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Date: (Filing No. S-)

INLAND FISHERIES AND WILDLIFE

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE
SENATE
125TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 643, L.D. 1849, Bill, “An Act To Protect Native Landlocked Salmon Fisheries in Schoodic and Seboeis Lakes from Invasive Fish Species”

Amend the bill by striking out the title and substituting the following:

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

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'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.

COMMITTEE AMENDMENT

1 **2. Examination of dams.** The commissioner and the Commissioner of Marine
2 Resources shall periodically examine all dams and other artificial obstructions to fish
3 passage within the inland waters in order to determine whether fishways are necessary,
4 sufficient or suitable for the passage of anadromous or migratory fish.

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

10 **4. Initiation of fishway proceedings.** The commissioner and the Commissioner of
11 Marine Resources shall initiate proceedings to consider construction, repair or alteration
12 of fishways in existing dams or other artificial obstructions whenever the ~~commissioner~~
13 ~~determines~~ commissioners determine that one or more of the following conditions may
14 exist:

15 A. Fish passage at the dam or obstruction in issue, whether alone or in conjunction
16 with fish passage at other upriver barriers, will improve access to sufficient and
17 suitable habitat anywhere in the watershed to support a substantial commercial or
18 recreational fishery for one or more species of anadromous or migratory fish; or

19 B. Fish passage at the dam or obstruction in issue is necessary to protect or enhance
20 rare, threatened or endangered fish species.

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

23 A. A fishway proceeding must be an adjudicatory proceeding under Title 5, chapter
24 375, subchapter 4, but a hearing is not required unless requested in accordance with
25 paragraph B. Notice of the proceeding must be given in accordance with Title 5,
26 section 9052 and the following requirements:

27 (1) Personal notice must be given to the dam owner, lessee or other person in
28 control of the dam or artificial obstruction, informing that person that a
29 proceeding has been undertaken and informing that person of that person's right
30 to request a hearing; and

31 (2) Notice to the public, in newspapers of general circulation in the areas
32 affected, must be given notifying the public of the initiation of the proceedings
33 and of the public's opportunity to request a hearing.

34 B. If any interested person requests a public hearing, the commissioner and the
35 Commissioner of Marine Resources shall, within 30 days, either notify the petitioners
36 in writing of the ~~commissioner's~~ commissioners' denial, stating the reasons for the
37 denial, or schedule a public hearing. ~~The commissioner~~ commissioners shall hold a
38 public hearing whenever:

39 (1) ~~The commissioner is~~ commissioners are petitioned by 50 or more residents of
40 the State; or

41 (2) The owner, lessee or other person in control of the dam or artificial
42 obstruction requests a hearing.

1 C. The commissioner and the Commissioner of Marine Resources shall accept
2 testimony from the owner, lessee or other person in control of the dam or artificial
3 obstruction on alternate fishway designs to those proposed by the ~~commissioner~~
4 commissioners for that dam or artificial obstruction.

5 **6. Decision.** In the event that the commissioner ~~decides~~ and the Commissioner of
6 Marine Resources decide that a fishway should be constructed, repaired, altered or
7 maintained pursuant to this section, the ~~commissioner~~ commissioners shall issue final
8 orders with specific plans and descriptions of the fishway construction, alteration, repair
9 or maintenance requirements, the conditions of the use of the fishway and the time and
10 manner required for fishway operation. The ~~commissioner~~ commissioners may issue a
11 decision requiring the owners, lessees or other persons in control of the dam or
12 obstruction to construct, repair, alter or maintain a fishway. Such a decision must be
13 supported by a finding based on evidence submitted to the ~~commissioner~~ commissioners
14 that either of the following conditions exist:

15 A. One or more species of anadromous or migratory fish can be restored in
16 substantial numbers to the watershed by construction, alteration, repair or
17 maintenance of a fishway and habitat anywhere in the watershed above the dam or
18 obstruction is sufficient and suitable to support a substantial commercial or
19 recreational fishery for one or more species of anadromous or migratory fish; or

20 B. The construction, alteration, repair or maintenance of a fishway is necessary to
21 protect or enhance rare, threatened or endangered fish species.

22 In the event that the ~~commissioner decides~~ commissioners decide that ~~no~~ a fishway
23 should not be constructed, the ~~commissioner~~ commissioners shall specify in that decision
24 a period not to exceed 5 years subsequent to that decision during which ~~no~~ a fishway may
25 not be required to be constructed.

26 **7. Compliance.** The owner, lessee or other person in control of a dam or other
27 artificial obstruction is jointly and severally liable for the costs of fishway design,
28 construction, repair, alteration or maintenance, and for full compliance with a decision
29 issued pursuant to subsection 6.

30 A. If the owner, lessee or other person in control of a dam or other artificial
31 obstruction refuses to comply or does not fully comply with the ~~commissioner's~~
32 decision issued pursuant to subsection 6, the commissioner and the Commissioner of
33 Marine Resources shall initiate a civil action to enjoin the owner, lessee or person in
34 control of the dam to comply fully with the ~~commissioner's~~ commissioners' order or
35 to restrain the violation of an order. In the proceeding, the court may not review the
36 legality of the ~~commissioner's~~ commissioners' order, except when the owner, lessee
37 or person in control of the dam or artificial obstruction has brought a timely petition
38 for judicial review pursuant to Title 5, chapter 375, subchapter 7.

39 B. The court may render judgment against and order the sale of the dam or other
40 artificial obstruction, the land on which it stands and a right-of-way to the dam or
41 artificial obstruction, in order to secure the costs of fishway construction, repair,
42 alteration or maintenance, the costs of the court-ordered sale and the costs incurred
43 by the department for fishway design. The purchaser of the dam or other obstruction
44 is subject to the ~~commissioner's~~ decision issued pursuant to subsection 6.

1 **8. Privileged entry.** The commissioner and the Commissioner of Marine Resources,
2 the ~~commissioner's~~ commissioners' agents or subcontractors may enter upon any private
3 land in order to examine, at least annually, fishways in dams or other artificial
4 obstructions and dams as provided in subsection 2. The ~~commissioner~~ commissioners
5 shall notify the landowner, lessee or other person in control of the dam when the
6 examination will take place and the time required to complete the examination. The
7 ~~commissioner~~ commissioners shall make every effort to preserve private land and shall
8 restore surrounding lands to the grade and condition existing prior to entry, if
9 economically feasible.

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

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

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

22 **Sec. 2. 12 MRSA §12761,** as affected by PL 2003, c. 614, §9 and amended by c.
23 655, Pt. B, §305 and affected by §422, is further amended to read:

24 **§12761. Construction of new dams or other artificial obstructions**

25 **1. Notice required.** Prior to construction or prior to authorizing construction of a
26 new dam or other obstruction in the inland waters, the owner, lessee or other person in
27 control of the dam or other artificial obstruction shall provide written notice to the
28 commissioner, and the Commissioner of Marine Resources supplying information on
29 construction plans, proposed location and date of construction of the dam or other
30 artificial obstruction.

31 **2. Initiation of fishway proceedings.** Within 30 days of receipt of the construction
32 notice pursuant to subsection 1, the commissioner and the Commissioner of Marine
33 Resources shall review the plans in order to determine whether fishway construction or
34 alteration of proposed fishway construction plans may be required pursuant to the criteria
35 set forth in section 12760, subsection 4. If the ~~commissioner determines~~ commissioners
36 determine that the construction or alteration may be necessary, the ~~commissioner~~
37 commissioners shall initiate fishway proceedings and follow the procedures prescribed in
38 section 12760.

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

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

