

§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 river herring, shad, salmon, sturgeon or other anadromous or migratory fish species.

The 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.

[PL 2017, c. 150, §9 (AMD).]

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.

[PL 2011, c. 612, §1 (AMD).]

3. Monitoring program. The commissioner and the Commissioner of Marine Resources shall establish a program to ensure fishways are functioning properly and remain sufficient or suitable for the passage of anadromous or migratory fish. The commissioners have sole authority to take corrective action at fishways as prescribed under this section.

[PL 2011, c. 612, §1 (AMD).]

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 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 [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

B. Fish passage at the dam or obstruction in issue is necessary to protect or enhance rare, threatened or endangered fish species. [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]
[PL 2011, c. 612, §1 (AMD).]

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. [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

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 commissioners' denial, stating the reasons for the denial, or schedule a public hearing. The commissioners shall hold a public hearing whenever:

(1) The 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. [PL 2011, c. 612, §1 (AMD).]

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 commissioners for that dam or artificial obstruction. [PL 2011, c. 612, §1 (AMD).]

[PL 2011, c. 612, §1 (AMD).]

6. Decision. In the event that the commissioner and the Commissioner of Marine Resources decide that a fishway should be constructed, repaired, altered or maintained pursuant to this section, the 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 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 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

B. The construction, alteration, repair or maintenance of a fishway is necessary to protect or enhance rare, threatened or endangered fish species. [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

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

[PL 2011, c. 612, §1 (AMD).]

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 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 commissioners' order or to restrain the violation of an order. In the proceeding, the court may 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 2011, c. 612, §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, 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 decision issued pursuant to subsection 6. [PL 2011, c. 612, §1 (AMD).]

[PL 2011, c. 612, §1 (AMD).]

8. Privileged entry. The commissioner and the Commissioner of Marine Resources, the 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 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 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.

[PL 2011, c. 612, §1 (AMD).]

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. [PL 2011, c. 24, §2 (NEW).]

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. [PL 2011, c. 24, §2 (NEW).]

[PL 2011, c. 612, §1 (AMD).]

SECTION HISTORY

PL 2003, c. 414, §A2 (NEW). PL 2003, c. 414, §D7 (AFF). PL 2003, c. 614, §9 (AFF). PL 2003, c. 655, §B304 (AMD). PL 2003, c. 655, §B422 (AFF). PL 2009, c. 561, §33 (AMD). PL 2011, c. 24, §§1, 2 (AMD). PL 2011, c. 612, §1 (AMD). PL 2017, c. 150, §9 (AMD).

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