

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Protect Native Diadromous Fish during Their Migration

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

Sec. 1. 38 MRSA §465, sub-§5 is enacted to read:

5. All waters. Dams in all classifications of fresh and estuarine surface waters must provide safe and effective upstream and downstream passage for indigenous anadromous and catadromous migratory fish, including eels. For every day this fish passage is not in effect, the dam owner may be automatically fined not less than \$1,000 by the department or other appropriate state agency.

A. Passage does not include any method such as "trap and truck" in which fish or eels are removed from the vicinity of the dam for any period of time.

B. For the purpose of this section, "safe" means that diadromous fish migrating upstream can pass the dam and are not killed or severely injured by dams when migrating downstream. "Safe" may not be construed to include passage through operating turbines or to include remedial measures that continue to kill or severely injure fish.

Sec. 2. 38 MRSA §465, sub-§6 is enacted to read:

6. Citizen suit provision. A person may commence a civil action on that person's own behalf against any person, including any governmental instrumentality or agency, who is alleged to be in violation of this section. The Superior Court has jurisdiction to enforce this section and impose penalties of up to \$10,000 per day per violation. The Superior Court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any prevailing or substantially prevailing party seeking to enforce this section against a violator, whenever the court determines the award is appropriate. For the purpose of this section, "citizen" means a person or persons having an interest that is or may be adversely affected and "person" means an individual, corporation, partnership, association, including an unincorporated association, state agency, municipality, commission or political subdivision of the State.

Sec. 3. 38 MRSA §465-B, sub-§4 is enacted to read:

4. All waters. Dams in all classifications of fresh and estuarine surface waters must provide safe and effective upstream and downstream passage for indigenous anadromous and catadromous migratory fish, including eels. For every day this fish passage is not in effect, the dam owner may be automatically fined not less than \$1,000 by the department or other appropriate state agency.

A. Passage does not include any method such as "trap and truck" in which fish or eels are removed from the vicinity of the dam for any period of time.

B. For the purpose of this section, "safe" means that diadromous fish migrating upstream can pass the dam and are not killed or severely injured by dams when migrating downstream. "Safe" may not be construed to include passage through operating turbines or to include remedial measures that continue to kill or severely injure fish.

Sec. 4. 38 MRSA §465-B, sub-§5 is enacted to read:

5. Citizen suit provision. A person may commence a civil action on that person's own behalf against any person, including any governmental instrumentality or agency, who is alleged to be in violation of this section. The Superior Court has jurisdiction to enforce this section and impose penalties of up to \$10,000 per day per violation. The Superior Court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any prevailing or substantially prevailing party seeking to enforce this section against a violator, whenever the court determines the award is appropriate. For the purpose of this section, "citizen" means a person or persons having an interest that is or may be adversely affected and "person" means an individual, corporation, partnership, association, including an unincorporated association, state agency, municipality, commission or political subdivision of the State.

Sec. 5. Department of Environmental Protection's report. The Department of Environmental Protection and Board of Environmental Protection are directed to submit and support this revision to the Administrator of the United States Environmental Protection Agency in accordance with the Federal Water Pollution Control Act.

Sec. 6. Effective date. This Act takes effect January 1, 2008.

SUMMARY

This bill requires that dams in this State in all classifications of fresh and estuarine surface waters must provide safe and effective upstream and downstream passage for indigenous diadromous fish. Diadromous fish are those that migrate from fresh to sea water or sea water to fresh water and are known as anadromous and catadromous fish, such as alewives, shad and salmon. It also provides a process for any person to bring a civil action against violators of the requirements.