

By Mr. Hynes of Marshfield, petition of Frank M. Hynes, Marc C. Montigny, Steven Angelo, John C. Klimm, Therese Murray and Bruce E. Tarr for legislation to further regulate marine fisheries in the Commonwealth. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Four.

AN ACT TO FURTHER REGULATE MARINE FISHERIES.

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. Purpose — It is hereby determined essential to
2 the public interest that the regulation of marine fisheries achieve
3 effective conservation for maximum sustainable yield based on
4 empirically verified data using reliable procedures and method-
5 ology.

1 SECTION 2. Regulatory Balance — Conservation of the fish-
2 ery resources for commercial and recreational harvesters must be
3 balanced with mitigation of economic impacts on harvesters. The
4 Division of Marine Fisheries is charged hereunder with develop-
5 ment of procedures and methodologies to achieve such regulatory
6 balance. Procedures and methodologies shall be published in the
7 Code of Massachusetts Regulations and shall specify standards to
8 be applied by the Division of Marine Fisheries and the Marine
9 Fisheries Advisory Commission in data collection, verification,
10 and support and development of regulatory conservation mea-
11 sures.

1 SECTION 3. Director of Marine Fisheries — The Commis-
2 sioner of the Department of Fisheries, Wildlife, and Environ-
3 mental Law Enforcement shall have the authority, with the
4 approval of the Marine Fishery Advisory Commission, to appoint
5 or remove the Director of Marine Fisheries. The Director of

6 Marine Fisheries shall be qualified in the field of marine fisheries
7 by training and experience.

1 SECTION 4. Marine Fisheries Advisory Commission — There
2 shall be in the Division of Marine Fisheries a commission to be
3 known as the Marine Fisheries Advisory Commission, which shall
4 consist of nine members. The Commission will advise the
5 Director, review fishery management plans and other regulations,
6 to ensure that they achieve effective conservation for maximum
7 sustainable yield. The governor shall appoint the members of the
8 Marine Fisheries Advisory Commission, which shall consist of
9 two members from the commercial mobile gear industry, two
10 members from the commercial fixed gear industry, two members
11 representing environmental interests, and two members represent-
12 ing recreational fishermen. The other member of the Commission
13 shall be qualified in the field of marine fisheries by training and
14 experience. Each member shall serve for a term of three years. No
15 member of the Commission shall hold any other position in the
16 department while serving as such, nor for a period of two years
17 thereafter. The Commission shall annually elect its own chairman
18 and clerk and shall keep accurate records of its meetings.

1 SECTION 5. Meetings and Hearings of the Commission —
2 The Commission shall meet at least quarterly, and more often at
3 the call of the chairman. A quorum to conduct business shall con-
4 sist of five members. The Commission shall hold public hearings
5 relative to matters within the jurisdiction of the division and shall
6 make recommendations to the director for the proper management
7 and development of the marine fisheries of the commonwealth.
8 The director or his designee shall attend all meetings and hearings
9 of the Commission and shall include in his annual report a report
10 of the Commission. The members of the Commission shall serve
11 without compensation but shall be reimbursed for actual expenses
12 incurred in the performance of their official duties.

1 SECTION 6. Fishery Management Plan — (A) The Director,
2 within nine months of the effective date of this legislation, shall
3 (1) Identify a specific fishery for management, and
4 (2) Prepare a fishery management plan for the fishery.

5 (B) Any plan developed by the Director shall be consistent with
6 the following standards:

7 (1) Conservation and management measures shall be based
8 upon the best scientific information gathered for the
9 Massachusetts fishery.

10 (2) Conservation and management measures shall promote effi-
11 ciency in the utilization of fishery resources; except that no such
12 measure shall have economic allocation as its sole purpose.

13 (3) Conservation and management measures shall take into
14 account and allow for variations among, and contingencies in,
15 fisheries, fishery resources, and catches.

16 (4) Conservation and management measures shall minimize
17 costs and avoid unnecessary duplication.

18 (5) Conservation and management measures shall be consistent
19 with federal laws and regulations.

20 (6) Conservation and management measures shall not discrimi-
21 nate between different fishermen. If it becomes necessary to allo-
22 cate or assign fishing privileges among various fishermen such
23 allocation shall be (A) fair and equitable to all such fishermen (B)
24 reasonably calculated to promote conservation; and (C) carried
25 out in such manner that no particular individual, corporation, or
26 other entity acquires an excessive share of such privileges.

27 (C) All the evidence, scientific data and reports relied upon by
28 the Director in the development of the plan shall be specifically
29 identified and shall become part of the administrative record.
30 When the Director prepares the fishery management plan, the
31 Director shall immediately

32 (1) Submit such plan, and proposed regulations to implement
33 such plan, to the Commission for its approval and comment. The
34 plan submitted to the Commission shall also be accompanied with
35 the administrative record containing all evidence, scientific data
36 and reports relied upon by the Director for the development of the
37 plan.

38 (2) Public notice of the plan shall be given, in accordance with
39 Chapter Thirty A of the Massachusetts General Laws, stating the
40 plan is available and that a public hearing will be held at which
41 time any interested party may submit written or oral comments on
42 the plan to the Commission. The public comments shall become
43 part of the administrative record.

44 (D) The Commission must submit its approval or disapproval
45 of the plan within 75 days of the date the plan was submitted to
46 the Commission by the Director

47 (1) If the Commission rejects the plan the Director shall have
48 thirty days to amend the plan according to the Commission's rec-
49 ommendations. The plan is then resubmitted to the Commission
50 for its approval or disapproval within thirty days.

