

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, March 28, 1962.

The committee on Natural Resources, to whom was referred so much of the Governor's Address (Senate, No. 1) as relates to the establishment of a marine fisheries advisory commission in the Department of Natural Resources and providing a comprehensive program dealing with the marine resources of the Commonwealth; and to segregation of that portion of the fuel tax attributable to the operation of water craft within the Commonwealth for use in said program (page 12); and to whom were referred the petition (accompanied by bill, House, No. 307) of John F. Dolan for establishing an advisory council within the Division of Marine Fisheries and the Division of Law Enforcement of the Department of Natural Resources; the petition (accompanied by bill, House, No. 308) of John F. Dolan relative to fees to be paid to the Director of the Division of Marine Fisheries for issuance of certain certificates and permits and setting up on the books of the Commonwealth a separate fund to be known as the marine fisheries fund; the petition (accompanied by bill, House, No. 1132) of Gerard F. Doherty for legislation relative to the taking of marine fish by spearfishing; the petition (accompanied by bill, House, No. 1840) of Auville W. Putnam and others for legislation to prohibit the catching of flounders in certain waters in the town of Marblehead; and the petition (accompanied by bill, House, No. 2039) of Charles L. Shea for prohibiting the taking of fish for commercial purposes in Quincy Bay, Hingham Bay, Weymouth Fore River and Weymouth Back River, report the accompanying bill (House, No. 3545).

For the committee,

FRANK G. RICO.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Two.

AN ACT RELATING TO THE PROMOTION AND DEVELOPMENT OF MARINE FISHERIES OF THE COMMONWEALTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 21 of the General Laws is hereby amended
2 by inserting after section 5 the following section:
3 *Section 5A.* There shall be in the division of marine fisheries
4 a commission to be known as the marine fisheries advisory
5 commission hereinafter called the commission, which shall con-
6 sist of nine members, qualified in the field of marine fisheries by
7 training and experience, to be appointed by the governor with
8 the approval of the council. As the term of a member expires,
9 his successor shall be appointed for a term of three years, except
10 that initially three members shall be appointed for terms of three
11 years, three members shall be appointed for terms of two years
12 and three members shall be appointed for terms of one year.
13 The governor may also, with the like approval, fill any vacancy
14 in an unexpired term. No member of the commission shall hold
15 any other position in the department while serving as such, nor
16 for a period of two years thereafter. Any member may be re-
17 moved for cause, after hearing by the governor with the ap-
18 proval of the council. The commission shall annually elect its
19 own chairman and clerk and shall keep accurate records of its
20 meetings and hearings and shall meet at least quarterly and at
21 the call of the chairman. A quorum to conduct business shall
22 consist of five members. The commission shall hold public
23 hearings relative to matters within the jurisdiction of the division
24 and shall make recommendations to the director for the proper
25 management and development of the marine fisheries of the
26 commonwealth. The director or his designee shall attend all
27 meetings and hearings of the commission and may present
28 evidence thereat and shall include in his annual report a report
29 of the commission. The members of the commission shall serve

30 without compensation but shall be reimbursed for actual ex-
31 penses incurred in the performance of their official duties.

1 SECTION 2. Chapter 130 of the General Laws is hereby
2 amended by inserting after section 2 the following section: —
3 *Section 2A.* Moneys received by the commonwealth for exist-
4 ing licenses, certificates, permits, fines or other penalties relating
5 to marine fish and fisheries and such sums as may be credited
6 under section thirteen of chapter sixty-four A, and all sums re-
7 ceived by the commonwealth from the federal government on
8 account of activities of the division of marine fisheries shall be
9 credited to a fund to be known as the Marine Fisheries Fund.
10 All moneys in said fund shall be appropriated only for the pur-
11 pose of maintaining, managing, operating and administering the
12 division of marine fisheries in carrying out its functions as set
13 forth in section five of chapter twenty-one.

1 SECTION 3. Said chapter 130 is hereby further amended by
2 inserting after section 17 the following section: —
3 *Section 17A.* Upon petition signed by any interested party
4 or upon his own motion, the director shall submit to the marine
5 fisheries advisory commission proposals relating to the manage-
6 ment of the marine fisheries. After public hearing, notice of
7 which shall be published in a newspaper of general distribution
8 in the areas affected, the commission shall in writing approve or
9 disapprove such proposals. If the proposal is approved, the di-
10 rector shall in accordance with such approval adopt, amend or
11 repeal rules and regulations not contrary to law which shall have
12 the effect of law upon the further approval of the commissioner
13 and which shall govern the following activities only:
14 (1) The manner of taking fish;
15 (2) The legal size limits of fish to be taken;
16 (3) The seasons and hours during which fish may be taken;
17 (4) The numbers or quantities of fish which may be taken;
18 (5) The opening and closing of areas within the coastal waters
19 to the taking of any and all types of fish; provided that no area
20 shall be so opened or closed without the consent of the selectmen
21 of a town or the mayor and council of a city affected thereby.
22 Upon the request of the commission, the selectmen or mayor
23 and council shall hold a public hearing upon the question and
24 shall thereafter notify the commission in writing within forty-

25 five days after such request has been received or consent will
26 be deemed to have been granted.

