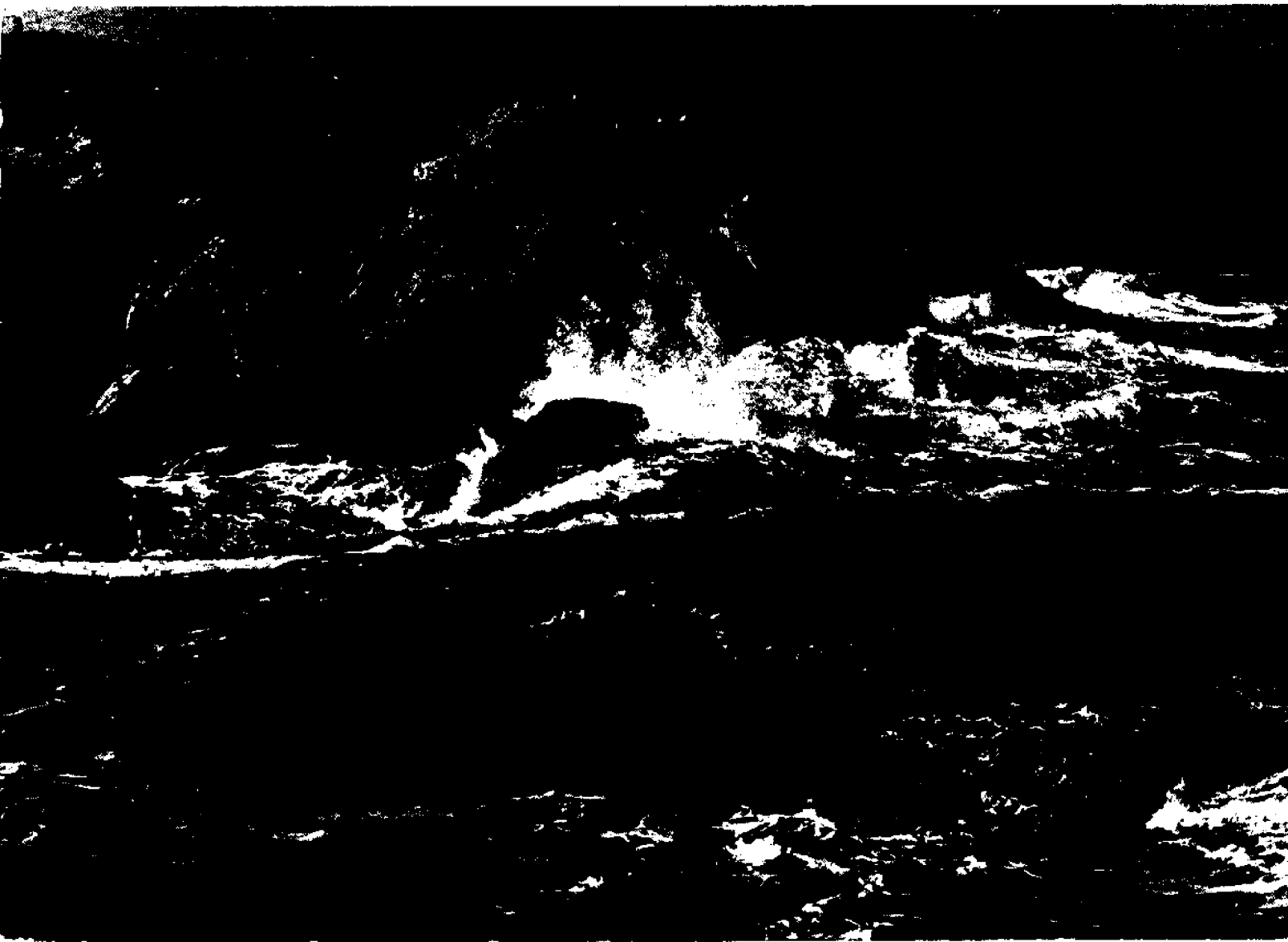


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STATE GOVERNMENT ORGANIZATION: AGENCIES DEALING WITH MARINE RESOURCES

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and the National Science Foundation



ACKNOWLEDGEMENTS

We wish to express thanks to the many State officials in ocean related agencies for their excellent cooperation and the many courtesies extended to this project. They have been the source of vital information and have made a unique contribution to this report. It is not to be assumed, however, that such officials necessarily share the interpretations and opinions herein expressed unless such opinions have been directly attributed to them. Hopefully, even areas of disagreement will not obscure our deep appreciation for such invaluable assistance.

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MAINE LAW AFFECTING MARINE RESOURCES

VOLUME I

STATE GOVERNMENT ORGANIZATION:
AGENCIES DEALING WITH MARINE RESOURCES

Partial Report Under a Study Carried
Out Under the Joint Sponsorship Of:
The School of Law and the University of Maine
and
The National Science Foundation

PELL MARINE RESEARCH CENTER
UNIVERSITY OF MAINE
NOV 1969

Research Director: Harriet P. Henry
Research Associate in Marine Law
University of Maine School of Law

Project Director: David J. Halperin
Professor of Law
University of Maine School of Law

PREFACE

A lobster dealer comments, with an air of resignation, on what he views as erratic inspection and enforcement practices; a member of one government agency claims another agency's project spoiled his research work.....

Charged with the responsibility of surveying all of Maine's law having an impact on the exploitation of marine resources, it became apparent to the authors that the structure of government plays at least as important a role in the process as the substance of the laws which government administers. We therefore present this volume as an integral part of the larger study of Maine law affecting marine resources. Additional volumes will appear within the next four months; these will deal in detail with the substantive laws of Maine affecting the resources of the sea, and will treat in greater detail the operations of some of the agencies referred to in this volume.

This study of Maine law is being carried out as a joint project of the School of Law of the University of Maine and the National Science Foundation, made possible by the encouragement and financial assistance of the Office of Sea Grant Programs, National Science Foundation. The major portion of the funds expended in support of this project were furnished to the School of Law under Grant No. GH 0022 awarded by the National Science Foundation pursuant to the National Sea Grant Colleges and Program Act of 1966, Public Law 89-688.

Portland, Maine, November 1, 1969

NON-STANDARD ABBREVIATIONS

For the sake of brevity, the following non-standard abbreviations and forms of citations have been used in this report.

Supreme Court	Refers to the Supreme Judicial Court of Maine unless otherwise indicated.
P.L. 1969, c.23	Public Laws of Maine are cited by legislative year and chapter number.
P.&S.L. 1969, c.22	Private and Special Laws of Maine are cited by legislative year and chapter number.
Resolves, 1969, c.21	Resolves of the Legislature are cited by legislative year and chapter number.
32 M.R.S.A. 1751	Public Laws of Maine which are compiled in Maine Revised Statutes Annotated will generally be cited by reference to the Title and Section numbers of Maine Revised Statutes Annotated.

(Supp.) When followed by (Supp.), a citation in the above form refers to the Cumulative Pocket Supplement for use in 1968-9 of Maine Revised Statutes Annotated.

Even though collected in Maine Revised Statutes Annotated, public laws may be referred to by legislative year of enactment and chapter number:

When year of enactment is material
When year of amendment is material
When statute is referred to for first time.

An asterisk (*) indicates that a position on a public agency is held by discretionary appointment, as opposed to positions held ex officio by statutorily-designated public officers.

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CHAPTER I STATE GOVERNMENT STRUCTURE

An institution is the lengthened shadow of one man...
Ralph Waldo Emerson.

All the State's activities should be under constant survey for any possible consolidation that might make for efficiency and economy ...William Tudor Gardiner.¹

INTRODUCTION

An important aspect of Maine law affecting marine resources is the structure of the administrative machinery responsible for ocean related activity. In Maine there are over 200 state entities, other than towns, cities, or counties, which are creatures of the legislative or executive branch. Of this number, approximately 50 are concerned with marine resources. A survey of State agencies has been made to help provide answers to the following questions: (1) Could better management of Maine's ocean potential, both from an economic and conservation point of view, be achieved by a realignment or consolidation of some of these entities? (2) If so, what should be the configuration of any new administrative structure? (3) What are the compelling reasons for, or obstacles to be overcome in making any recommended changes? The results of this investigation are set forth as follows.

PART I Summary of Findings: Part One will present a summary of the findings of the survey which will include general observations on the

1. Inaugural Address, January 3, 1929, Laws of Maine, 1929, p.904.
"...We may well contemplate the possibility of such a departmental reorganization as would group the State's activities under very few heads. A department head would then be such an important executive office that the appointment could not be used to fulfill political obligations. Perhaps such a change could be accomplished only gradually..."

2.

administrative structure, a categorization of the diverse agencies, specification of the areas in which there is no law or inadequate law, and suggestions for possible realignment and consolidation of these agencies.

PART II Description of State Agencies: Part II will contain a description of the approximately 50 agencies or commissions concerned with marine resources. This survey differs from any prior study of Maine State Government in that it does not purport to be a comprehensive analysis of State government, but rather a selective analysis of those portions of each department or agency that are integrally involved in or related to the exploitation of the ocean. Portions of organizations not usually associated with oceanography have been included for it is blatantly apparent that law affecting marine resources does not stop at the water's edge. As a corollary, it is equally true that portions of some departments that make a substantial contribution to ocean related activities are also entrusted with other functions which are completely unrelated. The interrelationship of these marine resource agencies will be noted. Laws of agencies most immediately involved with the ocean will be dealt with more exhaustively in subsequent chapters.

PART III Attitudes and Philosophies on Reorganization: The existence of over 200 State entities is a situation which is not unique to Maine, but that fact does not make State administration any less cumbersome. It might well have been written about Maine -- "Heads of many of Maryland's 246 executive agencies have told Governor Marvin Mandel they are all for reorganization as long as it doesn't cost them status,

economy, personnel, or money. Receptivity to recommended reorganization in Maine is somewhat comparable to the climate in Maryland. As in Maryland, many recommendations in the past for reorganization have been discounted, rightly or wrongly, as textbook approaches. Perhaps no consolidation plan will be put into effect unless the reasons for reorganization are more compelling than the reasons for resistance to change and there is a simultaneous determination by a strong executive and a strong Legislature.

Consideration will be given in this Part not only to the reasons for reorganization, but reasons why reorganization has not made much headway in the past. Validity of these speculations, however, must be tested against each individual's knowledge, for many of the reasons for resistance to change are not a matter of public record but are found in informal, privately expressed opinions.

