

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

Date: (Filing No. H-)

INLAND FISHERIES AND WILDLIFE

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
126TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 835, L.D. 1191, Bill, “An Act To Strengthen the Fishing Laws”

Amend the bill by inserting after the enacting clause and before section 1 the following:

Sec. 1. 12 MRSA §6121, as amended by PL 2011, c. 598, §10, is further amended to read:

§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.

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.

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 ~~he~~ determines 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

COMMITTEE AMENDMENT

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

3 **4. Adjudicatory proceedings.**

4 A. A fishway proceeding ~~shall be~~ is an adjudicatory proceeding under ~~the Maine~~
5 ~~Administrative Procedure Act~~, Title 5, chapter 375, subchapter ~~IV~~ 4, but a hearing
6 may not be required unless requested in accordance with paragraph B. Notice of the
7 proceeding ~~shall~~ must be given in accordance with Title 5, section 9052; and the
8 following requirements:

9 (1) Personal notice ~~shall~~ must be given to the dam owner, lessee or other person
10 in control of the dam or artificial obstruction, informing that person that a
11 proceeding has been undertaken and of ~~his~~ that person's right to request a
12 hearing; and

13 (2) Notice to the public, in newspapers of general circulation in the areas
14 affected, notifying the public of the initiation of the proceedings and of the
15 public's opportunity to request a hearing.

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

21 (1) ~~He is~~ The commissioners are petitioned by 50 or more Maine residents; or

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

24 C. The commissioner and the Commissioner of Inland Fisheries and Wildlife shall
25 accept testimony from the dam owner, lessee or other person in control of the dam or
26 artificial obstruction on alternate fishway designs to those proposed by the
27 ~~commissioner~~ commissioners for that dam or artificial obstruction.

28 **5. Decision.** In the event the commissioner ~~decides~~ and the Commissioner of Inland
29 Fisheries and Wildlife decide that a fishway should be constructed, repaired, altered or
30 maintained, ~~his~~ their final orders ~~shall~~ must be issued with specific plans and descriptions
31 of the fishway construction, alteration, repair or maintenance requirements, the conditions
32 of the use of the fishway and the time and manner required for fishway operation. The
33 ~~commissioner~~ commissioners may issue a decision requiring the owners, lessees or other
34 persons in control of the dam or obstruction to construct, repair, alter or maintain a
35 fishway. Such a decision ~~shall~~ must be supported by a finding based on evidence
36 submitted to the ~~commissioner~~ commissioners that either of the following conditions
37 exist:

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

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

3 In the event that the ~~commissioner decides~~ commissioners decide that no fishway should
4 be constructed, ~~he~~ the commissioners shall specify in that decision a period immediately
5 subsequent to that decision during which no fishway may be required to be constructed.
6 That period may not exceed 5 years.

7 **6. Compliance.**

8 A. The owner, lessee or other person in control of the dam or other artificial
9 obstruction ~~shall be~~ is jointly and severally liable for the costs of fishway design,
10 construction, repair, alteration or maintenance and for full compliance with a decision
11 issued pursuant to subsection 5. If the owner, lessee or other person in control of the
12 dam or other artificial obstruction refuses to comply or does not fully comply with
13 the ~~commissioner's~~ commissioners' decision, the ~~commissioner~~ commissioners shall
14 initiate a civil action to enjoin the owner, lessee or person in control of the dam to
15 comply fully with the ~~commissioner's~~ commissioners' order or to restrain the
16 violation of an order. In the proceeding, the court shall not review the legality of the
17 ~~commissioner's~~ commissioners' order, except when the owner, lessee or person in
18 control of the dam or artificial obstruction has brought a timely petition for judicial
19 review pursuant to Title 5, chapter 375, subchapter ~~VH~~ 7.

20 B. The court may render judgment against and order the sale of the dam or other
21 artificial obstruction, the land on which it stands and a right-of-way to the dam or
22 artificial obstruction in order to secure the costs of fishway construction, repair,
23 alteration or maintenance and costs of the court-ordered sale and the costs incurred by
24 the department for fishway design. The purchaser of the dam or other obstruction
25 ~~shall be~~ is subject to the ~~commissioner's~~ commissioners' decision.

26 **7. Privileged entry.** The commissioner and the Commissioner of Inland Fisheries
27 and Wildlife, the ~~commissioner's~~ commissioners' agents or subcontractors are privileged
28 to enter upon any private land in order to examine, at least annually, fishways in dams or
29 other artificial obstructions and the examination of dams provided in subsection 2. The
30 ~~commissioner~~ commissioners shall notify the landowner, lessee or other person in control
31 of the dam when the examination will take place and the time required to complete the
32 examination. The commissioner and the Commissioner of Inland Fisheries and Wildlife
33 shall make every effort to preserve private land and shall restore surrounding lands to the
34 grade and condition existing prior to entry, if economically feasible.

