

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1972

S. P. 637

In Senate, May 24, 1973

Reported by Senator Speers of Kennebec from the Committee on State Government and printed under Joint Rules No. 18.

HARRY N. STARBRANCH, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT to Create a Department of Marine Resources.

Preamble. The marine and estuarine resources of Maine constitute an extremely valuable asset which must be adequately protected and preserved for present and future generations but which must also be utilized, promoted and developed in a manner compatible with ecological considerations for the benefit of the citizens of Maine. The Legislature finds that there is a need for a marine-oriented agency to be responsible for research, comprehensive long-range planning and conservation of Maine's marine resources. The Legislature finds that these objectives can best be achieved by the creation of a Department of Marine Resources; now, therefore,

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

Sec. 1. R. S., T. 12, § 3401, sub-§§ 5-A, 8-A, 11-A, 16-B, 19-A, 26-A and 30-A, additional. Section 3401 of Title 12 of the Revised Statutes is amended by adding 7 new subsections 5-A, 8-A, 11-A, 16-B, 19-A, 26-A and 30-A, to read as follows:

5-A. Conservation. "Conservation" means providing for the development and wise utilization of Maine's marine resources or protecting the ultimate supply for present and future generations or preventing waste or for implementing sound management programs.

8-A. Cultivation. "Cultivation" means artificial control or manipulation by man of any marine species at some stage of its life history for the purpose of increasing yield or improving quality.

11-A. Fish, the noun. "Fish" means all marine animals.

16-B. Marine and estuarine resources. "Marine and estuarine resources" or "marine resources" means all renewable marine organisms, including fish, shellfish and marine plants, and the entire ecology and habitat supporting such marine organisms, unless otherwise provided by law.

19-A. Organism. "Organism" means all fish, marine plants and other marine life.

26-A. Species. "Species" means the scientific name used in the classification of marine organisms.

30-A. Take, the verb. The verb, "to take" means to fish for, hunt for, pursue, capture or kill, or attempt to do any of those acts. It does not include harvesting of marine species that are cultivated by the commissioner or persons authorized by him to cultivate pursuant to chapters 401 to 417.

Sec. 2. R. S., T. 12, § 3404, sub-§ 5, additional. Section 3404 of Title 12 of the Revised Statutes is amended by adding a new subsection 5 to read as follows:

5. Marine species regulations. All provisions contained in the private and special laws, which include those contained in the private and special laws of 1959, chapters 154 and 155, affecting the time, method, number, weight, length, location and condition under which marine species may be taken from coastal waters are to be considered as regulations of the department subject to this section and may be modified, amended or repealed in accordance with the authority delegated to the commissioner under sections 3504 and 3505.

Sec. 3. R. S., T. 12, § 3451, repealed and replaced. Section 3451 of Title 12 of the Revised Statutes, as amended by section 2 of chapter 337 of the public laws of 1967, is repealed and the following enacted in place thereof:
§ 3451. Department of Marine Resources

The Department of Sea and Shore Fisheries, as heretofore established and hereinafter in this chapter called the "department" is renamed the "Department of Marine Resources."

The department is established to conserve and develop marine and estuarine resources and to conduct and sponsor scientific research; to promote and develop the Maine coastal fisheries industry; to advise agencies of state and local government and agencies of the Federal Government concerned with development or activity in coastal waters; to implement, administer and enforce the laws and regulations enacted under chapters 401 to 419, under the direction of a Commissioner of Marine Resources appointed by the Governor, with the consent of the Council, who shall serve a term coterminous with that of the Governor until his successor is appointed and qualified.

The commissioner shall organize the department into such bureaus, divisions or other administrative units as he deems necessary to carry out the duties of the department. The commissioner shall designate an appropriate administrative officer in the department to serve as commissioner in the ab-

sence or disability of the commissioner or in the case of vacancy in the office of commissioner.

Sec. 4. R. S., T. 12, § 3501, repealed. Section 3501 of Title 12 of the Revised Statutes, as amended, is repealed.

Sec. 5. R. S., T. 12, § 3502, sub-§ 2, repealed and replaced. Subsection 2 of section 3502 of Title 12 of the Revised Statutes is repealed and the following enacted in place thereof:

2. Biennial report. The commissioner shall make a report to the Governor and Council and the Legislature every 2 years and may include such recommendations for changes and amendments in the existing laws and licensing procedures as are warranted by investigations and research.

Sec. 6. R. S., T. 12, § 3502, sub-§§ 5, 6 and 7, additional. Section 3502 of Title 12 of the Revised Statutes is amended by adding 3 new subsections 5 to 7, to read as follows:

5. —hold property. The commissioner may acquire and hold real property or any right or interest therein including, but not limited to, easements or rights of access.

