

# MAINE STATE LEGISLATURE

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MARINE RESOURCES

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STATE OF MAINE

SENATE

124TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 611, L.D. 1604, Bill, "An Act To Clarify the Marine Resources Laws To Provide for the Protection of Public Safety and Welfare"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 12 MRSA §6171-A, as amended by PL 1987, c. 100, §§1 to 3, is repealed and the following enacted in its place:

§6171-A. Protection of public health and safety and prevention of gear conflicts

1. Commissioner's powers. The commissioner may investigate conditions affecting public safety, public health or property and conflicts among harvesters of marine organisms. The commissioner, with the advice and consent of the Marine Resources Advisory Council, may adopt or amend such rules as the commissioner considers necessary to:

A. Protect public health;

B. Protect public safety;

C. Prevent property damage; or

D. Prevent gear conflicts and promote the optimum development of marine organisms.

Rules adopted in accordance with this subsection may include, but are not limited to, rules governing area closures when necessary to address conflicts among persons who fish commercially that may cause a threat of harm to a person.

2. Limitations. The limitations of section 6171, subsection 2 also apply to rules to prevent gear conflicts.

3. Considerations. In adopting rules to prevent gear conflicts, the commissioner shall consider:

COMMITTEE AMENDMENT

1 A. Traditional uses of the marine organisms;

2 B. Total economic benefits to the area in which the organisms are harvested; and

3 C. Promotion of the optimum economic and biological management of marine  
4 resources.

5 In each case, the commissioner shall accommodate the needs of all interested parties to  
6 the maximum extent possible, through provisions for joint use, alternate use or other  
7 methods.

8 4-A. Emergency rules. The commissioner may adopt or amend rules on an  
9 emergency basis if immediate action is necessary to protect the public health or public  
10 safety or to prevent property damage or serious economic harm to the area in which  
11 marine resources are harvested.

12 5-A. Procedure. The procedures of subchapter 2 must be used in adopting or  
13 amending rules authorized by this section.

14 Rules adopted pursuant to this section are routine technical rules as defined in Title 5,  
15 chapter 375, subchapter 2-A.

16 **Sec. 2. 12 MRSA §6171-C**, as enacted by PL 2005, c. 44, §1, is repealed.

17 **Sec. 3. 12 MRSA §6172, sub-§1-B**, as enacted by PL 2005, c. 44, §2, is amended  
18 to read:

19 **1-B. Advisory council.** Notwithstanding section ~~6171-C~~ 6171-A, the advice and  
20 consent of the Marine Resources Advisory Council is not required prior to adoption of a  
21 rule under this section.

22 **Sec. 4. 12 MRSA §6192, sub-§1**, as amended by PL 2005, c. 44, §3, is further  
23 amended to read:

24 **1. Procedures.** In an emergency adoption of a rule or amendment to a rule, the  
25 commissioner may modify the procedures required under the Maine Administrative  
26 Procedure Act and section 6191 in the following manner.

27 A. In an emergency adoption of a rule or amendment to a rule relating to the public  
28 health and safety, including rules authorized under sections ~~6171-C~~ 6171-A and  
29 6172, prior public notice and hearing is not required.

30 B. In an emergency adoption of a rule or amendment to a rule ~~relating to the general~~  
31 ~~welfare, as authorized by section 6171 or 6171-A~~, the rule is effective immediately,  
32 as provided in subsection 4. A public hearing must be held in the affected area  
33 ~~immediately thereafter~~ after the rule takes effect if requested of the commissioner in  
34 writing by 5 persons. The hearing must be held within 30 days of the commissioner  
35 receiving the written request. Notice of that hearing must be published once, not less  
36 than 5 days prior to the hearing, in a newspaper of general circulation in the affected  
37 area. In an emergency adoption of a rule or amendment to a rule relating to gear  
38 conflicts, as authorized by section 6171-A, the commissioner shall decide within 5  
39 business days after the hearing whether to continue or repeal an emergency closure.  
40 The commissioner's findings of fact must include the justification for the repeal or  
41 continuance of the closure, an analysis of the objections expressed at the public

1 hearing and the date for the end of the closure. Emergency rules under this paragraph  
 2 may be repealed by the Marine Resources Advisory Council.

3 ~~C. In an emergency adoption of a rule or amendment to a rule relating to gear~~  
 4 ~~conflicts, as authorized by section 6171-A, the rule is effective immediately, as~~  
 5 ~~provided in subsection 4. Prior public notice and hearing is not required.~~  
 6 ~~Notwithstanding any other provisions of law, a public hearing must be held in the~~  
 7 ~~affected area immediately if requested of the commissioner in writing by 5 persons.~~  
 8 ~~The hearing must be held within 30 days of the commissioner receiving the written~~  
 9 ~~request. Notice of that hearing must be published once, not less than 5 days prior to~~  
 10 ~~the hearing, in a newspaper of general circulation in the affected area. The~~  
 11 ~~commissioner shall decide within 5 business days after the hearing whether to~~  
 12 ~~continue or repeal the emergency closure. The commissioner's findings of fact must~~  
 13 ~~include the justification for the repeal or continuance of the closure, an analysis of the~~  
 14 ~~objections expressed at the public hearing and the date for the end of the closure.~~  
 15 ~~Emergency rules under this paragraph may be repealed by the advisory council.~~

16 D. Within 48 hours after the adoption of an emergency rule or an emergency  
 17 amendment to a rule authorized under section 6171-A, subsection 1, paragraph B or  
 18 C, the commissioner shall hold a public meeting in the area affected by the  
 19 emergency rule. A public meeting convened pursuant to this paragraph is not a  
 20 public hearing for purposes of the Maine Administrative Procedure Act.'

21 **SUMMARY**

22 This amendment consolidates the existing rule-making authority of the Commissioner  
 23 of Marine Resources with regard to gear conflicts, public health and the provisions  
 24 proposed in the bill regarding the protection of public safety. It also authorizes the  
 25 commissioner to adopt emergency rules to prevent property damage and provides that the  
 26 commissioner must hold a public meeting within 48 hours of adopting an emergency rule  
 27 regarding the protection of public safety or the protection of property. The amendment  
 28 provides that the public meeting is not a public hearing for purposes of the Maine  
 29 Administrative Procedure Act.

30 **FISCAL NOTE REQUIRED**  
 31 **(See attached)**



Approved: 02/18/10 *MAC*

# 124th MAINE LEGISLATURE

LD 1604

LR 2227(02)

**An Act To Clarify the Marine Resources Laws To Provide for the Protection of Public Safety and Welfare**

**Fiscal Note for Bill as Amended by Committee Amendment "A"**

**Committee: Marine Resources**

**Fiscal Note Required: Yes**

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## Fiscal Note

Minor cost increase - General Fund

### Fiscal Detail and Notes

Additional costs to the Department of Marine Resources can be absorbed within existing budgeted resources.