

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1211

6
7 H.P. 855 House of Representatives, April 2, 1985

8 Submitted by the Department of Marine Resources pursuant to Joint
9 Rule 24.

10 Referred to the Committee on Marine Resources. Sent up for concurrence
and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Crowley of Stockton Springs.

11 Cosponsored by Senator Brown of Washington, Representative Mitchell
of Freeport and Representative Rice of Stonington.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT Providing for the Regional Management
18 of Marine Fisheries Within the
19 Territorial Waters of the Atlantic
20 States.
21

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

24 12 MRSA c. 419, sub-c. III is enacted to read:

25 SUBCHAPTER III

26 REGIONAL MANAGEMENT

27 §4661. Preamble

28 By Act of the United States Congress, consent was
29 given to an amendment to the Atlantic States Marine
30 Fisheries Compact. Pursuant to that Act, the State
31 has determined that the regional management of the
32 fishery operations of the citizens and vessels of
33 this State is in the public interest and designates

1 the Atlantic States Marine Fisheries Commission as a
2 joint management agency with powers as provided for
3 in this subchapter.

4 §4662. Purpose and scope

5 The purpose and scope of this subchapter as de-
6 termined by the Legislature are:

7 1. Joint management. To provide for the joint
8 management of the fishery resources subject to the
9 jurisdiction of the states and in which those states
10 have a common interest;

11 2. Coordination. To coordinate the state manage-
12 ment of fishery resources subject to the jurisdiction
13 of more than one of the states with those states and,
14 where practicable, to manage as a unit, throughout
15 their range, individual stocks of the resources;

16 3. Allocation of resources. To assure that any
17 allocation of fishery resources by any management
18 measure adopted pursuant to this subchapter is fair
19 and equitable to all affected persons, groups or or-
20 ganizations;

21 4. Consistency. To assure that, where practica-
22 ble, a fishery resource which is subject to the ju-
23 risdiction of the states and which is also managed by
24 federal authorities in the fishery conservation zone
25 is managed in a consistent manner by federal and
26 state authorities and by the commission;

27 5. Opportunity to comment. To assure that all
28 affected fishermen, states and other interested par-
29 ties have an opportunity to comment upon any proposed
30 management measures concerning fishery resources to
31 be adopted pursuant to this subchapter; and

32 6. Promotion of resources. To promote the better
33 utilization of the fishery resources subject to the
34 jurisdictions of the states, by the development of a
35 joint program for promoting and conserving the re-
36 sources, for protecting those resources against
37 overfishing, waste, depletion or abuse and for assur-
38 ing a continuing yield of those resources.

1 §4663. Definitions

2 As used in this subchapter, unless the context
3 indicates otherwise, the following terms have the
4 following meanings.

5 1. Commission. "Commission" means the Atlantic
6 States Marine Fisheries Commission as established by
7 the Atlantic States Marine Fisheries Compact, 56
8 Stat. 267, May 4, 1942, chapter 283 and ratified by
9 this State pursuant to section 4651.

10 2. Common interest. "Common interest" means an
11 interest in a fishery resource arising when:

12 A. The fishery resource is traditionally and
13 customarily found within the territorial waters
14 of more than one state in marketable sizes or
15 quantities; and

16 B. A significant harvest of the fishery re-
17 sources has occurred historically in the same
18 states.

19 3. Fishery. "Fishery" means:

20 A. One or more stocks or marine, shell or
21 anadromous fish which can be treated as a unit
22 for purposes of conservation and management and
23 which are identified on the basis of geographi-
24 cal, scientific, technical, recreational and eco-
25 nomical characteristics; and

26 B. The act of fishing for the stocks defined in
27 paragraph A.

28 4. Fishery conservation zone. "Fishery conser-
29 vation zone" means those waters within the zone es-
30 tablished by section 101 of the Magnuson Fishery Con-
31 servation and Management Act of 1976, Public Law
32 94-265.

33 5. Fishery resource. "Fishery resources" means
34 any fishery, any stock of fish and any species of
35 fish.

1 6. Management measure. "Management measure"
2 means any rule which is designed to conserve, manage,
3 develop or allocate a fishery resource for the over-
4 all benefit of the states adopting that measure.

5 7. Representative. "Representative" means one
6 of 3 individuals appointed to the Atlantic States Ma-
7 rine Fisheries Commission pursuant to Article III of
8 the Atlantic States Marine Fisheries Compact, 56 Stat
9 267, May 4, 1942, chapter 283.

