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

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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.

1297  1800  1808-1909  1852, 1854, 1870, 1872

Continue to evolve based on whims of legislature and governing bodies (e.g., California)

Inhabitants of Stoughton v. Baker (MA, 1808)

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1999

WI legislature removes DNR’s authority to require fish passage

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.

WI has gone on to remove 65 dams since the law was enacted
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