

MAINE STATE LEGISLATURE

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CHAPTER 405
COMMISSIONER

Sec.

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§ 3501. Appointment; salary; facilities

The following provisions apply to the office of Commissioner of Sea and Shore Fisheries:

1. Appointment. The Governor, with the advice and consent of the Council, shall appoint a Commissioner of Sea and Shore Fisheries.

2. Term. The commissioner, as heretofore appointed, shall serve for 4 years or during the pleasure of the Governor and Council. He shall serve until his successor is appointed and qualified.

3. Vacancy. The Governor, with the advice and consent of the Council, shall fill any vacancy in office by an appointment for a full 4-year term.

4. Salary. The Governor, with the advice and consent of the Council, shall fix the compensation received by the commissioner.

5. Office space, facilities. The commissioner is entitled to an office in the State Capitol and adequate facilities for the transaction of business of his department.

R.S.1954, c. 38, §§ 1, 2; 1959, c. 331, § 1.

§ 3502. Powers and duties

The commissioner has the following powers and duties:

1. General supervision. The commissioner has general supervision of the administration and enforcement of the laws of chapters 401 to 417, except as otherwise provided.

2. Biennial report. The commissioner shall make a report to the Governor and Council every 2 years.

A. The commissioner shall in the report cover the period ending on June 30th of each even numbered year.

B. He shall file the report with the Governor and Council within 6 months of the end of the period which it covers.

3. Commissioner has powers of coastal warden. The commissioner has all the powers of a coastal warden under section 3652.

4. Commissioner to hire employees; employee's duties. The commissioner shall hire all necessary employees of the department, subject to the Personnel Law.

A. All employees shall perform such duties as are prescribed by the commissioner.

B. If there is a vacancy in office of the commissioner, the various employees shall continue in office until a new commissioner is appointed.

R.S.1954, c. 38, §§ 1, 2, 8; 1959, c. 331, § 1.

§ 3503. Closing of contaminated flats; regulations

The following provisions apply to contaminated or polluted shores, waters or flats:

1. Commissioner to examine and close shores, waters or flats; municipal cooperation. The commissioner shall from time to time examine or cause to be examined the shores, coastal waters and flats of the State as required or recommended by the United States Public Health Service and may examine them from time to time without such request or recommendation. He shall close contaminated or polluted shores, waters or flats in accordance with this section when the results of such an examination show him that clams, quahogs, oysters, mussels or other marine mollusks found in the area examined are contaminated or polluted or are not in conformity with sanitary standards recommended by the United States Public Health Service.

A. Municipalities in which shellfish flats and waters are located shall cooperate with the department in this program and shall collect water and clam samples from their flats and waters under the supervision of the department and such municipalities may raise and appropriate money for that purpose.

2. Commissioner to pass regulation; procedure. The commissioner shall close the shores, waters or flats to all digging or taking of clams, quahogs, oysters, mussels and other marine mollusks by immediately passing a regulation to that effect without a hearing and subject to the following provisions:

A. The commissioner shall state in the regulation the reason why the flats, waters or shores are closed, and the area which is closed.

B. The commissioner shall file a copy of the regulation certified by him with the Secretary of State and with the clerk of the Superior Court in each county where the closed shores, waters or flats are located.

C. After the commissioner has complied with paragraph B, he shall cause the regulation to be published once in a newspaper or combination of newspapers having general circulation in the county or counties where the shores, waters or flats to be closed are located.

D. The regulation is effective and has the force of law immediately upon the newspaper publication.

3. Possession unlawful. It is unlawful to possess any clams, quahogs, mussels, oysters or other marine mollusks which were taken or dug from any shores, waters or flats which are closed by a regulation of the commissioner.

4. Digging unlawful. It is unlawful to dig or take any clams, quahogs, mussels, oysters or other marine mollusks from any shores, waters or flats which are closed by a regulation of the commissioner.

5. Repealing regulations. When the shores, waters or flats closed by regulation, and the clams, quahogs, mussels, oysters or other marine mollusks there situated are no longer contaminated or polluted and meet the sanitary standards recommended by the United States Public Health Service, the commissioner shall repeal the regulation closing the particular area by publishing notice to that effect in a newspaper or combination of newspapers having general circulation in the county or counties where the area is situated. The regulation is repealed the day following the newspaper publication.

6. Savings clause. Regulations adopted by the commissioner under this section prior to January 1, 1964 remain in full force and effect until repealed as provided in subsection 5.

R.S.1954, c. 38, §§ 5, 94; 1957, c. 30, §§ 1, 6; 1959, c. 331, § 1; 1961, c. 238, § 1; 1963, c. 16; c. 411, § 1.

§ 3504. Conservation of certain marine species; regulations

The commissioner shall make regulations to remedy the danger when any existing condition endangers the conservation of fish, shellfish, lobsters, crabs, shrimp or marine worms in any of the coastal waters or flats of the State, subject to the following provisions:

1. Limitations for regulations. A regulation may only limit the taking of marine species by one or more of the following methods:

- A.** The time taken;
- B.** The method by which taken;
- C.** The number taken;
- D.** The weight taken.

2. Section grants no authority over salmon. This section grants no authority to adopt regulations for the conservation of Atlantic salmon.

3. Procedure of section 3505 to be followed. The commissioner shall follow the procedure of section 3505 in adopting a regulation authorized by this section.

