

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1640

H. P. 1321

House of Representatives, April 12, 1977

On Motion of Mrs. Post of Owls Head referred to the Committee on Marine Resources. Sent up for concurrence and 1,800 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Post of Owls Head.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Revise the Laws Concerning Marine Resources.

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

Sec. 1. 12 MRSA § 3451, as last amended by PL 1975, c. 771, § 146, is repealed.

Sec. 2. 12 MRSA § 3502, as last amended by PL 1975, c. 771, §§ 147, 148 and 149, is repealed.

Sec. 3. 12 MRSA § 3502-A, as enacted by PL 1973, c. 513, § 7, is repealed.

Sec. 4. 12 MRSA § 3504, as amended by PL 1973, c. 513, §§ 9 and 10, is repealed.

Sec. 5. 13 MRSA § 3505, as last amended by PL 1975, c. 743, §§ 2-A and 2-B, is repealed.

Sec. 6. 12 MRSA § 3506 is repealed.

Sec. 7. 12 MRSA § 3551, as last amended by PL 1975, c. 771, §§ 150 and 151, is repealed.

Sec. 8. 12 MRSA § 3552, as last amended by PL 1973, c. 663, §§ 2 and 3, is repealed.

Sec. 9. 12 MRSA § 3604, as amended by PL 1967, c. 296, §§ 2-5, is repealed.

Sec. 10. 12 MRSA § 3651, as last amended by PL 1975, c. 594, § 6, is repealed.

Sec. 10-A. 12 MRSA § 3652, as last amended by PL 1975, c. 743, § 3, is repealed.

Sec. 11. 12 MRSA §§ 3653 and 3654 are repealed.

Sec. 12. 12 MRSA § 3751, as last amended by PL 1975, c. 440, §§ 2 and 3, is repealed.

Sec. 13. 12 MRSA § 3752, as last amended by PL 1973, c. 513, § 22, is repealed.

Sec. 14. 12 MRSA Pt. 9 is enacted to read:

PART 9

MARINE RESOURCES

CHAPTER 429

DEPARTMENT OF MARINE RESOURCES

§ 6001. Purpose

The purpose of this Part is to establish a Department of Marine Resources 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 and cooperate with the agencies of local, State and Federal Government concerning activities in coastal waters and to implement, administer and enforce the laws and regulations necessary for these enumerated purposes as well as the exercise of all authority hereinafter conferred by this Part.

§ 6002. Commissioner; appointment; powers and duties

The Commissioner of Marine Resources shall be appointed by the Governor, subject to review by the Joint Standing Committee on Marine Resources and to confirmation by the Legislature. His term shall be coterminous with that of the Governor or until his successor is appointed and confirmed, whichever is later in time.

The commissioner shall organize the department into the administrative units which he decides are necessary to carry out its duties.

The commissioner shall designate the deputy commissioner, who shall serve as the commissioner in his absence or due to vacancy in the office of commissioner.

The commissioner shall hire all necessary employees of the department subject to the Personnel Law. Employees of the department shall perform duties prescribed by the commissioner.

The commissioner shall prepare a written code governing the operating procedures of the coastal warden service which shall be effective when approved by the Commissioner of Personnel.

The commissioner may acquire and hold any right or interest in real or personal property on behalf of the State.

Subject to the approval of the Governor, the commissioner may accept federal funds for use in department programs and to do such acts as are necessary to carry out federal laws pursuant to which such funds are provided and to accept any other funds as may be available to carry out the purposes of the department.

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

The commissioner may make regulations to assure the conservation of renewable marine resources in any of the coastal waters or flats and to otherwise carry out his duties and responsibilities established under this chapter.

The commissioner and his deputy are responsible for the administration and enforcement of the laws and regulations of this Title and have all the powers of a coastal warden.

The commissioner shall be responsible for the conservation and development of marine resources, including, but not limited to, providing technical, biological, managerial or other assistance within the department's capability to members of the fisheries industry; conducting educational programs and distributing information; serving as the primary state agency for providing promotional and marketing assistance for the fisheries industry; establishing and enforcing standards for fisheries inspection; engaging in all aspects of marine research; authorizing the cultivation of marine species and leasing areas of coastal waters and lands for cultivation purposes; and maintaining records of all leases, permits, grants, licenses issued by the State or any political subdivision in the coastal waters.

The commissioner shall report to the Governor every 2 years and may include such recommendations for amendments to the laws and licensing procedures under this Title as may be necessary for the operation of the department. The report shall cover the period ending June 30th of each even-numbered year and shall be due within 6 months of the end of the period which it covers.

The commissioner shall publish a pamphlet of all laws, rules and regulations for which he has direct administrative and enforcement responsibility as soon as possible after the adjournment of each Legislature. In addition, the commissioner may publish any other laws or regulations he deems helpful and appropriate to inform the public.