PART IV Selected Proposals for Governmental Reorganization: "Plus ca change, plus c'est la meme chose." It would be completely false to convey the impression that this report has turned up anything that had not been "known" before. The 1930 Gardiner Report ³ still makes fascinating reading. Proposals contained therein were instrumental in affecting the last major consolidation of State agencies, but many recommendations remain unheeded. A more recent study was the Public

2. The Washington Post, Sunday, April 13, 1969, p. A-25.

3. State Administrative Consolidation in Maine, National Institute of Public Administrative, New York City, 1930.

Administration Service Report of 1956 which met an untimely political death with the changing of the guard. More recently the Governor's Task Force on Governmental reorganization has attempted to wrest anew with the old problems. So continues the pattern evident in the last three decades of ideas not yet ripe for their time coming to rest without sacramental burial in the Legislative Research Committee or other convenient receptacles.

PART I SUMMARY OF FINDINGS

As is true on the national level, there is no single department, agency, or commission under which all oceanographic endeavor either could or should be placed. It is immediately apparent, however, from even a preliminary investigation of State agencies, that there are certain basic deficiencies in the organizational structure for the management of the State's marine resources. These deficiencies include a multiplicity of agencies; overlapping and sometimes conflicting jurisdiction; areas in which the Legislature has failed to assign responsibility for carrying out a general or specific function, or has not bestowed authority commensurate with the assigned responsibility; inadequate or complicated financing; and the absence of any forum or administrative machinery below the gubernatorial level to centralize decision making with regard to marine resources as a whole or to resolve inter-departmental conflicts in the use of and the priority for development of these resources. The State Planning Office has been assigned

4. Organization and Administration of the Government of the State of Maine, Public Administration Service, 1956.

the responsibility for developing the State Comprehensive Plan and to be the State coordinating agency between the several officers, authorities, boards, commissions, departments, and divisions, but this much needed staff function is hardly a substitute for strong operational departments.

These problems are compounded by a constitutionally weak executive, who, no matter how strong a personality or dynamic leader, is hampered by the legal structure. Perhaps among the greatest constitutional and statutory road blocks are the absence of gubernatorial appointive power for some key State officials and overlapping terms of these and other officials which dilutes the responsiveness and responsibility to the chief executive.

GENERAL OBSERVATIONS

Laws governing Maine's marine resources may roughly be categorized as primarily promotional, operational, or regulatory. In many of the agencies affecting these resources, the three functions have been combined. There has been little evidence of long range planning and goal setting and a minimum of research activity to provide the requisite knowledge necessary to draw up a meaningful comprehensive plan. In the absence of a comprehensive plan, regulatory measures, such as zoning and land use controls, designed to preserve the integrity of the marine environment have either not been enacted, are inadequate, or difficult to enforce in the absence of clear cut policy decisions as to the allocation of Maine's coast, submerged lands, and marine resources between the conflicting needs of exploitation and preservation.

6.

Here again lack of knowledge has made it possible on one hand for anything to happen because of economic pressures and no reliable measure of the detriment to the environment, and on the other hand for nothing to happen because of real or supposed danger to the marine environment.

Planning

New interest in planning has been fanned by the availability of federal funding for a variety of programs. The conditions under which planning grants are awarded and the subsequent "award" by funding for approved projects has had an important influence in shaping the development and conservation of Maine's resources. Similarly, bona fide State plans may be either accelerated or torpedoed merely by turning on or off the federal financing. For example, it is submitted that the time table set by the Environmental Improvement Commission for bringing Maine's tidal and inland waters up to classification is physically and fiscally impossible because of the unavailability of federal matching funds. Even an eleventh hour largess from the Federal Government would fail to accomplish the results because if the work is not spread out over a period of years, sufficient State funds and the scarce technical and engineering talent available in Maine could not be brought to bear on the problem. A comparable situation of State helplessness in the face of federal financing is the Camp Ellis beach erosion situation, (See Chapter on Soil Erosion) which may or may not have resulted from failure of the federal government to meet on schedule previously announced commitments. A consolidated agency might better reap the benefits of federal planning grants and funding, while at the same time preserving an orientation that takes into

account Maine's uniqueness.

Accommodation for Change

Except for fishing and transportation, the present organizational set-up makes no provision for any extensive activity in the ocean; there is no legislative provision for the regulation and promotion of other activities; and there is no non-legislative way of accommodating new uses, nor of developing modes whereby conflicts among possible uses of a resource or area are resolved. Until recently, the problem has been academic. Without attempting to prescribe in detail how allocation of the ocean bottom and territorial sea should be handled for mining, aquaculture, sea moss gathering, fishing, recreational uses, weather reporting, hardware testing, etc., the machinery should be set up to process such activity on a planned rather than an ad hoc basis, and laws should be enacted that will assure that allocation for one activity will not tie up in perpetuity resources for which a better or more profitable use might develop.

Combination of Agencies

Although all the listed agencies are interrelated, they are related to each other in different ways and in varying degrees. For example, the Maine Mining Bureau should have a close working relationship with the Department of Sea and Shore Fisheries in the exploitation of the continental shelf, but on terra firma it is more closely related to the Forestry Department whose Commissioner is the Land Agent and is responsible for the administration of State owned land. Similarly,

8.

the Department of Inland Fish and Game has close interests with the Department of Sea and Shore Fisheries for anadromous fish, pollution, watercraft safety, wetland control, etc., but it has a different, equally close relationship with the Forestry Department and Parks and Recreation in game management and recreational uses. Any realignment plan will have to weigh the relative affinity of one agency to another and to all other agencies in suggesting a new organization. The bias of the suggestions listed below is clearly oriented toward marine resources.

Enforcement Service

Unnecessary fragmentation can be seen in the separate warden services for the Department of Inland Fish and Game and the Department of Sea and Shore Fisheries as well as the ranger services of the Parks and Recreation Commission and the Forestry Department. In many instances particular training and background are necessary for carrying out specific functions, but consolidation need not eliminate specialization. A centralized warden, ranger, resource control enforcement service could assign personnel to departments and divisions much in the same way that the Attorney General assigns assistant attorneys general permanently to different departments. Advantages of a consolidated warden service are immediately apparent in the overseeing of statutory requirements for the laws and regulations of the Environmental Improvement Commission, the Maine Mining Bureau, and the Parks and Recreation Commission, agencies which at present are not equipped to carry out other than land based surveillance.

AREAS IN WHICH NO LAW OR LAW INADEQUATE

Viewed today, it seems apparent that most of Maine's laws dealing with marine resources have been enacted as an ad hoc reaction to a specific problem arising in connection with a specific resource. Faced with such a specific problem, the Legislature formulated a fairly specific solution, and assigned an implementing role to some agency of government. Frequently, because the problem seemed to be new or specialized, it seemed logical to assign implementation to a new and specialized agency.

As this process has continued, it has created the profusion of agencies referred to previously. But in addition, since so much legislation has been specific-problem oriented, there are considerable gaps: problem-areas which are not dealt with, agencies whose powers are not sufficient to fulfill their intended responsibilities, and the like. At best, such vacuums create legal uncertainty which discourages potentially valuable research and development; at worst, it may yield unwitting destruction of irreplaceable resources, through unregulated exploitation or through development of one resource at the expense of another.

The following list cannot be exhaustive; it includes only those legal gaps which have come to light during the course of this project, and more fruitful imaginations can, no doubt, extend it.

Present Deficiencies in State Governmental Structure

1. No State Agency has an over-all view or authority to coordinate or manage the State's marine resources.
2. There is no tribunal or person to assign priorities for or to resolve conflicting uses of marine-resources.
3. The promotional and regulatory aspects of the development of marine resources are often centered in the same agency or in the same person.
4. There is no provision for authorizing the prospecting and production of oil and gas from Maine's territorial sea.
5. There is no clear cut allocation of responsibility for the mining of sand and gravel from the territorial sea and tidal rivers and estuaries.
6. There is no provision, with the exception of sea moss, for the commercial harvesting of vegetable resources from the sea other than provisions for experimentation and research found under the laws of the Department of Sea and Shore Fisheries.
7. With the exception of clams and oysters, provision for aquaculture of marine species is limited to the same provisions for research and experimentation mentioned in point (6.) above. The laws for the cultivation of oysters are inadequate because of the necessity of obtaining the permission of the adjacent riparian proprietor. Statutory authority for licensing cultivation of oysters from rafts is non-existent.
8. There is no statutory machinery to adequately safeguard living marine resources. E.g., Sea and Shore Fisheries have no official voice in establishing water classification; Sea and Shore Fisheries have been designated, without statutory authority or appropriations, to work with the Corps of Engineers in ruling on whether a dredging and filling project would be harmful to the ecology or marine life in the area.
9. The State has extremely limited control of the water resources of Maine.
10. No State agency other than the Legislature has the authority to pass on the desirability of dams or to prohibit their construction.
11. No State agency is responsible for preventing or alleviating beach erosion.
12. There is no statutory authority for municipalities or councils of governments to regulate oil or other pollution in their harbors. No present State machinery is in existence to fulfill the function, although the Environmental Improvement Commission has jurisdiction in this area.

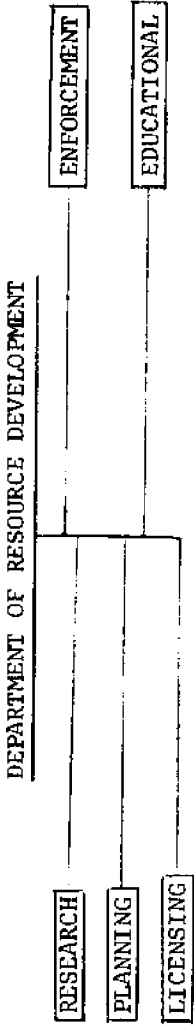
PROPOSED ORGANIZATIONAL STRUCTURE

From the point of view of the development and conservation of Maine's marine resources, a Department of Resource Development is proposed. It would contain three major divisions -- Promotional and Finance, Development, and Land and Water Use Controls. Serving all three divisions would be staff divisions of research, planning, licensing, enforcement, and education which would include a unified warden-ranger service. If a super-agency cannot be immediately accepted, the three main divisions could be separate departments with some realignment of functions. Listed below are proposed placement of functions that are now in the listed agencies.

In suggesting possible realignment of the State's administrative structure, the following objectives were considered:

1. Long range maximum utilization of Maine's marine resources.
2. Coordinated management of Maine's marine resources.
3. Administrative mechanism for assigning priorities and resolving conflicting uses of marine resources.
4. Promotion of research capacity.
5. Separation of promotional and regulatory functions.
6. Reduction in number of State agencies and interlocking boards of directors.

For purposes of this inquiry, no attempt has been made to sort out line and staff functions or suggest the obvious abolition or combination of some agencies, bureaus, and advisory boards.