4. Commissioner may declare emergency. The commissioner may declare an emergency if it appears to him that immediate action is necessary to remedy the danger.

A. An unusually large concentration of fishermen or diggers in any of the coastal waters or flats in the State which might deplete the supply of any marine species covered by this section is deemed an existing condition endangering the conservation of the particular marine species for the purposes of this subsection.

R.S.1954, c. 38, §§ 5, 38; 1959, c. 331, § 1.

§ 3505. —Procedure for adoption of regulations

The procedure for the adoption of the regulations authorized in section 3504 is as follows:

1. Commencement of proceedings, declaration of emergency, petition. The proceedings must commence by one of the following methods:

A. If the commissioner declares that an emergency exists, he shall prepare a written declaration of emergency containing the following information:

- (1) A statement that an emergency exists;
- (2) The particular marine species affected;

(3) The existing condition which endangers conservation, and its general location.

B. A majority of the municipal officers of a municipality where an existing condition endangers the conservation of marine life, or 25 citizens of that municipality, or a majority of the county commissioners of a county where such a condition exists may petition the commissioner subject to the following provisions:

(1) They shall address the petition to the commissioner.

(2) They shall include in the petition the following information:

(a) The particular marine species affected;

(b) The existing condition which endangers conservation and its general location.

(3) They shall file the petition with the commissioner before the first day of September of the year in which it is in order for hearing.

2. Notice of hearing, contents, publication. The commissioner shall give notice of the hearing as provided in this subsection:

A. He shall cause the notice to contain the time and place of hearing.

(1) If the hearing is under a petition, the time of hearing must be in compliance with subsection 3, paragraph B.

B. The commissioner shall cause the notice to contain all the information required to be in the declaration of emergency, or the petition, whichever is applicable.

C. The commissioner shall cause the notice to be published in a newspaper published in the county where the petition or declaration of emergency alleges the condition exists, or

(1) If no newspaper is published there or if the area where the condition is alleged to exist is in more than one county, then notice may be published in a newspaper or combination of newspapers having general circulation in each county where the condition is alleged to exist.

D. If a hearing is to be held under a petition, the commissioner shall cause the notice to be published once a week for 2 successive weeks prior to the hearing.

E. If a hearing is to be held under a declaration of emergency, the commissioner shall cause the notice to be published once at least 5 days before the hearing.

3. Hearing; time of; who may conduct; who may be heard; record of; place. The commissioner shall cause a public hearing to be held at the time and place designated in the notice.

A. The commissioner may appoint some member of the department to conduct the hearing.

B. The commissioner shall cause the hearing under a petition to be held between September 15th and December 1st next following receipt of the petition by the commissioner, provided the petition is received by the commissioner prior to September 1st of the same year.

(1) If the petition is not received by September 1st, it is not in order for hearing until the year next following.

C. Any interested person may give relevant evidence at the hearing.

D. The commissioner shall cause a record to be kept of all evidence given at the hearing.

E. The commissioner shall cause the hearing to be held within a radius of 25 miles of where the alleged condition exists, unless the proceeding is under a declaration of emergency in which case it may be held in the State Capitol.

4. Commissioner to adopt regulation after hearing; consent of advisory council. After the hearing the commissioner shall adopt a regulation to remedy the danger caused by the condition proven at the hearing to exist.

A. If the hearing is held under a petition, a regulation may not be adopted unless the proposed regulation is first submitted to the advisory council for its advice and consent.

5. Publication of regulation before it becomes effective. A regulation must be published in accordance with this subsection before it may become effective.

A. The commissioner shall cause a copy of the regulation, certified by him, to be filed in all the following places:

(1) With the Secretary of State;

(2) With the clerk of Superior Court of each county where the regulation is to be in force.

B. After the commissioner has complied with paragraph A he shall publish the regulation once in some newspaper pub-

lished in the county where the regulation is to be in force, or

(1) If no newspaper is published there, or if the regulation is to be in force in more than one county, he may publish the regulation once in a newspaper or combination of newspapers having general circulation in each county where it is to be in force.

6. When regulations become effective. The following regulations become effective and have the force of law at the times indicated:

A. A regulation adopted under a petition proceeding under this section becomes effective on the first day of January following newspaper publication.

B. The commissioner may provide a specific time after newspaper publication when a regulation adopted under a declaration of emergency becomes effective.

(1) If no time is provided in the regulation, it becomes effective the day following publication.

R.S.1954, c. 38, § 5; 1959, c. 331, § 1.

§ 3506. Publication of biennial pamphlet of laws

As soon as possible after adjournment of each Legislature, the commissioner shall publish in pamphlet form all the laws of chapters 401 to 417 as amended.

1. May include related laws. The commissioner may include in the pamphlet regulations adopted pursuant to the Revised Statutes of 1954, chapter 38, regulations adopted pursuant to chapters 401 to 417, regulations adopted pursuant to legislative directive, private and special laws concerning sea and shore fisheries and any other related laws, regulations or ordinances which the commissioner feels necessary or helpful to inform the public.

2. Size, printing and distribution of pamphlet. The commissioner shall determine the size of the pamphlet, the manner of printing it and the distribution of it, as he feels necessary or helpful to carry out the intent of this section.

R.S.1954, c. 38, § 142; 1959, c. 331, § 1.