§ 6003. Advisory council; appointment; composition

The Governor shall appoint an advisory council consisting of 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 fisheries activities over which the department has jurisdiction.

All members shall be appointed for a term of 3 years, except a vacancy shall be filled for the unexpired portion of the term. Members shall serve until their successors are appointed.

Members of the council may not be compensated for their services, but they are entitled to receive actual expenses which do not exceed a total of \$5,000 for all members in any one fiscal year.

The council shall give the commissioner information and advice concerning the administration of the department and carry out other duties specifically conferred by this chapter.

The council shall hold regularly quarterly meetings in the months of January, April, July and October with the commissioner, or some person appointed by him for that purpose, in the Capitol Area, but may hold special meetings at any time or place within the State.

The council shall elect one of its members as chairman, one as vice-chairman and one as secretary, all for a term of one year at the regular January meeting. The chairman shall call and preside at all meetings of the council. The vice-chairman shall call and preside at all meetings of the council in the chairman's absence. The secretary shall cause records to be taken and to be preserved of all meetings of the council. The council shall elect one of its members to fill a vacancy in any of the 3 positions for the unexpired term at the next regular or special meeting following the vacancy.

§ 6004. Coastal warden ; appointment ; powers ; duties

Applicants for coastal warden who qualify under the commissioner's code of operation and who pass the examination administered by the Department of Personnel may be appointed by the commissioner to hold office under Title 5, chapters 51 to 61, and the commissioner's code of operation. Coastal warden's compensation is determined under the Personnel Law. Except before the District Court, wardens shall be allowed the same fees as sheriffs and their deputies for like service which shall be paid to the commissioner for use of the State. Wardens may not hold any other state, county or municipal office for which they receive compensation. Wardens shall enforce all laws and regulations relating to marine resources and may arrest and prosecute all violators. Wardens may serve all processes pertaining to marine resources laws and regulations.

Coastal wardens have jurisdiction and authority in all the counties of the State and in all the waters within the jurisdiction of the State. In addition to their specified powers and duties, the sworn coastal warden personnel of the Department of Marine Resources shall have the power to investigate and prosecute violators of any law of this State and to arrest without warrant and detain persons found violating or attempting to violate any other penal law of the State until a legal warrant can be obtained. Coastal wardens have the power to require aid in executing the duties of their office.

A sheriff, deputy sheriff, police officer, constable and inland fisheries and wildlife warden, within their respective jurisdictions, are vested with the powers of a coastal warden, except the powers provided in section 4457. It is unlawful for any person to impersonate a coastal warden or to falsely represent himself to another person as a coastal warden.

§ 6005. Regulations

Regulations issued by the commissioner shall conform to one of the following procedures.

1. **Emergency procedures.** The commissioner may declare an emergency if immediate action is necessary to conserve any marine resource. An unusually large concentration of fishermen which might deplete the supply of any marine species justifies a declaration of emergency. A declaration of emergency shall contain a statement that the emergency exists, the name of the particular marine specie affected and the nature and location of the condition which constitutes the emergency. After notice and hearing, the commissioner may adopt or amend any regulation under an emergency declaration if immediate action is necessary.

2. **Municipal petition.** Twenty-five citizens or a majority of the municipal officers or a majority of the county commissioners may submit a petition to the commissioner to promulgate regulations when an existing condition endangers the conservation and the location of that condition. To insure a hearing prior to December 31st, the petition shall be filed on or before September 1st. After notice and hearing and with the advice and consent of the advisory council, the commissioner may adopt or amend any regulation proposed in a municipal petition.

3. **Commissioner's initiative.** On his own initiative, the commissioner may promulgate, adopt or amend any regulation he deems necessary to promote the conservation or propagation of marine species. The commissioner shall prepare a written declaration stating the regulation or amendment which indicates the location or locations which will be affected.

After notice and hearing, the commissioner may adopt or amend any regulation proposed on his own initiative, provided that he is satisfied that the marine species will be conserved or their propagation promoted and that the regulation is in the best interest of the State.

4. **Notice and hearing.** The notice shall contain all information which shall be included in a declaration of emergency or initiative or in a municipal petition. The notice shall provide the time and place where the hearing will be held. The notice shall be published in a newspaper of general circulation in each county where the condition is alleged to exist. The notice shall be published at least 5 days before a hearing on a declaration of emergency. The notice shall be published once a week for 2 consecutive weeks prior to a hearing on a municipal petition or a declaration of commissioner's initiative. The hearing shall be held within a 25-mile radius of the location of the condition, except that a hearing under a declaration of emergency or commissioner's initiative may be held in the Capitol Area. Hearings may be conducted by the commissioner or by any member of the department or the advisory council who is appointed by him. Any interested person may provide relevant evidence at the hearing. The commissioner or his appointee shall record and maintain all relevant evidence provided at the hearing.