35 **Sec. 2. 12 MRSA §10902, sub-§8**, as affected by PL 2003, c. 614, §9 and
36 amended by c. 655, Pt. B, §§101 to 103 and affected by §422, is further amended to read:

37 **8. Mandatory revocation of fishing license.** The commissioner shall suspend a
38 person's fishing license for at least one year and may suspend any other license issued
39 under this Part and held by that person if that person is convicted or adjudicated of:

40 A. Introducing fish into ~~inland waters~~ a private pond without a permit in violation of
41 section ~~12509, subsection 2; and sections 12510, 12511 and 12512;~~

42 B. Taking or possessing sport fish in violation of bag, weight and size limits in
43 violation of section 12602, as it relates to trout, salmon, togue and black bass,

- 1 whenever the violation involves twice the general bag and possession limit adopted
2 by rule by the commissioner for that species of fish;
- 3 ~~B 1. Possessing fish in violation of section 12611;~~
- 4 C. Importing live bait fish or smelts, in violation of section 12556;
- 5 D. Buying or selling freshwater sport fish, in violation of section 12609-A; or
- 6 E. Taking fish by explosive, poisonous or stupefying substances, in violation of
7 section 12653.

8 The commissioner shall suspend a person's fishing license for 5 years and may suspend
9 any other license issued under this Part and held by that person if the person is convicted
10 or adjudicated of illegally importing, transporting or possessing live freshwater fish or
11 fish gametes under sections 12509, 12510, 12512 and 12611, except that this mandatory
12 revocation does not apply to offenses involving live bait fish or smelts.'

13 Amend the bill by inserting after section 1 the following:

14 'Sec. 2. 12 MRSA §12462 is enacted to read:

15 **§12462. Waters containing state heritage fish that have not been stocked since 1988**

16 **1. Live bait rules.** The commissioner shall adopt rules governing the use of live fish
17 as bait on lakes and ponds that contain state heritage fish as defined under Title 1, section
18 212-A and that according to reliable records have not been stocked since January 1, 1988.
19 Rules adopted pursuant to this section are major substantive rules as defined under Title
20 5, chapter 375, subchapter 2-A.

21 **2. Live bait allowed.** The use of live fish as bait is allowed on Millimagassett Lake,
22 in T.7, R.8 W.E.L.S.; Millinocket Lake and Little Millinocket Lake, in T.7, R.9 W.E.L.S.,
23 T.8, R.9 W.E.L.S. and T.7, R.10 W.E.L.S.; and Webster Lake, in T.6, R.10 W.E.L.S. and
24 T.6, R.11 W.E.L.S.'

25 Amend the bill in section 2 in §12504 in subsection 2-A in paragraph B in the 2nd
26 line (page 2, line 4 in L.D.) by inserting after the following: "part of the derby" the
27 following: 'if it is to be retained solely for derby purposes.'

28 Amend the bill by striking out all of sections 5 to 7 and inserting the following:

29 **'Sec. 5. Report from the Department of Inland Fisheries and Wildlife.**
30 The Commissioner of Inland Fisheries and Wildlife shall review the lakes and ponds that
31 contain eastern brook trout, *Salvelinus fontinalis*, and that according to reliable records
32 have not been stocked since January 1, 1988, referred to in this section as "B List waters,"
33 and report the findings to the Joint Standing Committee on Inland Fisheries and Wildlife
34 no later than January 15, 2014. The report must include:

35 1. A complete list of up-to-date B List waters with justification as to the
36 qualifications for each water listed; and

37 2. A management plan for the B List waters that is in accordance with the intent of
38 the department's mandate in the Maine Revised Statutes, Title 12, section 10051 to
39 preserve, protect and enhance the inland fisheries and wildlife resources of the State, to
40 encourage the wise use of these resources, to ensure coordinated planning for the future

1 use and preservation of these resources and to provide for effective management of these
2 resources.

3 The Joint Standing Committee on Inland Fisheries and Wildlife shall review the
4 commissioner's report and, if necessary, establish guidelines for qualifications for B List
5 waters and the management of B List waters. The committee is authorized to submit
6 legislation related to its findings to the Second Regular Session of the 126th Legislature.'

7 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
8 section number to read consecutively.

9 **SUMMARY**

10 This amendment allows the use of live bait on Millimagassett Lake, Millinocket
11 Lake, Little Millinocket Lake and Webster Lake. This amendment also directs the
12 Commissioner of Inland Fisheries and Wildlife to adopt rules for the use of live bait on
13 waters that contain state heritage fish and have not been stocked since January 1, 1988.

14 This amendment enhances penalties for noncompliance with the requirements for the
15 importation, transportation and possession of live freshwater fish and freshwater fish
16 gametes, not including bait fish, by creating a 5-year revocation of licenses issued under
17 the Inland Fisheries and Wildlife laws.

18 This amendment also removes the provisions of the bill that strike reference to the
19 authority of the Commissioner of Marine Resources over fishways under the jurisdiction
20 of the Commissioner of Inland Fisheries and Wildlife and instead creates joint authority
21 for the 2 commissioners for the fishways currently under the exclusive jurisdiction of the
22 Commissioner of Marine Resources.

23 Finally, this amendment directs the Commissioner of Inland Fisheries and Wildlife to
24 provide a report on eastern brook trout B List waters to the Joint Standing Committee on
25 Inland Fisheries and Wildlife by January 15, 2014 and authorizes the committee to report
26 out a bill related to its review of the commissioner's report.

27 **FISCAL NOTE REQUIRED**

28 **(See attached)**