6. —accept funds. The commissioner may, subject to the approval of the Governor and Council, accept for the State any federal funds apportioned under federal law relating to authorized programs of the department and to do such acts as are necessary for the purposes of carrying out such federal laws; and to accept from any other agency of government, individual, group or corporation such funds as may be available to carry out the purposes of the department.

7. —agreements. The commissioner may enter into reciprocal enforcement agreements with other states, interstate regional authorities and the Federal Government.

Sec. 7. R. S., T. 12, § 3502-A, additional. Title 12 of the Revised Statutes is amended by adding a new section 3502-A, to read as follows:

§ 3502-A. Conservation and development of marine resources

The commissioner shall be responsible for conserving and developing marine resources which shall include, but not be limited to, responsibility for the following:

1. Assisting members of the fisheries industry by providing technical, biological, managerial or other assistance within departmental capability;
2. Conducting educational programs and distributing information;
3. Serving as the primary state agency for providing promotional and marketing assistance for the commercial fisheries;
4. Establishing and enforcing standards of fish and fisheries inspection;
5. Engaging in all aspects of marine research;

6. Authorizing cultivation of marine species in coastal waters pursuant to chapters 401 to 417;

7. Leasing areas of coastal waters and lands beneath coastal waters to others for cultivation pursuant to chapters 401 to 417;

8. Maintaining records of all leases, grants, licenses and permits by the State, its departments or agencies, municipalities or other political subdivisions, of, or with respect to, areas in coastal waters, together with records of activities authorized thereby. Every state department, agency or official, municipality or political subdivision shall file copies of such documents and records with the commissioner in such form and at such intervals as may be established by him.

Sec. 8. R. S., T. 12, § 3502-B, additional. Title 12 of the Revised Statutes is amended by adding a new section 3502-B, to read as follows:

§ 3502-B. Ecology and habitats supporting marine fisheries

The commissioner:

1. May enforce section 4709 relating to the Wet Lands Control Law;
2. Shall advise the United States Corps of Engineers, the Department of Transportation and appropriate state agencies on the ecological effects of dredging, filling and depositing of soil or otherwise altering coastal wetlands;
3. Shall at all times consult with, advise and cooperate with the State Planning Office, the Department of Environmental Protection, the Department of Inland Fisheries and Game, the Maine Geological Survey, the Department of Forestry, the Department of Parks and Recreation, the Land Use Regulation Commission and the Maine Mining Bureau in the carrying out of its duties and those agencies shall in turn cooperate with the Department of Marine Resources in carrying out their duties. Cooperation shall include, but not be limited to, the exchange of information and the filing of copies of any applications, petitions, requests, reports or other similar documents which may bear upon the responsibilities of any of the aforementioned departments. The heads of each department are directed to work out details of the exchange of such information and to provide an opportunity for any of the departments to respond, formally or informally, before final decisions are rendered on matters of applications, petitions, requests or other similar requests. If any department has received from the Department of Marine Resources comments in writing before a final decision is rendered on the matter of an application, petition, request or other similar matter, it shall consider those comments in its final decision and they shall be made a part of the record.

Sec. 9. R. S., T. 12, § 3504, amended. The first paragraph of section 3504 of Title 12 of the Revised Statutes is repealed and the following enacted in place thereof:

The commissioner may make regulations to assure the conservation of renewable marine resources in any of the coastal waters or flats of the State.

Sec. 10. R. S., T. 12, § 3504, sub-§ 1, ¶¶ E and F, additional. Subsection 1 of section 3504 of Title 12 of the Revised Statutes is amended by adding 2 new paragraphs E and F, to read as follows:

E. The length;

F. The location.

Sec. 11. R. S., T. 12, § 3505, sub-§ 1, ¶ C, additional. Subsection 1 of section 3505 of Title 12 of the Revised Statutes is amended by adding a new paragraph C, to read as follows:

C. The Commissioner of Marine Resources may investigate or cause to be investigated conditions affecting marine resources in any coastal waters or flats of the State, and may on his own initiative with the advice and consent of the advisory council, make or amend such regulations as he deems necessary to conserve marine species or to promote their propagation to the extent provided in section 3504 and in accordance with the procedure provided in this section. To adopt or amend a regulation under this paragraph, the commissioner shall prepare a written declaration containing the following information:

- (1) The regulation or the amendment which he proposes to adopt;
- (2) The general location or locations to be governed by the regulation or the amendment.

Sec. 12. R. S., T. 12, § 3505, sub-§ 2, ¶ B, amended. Paragraph B of subsection 2 of section 3505 of Title 12 of the Revised Statutes is amended to read as follows:

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

Sec. 13. R. S., T. 12, § 3505, sub-§ 2, ¶ C, amended. The first paragraph of paragraph C of subsection 2 of section 3505 of Title 12 of the Revised Statutes is amended to read as follows:

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

Sec. 14. R. S., T. 12, § 3505, sub-§ 3, ¶ A, amended. Paragraph A of subsection 3 of section 3505 of Title 12 of the Revised Statutes is amended to read as follows:

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

Sec. 15. R. S., T. 12, § 3505, sub-§ 4, repealed and replaced. Subsection 4 of section 3505 of Title 12 of the Revised Statutes is repealed and the following enacted in place thereof:

4. Commissioner to adopt regulation after hearing; consent of advisory council. After the hearing the commissioner shall adopt a regulation to

remedy the danger declared under subsection 1, paragraph A proven at the hearing to exist.