1 SECTION 4. Said chapter 130 is hereby further amended by
2 striking out section 104 and inserting in place thereof the follow-
3 ing section: —

4 *Section 104.* This chapter shall not be deemed to affect any
5 privileges granted in any special statute relating to fisheries in
6 any particular place, except such provisions thereof as relate to
7 shellfish and shellfisheries, to alewife fisheries, and to those
8 activities which may be the subject of rules and regulations under
9 section seventeen A.

1 SECTION 5. Chapter 21 of the General Laws is hereby
2 amended by adding after section 15 the following new section: —

3 *Section 16.* There is hereby established in the department
4 a board to be known as the public access board composed of the
5 commissioner of the department of natural resources, who shall
6 be designated chairman, the director of the division of fisheries
7 and game and the director of the division of motorboats. The
8 board shall meet at the call of the chairman and shall by ma-
9 jority vote designate locations of public access and related fa-
10 cilities to great ponds and the coastal waters. There is hereby
11 established a fund to be known as the Public Access Fund to
12 which shall be credited such sums as shall be determined under
13 the provisions of section thirteen of chapter sixty-four A. Such
14 fund shall be expended subject to appropriation, only for the
15 purpose of providing public access and related facilities in and to
16 great ponds, as defined in chapter ninety-one, and coastal waters
17 as defined in chapter one hundred and thirty, and the access
18 board shall designate the department of public works as the
19 contracting agent for the expenditure of such funds.

1 SECTION 6. Chapter 91 of the General Laws is hereby
2 amended by adding after section 5, the following section: —

3 *Section 5A.* The department shall, after notice in writing
4 signed by the chairman of the access board established under
5 chapter twenty-one, and with the consent of the governor and
6 council, take by eminent domain, under the provisions of chapter
7 seventy-nine, such land and water areas designated by said
8 board for the purposes of providing public access and related

9 facilities in and to coastal waters, as defined in chapter one
10 hundred and thirty, and great ponds, as described in chapter
11 ninety-one, and shall construct and maintain such roads, parking
12 areas, docks, ramps and related facilities as may be designated
13 by said board. The cost of such acquisition and construction
14 shall be chargeable to the Access Fund established under section
15 sixteen of chapter twenty-one.

1 SECTION 7. Said chapter 64A is hereby amended by striking
2 out section 13 and inserting in place thereof the following sec-
3 tion: —

4 *Section 13.* All sums received under this chapter as excise,
5 penalties or forfeitures, interest, costs of suit and fines shall be
6 paid into the treasury of the commonwealth, and shall be cred-
7 ited by the treasurer of the commonwealth in accordance with
8 the provisions of this section. Whereas at least one and one-
9 fifth per cent of all the fuel upon which an excise is levied under
10 section four is used in producing or generating power for the
11 operation of watercraft of every description, except seaplanes,
12 and not for propelling vehicles on public highways; said one
13 and one fifth per cent of the total of said excise shall be deter-
14 mined by the treasurer who shall thereafter credit such amount
15 as follows: one fifth of one per cent of the said fuel excise shall
16 be credited to the Inland Fisheries and Game Fund established
17 by chapter one hundred and thirty-one, section three A; two
18 fifths of one per cent of said excise shall be credited to the Public
19 Access Fund as established by section sixteen of chapter twenty-
20 one; two fifths of one per cent of said excise shall be credited
21 to the Marine Fisheries Fund established by section two A
22 of chapter one hundred and thirty; and one fifth of one per
23 cent of said fuel excise shall be credited to the Recreational
24 Boating Fund established under section sixteen of chapter
25 ninety B. The remaining ninety-eight and four fifths per cent
26 of such excise and all other sums received under this chapter
27 shall be credited to the Highway Fund.

1 SECTION 8. Section 4 of chapter 64A of the General Laws, as
2 amended by section 1 of chapter 411 of the acts of 1960, is hereby
3 further amended by adding at the end thereof the following para-
4 graph: —

5 The excise levied by this section includes, but is not limited

6 to, an excise on fuel sold by the distributor, or imported or caused
7 to be imported by an unclassified importer, for use in producing
8 or generating power for the operation of water craft of every
9 description, except a seaplane.

1 SECTION 9. The first sentence of section 7 of said chapter
2 64A, as appearing in section 1 of chapter 728 of the acts of 1957,
3 is hereby amended by inserting after the word "except", in
4 line 4 the following words: — "in producing or generating power
5 for the operation of water craft of every description, other than
6 a seaplane, or,".

1 SECTION 10. Said chapter 130 is hereby further amended by
2 striking out the last paragraph of section 2 as most recently
3 amended by section 37 of chapter 98 of the acts of 1945, and
4 inserting the following new paragraph: —

5 Whoever violates any provision of this chapter or any rule
6 or regulation made under authority thereof, unless otherwise
7 provided, shall be punished by a fine of not less than ten nor
8 more than one thousand dollars, or by imprisonment for not
9 more than one month, or both. Any penalty imposed under
10 this section may be in addition to forfeiture proceedings which
11 may be instituted under authority of section nine and action
12 under section two relative to the suspension or revocation of
13 licenses, permits or certificates.

HOUSE

No. 5548

THE CONSTITUTION OF THE UNITED STATES

1787

... the ... of ...

... the ... of ...