10 8. State. "State" means any state which is party
11 to the Atlantic States Marine Fisheries Compact, 56
12 Stat. 267, May 4, 1942, chapter 283.

13 §4664. Standards and guidelines

14 Any management measure developed and promulgated
15 pursuant to this subchapter shall comply with the
16 following standards and guidelines.

17 1. Expectation of enforcement. There shall be a
18 reasonable expectation that the management measures
19 are capable of being implemented and enforced.

20 2. Nondiscrimination. Management measures shall
21 not discriminate among the states or residents of the
22 states.

23 3. Stocks managed as units. To the extent prac-
24 ticable, an individual stock of fish shall be managed
25 as a unit throughout its range and stocks of fish
26 shall be managed as a unit or in close coordination.

27 4. Protection of resources. Management measures
28 shall protect fishery resources against overfishing,
29 waste, depletion or abuse, while assuring a continu-
30 ing yield of the resources.

31 5. Scientific information. Management measures
32 shall be based upon the best scientific information
33 available to the commission.

34 6. Needs of each state. Management measures
35 shall be implemented, to the extent practicable, tak-
36 ing into consideration the unique needs of the fish-
37 ery in each state and the administrative requirements

1 of those states managing a fishery resource pursuant
2 to this subchapter.

3 §4665. Management process

4 1. Declaration of resource; 2 or more states.
5 Representatives of any 2 or more states to the com-
6 mission may, by a vote of at least 2 from each state,
7 declare a fishery resource in which those states have
8 a common interest to be in need of joint management.

9 2. Notice of intent. When a fishery resource
10 has been so declared in need of management and prior
11 to the adoption of any management measures pursuant
12 to this subchapter, a notice of intent to manage
13 shall be sent to each state by mailing a copy of the
14 notice to:

15 A. The Governor of each state;

16 B. The state official having principal authority
17 and jurisdiction over the marine resources of
18 each state; and

19 C. The Clerk of the House and Senate of the Leg-
20 islature of each state.

21 3. Notice; content. The notice shall contain
22 the following information:

23 A. A description of the fishery resource to be
24 managed;

25 B. A statement of the reasons for management;
26 and

27 C. A list of all states deemed to have a common
28 interest in the fishery resource to be managed.

29 4. Authority of representatives. The representa-
30 tives appointed by this State to the commission may
31 join with representatives to the commission from oth-
32 er states in adopting joint management measures af-
33 fecting a fishery resource in which their respective
34 states have common interest; provided that no fishery
35 resource subject to the jurisdiction of this State
36 may be subject to a management measure so adopted un-

1 less a majority of its representatives to the commis-
2 sion have voted in favor of it. The state whose rep-
3 resentatives vote in favor of a management measure
4 shall constitute a joint management section within
5 the commission.

6 5. Administrative procedure. Management mea-
7 asures shall be subject to the notice and hearing re-
8 quirements of the Maine Administrative Procedure Act,
9 Title 5, chapter 375, provided that the commission
10 may adopt and utilize those alternative rule-making
11 procedures it determines are necessary and appropri-
12 ate to rule-making on a regionalized basis as long as
13 those procedures provide notice and opportunity for
14 comment substantially equivalent to that provided for
15 in the Maine Administrative Procedures Act, Title 5,
16 chapter 375. Rule-making hearings necessary to the
17 adoption of management measures under this subchapter
18 may be held in a location which is reasonably central
19 and accessible to the affected citizens of all the
20 participating states, and need not be held within
21 this State. Management measures adopted under this
22 subchapter shall not require the review and approval
23 of the Marine Resources Advisory Council.

24 §4666. Implementation

25 1. Publication. After approval by the represen-
26 tatives of the affected states comprising the joint
27 management section within the commission, the manage-
28 ment measures so approved shall be published by the
29 commission in at least 2 trade journals or newspapers
30 of general circulation in the recreational or commer-
31 cial fishing industries, and shall be distributed by
32 the commission to any interested parties who request
33 those management measures.

34 2. Effect. Twenty-one days after publication as
35 specified in subsection 1, the management measures
36 shall have the same legal force and effect as a rule
37 approved by the Department of Marine Resources of
38 this State.

39 §4667. Enforcement

40 1. Enforcement. All management measures adopted
41 pursuant to this subchapter shall be enforced by

1 those law enforcement officials having authority and
2 jurisdiction to enforce the marine fishery laws and
3 rules of this State.

