

**TESTIMONY OF THE
DEPARTMENT OF INLAND FISHERIES AND WILDLIFE
BEFORE THE JOINT STANDING COMMITTEE ON INLAND FISHERIES AND
WILDLIFE**

In Opposition to L.D. 1049

An Act to Protect Maine's Inland Fisheries from Invasive Fish

SPONSORED BY: Presented by Senator BLACK of Franklin.

CO-SPONSORED BY: Representative HEPLER of Woolwich
Representative LANDRY of Farmington
Representative MASON of Lisbon

DATE OF HEARING: April 24, 2023

Good afternoon Senator LaFountain, Representative Landry and members of the Inland Fisheries and Wildlife Committee. I am Francis Brautigam, Fisheries Director at the Department of Inland Fisheries and Wildlife, speaking on behalf of the Department, in opposition to L.D. 1049 as written, but in support of the broad intent of this bill to protect native fish from aquatic invasive threats and as such propose an amendment to the bill. This testimony represents joint testimony on behalf of the Department and the Department of Marine Resources.

This bill directs the MDIFW and MDMR commissioners to manage invasive fish concerns, under an amendment to existing statute (Title 12, Section 12760, section 9) that applies to specific dams on specific waters, including Sebec Lake, Schoodic Lake, and Seboeis Lake. On these specific waters, the construction or authorized construction of a fishway or fish bypass structure is not authorized where the fish passage design and operation would allow the upstream passage of an invasive fish species known to be present downstream in the Piscataquis River or Penobscot River drainage. LD 1049 contains 3 amendments to this existing statute:

- 1) A dam located on the Penobscot River in the Town of Medway would be added, requiring IFW and DMR Commissions to not require or authorize a fishway at this dam that would allow the upstream passage of an invasive fish species known to be present downstream.
- 2) Requires a very specific prescription (vertical barrier at least 4 feet tall) to prevent upstream passage of invasive fish at Brown's Mill in Dover Foxcroft.

There is currently a 4-foot invasive fish barrier in place that blocks invasive species, but it also blocks native sea-run fish such as American shad, alewife, blueback herring, and may block or delay Atlantic salmon and American eel, species managed by Maine DMR. There is an existing 2009 Memorandum of Agreement between IFW and DMR regarding the maintenance of this Invasive Fish Barrier.

- 3) Lastly, the bill precludes removal or modification of the installed fish barriers to prevent upstream passage of invasive fish species.

Both the IFW and DMR support adoption of AIS control measures associated with fish passage projects around the state, where AIS is identified as a priority concern for IFW. Aquatic invasive species are one of the leading threats to conserving Maine's native sport and nonsport fish as outlined in the Department's 15-year strategic fisheries management plan and the State Wildlife Action Plan.

Most dams create fish passage barriers, preventing spread of invasive fish, but unfortunately, they are the largest controllable threat to sea-run fish recovery in Maine and significantly impact DMR's ability to achieve their mission. Reconnecting habitats by providing passage is also important in the conservation of native non-migratory fish as well. As such, responsible collaboration and statewide coordination of AIS threats and providing passage to sea-run and resident fish to historic habitats remain important agency and state conservation and recovery priorities. In situations where new fish passage is proposed, IFW and DMR strive to find a balanced approach, preventing or reducing the risk of spread of AIS when applicable, while striving to support passage for migratory fish. Resolution is sometimes challenging and often requires creative and at times more costly approaches to responsibly balance AIS and fish passage interests. Because of these challenges and the fact that AIS threats and barriers to migratory fish occur statewide, not only on the waters listed in law, I would like to offer some additional considerations in support of one requested amendment to this bill's language, as well as a commitment by both agencies.

There is a need to manage AIS concerns and restore fish passage statewide, not just those locations currently identified in existing statute and in this bill. A more comprehensive and less prescriptive water by water approach that allows our respective agencies to work through the issues in a thoughtful and balanced way is what's needed. The Department proposes the addition of the following revised language to Title 12, Section 12760, Subsection Section 2: "the Commissioners will consider current and future Aquatic Invasive Species threats in planning for fish passage". This new language creates a broad consideration for both agencies regarding AIS threats at dams statewide beyond the 3 dams currently identified in statute. The MDIFW and MDMR will also commit to the development of a new MOU that would outline an approach to responsibly manage AIS threats while supporting fish passage needs throughout the state. The MDIFW and MDMR recommend the aforementioned language revision in statute and the development of a new MOU, instead of continuing to add select waters

of public interest to a short incomplete list as proposed in this bill. These two measures will support the responsible management of AIS concerns statewide.

Managing statewide AIS threats while also supporting fish passage interests requires flexibility to match potential solutions to control AIS, including new emerging technologies, with differing site conditions considerate of risks and threats. For example, the 4-foot vertical invasive pike barrier currently at Browns Mill does not appear to pass all ESA listed salmon and certainly does not pass other commercial and recreational migratory fish. There may be other approaches in the future better suited for this site or in the watershed to improve passage while comanaging AIS concerns. As such, while both state fishery agencies support the responsible management of invasive fish in the West Branch of the Penobscot and Piscataquis Rivers, additional flexibility in the actual strategies adopted by both agencies to manage AIS is needed but would not be allowed under the current language in this bill.

As federal agencies have significant influence and a role in relicensing dams subject to Federal Energy and Regulatory Commission authority, establishing a state of Maine position, rooted in proposed statutory language and a new MOU will allow MDIFW and MDMR to establish a unified front to manage and influence discussions with the federal agencies and partners. Effective collaboration between MDIFW and MDMR does require flexibility as already discussed to accomplish the goals of this bill while minimizing conflict with our federal partners in meeting their respective missions. For example, this bill would prevent restoration of several sea-run fish in the Piscataquis River without providing the agencies an opportunity to come up with a solution that accomplishes multiple objectives.

In place of this bill, both state agencies would respectfully ask this committee to add the requested language in statute to clearly acknowledge that AIS concerns are a consideration as new fish passage initiatives are pursued. In addition, a new MOU will be developed to create an approach to responsibly manage statewide AIS concerns as waterways are reopened to reconnect habitats and restore sea-run migratory fish, as well as resident native fish. The approach in this bill and in current statute is too prescriptive and limiting and should recognize the need for flexibility in adopting the most appropriate AIS control solutions and locations to manage AIS threats, while supporting fish passage needs.

I would be glad to answer any questions at this time or during the work session.