. 127, §84 (AMD). PL 1983, c. 388, §1 (RPR). PL 2001, c. 190, §§1,2 (AMD). PL 2011, c. 598, §10 (AMD). PL 2013, c. 358, §1 (AMD).

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