4 2. Territorial waters; conservation zone; pur-
5 suit. When authorized by the law enforcement offi-
6 cial of a participating state, the law enforcement
7 officials may, in the exercise of this authority,
8 pursue into the territorial waters of a participating
9 state or into the fishery conservation zone any ves-
10 sel or person which they have reasonable cause to be-
11 lieve is engaged in fishing in violation of manage-
12 ment measures adopted pursuant to this subchapter.
13 The states whose territorial waters are immediately
14 adjacent to the territorial waters of this State
15 shall have reciprocal rights of pursuit into the ter-
16 ritorial waters of this State.

17 3. Cooperative agreements. The commissioner may
18 enter into cooperative agreements with officials of
19 any other state, or with officials of the National
20 Marine Fisheries Service, for the purpose of enforc-
21 ing any management measure adopted pursuant to this
22 subchapter. Without the limitation of this subsec-
23 tion, the cooperative agreements may provide for the
24 deputization of law enforcement officers of other
25 states and of the Federal Government to enforce man-
26 agement measures adopted under this subchapter
27 against citizens of this State and against vessels
28 registered in this State, whether within or outside
29 of the territorial jurisdiction of this State.

30 §4668. Penalties

31 1. Fines and penalties. Violations of any man-
32 agement measures adopted pursuant to this subchapter
33 shall be subject to the fines and penalties as pro-
34 vided for in sections 6201 to 6207.

35 2. Jurisdiction. Jurisdiction to enforce the
36 provisions of this subchapter or any management mea-
37 sure as provided for in this subchapter shall be de-
38 termined by the relevant provisions of the laws of
39 this State, or by the terms and conditions of any co-
40 operative enforcement agreement entered into pursuant
41 to section 4667, subsection 3.

1 STATEMENT OF FACT

2 The problem of achieving interstate cooperation
3 on the management of common fishery resources, in the
4 absence of clear federal authority, has long been ac-
5 knowledged. Particularly over the past 40 years im-
6 portant efforts have been made to create an inter-
7 state structure permitting a common approach to com-
8 mon problems. The coastal states of the continental
9 United States form 3 major interest groups: The At-
10 lantic States Marine Fisheries Commission (ASMFC),
11 the Gulf States Marine Fisheries Commission and the
12 Pacific Marine Fisheries Commission. While the com-
13 mission, consisting of 3 representatives from each
14 member state, provides an important vehicle for com-
15 munication, its coordinating powers are limited to
16 recommendations which might be made to individual
17 state governors and legislatures concerning needed
18 legislation and to consulting with and advising the
19 pertinent administrative agencies in the states with
20 regard to problems connected with the fisheries.
21 This bill addresses that weakness and will result in
22 clarifying the commission's authority to be an effec-
23 tive and efficient fisheries management tool operat-
24 ing in the State's interest.

25 The Maine Revised Statutes, Title 12, section
26 4661 affirms the intent of the Maine Revised Stat-
27 utes, Title 12, section 4601, and states the intent
28 of regional fisheries management.

29 The Maine Revised Statutes, Title 12, section
30 4662 states the purposes of and benefits to be accom-
31 plished from regional management.

32 The Maine Revised Statutes, Title 12, section
33 4663 defines important words and phrases throughout
34 the subchapter.

35 The Maine Revised Statutes, Title 12, section
36 4664 sets the standards for testing the propriety and
37 efficacy of management measures contemplated or un-
38 dertaken within this context. These standards are
39 similar, but not identical, to those within the
40 Magnuson Fisheries Conservation and Management Act of
41 1976, the federal "200-mile limit" Act.

1 The Maine Revised Statutes, Title 12, section
2 4665 addresses the legal deficiencies within the
3 Maine Revised Statutes, Title 12, section 4613 and
4 4653, which provided regulatory powers, but fail to
5 specify the method of exercising those powers or the
6 statutory limits on those powers.

7 It also provides that the commission may adopt
8 common administrative procedures which satisfy the
9 requirements of the Administrative Procedure Acts of
10 each participating state.

11 The Maine Revised Statutes, Title 12, section
12 4666 specifies methods of giving public notice to
13 proposed and final rulemaking by the commission.

14 The Maine Revised Statutes, Title 12, section
15 4667 provides that rules adopted by the commission
16 shall be enforced by the affected states. It pro-
17 vides for reciprocal enforcement action by participa-
18 ting states. It reaffirms the intent of the Maine
19 Revised Statutes, Title 12, section 6022, subsection
20 6.

21 The Maine Revised Statutes, Title 12, section
22 4668 specifies penalties for violations of rules
23 adopted within this process and sets criteria for de-
24 termination of enforcement jurisdiction.

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