LAND AND WATER USE CONTROLS

- Functions from Divisions of Sanitary Engineering, Department of Health and Welfare
- Maine Land Use Regulation Commission
- Wetlands Control Board
- Soil and Water Conservation Commission
- Environmental Task Force
- Environmental Improvement Commission
- Coordinator of Atomic Development Activities
- Board of Pesticides Control
- Keep Maine Scenic Committee
- Scenic Highway Board
- Bureau of Watercraft Registration
- Maine Mining Commission
- Conservation Functions of Gas and Oil Development
- Inspectors of Dams and Reservoirs
- Penobscot Bay and River Pilotage Commission

PROMOTION AND FINANCE

- Department of Economic Development
- Maine Publicity Bureau
- State Geologist
- Maine Industrial Building Authority
- Maine Recreational Authority
- Municipal Securities Approval Board
- Department of Economic Development Advisory Board

DEVELOPMENT*

- States Parks and Recreation Commission
- Forestry Department
- Maine Mining Bureau
- Department of Inland Fish and Game
- Department of Sea and Shore Fisheries
- Maine Sardine Council
- Atlantic Sea Run Salmon Commission
- Advisory Council Sea and Shore Fisheries
- Advisory Council Inland Fish and Game

*The Department of Agriculture has been left outside the consolidated agency. It would still retain the inspection functions with regard to sardines. Any responsibility added by seafood inspection bill on the federal level would be delegated to this Department.

to make and confirm an appointment, similar approval is necessary to
remove an appointee.⁵

Mention is made in Part I of this chapter that there is no tribunal below the gubernatorial level to set overall direction for the management of Maine marine resources, resolve priorities in the conservation and development of these resources, or to settle interdepartmental conflicts. Once the problem reaches the Governor's office, while the "buck may stop", the problem may not be finally resolved. As a general rule it may be assumed that the Governor and department heads, either in informal discussions or cabinet type meetings, would bring their best thinking to bear on any problem and work out a reasonable course of action. If in an extreme situation, however, a department or agency head, or even one of the numerous commissions is recalcitrant or holds a position in direct opposition to the best judgment of the Governor, if granted authority by the Legislature, such position or person could prevail. Unless the Governor had sole responsibility for appointment, he can not remove a department head. This lack of direct administrative responsibility and responsiveness should be considered in evaluating the already cumbersome machinery for managing Maine's marine resources.

The multitudinous agencies and commissions that have been assigned statutory discretion for some parts of the decision-making process are outlined infra. It is submitted that a greater appreciation of

5. Id.

the Governor's ingenuity and endurance in having to deal with, much less vie with, so many agencies can be gained merely from the laborious task of just reading the descriptions of those entities with which he must work.

6

2. STATE PLANNING OFFICE

The State Planning Office was created in January, 1968 at the Section Special Session of the 103rd Legislature. This Office, which became effective in April, 1968, is administered by a Director, who by statute must be experienced in planning or public administration with a master's degree in these or related fields. He is appointed by the Governor with consent of the Council for a term of five years.

This Office was established in the Executive Department, directly responsible to the Governor, to coordinate and develop the several planning responsibilities of State Government and "serve as an advisory, consultative, coordinating, administrative, and research agency."⁷

Many of the Planning Office functions are a spin-off of functions⁸ formerly assigned to the Department of Economic Development. One such function is the responsibility for the preparation of a comprehensive

6. 5 M.R.S.A. 3301-3307 as added by P.L. 1967, c.533. See also P.L. 1935, c.191 creating Maine State Planning Board; repealed by P.L. 1937, c.157 and records turned over to Maine Development Commission.

7. 5 M.R.S.A. 3303 (1) as added by P.L.1967, c.533.

8. 10 M.R.S.A. 451 (6-8) as repealed by P.L. 1967, c.533.

plan for the physical development of the State. This plan is to be known as the Maine Comprehensive Plan designed with the general purpose of guiding and carrying forward a coordinated, effective, and economic development of the State as will best promote the welfare and prosperity of the people. Statutory authorization for this "Comprehensive Plan" has been on the books for almost 15 years, but the requisite time and talent have not as yet been committed to the completion of this task.

In addition, the State Planning Office is assigned the duties of assisting the Governor and the Legislature in identifying long range goals and policies for the State; conducting continuing analysis of the economy and resources of the State of Maine; providing upon request, technical assistance to local and regional planning groups in the fields of planning, public housing, and urban renewal; participation in interstate planning; acceptance of federal or foundation funds; "and act as the [Emphasis supplied] coordinating agency among the several officers, authorities, boards, commissions, departments, and divisions of the State in matters relative to the physical development of the State," ⁹ In this connection, the Governor has assigned the State Planning Office responsibility for the staff work for the Governor's Task Force on Governmental Reorganization. The proposals from this citizens' group will be available before the end of 1969. Hopefully, its objectivity will not be diluted through this administrative convenience.

9. 5 M.R.S.A. 3305 (1) (G) (1) as added by P.L. 1967, c.533; 30 M.R.S.A. 4501-3 as amended by P.L. 1969, c.382.

The 104th Legislature empowered the State Planning Office to assist in forming regional planning commissions and the newly authorized councils of governments, again emphasizing the role of the State Planning Office as a coordinating agency.

The Director of the State Planning Office was not appointed until November, 1968. The impact of this office on oceanography is potentially large, but it has not been in existence long enough to determine in what manner this influence will be exerted. An example of the type of direction that this office will give is illustrated by "Proposals for a Coastal Development Plan for the New England Regional Commission. A consulting firm has recently been employed to assist the planning office formulate this plan.

Interrelationship With Other State Agencies

Director is Member

*Environmental Task Force
Maine Land Use Regulation
Commission
Scenic Highway Board

Director to sit as member of

Regional Planning Commissions
in wild lands and unorganized
territories.

Potentially interrelated with all State entities.

12

3. STATE PLANNING COUNCIL

Under the legislation setting up the State Planning Office, provision was made for a State Planning Council. The Council is to be

10. 5 M.R.S.A. 3305 (1) (D) as amended by P.L. 1969, c.382; 30 M.R.S.A. 1981-6 as added by P.L. 1969, c.382; 30 M.R.S.A. 4501-3 as amended by P.L. 1969, c.382.

11. Maine State Planning Office, March 13, 1969.

12. 5 M.R.S.A. 3306 as added by P.L. 1967, c.533.

18.

composed of one representative each from the fields of health, education, natural resources, transportation, local and regional planning, and commerce and industry, at least three citizens at large; and the Speaker of the House and President of the Senate or their designees, as members ex officio. The statute provides for a total number not exceeding 15 to serve on the Council, appointed by the Governor with consent of the Executive Council. The term of office is not to be in excess of four years. Its duties are described as meeting at least twice a year or at other times as requested by the Governor, the Planning Director, any four of its members, or on the initiative of the chairman.

Interrelationship With Other State Agencies

Represented on Council are

- *Chief, Department of Health and Welfare
- *Commissioner of Education
- *Commissioner of State Highway Commission
- *Commissioner of Department of Economic Development

13

4. NEW ENGLAND INTERSTATE PLANNING COMMISSION

The New England Interstate Planning Commission was established in 1967 to administer the New England Interstate Planning Compact. Its purpose is "to provide in the New England region, improved facilities and procedures for the coordination of the policies, programs and activities of interstate significance in the New England region in

14

13. 10 M.R.S.A. 304-310 as added by P.L. 1967, c.487.

14. 10 M.R.S.A. 301-317 as added by P.L. 1967, c.487.

the field of physical, social and economic resources and to study, investigate and plan appropriate governmental activities with respect to the conservation, development and use of the same..." The Commission is mentioned as one possible vehicle for interstate coordination of problems and potential in the exploitation of the ocean.

15

5. DEPARTMENT OF ECONOMIC DEVELOPMENT

The Department of Economic Development (hereinafter referred to as the D.E.D.) is a conglomerate which acts as a lightning rod for oceanographic activities. It is headed by a Commissioner of Economic Development appointed by the Governor with consent of the Executive Council for a term of four years. The Commission is organized into four divisions: Research, Planning and Program Assistance; a Division of Development, consisting of subdivisions for Industrial Development, Vacation-Travel Development and Community Development; a Division of Science, Technology, and Mineral Resources; and a Division of Promotion.

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15. 10 M.R.S.A. 401-661 as amended. (Interview with Commissioner James K. Keefe, November 6, 1968, December 17, 1968.)
16. See An Inventory of Ocean-Oriented Activities in the State of Maine, prepared by the Maine Department of Economic Development, October, 1968.
17. 10 M.R.S.A. 401.
18. 10 M.R.S.A. 402 as amended by P.L. 1969, c.442.

Philosophy

In the context of the classic state industry-attracting agency, the D.E.D. has been assigned the responsibility for the economic development of Maine. Two tenets have been emphasized by this department: (1) closing the income gap between Maine and the rest of New England, and (2) development through conservation. The latter can best be summarized as putting prospective industry on notice of the Environmental Improvement Commission's (EIC) laws with regard to water and air pollution and an articulation of State policy in preserving Maine's environmental integrity.¹⁹ This policy takes cognizance of not only the dollar and cents value of Maine's liveability but also the economic advantage of farsighted management of the State's natural resources. Despite, or perhaps partially because of these goals, a certain element of schizophrenia is inevitable in welcoming industry to Maine. The task is made more difficult because of the absence of a comprehensive plan for State development and a lack of economic alternatives for the citizens of Maine.²⁰ The Commissioner mentioned the desirability of establishing State goals and priorities and the need for State-wide coastal zoning.

19. Interview with Commissioner Keefe; see also Maine On The Go, December, 1968 p.14, former publication of D.E.D. prohibited by P.L. 1969, c.442.

20. The Commissioner of D.E.D. stated that there are 60-70 comprehensive plans covering a multitude of subjects and twice that number of so-called 701 plans for local governmental units usually referred to as master plans, which are supposed to be comprehensive plans. The Commissioner feels that in many instances these plans were drawn up in a vacuum. Interview with James K. Keefe, December 17, 1968.

Manufacturing and Processing

The basic thrust of the D.E.D. has been toward industrial and manufacturing enterprises. Included in such activity would be the attracting of industry involved in the scientific and technological aspects of oceanography, such as equipment fabrication plants, electronic systems, anti-submarine warfare buoy systems, submarine communication systems, ocean surveillance systems, research and commercial equipment to harvest the sea's products, and other hardware used in the marine environment. This agency has also been deeply involved in the proposed Free Trade Zone oil refinery complex at Machiasport; negotiations with Lion Ferry of Sweden on a new ferry service between Nova Scotia and Portland; and the development of atomic energy power in the State.

Minerals

This Department has been very instrumental in the contemplated oil prospecting in the Gulf of Maine by King Resources.

