

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 426

H.P. 327 House of Representatives, February 19, 1987
Reference to the Committee on State and Local Government
suggested and ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative MITCHELL of Freeport.
Cosponsored by Representatives RICE of Stonington,
SALSBURY of Bar Harbor and HOLT of Bath.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Clarify the Emergency Rule-making
2 Authority of the Commissioner of
3 Marine Resources.
4

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

7 Sec. 1. 12 MRSA §6171-A, sub-§4, as enacted by
8 PL 1981, c. 427, is repealed.

9 Sec. 2. 12 MRSA §6171-A, sub-§5, as amended by
10 PL 1983, c. 645, §1, is repealed.

11 Sec. 3. 12 MRSA §6171-A, sub-§§4-A and 5-A are
12 enacted to read:

13 4-A. Emergency rules. The commissioner may adopt
14 or amend rules under emergency procedures if immedi-

1 ate action is necessary to prevent serious economic
2 dislocation to the area in which marine resources are
3 harvested.

4 5-A. Procedure. The procedures of subchapter II
5 shall be used in adopting or amending rules autho-
6 rized by this section.

7 Sec. 4. 12 MRSA §6192, sub-§1, as amended by PL
8 1983, c. 645, §2, is further amended to read:

9 1. Procedures. In an emergency adoption or
10 amendment, the commissioner may modify the procedures
11 required under the Maine Administrative Procedure Act
12 and section 6191 in the following manner.

13 A. In an emergency adoption or amendment of
14 ~~regulations~~ rules relating to the public health and
15 and safety, including ~~regulations~~ rules autho-
16 rized under section 6172, prior public notice and
17 hearing shall not be required.

18 B. In an emergency adoption or amendment of
19 ~~regulations~~ rules relating to the general wel-
20 fare, as authorized by section 6171, the
21 ~~regulation~~ rule shall be effective immediately,
22 as provided in subsection 4, ~~but a.~~ A public
23 hearing shall be held in the affected area imme-
24 diately thereafter if requested of the commis-
25 sioner in writing by 5 persons. The hearing shall
26 be held within 10 days of the commissioner re-
27 ceiving the written request. Notice of that hear-
28 ing shall be published once, not less than 5 days
29 prior to the hearing, in a newspaper of general
30 circulation in the affected area.

31 C. In an emergency adoption or amendment of
32 rules relating to gear conflicts, as authorized
33 by section 6171-A, the regulation shall be effec-
34 tive immediately, as provided in subsection 4.
35 Prior public notice and hearing shall not be re-
36 quired. Notwithstanding any other provisions of
37 law, a public hearing shall be held in the af-
38 ected area immediately if requested of the com-
39 missioner in writing by 5 persons. The hearing
40 shall be held within 10 days of the commissioner
41 receiving the written request. Notice of that

1 hearing shall be published once, not less than 5
2 days prior to the hearing, in a newspaper of gen-
3 eral circulation in the affected area. The com-
4 missioner shall decide within 5 business days af-
5 ter the hearing whether to continue or repeal the
6 emergency closure. His findings of fact must in-
7 clude the justification for the repeal or contin-
8 uance of the closure, an analysis of the objec-
9 tions expressed at the public hearing and the
10 date for the end of the closure. Emergency regu-
11 lations under this paragraph may be repealed by
12 the advisory council.

13

STATEMENT OF FACT

14 This bill clarifies the emergency rule-making au-
15 thority of the Commissioner of Marine Resources by
16 consolidating the sections that pertain to emergency
17 rules under the Maine Revised Statutes, Title 12,
18 section 6192. It requires the commissioner to hold a
19 public hearing after promulgating emergency rules for
20 gear conflict and conservation closures if petitioned
21 by 5 persons.

22 The bill repeals the subsections pertaining to
23 the procedure and conditions for adopting emergency
24 rules for gear conflicts in Title 12, section 6171-A.
25 In its place is substituted simpler language for pro-
26 cedures consistent with the sections for conservation
27 and public health and safety closures. The procedure
28 for emergency gear conflict rules is taken out of
29 this section and moved to Title 12, section 6192. The
30 criteria for use of such emergency rules are embodied
31 in Title 12, section 6171-A, subsection 4-A. These
32 criteria and procedures are not substantially
33 changed.

34 The bill amends Title 12, section 6192 to include
35 emergency gear conflict closures with the procedures
36 for emergency rules for public health and safety clo-
37 sures and conservation closures. This section estab-
38 lishes the requirement and time limit for the commis-
39 sioner to grant a public hearing concerning those ac-
40 tions. A written request by at least 5 people re-
41 quires the commissioner to hold a public hearing on

1 the emergency rules on gear conflicts or conservation
2 closures. The public hearing must be held within 10
3 days of receiving the written request and must be ad-
4 vertised and held within the affected area. The com-
5 missioner must prepare findings of fact outlining his
6 justification for the gear conflict closure, a re-
7 sponse to the concerns raised at the hearing and the
8 date when the emergency closure will end.

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