51 (2) If the Commission approves the plan it shall become effec-
52 tive thirty days after its decision.

53 (E) The Commission's decision shall state in sufficient detail
54 the reasons for its decision showing a substantial basis on the
55 administrative record, and such decision shall become part of the
56 administrative record.

1 SECTION 7. Rules and Regulations — The Director shall have
2 the authority to adopt, amend or repeal all rules and regulations
3 relative to a fishery management plan, or which are necessary for
4 the maintenance, preservation and protection of all marine fish-
5 eries resources between the mean high water mark of the com-
6 monwealth and a straight line extension of the lateral boundaries
7 of the commonwealth drawn seaward to a distance of 200 nautical
8 miles or to a point where the water depth reaches 100 fathoms,
9 whichever is greater. While exercising this authority the Director
10 shall act in accordance with, and subject to the provisions of
11 Chapter Thirty A of the General Laws of the Commonwealth, and
12 under the following procedures:

13 (A) The Director shall receive petitions signed by any party rel-
14 ative to implementation or amendment of a fishery management
15 plan and shall either approve the petition for action or reject it
16 within thirty (30) days.

17 (1) If the petition is accepted the Director must present a plan
18 within 9 months to the Commission, in accordance with the proce-
19 dures set forth in subsections (B) through (I).

20 (2) If the petition is rejected then the interested party may fol-
21 low the procedures set forth in subsection H.

22 (B) The Director shall notify the Marine Fisheries Advisory
23 Commission of his intent to adopt, amend or repeal any rule or
24 regulation. Along with such notice the Director will present to the
25 Commission all evidence, scientific data, and reports relied upon

26 for his action. Such evidence shall be the complete administrative
27 record supporting the Director's proposed action.

28 (C) Within thirty days of receiving notice of the Director's pro-
29 posed action, the Commission shall hold a public hearing, in
30 accordance with Chapter Thirty A of the General Laws of the
31 Commonwealth of Massachusetts.

32 (D) Any interested party may submit their written or oral com-
33 ments on the Director's proposed action at the public hearing,
34 which shall be part of the administrative record.

35 (E) Within thirty days after the public hearing, the Commission
36 may recommend approval or disapproval of the Director's pro-
37 posed action. Such recommendation shall be in writing and will
38 state in sufficient detail the reasons, based on the administrative
39 record, for the decision. Such recommendation shall become part
40 of the administrative record, and the complete administrative
41 record shall be sent to the Director.

42 (F) The Director may decide to accept or reject the
43 Commission's recommendation. The Director's decision shall be
44 in writing and state in sufficient detail the reasons, based on the
45 complete administrative record, for the decision.

46 (G) The Director's decision must be supported by substantial
47 evidence on the complete administrative record.

48 (H) Within thirty (30) days of the Director's decision, any
49 interested party may petition the Commissioner of the Department
50 of Fisheries, Wildlife, and Environmental Law Enforcement, for a
51 rehearing. If the Commissioner fails to deny or grant the petition
52 within thirty (30) days of the filing of the petition then the
53 Director's decision is deemed to be affirmed. The interested party
54 may seek judicial review in the Appeals Court within thirty (30)
55 days, in accordance with the provisions of Chapter Thirty A of the
56 General Laws of the Commonwealth of Massachusetts, if the
57 Commissioner does any of the following:

- 58 (1) denies the petition for rehearing;
59 (2) affirms the Director's decision after a rehearing; or
60 (3) takes no action on the petition.

61 (I) Neither the Director nor the Commissioner shall enter into
62 or otherwise consent to any agreements for or pertaining to the
63 preparation of a fishery management plan, an amendment to a
64 plan, or a regulation, and shall not maintain nor continue any such
65 agreement or consent.

1 SECTION 8. Emergency Regulations — The director, subject
2 to the notice provisions of Chapter Thirty A of the Massachusetts
3 General Laws, without hearing, may promulgate emergency regu-
4 lations, with the approval of the Commission, necessary for the
5 immediate management and control of the marine fisheries. The
6 Director shall notify the Commission of the reasons, in sufficient
7 detail, for the emergency regulation and will present all data relied
8 upon to develop the emergency regulation. All the evidence, sci-
9 entific data and reports relied upon by the Director shall become
10 part of the administrative record. Such emergency regulations may
11 be limited in time but shall not remain in effect for a period longer
12 than forty-five days and shall not be renewed.

1 SECTION 9. Administrative Record — The administrative
2 record shall consist of all records, investigative reports, scientific
3 data, oral or written testimony, and any other documents relied
4 upon by the Director or the Commission when approving or pro-
5 mulgating rules and regulations. Any factual information, materi-
6 als or other matters not contained in the administrative record
7 shall not be considered by the director nor by the Commission
8 when promulgating rules and regulations, in accordance with, and
9 subject to, Chapter Thirty A of the General Laws of the
10 Commonwealth of Massachusetts.

1 SECTION 10. Prior Acts — This Act shall supercede all prior
2 Acts, Resolves, and Statutes which are inconsistent with the above
3 Act.

1 SECTION 11. The Marine Fishery Advisory Commission
2 established hereunder shall replace and supercede the Marine
3 Fishery Advisory Commission existing under prior law and
4 appointments to the positions of Commissioners on the Marine
5 Fishery Advisory Commission established hereunder shall be
6 made within sixty (60) days from the date of enactment hereof.
7 Provided regulations adopted under prior law shall remain in force
8 and effect.