There is a situation peculiar to Maine in the interrelationship of promotional and administrative activity in the development of the mineral wealth of the State because of the dual role filled by the director of the Division of Science, Technology, and Mineral Resources under the D.E.D. He is both State Geologist and the executive officer of the Maine Mining Bureau, in theory an independent agency. In one capacity he is responsible for enticing mining interests to Maine on either State-owned or privately owned land; in the other capacity he is responsible for administering mining activity on State owned land.

22.

The 104th Legislature has also made him responsible, wearing his Maine Mining Bureau hat, for enforcing conservation measures in the development of oil and gas resources on all land in the State, or submerged lands within the State's territorial seaward boundary.

21

Living Resources:

The Department has been involved in the promotion of the concept of aquaculture in general and the expansion of the seaweed gathering industry in particular, but it has had relatively little involvement in the development and expansion of the fishing industry as such.

In some situations, the interests of the D.E.D. and the Department of Sea and Shore Fisheries coincide, such as trying to obtain a freeze dry plant in Maine. The D.E.D.'s interest was primarily in the plant rather than the fish. No great interest was evidenced by this Department in development of food protein concentrate from fishery products. The D.E.D. does cooperate with the Department of Sea and Shore Fisheries and the Maine Sardine Council in the promotion of seafood products, but the bulk of the work is carried on by the latter two organizations. D.E.D. publications and promotional materials, except in rare instances, are almost completely devoid of fishery information or encouragement for development.

21. 10 M.R.S.A. 2151-2166 as enacted by P.L. 1969, c.301.

22. The Commissioner of the D.E.D. related an incident of fish frozen at a processing plant in Rockland then transported to Georgia where the fish were freeze-dried and put on the market in that form. Interview with Commissioner, December 17, 1968.

Part of this lack of promotion of the industry, as opposed to the fish, is undoubtedly traditional, but perhaps in a large measure can be explained by (1) the depressed condition of the fishing industry in general, which does not hold out great employment opportunities and (2) the level of wages in that industry, which would not help close Maine's income gap. This is undoubtedly the situation at the moment, but can efficient production and wage scales be upgraded through modernization and changes in legal structure?

Recreation and Tourism

The Department has a very active tourist promotional division and it is the D.E.D. which has plugged for the four seasons concept of recreational activity in Maine. The Commissioner was completely cognizant of the Maine coast's recreational potential but did not feel that his department has paid a great deal of attention to the development aspect of this industry in the past. He did question whether recreational development, e.g. seaside motels, restaurants, etc., sparked by financing under the Maine Recreational Authority, always resulted in a net gain for the State. He mentioned unemployment compensation or welfare payments for seasonal workers and the cost of other services, such as schools and snow plowing of roads, etc. He felt that the recreational development that was completely financed by private funds was another story.

23. See also McKee, J. "Coastal Development: Cost Benefit Models," Maine Townsman, July, 1969, p.5.

Research

"Basic to the future commercial growth of sea industries is current sea research. While both the U.S. Government and private concerns are interested in ocean exploration, the facilities established to date are quite meager. Thus, there is a good opportunity for Maine to get in on the ground floor, and exert concerted effort to become a leader in oceanographic research." ²⁴ An example of implementing this suggestion is to be found in the proposal of the Governor's Task Force on Oceanography for a Maine Marine Institute. The D.E.D. was represented on this Task Force. This federally underwritten project was awarded to Florida instead of Maine, but the suitability of such an institution ²⁵ for Maine has not been diminished by this defeat.

Community Development

The 104th Legislature added a new function to the duties of the D.E.D. by creating the Community Development Subdivision of the Division of Development. Its duties are to promote and assist the efforts of local communities, community officials and community and regional organizations in working for economic and social improvements of such areas.

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24. Planning Study for the Economic Growth of the State of Maine, Armour Research Foundation for the State of Maine, D.E.D. under a grant from the Small Business Administration, 1961, p.66.
 25. Proposed Maine Marine Institute; Progress Report, Governor's Task Force on Oceanography; See Portland Press Herald, April 18, 1967 for composition of this task force.

Included are powers to assist local and regional efforts aimed at conservation of natural resources, including preservation of scenic beauty.²⁶

The last Legislature also required the Commissioner of Economic Development to sit as a member of regional planning commissions where wildlands or unorganized townships are involved in designated planning districts.²⁷

Interrelationship With Other State Agencies

Commissioner is member of	State Transportation Commission *Advisory Board, Water Resources Center *State Planning Council *Environmental Task Force
is member ex officio	Scenic Highway Board Maine Industrial Building Authority Maine Recreational Authority Development Corporation of Maine ²⁸
is represented on	Maine Mining Bureau
to sit as member of	Regional Planning Commissions in wildlands and unorganized townships
employs (subject to personnel laws)	State Geologist (who is Director of Division of Science, Technology and Mineral Resources)
involved with	Promotional activities of the Department of Sea and Shore Fisheries Department of Agriculture Maine Sardine Council Municipal Securities Approval Board State of Maine Publicity Bureau

26. 10 M.R.S.A. 552 as added by P.L. 1969, c.442.

27. 30 M.R.S.A. 4501 (3) (1) as added by P.L. 1969, c.382.

28. The Commissioner of Economic Development is an ex officio director of the Development Credit Corporation of Maine a private (Cont. p.26)

6. DEPARTMENT OF ECONOMIC DEVELOPMENT ADVISORY COUNCIL

The Department of Economic Development Advisory Council consists of seven members appointed by the Governor for a term of three years. Until 1967, the statutes provided for monthly meetings; after 1967 the requirement was changed to meet at the request of the Chairman or at the request of three members of the Council. The Council reviews activities of the D.E.D., making recommendations and giving advice relative to these operations. The Commissioner of Economic Development attends meetings on request. He is to make response to recommendations of the Council within thirty days of the filing of such recommendations.

28. (Cont. from p.25)

corporation chartered by the Legislature to encourage new industry and business ventures which will promote the industrial, agricultural, and recreational developments within the State. It is specifically authorized to provide funds to applicants for whom credit is not otherwise readily available. (P. & S.L. 1949, c.104) This corporation was a forerunner of the Maine Industrial Building Authority and the Maine Recreational Authority and the first corporation of this type in the United States created to provide capital to high risk enterprises. Although this corporation was founded at the urging of State officials, and it cooperates closely with State agencies, it is completely private and the credit of the State is not pledged to guarantee its loans. (Interview with Executive Director, William Coffin, Oct. 16, 1969). In the last 20 years it has made loans of approximately 16 million dollars to 176 enterprises, including ten loans totaling over a half a million dollars last year. (Portland Press Herald, Feb. 27, 1969). This company has made only a few loans to marine related industries or enterprises, but there is nothing in its corporate charge to prevent it from making loans to any one including individual fishermen.

29. 10 M.R.S.A. 404-5.

30. P.L. 1967, c.371.

7. STATE TRANSPORTATION COMMISSION

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The State Transportation Commission was created in 1965 and has continued in being at least through June 30, 1969. The Commission is composed of two members of the Senate appointed by the President of the Senate, two members of the House of Representatives appointed by the Speaker, and seven members from the public including the Commissioner of Economic Development. This Commission was assigned the statutory duty of preparing guidelines for an integrated transportation system best serving the economic development of the State. This assignment included study of water transport and the integration of water transport with air, highway, and rail systems.

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8. STATE OF MAINE PUBLICITY BUREAU

The State of Maine Publicity Bureau is technically a private corporation but has quasi-official characteristics because of its function and contribution-in-kind received from the State. The Bureau is a state-wide, private, non-profit, non-partisan corporation to promote the agricultural, industrial and recreational resources of the State of Maine. This is accomplished by maintaining exhibits and disseminating information at five permanent and three temporary offices and at trade fairs and expositions. The Bureau distributes literature not only of its own members, who provide the Bureau's operating funds (also literature of some persons who do not make financial contributions)

31. P.&S.L. 1965, c.188.

32. Established in 1921 and chartered in 1937 by P.&S.L. 1937, c.22.

28.

but also State publications and promotional material supplied by the D.E.D. or other agencies such as the Department of Inland Fisheries and Game or the Parks and Recreation Commission. While the Bureau is not directly "paid" by the State for handling State material, it receives assistance in the form of the use of State owned buildings (headquarters in Portland built during W.P.A. days belongs to the State); or offices rented for the Bureau by the State (New York); or municipally owned buildings (Bangor). The cost of maintaining these buildings is funneled through the budget of the D.E.D. inasmuch as the Bureau does not receive any direct legislative appropriation. The Bureau does not receive any direct legislative appropriation. The Bureau has a long standing working relationship with the D.E.D., but it was not until the last Legislature that statutory direction for this cooperation was written into law.

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9. STATE GEOLOGIST

The State Geologist is employed by the Commissioner of Economic Development. When the office was first created in 1929 he was appointed directly by the Governor. He acts as Director of the Science, Technology and Mineral Resources Division of the D.E.D. and performs such other duties as may be required of him by law or assigned to him by

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33. P.L. 1969, c.442 §2.

34. 10 M.R.S.A. 651.

35. P.L. 1929, c.183.

the Commissioner. One of the duties assigned to him by law is consultant to as well as administrator of the Maine Mining Bureau.³⁶

Interrelationship With Other State Agencies

Is employed by Commissioner of Economic Development and serves as a Division Head in that Department.

Consultant to and Administrator of Maine Mining Bureau

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10. COORDINATOR OF ATOMIC DEVELOPMENT ACTIVITIES

The Coordinator of Atomic Development is an office that was established in 1955 as the State's response³⁸ to the Federal Atomic Energy Act of 1954. He is appointed by the Governor with advice and consent of Council for an indefinite term.

The first Coordinator was then Chairman of the Public Utilities Commission. For about the past ten years, a former professor of physics³⁹ at Bowdoin College has held this title. He explained that the office was set up when the Atomic Energy Commission was projecting that the states would have a more paramount role in prescribing regulations for the use of atomic energy. This development has not come to pass, and

36. 10 M.R.S.A. 2101 as amended by P.L. 1967, c.170, P.L. 1969, c.508. See section on D.E.D. on p. 19, and section on Maine Mining Bureau on p.95 for description of duties under these two agencies.

37. 10 M.R.S.A. 102.

38. See 10 M.R.S.A. 51-203.

39. Professor Noel Little.

this office has been more or less moribund for a long time. Although it would seem from the statutes that the Coordinator must rule upon anything having to do with atomic energy, he had nothing to say about the new atomic power plant at Wiscasset. Most of the regulations governing this installation came from the United States Atomic Energy Commission.