5. **Effective date.** A regulation shall become effective following publication in all newspapers in which the notice of hearing was published, except

no regulation shall become effective until a certified copy of the regulation is filed with the Secretary of State and the clerk of the Superior Court of each county where the regulation is to be in force.

6. Conservation regulation. Any conservation regulation of the commissioner limiting the taking of marine species shall limit only one or more of the following :

- A. The time during which the marine species may be taken ;
- B. The method by which the marine species may be taken ;
- C. The number of marine species which may be taken ;
- D. The weight of the marine species taken ;
- E. The length of the marine species taken ; and
- F. The location from which the marine species may be taken.

7. Examination. Notwithstanding the provisions of section 6005, the commissioner, upon his own initiative or pursuant to requirements of federal standards, shall examine the shores, coastal waters and flats of the State. When examination indicates that marine mollusks are contaminated, polluted or otherwise not in conformity with federal sanitary standards, the commissioner shall close the area by adopting, amending or repealing a regulation to close a contaminated area to digging or taking of marine mollusks without hearing ; by stating in the regulation why the area was closed ; or by publishing notice of the regulation in the manner specified in section 6005.

8. Area closed. The area is closed immediately upon publication of notice of the regulation as provided in this section.

§ 6006. Licensing

1. General provisions.

- A. Reference to the taking or possession of any marine species includes the taking and possession of any part of it.
- B. Any person who has been domiciled in Maine for the 6 months preceding the date of his application is eligible for a resident license.
- C. A license or a permit expires on December 31st of the year it is issued.
- D. No license or permit is transferable.

2. Application.

- A. Application shall be made on forms furnished by the commissioner.
- B. No license or permit shall be issued unless all questions are answered on the application form.
- C. Any license or permit issued through error, misrepresentation or misstatement is void and the holder shall surrender it on demand of the commissioner.

D. The commissioner may notice and summons any applicant or holder to appear at a specified time and place to answer any questions regarding his application, license or permit provided that the appearance is scheduled at least 10 days after the date the summons is mailed.

E. If the applicant or holder fails to satisfactorily answer the commissioner's questions regarding his application, license or permit or fails to appear, the commissioner may revoke or suspend his license.

3. Possession. When engaged in an activity which is licensed or permitted by the commissioner, the license or permit must be exhibited, upon the request of a coastal warden or other authorized person. A failure to exhibit a license or permit so requested is prima facie evidence that the individual has no license or permit. If crew members are included in the license for any operation, any bona fide crew member can carry out that operation if the license is in his possession.

4. Duplication. Licenses or permits which have been lost or destroyed shall be reissued at a cost of \$1.

5. Inspection. Application for a license constitutes consent to search and inspect equipment, watercraft, vehicles and facilities used in connection with the licensed activity and to seizure of evidence or contraband found therein. No dwelling house may be searched without a search warrant and then only in the daytime. Failure to permit inspection or seizure is a basis for suspension of the applicable license.

6. Suspension. Without notice and hearing to the holder, the commissioner shall suspend any and all licenses and permits issued by him and the right to obtain the same for 3 years on conviction for violation of section 4457 or for one year for refusal to permit inspection, search or seizure.

Without notice and hearing to the holder, the commissioner may suspend any and all licenses and permits issued by him and the right to obtain the same for 6 months from date of last conviction of any law or regulation enforced or administered by the commissioner or for 9 months from the date of the 2nd conviction occurring within 7 years of the last conviction or for one year from the date of the 3rd conviction occurring within 7 years of the first conviction. For purposes of this section, a judgment of guilt shall be considered a conviction during pendency of appeal.

7. Notice. After suspension of any license or permit, the commissioner shall provide notice by mailing announcement of the opportunity for hearing to the license or permit holder at the address provided in the application.

8. Hearing. Upon the request of the holder, hearing shall be conducted at the Department of Marine Resources. At the hearing, the holder shall be entitled to present any evidence concerning the violation which might justify continuation of his license. Except for suspension on conviction for violation of section 4457, the commissioner may allow the license to be maintained if he is satisfied that to do so would be in the best interests of justice.

9. Appeal. Any holder whose license or permit or right to obtain the same is suspended for failure to permit inspection or seizure, after participa-

tion in a hearing conducted by the commissioner, may appeal to the Superior Court within 10 days after notification of the suspension. The issues on appeal are limited to whether the party was licensed by the department and whether the party refused inspection or seizure.

STATEMENT OF FACT

The purpose of this bill is to provide a vehicle whereby the Joint Standing Committee on Marine Resources can make a comprehensive revision of the laws concerning marine resources.