

MAINE STATE LEGISLATURE

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ONE - HUNDREDTH LEGISLATURE

Legislative Document

No. 385

H. P. 271

House of Representatives, January 17, 1961.

Referred to Committee on State Government. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Brown of Cape Elizabeth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-ONE

**AN ACT Transferring Duties of Atlantic Sea Run Salmon Commission to
Department of Inland Fisheries and Game.**

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., c. 37, §§ 67-A - 67-B, additional. Chapter 37 of the Revised Statutes, as revised, is amended by adding 2 new sections to be numbered 67-A and 67-B, to read as follows:

'Atlantic Sea Run Salmon.

Powers and duties.

Sec. 67-A. Commissioner's authority to adopt regulations when conservation of salmon endangered. The Commissioner of Inland Fisheries and Game has sole authority to adopt regulations regarding Atlantic sea run salmon, but his authority is limited to the following provisions:

I. Duty to make; procedure; limitation of methods; emergency; not to infringe on water improvement jurisdiction. He shall make regulations to remedy the danger when any existing condition endangers the conservation of Atlantic salmon within the territorial limits of the State, subject to the following provisions:

A. The commissioner shall follow the procedure provided in section 67-B.

B. A regulation may only limit the takings of Atlantic salmon in one or more of the following methods:

1. The time when taken;

2. The method by which taken;
3. The number taken;
4. The weight taken.

C. If the danger appears to the commissioner to require immediate action, he may declare an emergency and proceed under the declaration of emergency provisions of section 67-B.

D. The commissioner has no authority to pass a regulation based on a condition which is within the jurisdiction of the Water Improvement Commission under chapter 79.

Sec. 67-B. Procedure for commissioner to adopt regulations authorized by section 67-A. The procedure for the adoption of regulations authorized by section 67-A is as follows:

I. Commencement of proceedings; declaration of emergency; petition. The proceedings must commence with 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 existing condition which endangers the conservation of Atlantic salmon and its general location.

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

1. They shall address the petition of the commissioner;
2. They shall insert the following information in the petition:
 - (a) The existing condition which endangers the conservation of Atlantic salmon.
 - (b) The general location of such condition.

II. Notice of hearing; contents; publication. The commissioner shall give notice of the hearing as provided in this subsection.

A. The commissioner shall cause the notice to contain a statement of the time and place of the hearing.

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 the notice may be published in a newspaper or combination of newspapers having general circulation in each such county.

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

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

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

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

B. The commissioner shall cause a permanent record to be taken of all evidence given at the hearing.

C. 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.

D. If the proceeding is under a declaration of emergency, the commissioner may cause the hearing to be held in the Capitol.

IV. Duty to adopt regulation after hearing. After the hearing the commissioner shall adopt a regulation to remedy the danger caused by the condition proven at the hearing to exist.

V. Publication of regulation before it becomes effective. The commissioner shall cause the regulation to be published in accordance with this subsection before the regulation becomes effective.

A. The commissioner shall cause a copy of the regulation 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 in some newspaper published 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, it may be published in a newspaper or combination of newspapers having general circulation in each county where it is to be in force.

VI. When regulations become effective. A regulation becomes effective at the time indicated in the regulation by commissioner, subject to the following provisions:

- A.** The effective date must be at least 10 days after the time of hearing.
- B.** The effective date must be at least one day after the newspaper publication provided in subsection V.
- C.** If no date is specified in the regulation for it to become effective, it becomes effective immediately after the provisions of paragraphs A and B are met.'

Sec. 2. R. S., c. 37-A, §§ 19-21, repealed. Sections 19 to 21 of chapter 37-A of the Revised Statutes, as enacted by section 1 of chapter 331 of the public laws of 1959, are repealed.

Sec. 3. R. S., c. 37-A, § 22, amended. Section 22 of chapter 37-A of the Revised Statutes, as enacted by section 1 of chapter 331 of the public laws of 1959, is amended to read as follows:

'**Sec. 22. General provisions for all regulations.** The following provisions apply to all rules and regulations of the commissioner ~~and of the salmon commission in effect immediately prior to the effective date of this revision~~, to all regulations of the commissioner ~~and of the salmon commission~~ which are adopted under this chapter, and all regulations of the commissioner adopted by legislative directive.

I. Have force of law. They have the force of law.

II. Remain in force until changed. They remain in force until changed by further regulations, or by the Legislature.

III. Provision for penalties. Whoever violates any provision of them shall be punished by the penalties provided in section 96, unless a specific penalty is otherwise authorized and provided.

IV. Proof of regulation by certificate. A certified copy of any one of them is admissible in all courts to prove the regulation, subject to ~~the provisions of~~ this subsection, and is prima facie evidence that the regulation was adopted in accordance with ~~the provisions of~~ the statute authorizing it.

A. A regulation of the commissioner must be certified by him, and must be accompanied by his signed statement that it was in force on the date of the alleged violation.

B. ~~A regulation of the salmon commission must be certified by either the Commissioner of Sea and Shore Fisheries or by the Commissioner of Inland Fisheries and Game, and must be accompanied by the signed statement of either that it was in force on the date of the alleged violation.~~

C. The certified copy is admissible in evidence in any court upon testimony of any coastal warden, or game warden, that he received the certified regulation after requesting the same by telephone, or otherwise, from the office of the Commissioner of Sea and Shore Fisheries ~~or the office of the Commissioner of Inland Fisheries and Game if the regulation is one adopted by the salmon commission.~~

I. No further foundation is necessary for the admission of the certified copy of the regulation in evidence.'