Most of the activity concerned with radiation has been handled through the Department of Health and Welfare, which has been assigned specific duties and powers to make regulations.⁴⁰

The legislation setting up the post of Coordinator expressly recognized the risk of radiation damage to natural resources;⁴¹ but it was not until the 103rd Legislature that a prohibition against radioactive pollution was written into the laws of the Environmental Improvement Commission.⁴²

Interrelationship With Other State Agencies

Specific duties assigned	Department of Health and Welfare
Requirement that these departments make studies and recommendations	Health and Welfare State Highway Commission Public Utilities Commission Forestry Commission Inland Fish and Game Sea and Shore Fisheries Labor and Industry Department of Economic Development

40. 10 M.R.S.A. 103.

41. 10 M.R.S.A. 101.

42. 38 M.R.S.A. 363, 364 as amended by P.L. 1967, c.475 §4-5.

43

11. MAINE INDUSTRIAL BUILDING AUTHORITY

The Maine Industrial Building Authority is composed of nine members appointed by the Governor with consent of Council for a term of four years. The Commissioner of Economic Development is a statutory member of the Board. The Authority is empowered to employ a manager.

The Authority was established in 1957 to stimulate the flow of private capital into the economy of Maine by pledging the full faith, and credit of the State for loans to industrial enterprises. Its stated purpose was to meet "a state-wide need for new industrial buildings to provide enlarged opportunities for gainful employment by the people of Maine and to thus insure the preservation and betterment of the economy of the State and its inhabitants." Subsequent amendments broaden enterprises to include piers and agricultural and fishing enterprises under the broad term of economic development.⁴⁵ It was necessary to amend the Maine Constitution⁴⁶ to enable the Authority to extend the full faith, and credit of the State to other than manufacturing or industrial enterprises. This was done after the Maine Supreme Court had ruled in 1967 that activities which constitute the harvesting of the products of the land or sea do not qualify within the scope of industrial and manufacturing enterprises as used under Art. IX Sec. 14-A

43. 10 M.R.S.A. 701-852 as amended.

44. P.L. 1957, c.421 §1.

45. P.L. 1961, c.341; P.L. 1965, c.142 §1; P.L. 1967, c.525 §1.

46. Resolves 1967, c.84.

and that proposed legislation seeking to extend the credit of the State to agricultural and fishing activities was unconstitutional.

The Authority maintains close liaison with the D.E.D. in providing assistance to its various divisions and in facilitating the planning and financing of industrial projects. The Authority also cooperates with local planning boards and municipal officers.

The total amount of mortgages outstanding may not exceed \$80,000,000 at any one time unless Art. IX Sec. 14-A of the Maine Constitution is further amended. There is a limitation of \$8,000,000 for any one project with the exception of the provision made in the "Bath Iron Works Amendment" which would allow a \$32,000,000 total for an industry constructing sea going ships or vessels provided the loan is approved prior to January 15, 1971.

To date loans to marine related industry have included only a corporation in Rockland making fiber glass power cruisers. Fish processing plants or canneries were considered industrial enterprises even

47. Opinion of the Justices, Me. 230 A. 2d 804 (1967).

48. 10 M.R.S.A. 751 (5).

49. 10 M.R.S.A. 752 (9) as amended by P.L. 1967, c.525 §7.

50. 10 M.R.S.A. 803 (2) as amended by P.L. 1967, c.548; Resolves 1967, c.88 authorizing referendum on Constitutional amendment increasing to \$80,000,000 the State credit which may be used to insure industrial, etc., loans. (Const. Amend. #109 affecting Const. Art. IX, Sec. 14-A. Approved November 1968).

51. See Report of the Maine Industrial Building Authority, June, 1968.

before the fisheries and agricultural amendment, but such enterprises⁵² have not applied or qualified for loans under this act.

Interrelationship With Other State Agencies

Authority has as a member

Commissioner of Economic
Development

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12. MAINE RECREATION AUTHORITY

The Maine Recreation Authority is composed of nine members appointed by the Governor with consent of Council for a term of four years. The Commissioner of Economic Development and the Director of Parks and Recreation are statutory members of this Authority.⁵⁴ A former Commissioner of the D.E.D. is presently the Manager of this agency.

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This Authority was created in 1966⁵⁵ after the voters of Maine approved a Constitutional Amendment in the November 1965 referendum allowing the full faith and credit of the State to be pledged in assisting recreational development within the State. Similar to the Maine Industrial Building Authority, after which the Maine Recreational Authority is patterned, its purpose is to stimulate private capital "to encourage development of facilities and projects of size, scope, and character that will attract recreational visitations and expendi-

52. Interview with Roderic C. Q'Connor, Manager M.I.B.A., Aug. 21, 1969.

53. 10 M.R.S.A. 5001-6052 as added by P.L. 1966, c.495.

54. 10 M.R.S.A. 5051 as amended by P.L. 1969, c.6.

55. P.L. 1965, c.495 §1.

tures within the State of Maine, encourage peripheral land development for residential and commercial purposes and thereby expand employment opportunities for residents of the State." ⁵⁶ The Maine Recreation Authority is to maintain close liaison with the Department of Economic ⁵⁷ Development and consult with local and regional authorities as to the ⁵⁸ expediency and advisability of insuring any mortgage.

Mortgages may be guaranteed for an aggregate up to 10 million dollars as provided for in Art. IX Sec. 14-B of the Maine Constitution. A mortgage may be for not less than \$100,000 or more than two million (\$2,000,000) and cannot represent more than 75% of the cost of the ⁵⁹ project at the time the mortgage is executed.

Approximately \$2 million dollars or about 12% of total loans guaranteed by this Authority has involved the development of marine resources. Of this amount, approximately \$1.7 million represents guarantees to four ocean front motels, and about \$200,000 for marinas ⁶⁰ in Portland Harbor and Boothbay Harbor.

Interrelationship With Other State Agencies

Membership on Authority includes

Commissioner of Economic
Development
Director of Parks and Recreation

56. 10 M.R.S.A. 5002 (Supp.).

57. 10 M.R.S.A. 5051 (5) (6) (Supp.).

58. 10 M.R.S.A. 5052 (1) (Supp.).

59. 10 M.R.S.A. 6003 (2) as amended by P.L. 1967, c.518 §2.

60. Interview with Lloyd K. Allen, Manager Maine Recreational Authority, October 17, 1969.

13. MUNICIPAL SECURITIES APPROVAL BOARD

The Board is composed of the State Treasurer and six other members appointed by the Governor with the advice and consent of Council for a term of three years. The Board is authorized to employ a manager who is to maintain close liaison with the Department of Economic Development and the Maine Industrial Building Authority.⁶² The Board's function is to issue certificates of approval to municipalities who have made application to issue revenue producing bonds under the Municipal Industrial and Recreational Obligations Act passed in 1965.⁶³

The Act was enacted to enable municipalities to acquire, construct, reconstruct, renew, and replace industrial and recreational projects within or partly within the corporate limits of the municipality. Financing is obtained by the issuance of revenue producing bonds, approved by the Board described above, and subsequently ratified by the voters of the Municipality.⁶⁴ Such bonds are not backed by the credit of the State. Neither are they considered general obligation bonds or hence a debt of the municipalities.⁶⁵

61. 30 M.R.S.A. 5327 (Supp.) as amended by P.L. 1969, c.340 §2.

62. 30 M.R.S.A. 5329 (5) (Supp.).

63. 30 M.R.S.A. 5325-5343 as added by P.L. 1965, c.423 §1; See also 18 Me. Law Rev. 25.

64. The proposed Tepco aluminum plant at Trenton was defeated because the voters of that community voted overwhelmingly against the bonds. See Portland Sunday Telegram, April 27, 1969.

65. 30 M.R.S.A. 5331 (3) (Supp.); 30 M.R.S.A. 5336 (Supp.); Opinion of the Justices, 161 Me. 182, 210 A. 2d 683 (1965); Northeast Shoe Co. v. Industrial and Recreational Approval Board, Me. 223 A. 2d 423 (1966); Reconst. Finance Corp. v. Municipal Building Corp., 63 F. Supp. 587 (D. Me. 1945).

To date approximately 10 million dollars in projects has been approved by the Board in less than two dozen communities. Many of the projects approved never progressed any further, with the result that only about half the amount of bonds approved has ever been issued. None of the bonds issued under this act has been for marine related enterprises. To date all proposals for recreational projects have been considered too speculative. Bonds were approved for a tuna processing plant, but the project failed to materialize.⁶⁶ Fishery enterprises per se do not fall within the definition of industrial-commercial projects under the act.⁶⁷

Interrelationship With Other State Agencies

Maintains liaison with

Department of Economic Development
Maine Industrial Building
Authority

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14. GREATER PORTLAND PUBLIC DEVELOPMENT COMMISSION

The Greater Portland Public Development Commission is a corporation managed by a board of five directors. The directors, appointed by the Governor with advice and consent of Council, are to be citizen-

66. Interview with Clifford Andreasen, Manager of Municipal Securities Approval Board, October 15, 1969; Maine Industrial Recreational Finance Approval Board, Annual Report, 1968.

67. 30 M.R.S.A. 5326 (2) as amended by P.L. 1969, c.340 §1.

68. P.&S.L. 1945, c.123.

residents of Portland and/or South Portland. This Corporation is a State agency and is declared to be an instrumentality and agency of the State.⁶⁹ It was established in 1945 to take over the South Portland Ship Yards, which had been declared surplus by the Federal Government. The Corporation was given power to acquire this land and broad powers to lease, hold, manage, control, sell, or mortgage the facilities or land therein.⁷⁰

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15. MAINE PORT AUTHORITY

The Maine Port Authority is a public agency of the State of Maine for the general purpose of acquiring, constructing, and operating piers and terminal facilities within the State of Maine.⁷² It was created in 1929 under the name Port of Portland Authority; the name was changed to Maine Port Authority in 1945.⁷³ The Authority consists of a board of five directors; four of these directors are appointed by the Governor with advice and consent of Council; one director is appointed by the City Council of the City of Portland. All five serve for a term of three years.

69. P.&S.L. 1947, c.97.

70. P.&S.L. 1945, c.123.

71. P.&S.L. 1929, c.114 as amended. Latest amendment P.&S.L. 1969, c.196.

72. P.&S.L. 1929, c.114 as amended by P.L. 1969, c.196. Until 1969 Maine Port Authority's general jurisdiction was limited to Portland and Bar Harbor.

