

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

JAMES E. TIERNEY  
ATTORNEY GENERAL



STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

March 18, 1981

Representative Harold Hanson  
State House  
Augusta, Maine 04333

Dear Representative Hanson:

You have inquired as to the authority of the Department of Marine Resources Advisory Council to require the Commissioner of Marine Resources to adopt a specific regulation. The statutory provisions concerning the powers and duties of the Advisory Council do not authorize the Advisory Council to mandate regulation promulgation by the Commissioner of Marine Resources.

12 M.R.S.A. § 6024(2), which sets forth the general powers and duties of the Advisory Council provides:

The council shall give the commissioner information and advice concerning the administration of the department and carry out other duties specifically delegated by marine resources' laws. ...

Clearly, this provision does not authorize the Advisory Council to require the Commissioner to promulgate regulations. 12 M.R.S.A. § 6171, the statutory provision concerning regulation powers of the Commissioner of Marine Resources does require Advisory Council participation in the regulation promulgation process:

1. Commissioner's powers. The commissioner may investigate conditions affecting marine resources and, with the advice and consent of the advisory council, may adopt or amend such regulations as he deems necessary to promote the conservation and propagation of marine organisms. (emphasis added).

Representative Harold Hanson  
March 18, 1981  
Page Two

Although section 6173 requires Advisory Council consent as a prerequisite for valid promulgation of a Department of Marine Resources regulation, the provision does not permit the Advisory Council to mandate regulation promulgation by the Commissioner.

Although the Advisory Council has no power to require regulation promulgation, the council does have the option of advising the commissioner that council consent will be granted only in the event that the proposed regulation meets certain council standards. Of course, the commissioner is not compelled to meet council regulation standards, but could instead refuse to propose a regulation conforming to council standards, thereby creating an impasse. Thus, cooperation and compromise between the Advisory Council and Commissioner are essential for promulgation of Department of Marine Resources regulations.

If this office can be of any further assistance, please do not hesitate to ask.

Sincerely,

*Elizabeth R. Butler*

ELIZABETH R. BUTLER  
Assistant Attorney General

ERB:njm