A. The commissioner may adopt any regulation proposed under subsection 1, paragraph B provided that the proposed regulation is first submitted to the advisory council for its advice and consent.

B. The commissioner may adopt a regulation proposed under subsection 1, paragraph C provided that the commissioner is still satisfied that the marine species will be conserved or their propagation promoted and that the regulation is in the best interest of the State.

Sec. 16. R. S., T. 12, § 3505, sub-§ 6, ¶ B, amended. The first sentence of paragraph B of subsection 6 of section 3505 of Title 12 of the Revised Statutes is amended to read as follows:

The commissioner may provide a specific time after newspaper publication when a regulation adopted under a declaration of emergency, or a declaration of his own initiative, becomes effective.

Sec. 17. R. S., T. 12, § 3551, sub-§ 1, amended. Subsection 1 of section 3551 of Title 12 of the Revised Statutes is amended to read as follows:

1. Appointment; composition. The Governor, with the advice and consent of the Council, shall appoint an advisory council consisting of ~~5~~ 9 members. The members shall be selected from the persons engaged in commercial activities or industries based on marine resources and their composition shall adequately represent the commercial activities over which the department has jurisdiction.

Sec. 18. R. S., T. 12, § 3551, sub-§ 2, repealed and replaced. Subsection 2 of section 3551 of Title 12 of the Revised Statutes is repealed and the following enacted in place thereof:

2. Term. Initially, $\frac{1}{3}$ of the members of the council shall be appointed for a term of 3 years, $\frac{1}{3}$ shall be appointed for a term of 2 years and $\frac{1}{3}$ shall be appointed for a term of one year. Thereafter, all members shall be appointed for a term of 3 years. Members shall serve until their successors are appointed and qualified.

Sec. 19. R. S., T. 12, § 3551, sub-§ 4, amended. Subsection 4 of section 3551 of Title 12 of the Revised Statutes is amended to read as follows:

4. Compensation. Members of the council may receive no compensation for their services, but they are entitled to receive actual expenses which do not exceed a total of ~~\$500~~ \$5,000 for all the members in any one fiscal year.

Sec. 20. R. S., T. 12, § 3552, sub-§ 2, amended. Subsection 2 of section 3552 of Title 12 of the Revised Statutes is amended to read as follows:

2. Council to hold regular meetings. The council shall hold regular quarterly meetings with the commissioner, or some person appointed by him for that purpose, at the Capitol ~~on the first Thursday of June and of December of each year.~~

Sec. 21. R. S., T. 12, § 3705, repealed and replaced. Section 3705 of Title 12 of the Revised Statutes, as enacted by chapter 60 of the public laws of 1965, is repealed and the following enacted in place thereof:

§ 3705. Marine resources research

The department under the direction of the commissioner is authorized to conduct or sponsor a program or programs for research and development of commercial fishery resources and other marine resources of the State which may include, but not be limited to, biological, chemical, technological, hydrological, processing, marketing, financial, economic and promotional research and development. The department may carry out such a program or programs within the department, in cooperation with other state agencies, and federal, regional and local governmental entities, or with private institutions or persons. The department is authorized to receive funding and to undertake programs in conformity with Federal Public Law 88-309 and other federal programs concerned with marine resources and public health programs associated with marine resources; to seek and expend matching federal funds for the purposes of this section; and to seek and receive funding or accept donations from other public or private sources for the purposes of this section.

Sec. 22. Amendatory provision. References in the Revised Statutes or laws to the "Department of Sea and Shore Fisheries," or "Sea and Shore Fisheries" shall be deemed to refer to the Department of Marine Resources.

Sec. 23. Legislative intent; advisory council. It is the intention of the Legislature not to terminate or in any way affect the present terms of members of the existing advisory council appointed under the Revised Statutes, Title 12, section 3551. The qualification provisions inserted by amendment in section 16 of this Act are intended to apply prospectively. It is also the intention of the Legislature that the provisions concerning staggering of terms apply prospectively.

Sec. 24. Transitional provisions.

1. **Personnel.** The present Commissioner of Sea and Shore Fisheries shall become the Commissioner of Marine Resources. His term shall be coterminous with that of the Governor. The creation of the Department of Marine Resources shall have no effect on presently serving members of the Advisory Council or any employee of the department.

2. **Regulations.** All regulations currently in effect and operation pursuant to chapters 401 to 417 referred to in this Act shall continue in effect unless in conflict with this Act, until rescinded, amended or changed according to law.