73. P.&S.L. 1929, c.114 as amended by P.&S.L. 1945, c.129.

Ferry Service

In 1951 the Maine Port Authority was authorized and directed to construct a terminal at Bar Harbor for the international ferry to be built by the Canadian Government (Blue Nose Ferry) to run between Nova Scotia and Bar Harbor.⁷⁴ In 1957 the Maine Port Authority was authorized and directed to set up and operate a ferry service between the mainland and the towns of North Haven, Vinalhaven, Islesboro, and Swan's Island with discretionary power to operate to and from Long Island Plantation. In addition, the Authority was directed to construct a landing place in the town of Lincolnville for the ferry service between North Haven, Vinalhaven, Islesboro, Swan's Island and the town of Lincolnville. A floating dock and a slip as a public landing for small boats was to be constructed adjacent to the landing place for the ferry.⁷⁵ In 1959 the Port Authority was directed to take necessary steps to secure and maintain adequate ferry transportation for persons and property between the mainland and islands in Casco Bay located within the limits of the City of Portland.⁷⁶

Foreign Trade Zone

In 1963 the Maine Port Authority was authorized to submit an application to the Secretary of Commerce for the purpose of establishing a Foreign Trade Zone in Maine. The Authority was further instructed to

74. P.&S.L. 1951, c.219; Resolves, 1953, c.105.

75. P.&S.L. 1957, c.190.

76. P.&S.L. 1959, c.79.

select, and describe the location of this zone or zones. It was given full power and authority "to lease the right and erect, maintain and operate any structures or buildings or enclosures as may be necessary or proper for the establishment and operation of any such Foreign Trade Zone...."⁷⁷

Activity of the Maine Port Authority at Machiasport was one of the reasons for extending the jurisdiction of the Maine Port Authority to all ports within the State of Maine. The 104th Legislature declared that

...the Maine Port Authority is concerned with the development of ports in the State of Maine, and at present has opportunities which require immediate action, and which will directly contribute to the economic development of the State of Maine, and which will be lost unless such immediate action is taken...⁷⁸

Relation to Board of Harbor Commissioners

The legislation that set up this Authority made it clear that regulations of Maine Port Authority would take precedence over rules or regulations enacted by the Board of Harbor Commissioners for the Harbor of Portland.⁷⁹ The Maine Port Authority's actions are subject to review by the Public Utilities Commission in instances where the Authority's eminent domain powers are used against an existing utility or common carrier.⁸⁰

77. P.&S.L. 1963, c.178.

78. P.&S.L. 1969, c.196.

79. P.&S.L. 1929, c.114.

80. P.&S.L. 1929, c.114; P.&S.L. 1969, c.196.

16. MAINE PORT AUTHORITY ADVISORY COMMITTEE

The Maine Port Authority Advisory Committee consists of seven members - one from the town of North Haven, one from the town of Vinalhaven, one from the town of Islesboro and one from the town of Swan's Island and three members from the mainland counties of Knox, Waldo and Hancock, are appointed by the Governor with advice and consent of Council. This Board makes recommendations to the Maine Port Authority concerning its function of operating the ferry for North Haven, Vinalhaven, Islesboro, Swan's Island, and Long Island Plantation. Advisory committees for other functions of the Authority have not been established.

17. BOARD OF PORTLAND HARBOR COMMISSIONERS

The Board of Portland Harbor Commissioners was established in 1917 combining the Harbor Commissioners from the City of Portland and the City of South Portland. The Commission is composed of four commissioners, two from Portland, two from South Portland, appointed by the Governor with advice and consent of Council for a period of four years.

The Board is responsible for the administration and management of

81. P.&S.L. 1957, c.190.

82. P.&S.L. 1917, c.192 as amended. See 38 M.R.S.A. 1-6 for general statutory authorization for harbor masters; 38 M.R.S.A. 41-46 for port wardens; and 38 M.R.S.A. 81-84 for pilots.

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the Harbor. The Commissioners' authority includes power to establish harbor lines, issue permits for construction or modification of wharves and piers, establish harbor rules, and supervise anchorage. Provision is also made for a \$500 fine plus cost of abatement or removal against anyone who pollutes the waters of the harbor other than through the ordinary use of sewers and drain pipes. The harbormaster is given police power comparable to that exercised by Portland policemen assigned to policing the harbor. He is also authorized to pursue and arrest anyone found violating any of the laws of the State.

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18. STATE COMMITTEE ON TRANSPORTATION NEEDS IN CASCO BAY

The State Committee on Transportation needs in Casco Bay was created at the Special Session of the 100th Legislature. The Committee consisted of three members of the Senate appointed by the President of

83. P.&S.L. 1917, c.192 §4:

The harbor of Portland shall include, and said Board shall be vested with, jurisdiction over the entire harbor and tidal waters within the limits of the city of Portland, including the islands belonging thereto, and its tidal waters within the limits of the city of South Portland, and over the receiving basins and reservoirs of said harbor including the tidal waters of Fore River, Back Cove, and northeasterly along the shore to the easterly side of the mouth of the Presumpscot River to the Grand Trunk Railway Company's bridge, and about said islands; and also southerly and easterly of the lines of said harbor, so far as the jurisdiction of the State extends, including all channels and entrances into said harbor (so far as the same are not under the exclusive control of the United States), and also including all coves, inlets, and other parts where the tide ebbs and flows, within the limits of said cities.

84. P.&S.L. 1917, c.192 §8, §16.

85. P.&S.L. 1961, c.246. See also State Transportation Commission, p.27.

the Senate, four members of the House of Representatives appointed by the Speaker of the House, and four citizens of Maine appointed by the Governor. The Governor also designated the Chairman.

The Committee was charged with studying the present adequacy of public transportation in Casco Bay, and the extent to which improvements must be provided to meet the region's present and future transportation needs. A report of the Committee's findings was made to the 101st Legislature. ⁸⁶ The Committee is not presently funded, is inactive, and presumably is defunct. The Committee is listed here as an example of the type of ad hoc organizations that have been set up by the State.

19. PASSAMAQUODDY DISTRICT AUTHORITY

The Passamaquoddy District Authority was established in 1945 to operate the tidal power plant which was to harness the energy from the rise and fall of the tide in the Bay of Fundy. The Board of this Authority consists of seven members appointed by the Governor with advice and consent of Council for a term of seven years.

The rights and powers granted by this enabling legislation were to terminate at the expiration of seven years from the date the act became effective, "unless the work of construction of a tidal power plant has actually been commenced before that date and shall so termi-

86. Report of the State Committee on Transportation Needs in Casco Bay, February 8, 1963.

87. P.&S.L. 1945, c.65.

nate at the expiration of ten years unless the tidal plant is then in operation." (A tidal power plant, for the purpose of this section, included a tidal power test plant.)⁸⁸ The expiration date of the Authority⁸⁹ was extended first to fourteen years then to twenty-one years. This Authority is included to show the type of organization set up to utilize Maine's marine resources.

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20. STATE HIGHWAY COMMISSION

The State Highway Commission consists of three members appointed by the Governor with advice and consent of Council. Two members serve terms of three years; the third is appointed by the Governor as Chairman for a term of seven years. One member shall be a member of the political party which casts the second highest number of votes in the⁹¹ last gubernatorial election.

The relationship of the Highway Department with marine resources is more potential than actual at the moment. Potential impact would include the following areas:

Coastal Development

Conceivably, the construction of highways could be used to determine the pattern of economic growth and development along the coast and possibly even as a zoning tool. The Chairman of the Highway Commission

88. P.&S.L. 1945, c.65.

89. P.&S.L. 1951, c.65; P.&S.L. 1959, c.157.

90. 23 M.R.S.A. 51-64 as amended.

91. 23 M.R.S.A. 51.

explained, however, that the Highway Commission is so far behind in the number of highways that people want built within the framework of economic forces that are now at work that such a role for the Highway Commission could only be achieved by planning ahead and being that much ahead of the need for development. He did not feel that highway construction was a proper zoning tool. He did, however, feel that there was a need for strong local zoning.⁹²

Recreation Potential

The State Highway Commission cooperates with the Parks and Recreation Commission in the development of scenic turnouts which could be included on coastal highways.⁹³ The interrelationship with the Parks and Recreation Commission in the construction of parking sites and boat launching ramps is discussed, infra at page 88. The Chairman also speculated about the desirability of superhighways of modern design on coastal highways and leading to peninsulas or remote points of land. He indicated that he was coming to the position that traveling such highways was in a large part motivated by recreational or authentic considerations other than speed and if "getting there is half the fun", roads should be designed to fulfill this function.⁹⁴

Sand and Gravel

Large amounts of sand and gravel are needed for road construction both in Maine and elsewhere. Sand and gravel dredged from submerged

92. Interview with David H. Stevens, Chairman of the Highway Commission, March 13, 1969.

93. Many aspects of this cooperation were formalized by creation of the Scenic Highway Board. See Section 36.

94. Interview with Chairman, David H. Stevens.

lands around the Boston area are being exhausted as are our **land supplies** here and elsewhere. The Chairman said that the Commission has no plans to take sand and gravel from the ocean for use on highways. There has been only one instance to date in which they have taken it from a beach, but they have no other plans for getting sand from this source.

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Wetlands Control Board

The Chairman of the Highway Commission serves as a member of the Wetlands Control Board. Although originally less than enthusiastic about the idea, he has found that the Wetlands Legislation has worked no hardship on his department. There is, of course, a saving clause in the legislation which exempt repair and maintenance of highways from the wetlands machinery.

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Pesticides Control Board

The Chairman sits as a member of the Pesticides Control Board because of the large amount of pesticides used in clearing areas along highways. In theory, at least, such pesticides could find their way into the water supply and eventually tidal waters.

Dedicated Revenue

The Highway Commission is the only State department that has constitutionally dedicated revenue, and it derives a large portion of its operating revenue from this source. See Chairman's comment on Dedicated Revenue, p. 144.

95. Id. See also Sand and Gravel on the Continental Shelf off the Northeastern United States, Department of the Interior, Geological Survey Circular 602. See Portland Evening Express Jan. 20, 1969, p.22.

96. 12 M.R.S.A. 4708 (Supp.).

Interrelationship With Other State Agencies

Chairman sits as member of	*State Planning Council Wetlands Control Board Board of Pesticides Control Scenic Highway Board
Cooperates with	Parks and Recreation Commission Coordinator of Atomic Development
Represented on	*Water Resources Center Advisory Board

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21. PUBLIC UTILITIES COMMISSION

The Public Utilities Commission is composed of three members appointed by the Governor with advice and consent of Council for a term of seven years. The Chairman is designated by the Governor. The relationship of this Department with marine resources is most elusive despite the physical contact with the ocean of many of the installations over which the Commission has jurisdiction.

Thermal and Radioactive Pollution

Although the Public Utilities Commission is responsible for all public utilities, it does not make regulations regarding thermal or radiation pollution of Maine's marine environment.

The atomic aspects of the Yankee Power Plant at Wiscasset are regulated by the U.S. Atomic Energy Commission. The Public Utilities Commission is responsible for such other aspects as safety and financing.

97. 35 M.R.S.A. 1 and following.

