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Public Law
124th Legislature
Second Regular Session

Chapter 528
S.P. 611 - L.D. 1604

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

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

Sec. 1. 12 MRSA §6171-A, as amended by PL 1987, c. 100, §§1 to 3, is repealed and the following enacted in its place: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

- A. Traditional uses of the marine organisms;
- B. Total economic benefits to the area in which the organisms are harvested; and
- C. Promotion of the optimum economic and biological management of marine resources.

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

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

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

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

Sec. 2. 12 MRSA §6171-C, as enacted by PL 2005, c. 44, §1, is repealed.

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

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

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

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

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

B. In an emergency adoption of a rule or amendment to a rule relating to the general welfare, as authorized by section 6171 or 6171-A, the rule is effective immediately, as provided in subsection 4. A public hearing must be held in the affected area immediately thereafter after the rule takes effect if requested of the commissioner in writing by 5 persons. The hearing must be held within 30 days of the commissioner receiving the written request. Notice of that hearing must be published once, not less than 5 days prior to the hearing, in a newspaper of general circulation in the affected area. In an emergency adoption of a rule or amendment to a rule relating to gear conflicts, as authorized by section 6171-A, the commissioner shall decide within 5 business days after the hearing whether to continue or repeal an emergency closure. The commissioner's findings of fact must include the justification for the repeal or continuance of the closure, an analysis of the objections expressed at the public hearing and the date for the end of the closure. Emergency rules under this paragraph may be repealed by the Marine Resources Advisory Council.

C. In an emergency adoption of a rule or amendment to a rule relating to gear conflicts, as authorized by section 6171-A, the rule is effective immediately, as provided in subsection 4. Prior public notice and hearing is not required. Notwithstanding any other provisions of law, a public hearing must be held in the affected area immediately if requested of the commissioner in writing by 5 persons. The hearing must be held within 30 days of the commissioner receiving the written request. Notice of

~~that hearing must be published once, not less than 5 days prior to the hearing, in a newspaper of general circulation in the affected area. The commissioner shall decide within 5 business days after the hearing whether to continue or repeal the emergency closure. The commissioner's findings of fact must include the justification for the repeal or continuance of the closure, an analysis of the objections expressed at the public hearing and the date for the end of the closure. Emergency rules under this paragraph may be repealed by the advisory council.~~

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

Effective July 12, 2010