Jun 5th, 11:10 AM - 11:30 AM

Session A1 - Examining State Fish Passage Laws: Applicability and Enforcement

Serena McClain
American Rivers

Follow this and additional works at: http://scholarworks.umass.edu/fishpassage_conference

http://scholarworks.umass.edu/fishpassage_conference/2012/June5/12

This Event is brought to you for free and open access by the The Fish Passage Community at UMass Amherst at ScholarWorks@UMass Amherst. It has been accepted for inclusion in International Conference on Engineering and Ecohydrology for Fish Passage by an authorized administrator of ScholarWorks@UMass Amherst. For more information, please contact scholarworks@library.umass.edu.
Examining State Fish Passage Laws: Applicability and Enforcement

S. McClain
National Fish Passage Conference
June 2012
13 states have laws on some or all rivers outlawing mill dams from blocking passage

Magna Carta

Constitutionality of fish passage requirements largely settled in the courts

Inhabitants of Stoughton v. Baker (MA, 1808)

Continue to evolve based on whims of legislature and governing bodies (e.g., California)
The WI legislature removes DNR’s authority to require fish passage in 1999. WI has gone on to remove 65 dams since the law was enacted. In 2010, Commissioner of the MDIFW issued his final order in the Cumberland Mills Dam Fishway Proceeding. This was the first use of Maine’s fishway law (12 M.R.S.A. § 12760), which enables the Commissioner to require fish passage by the owners of any (nonhydropower) dam within inland waters for anadromous or migratory fish species.
basic framework: (many) state fish passage laws

Authorization
  • Makes unlawful construction of a barrier (dam, weir, etc.) that blocks passage for fish
  • Authorizes a state natural resource agency or other governing body to require fish passage

Enforcement
  • Installation of fishway
  • Declaration of public nuisance
  • Abatement

Penalties
  • Average of three to six months to provide passage
  • Fines averaging $100/offense (ranges from each day being considered a new offense to establishment of maximum fines)
  • A few states offer up the opportunity for jail time for offenders
doing it and doing it and doing it well

States that

• Integrate fish policies at all levels and across agencies, coordinate and integrate
• Language within the regulations/guidance allowing for a streamlined permitting process for remediation of barriers

barriers to success

• Lack of political will
• Lack of staff
• Fines (if collected) are often menial
• Often no direct parameters for determining what constitutes “effective” fish passage
Serena S. McClain
American Rivers
1101 14th Street, NW
Suite 1400
Washington, DC 20005