98. 35 M.R.S.A. 1.

Neither the Maine Public Utilities Commission nor the Federal Power Commission make any regulations with regard to thermal pollution. In the absence of federal pre-emption, levels of radioactivity and degree of thermal pollution are regulated by statutes of the Environmental Improvement Commission.⁹⁹

Dams

The Public Utilities Commission has very limited jurisdiction over dams. Plans for dams must be filed with the Public Utilities Commission in Maine,¹⁰⁰ but there is no indication that the Public Utilities Commission has any veto over such a dam. The control the PUC does exercise is in the form of reviewing and approving the financing for any proposed construction. There is no statutory provision for the removal of dams other than the removal of ice dams.¹⁰¹ The Department of Inland Fish and Game is responsible for fishways on dams: they have the authority to prescribe when and how a fishway should be erected, but they do not have any veto over construction of a dam.¹⁰²

No obstruction to navigation may be erected unless legislatively authorized, either by general statute or by private and special law. There is no general statutory authorization for building dams except that found under the Milldam Act, which is restricted to non-tidal

99. 38 M.R.S.A. 363-364 as amended by P.L. 1969, c.431.

100. 35 M.R.S.A. 11.

101. 35 M.R.S.A. 14.

102. 12 M.R.S.A. 2201-2205.

rivers and streams. The jurisdiction of the Army Corps of Engineers and the Federal Power Commission ¹⁰⁴ is also involved in the obstruction of any navigable stream. (See Chapter Four infra).

The Chairman of the PUC sits on the Pesticides Control Board because of his agency's interest in water supplies for towns and municipalities.

Interrelationship With Other State Agencies

Chairman sits as member	Board of Pesticides Control
Commission participates in	Eminent Domain proceedings involving Maine Port Authority

22. WATER RESOURCES DIVISION, UNITED STATES GEOLOGICAL SURVEY

The Water Resources Division, a Federal Agency under the Geological Survey of the Department of the Interior, acts as the State's Water Resources Division under the Public Utilities Commission. ¹⁰⁵ This Division is primarily a fact-finding and information storing agency for hydrological data relating to water power of the State, including basic water storage information; number and location of dams; water flow and

103. 38 M.R.S.A. 611-892.

104. e.g. Regulations of the Federal Power Commission require that with the damming of a navigable stream, certain improvements and rights of way for recreational purposes and future plans for recreation and park use and for fish game must be established.

"The Commissioner will evaluate the recreational resources of all projects under Federal license or application, therefore, and seek within its authority the ultimate development of these resources consistent with the needs of the area to the extent that such development is not inconsistent with the primary purpose of the project." (Federal Power Commission Rules of Practice and Procedure, Jan. 6, 1969, §2-7.)

105. See 1 M.R.S.A. 25; 35 M.R.S.A. 10.

gauge levels; drainage areas; inventory of quality of water; location, nature and size of water bodies within the State; topographic surveys, etc. The Division has not traditionally been concerned with pollution,¹⁰⁶ per se. The District Engineer of the Water Resources Division answers State queries on Public Utilities Commission stationery and in general speaks for the State on matters within his competence except when delicate questions of State and Federal relationship are involved. The Division has no police or regulatory powers. The State¹⁰⁷ bears half the cost of the work of this Division.

The limited function and authority of the Water Resources Division highlights the fact that Maine has no enabling legislation or administrative setup to regulate the water resources of this State. The

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106. Water quality for purposes of the Geological Survey has related to natural minerals or elements leached from the soil. Recently the Division has begun to take on responsibility for storing water quality data from the F.W.P.C.A. monitoring stations. (Interview with Gordon S. Hayes, District Engineer, Water Resources Division, August 7, 1969).
107. There is a long history of cooperation between the Water Resources Division and the State of Maine dating from 1909. In that year the Maine Water Storage Commission was created to handle basic water data, (P.L. 1909, c.212) and was authorized to cooperate with the Geological Survey. In 1913 the Public Utilities Commission was created (P.L. 1913, c.129) and the Water Resources function was transferred to it where it remained until 1919 until the creation of the Maine Water Power Commission. (P.L. 1919, c.132). In 1925 this Commission was dissolved and the function was again transferred to the Public Utilities Commission. (P.L. 1925, c.187). Until such time as the function was completely relegated to the Federal office, State and Federal employes worked side by side in the same office doing basically the same thing, but subject to two different sets of ground rules. (Interview with Gordon S. Hayes).

historic and overriding interest in water resources has been for power. As civilization progressed, with the resultant problems of people and pollution, the predecessor of the Environmental Improvement Commission was created to handle pollution. Other facets of control of the State's water resources were dispensed to the most readily available department or else were left unregulated. An example of the former would be the delegation to the Department of Inland Fish and Game of the authority to regulate bulldozing on Maine's rivers and streams.

The Milldam Act allows riparian owners on non-tidal streams to dam up streams to create power. The result of this authorization may be disastrous to an upstream riparian owner who has not built his own power dam. (Such an upstream owner is particularly vulnerable since one with his own power dam has the protection mentioned in note 109 below.) In Brown v. DeNormandie, the owner of a prosperous summer resort was held helpless to prevent his sandy beaches from being inundated by the rising waters behind defendant's dam. A riparian owner on a great pond at least has the protection that the water level may not be withdrawn below the natural low water mark without legislative

108. 12 M.R.S.A. 2205. Before World War II there were practically no bulldozers in the lumbering industry in Maine. After World War II the cheap plentiful supply of surplus bulldozers revolutionized the lumbering industry and the methods of taking down trees and building roads. In the furtherance of these operations, bulldozers went into the streams, logs and dirt were pushed in the streams, gravel was disrupted, and spawning fish and eggs were destroyed.

109. 38 M.R.S.A. 611 et seq. An owner may build a dam as high as he likes as long as the headwater does not flood out the tail water of the next power dam up the stream. This general statutory authorization applies only to power dams, not to dams for water storage or for recreational purposes.

110. 123 Me. 535, 546, 124 A. 697 (1924).

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approval. The riparian owner of a pond of less than 10 acres does not have the same assurance that his shore frontage will not become a quagmire. Even the legislative control over the water level on great ponds has in many instances been leased or sold to private companies. Other than for purposes of navigation, the State has no other control of flowage rights. The level of water and rate of flow of any navigable stream is influenced by the practices of the riparian owners, each of whom (in addition to the right to erect power dams pursuant to the Milldam Act) is entitled to a reasonable use of the waters. What is reasonable for consumptive use, as opposed to water which is returned to the stream relatively undiminished, must be adjudicated as a question of fact in any instance where it is contested by another riparian owner. The level of water is of extreme importance for power, fishing, recreation, and pollution although the optimum levels for each of the uses may not coincide.

There are no State safety requirements prescribed for dams; there is no machinery or even requirement for removing a dam except for ownership and assurances that its removal will create no hazards to health. The greatest problem has not been with the big dams but with small ones, some over a hundred years old that may wash out with catastrophic results. Safety is not assured by the Corps of Engineers review of the design for clearance or the Federal Power Companies licensing procedure which surveys dams for maximum power and recreation-

111. See Fernald v. Knox Woolen, 82 Me. 48, 19 A. 93 (1889).

al criteria.

The Legislature has not been unaware of the archaic state of Maine water laws. There have been various suggestions to bring together all phases of water regulations except pollution control under one agency, but the Legislature has not seen fit to implement any such suggestions. ¹¹³

The State of Maine has cooperated with interstate groups such as the Northeastern Resources Commission created by the Northeastern Water and Related Land Resources Compact ¹¹⁴ and the New England River Basin Commission which is a federally approved agency, the chairman being appointed by the President.

23. INSPECTOR OF DAMS AND RESERVOIRS

The Inspector of Dams and Reservoirs, who must be a competent and practical engineer, is appointed by the Governor with advice and con-

112. It may be possible that the Federal Power Commission will pre-empt the field. In the last five to six years, the Commission has come into the State and begun to license dams, some of which have been built for a hundred years. The license fee is used to pay the Power Commissions to help it run its business. Licenses extend for a period of 99 years after which time the Federal Power Commission has the right to take over the dam "lock, stock and barrel." The Commission has by now licensed all the major power plants and utilities and now is beginning to license secondary storage dams and power rights. The jurisdiction over the storage dams in Maine began when the Commission was able to extend the definition of navigable to floatable streams. (Interview with Gordon S. Hayes).
113. A bill for a Water Development Authority was submitted in the 104th Legislature (L.D. 1216). The magnitude of the problem is not properly reflected in another defeated bill entitled "An Act Establishing A Study Commission On Water Resources" (L.D. 928) which had allocated \$370 for the first year and \$500 for the second year.
114. This was not enacted into statute in Maine but for text of agreement see New Hampshire Revised Statutes Annotated, 1968, Chapter 489A (Replacement).
115. 38 M.R.S.A. 811.

sent of Council, for a term which runs until his successor is appointed. His jurisdiction is to rule on the safety and efficiency of a dam only if he is requested to do so by ten resident taxpayers or officials of any town or county. Should he find the dam unsafe or dangerous, he is to notify the owners to make repairs. If the owner does not make repair, then the matter is referred to the Superior Court where the owner may be enjoined from using the dam or reservoir or the water contained therein until the recommendation is complied with.

The full compensation for his services is \$5.00 per day plus expenses, to be paid by the State if the dam passes muster, otherwise to be paid by the owner of the dam. The importance of this position may be gauged from the fact that in the 1930's after the retirement of the then inspector, who was also Chief Engineer of the PUC, the position remained vacant for almost 30 years with no resultant inconvenience to anyone.

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24. WETLANDS CONTROL BOARD

The Wetlands Control Board is composed of the Commissioner of Sea and Shore Fisheries, the Commissioner of Inland Fisheries and Game,

116. 38 M.R.S.A. 812.

117. 38 M.R.S.A. 813.

118. Interview with Gordon S. Hayes, District Engineer, Water Resources Division, Geological Survey, August 7, 1969.

119. 12 M.R.S.A. 4701-4709 as amended by P.L. 1969, c.379.

the Commissioner of the Environmental Improvement Commission, the Chairman of the State Highway Commission, and the Forestry Commissioner or their delegates. A 1969 amendment added the Commissioner of Health and Welfare.¹²⁰

Purpose

The Wetlands Control Board was established in 1967 to regulate the alteration of coastal marshes and wetlands. The statute provides:

No person, agency, or municipality shall remove, fill, dredge, or drain sanitary sewage into, or otherwise alter any coastal wetland, as defined herein, without filing written notice of his intention to do so, including such plans as may be necessary to describe the proposed activity, with the municipal officers in the municipality affected and with the Wetlands Control Board.¹²¹

The 1969 amendment defined "coastal wetlands" as "...any swamp, marsh, bog, beach, flat or other contiguous lowland above extreme low water which is subject to tidal action or normal storm flowage at any time excepting periods of maximum storm activity."¹²²

Machinery

The proposed alteration of the area may not proceed unless the application ("notice of intention") is approved by both the municipality and the Wetlands Control Board, after a public hearing.

120. P.L. 1969, c.379.

121. 12 M.R.S.A. 4701 as amended by P.L. 1969, c.379 §2.

122. P.L. 1969, c.379 §2.

Approval may be withheld by either the municipal officers or the board when in the opinion of either body the proposal would threaten the public safety, health or welfare, would adversely affect the value or enjoyment of the property of abutting owners, or would be damaging to the conservation of public or private water supplies, or of wild life or freshwater, estuarine or marine fisheries.¹²³

When this legislation was written, the review or intermediate step by the local authorities was included to give municipalities a voice in this decision. Although the municipalities would probably have screamed loudly if they had not been given this power, it has not been an unmixed blessing. Many municipalities are reluctant to defend the legal suit which might follow if they denied the permit, preferring to leave this to the Board. In the absence of some overwhelming local sentiment a permit is usually approved by the municipality.

There is an escape clause in this legislation for maintenance or repair of presently existing ways, roads or railroad beds and for the construction, maintenance and repair of any utility as defined in 23 M.R.S.A. 255 or private roads and bridges required or convenient to agriculture, or in a logging or lumbering operation, abutting or crossing said wetlands, provided no water course is substantially altered.¹²⁴

123. 12 M.R.S.A. 4702 (Supp.).

124. 12 M.R.S.A. 4708 as amended by P.L. 1969, c.379 §7.

Background

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This bill was modeled after a similar act in Massachusetts. The preamble to the Massachusetts law contained the following language "...its purpose...is in part to immediately provide for the protection of coastal wetlands against the imminent threat of the development of such lands for industrial and other uses detrimental to their preservation in their natural state."

The purpose in Maine of enacting this legislation was also basically a land use control measure, but also, a very important consideration was the conservation element of preserving wild life, both fowl and game, in the coastal marshlands, and preserving the coastal wetlands and estuaries as sources of nutrients, habitat, and spawning grounds for marine species of fish.

This is the first comprehensive State regulation of the coastal zone. This progressive piece of legislation is the only legislation on the books outside of local zoning ordinance which will allow a breathing space for a planned development of the Maine coastline. It was passed without funding. Its actual operations were initially financed out of the department budgets, principally the Department of Sea and Shore Fisheries and Inland Fish and Game, and it was not granted operational funds until the 104th Legislature.

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125. P.L. of Mass. 1965, c.768. Massachusetts General Laws Annotated, Chapter 130 §105.

126. P.&S.L. 1969, c.154.

Relationship to Colonial Ordinances

The State has always had the authority to regulate use of the intertidal zone, but heretofore the authority has not been extensively exercised. As suggested by the opinion of the Massachusetts Supreme Judicial Court in a case where the constitutionality of comparable legislation was challenged, the Colonial Ordinances have a bearing on the constitutionality of these statutes.^{126a} As discussed in a subsequent chapter, the unique ownership these ordinances gave in land below high tide has never been absolute but has rather been impressed with a public use. In preserving these areas for the total environment, the Wetlands regulations are consistent with the historic nature of the limited ownership of these areas and the judicial interpretations of the extent of the public servitude therein. The Maine Supreme Court declined to rule on the constitutionality of the Wetlands Act in the one challenge to reach that Court to date;^{126b} there can be little doubt that when the issue is properly presented, the Court will find this regulation of use to be a logical extension of its prior decisions.

Property of an Abutting Owner

The statute^{126c} authorizes denial of a permit if the alteration "would adversely affect the value or enjoyment of the property of

126a. Commissioner of Natural Resources v. S. Volpe & Co., Inc., 349 Mass. 104, 112, 206 N.E. 2d 666 (1965).

126b. Johnson v. Wetlands Control Boards, Me. 250 A. 2d 825 (1969).

126c. 12 M.R.S.A. 4702 (Supp.).

abutting owners." This phrase is not contained in the Massachusetts
¹²⁷
statute. This clause would be sustainable under the common law only
if the adverse effect amounted to a common law nuisance or, under the
Colonial Ordinances, only if the damage was to navigation or to fish-
eries. It has parallels, however, in consideration of the views of
neighbors on proposed variances in zoning. The lack of standards by
which to gauge "enjoyment", and the implied power to prefer one littor-
al owner's economic interest over another's, cast doubt on the validity
of this ground for permit denial.

25. SOIL AND WATER CONSERVATION COMMISSION

The State Soil and Water Conservation Commission consists of elev-
en members. Its membership includes the Dean of the College of Agricul-
ture, the Commissioner of Agriculture, the Forestry Commissioner, the
Commissioner of Inland Fish and Game, and the Commissioner of Sea and
Shore Fisheries who shall serve ex officio. In addition there are to
be four Soil and Water Conservation District Supervisors representing
four areas and two Soil Conservation Representatives to be appointed
by the four District Supervisors. The elected officials serve for a
¹²⁹
term of four years. ¹³⁰ The Commission is authorized to employ an execu-
tive director.

127. Compare "...and protecting public and private property..." Mass.
Gen. Laws annotated, 1958, c.130 §105 (Supp.).

128. 12 M.R.S.A. 1-201 as amended by P.L. 1969, c.477.

129. 12 M.R.S.A. 51 (Supp.).

130. 12 M.R.S.A. 52.

Responsibilities

The primary duty of this Commission is to classify soil within the State of Maine according to suitability for different types of activity, e.g., forests, roads, campsites, industrial development, housing. This is part of its duty in carrying out the Legislature's policy to provide for soil and water conservation, prevention of soil erosion, flood control, prevention of impairment of dams and reservoirs, assistance in maintaining navigability of harbors and rivers, preserve wildlife, protect the tax base, and protect public lands.¹³¹ All Commission recommendations are advisory, however, and it is specifically forbidden to infringe upon or impair the rights of any owner of riparian land.¹³² Its recommendations are not enforceable if the land owner does not wish to comply.

Relation to Marine Resources

This Commission is closely related to marine resources although no specific statutory authorization would so indicate. The Commission has not been given responsibility for coastal erosion, but on the other hand there is nothing in Maine law which would prohibit it from this function. Its jurisdiction, according to the Executive Director¹³³ stops at high water mark. With coastal erosion, high water mark is

131. 12 M.R.S.A. 2.

132. 12 M.R.S.A. 4.

133. Interview with Executive Secretary of Soil Conservation Commission, Charles L. Boothby, March 4, 1969.

continually being pushed further inland so the agency has a definite interest in the shore.

Coastal Erosion

In the office of the Executive Secretary of the Soil Conservation Commission is a 1965 map of Maine with many areas of the coast marked in black indicating where the shore has eroded. Information is compiled from reports made to the Commission or from personal knowledge of people from the area. One of the most extreme cases is the Islesboro region where in some instances as much as a foot a year is lost to the sea. In this case sheer cliffs are being eaten into by the action of the waves and tide.

Camp Ellis

When questioned about the Camp Ellis situation (See Chapter on Erosion) the Executive Secretary described this as a classic example of a town having failed to institute proper zoning of property in the past. At Camp Ellis, he feels, the beach is highly unsuitable for residential structures. He raised the possibility that in this and in other cases perhaps the town should take the beach for recreational purposes thereby putting it to proper use. A long range look should be given to inland waterways and lakes as well.

Time and Tide

Against the backdrop of time it is apparent that no local, state, or federal agency can control the emergence or disappearance of conti-

nents. In a more limited span of time, however, measures to manage and control shore erosion are possible. It was pointed out that beach erosion preventive measures are very expensive. They cost about \$60.00 a running foot so they should be planned very carefully. With proper determination of land use, the Executive Secretary feels that the cost/benefit ratio of preventing soil erosion to the coast runs very favorably.

Corps of Engineers

Although there is no formal statutory direction, the Soil and Conservation Commission has informal working relationships with many of the State and Federal agencies. One such agreement is with the Army Corps of Engineers. The Commission will work with the Corps to assist any private consultant hired by a municipality for the design of erosion control measures. They are not in a position to assist private individuals because, from a realistic point of view, a private owner will usually own only a small portion of the beach or "reach" as it is known in proper terminology. In many cases, what may solve one person's problems, may accelerate the problem of his neighbor (e.g., situation at Popham Beach) so the whole area or reach must be taken into consideration.

Sea and Shore Fisheries

The Department of Sea and Shore Fisheries has a direct interest in coastal erosion because deposits of sediment or silt on clam flats or fish spawning grounds may be highly destructive if not fatal to

their productivity. Many of the measures designed to prevent the effects of erosion in tidal rivers and estuaries must be initiated further upstream if the deleterious effects are to be avoided downstream. Here the Soil Conservation Commission's work and the interest of the Sea and Shore Fisheries are quite related.

Pesticides

The work of erosion control is also very important in control of pesticides, which can cause great damage to fisheries. If there is proper erosion control, less pesticides are carried into the surface waters. DDT, in particular, has a high affinity for soil products. If there is no erosion, most of the DDT will stay with the soil products rather than being washed into the inland waterways and hence to tidal waters.

Wetlands Control

The Committee is not represented on the Wetlands Control Board. This is probably one area where the Executive Secretary should sit, particularly, if Wetlands legislation is extended to inland waters.

Agriculture

The relationship of the Commission with the Department of Agriculture is mainly in the representation of the Agriculture Commissioner on the Soil Conservation Commission. In relation to function and working arrangement, the Soil Conservation Commission has a much closer tie-in, and direct responsibility to the Federal Department of Agriculture. This is a local-federal relationship type of arrangement

in which each local district sets its own program and the Executive Secretary of the Soil Conservation Commission is a coordinator of all these programs with the Federal Department of Agriculture.

Division of Sanitary Engineers

The Commission has a working relationship with the Division of Sanitary Engineers, Department of Health and Welfare. The latter Division is responsible for enforcing the State plumbing code, for septic tanks, sewer systems, etc. The Division both asks and receives help from the Soil Conservation Commission. In general, in passing on the placement of septic tanks or sewer systems, the Sanitary Engineering Division is mainly concerned with the percolation test. The Secretary thinks that percolation tests should be thrown out in the determination of suitability for sewerage, building, etc. He pointed out that although the soil may be all right, in many instances there is ledge right beneath the top soil which in itself would make areas unsuitable for septic tanks. An example of this was the Farm Home Administration's Low Income Housing in Leeds. In that case, proper percolation tests were taken, but the Commissioner was neither asked for nor gave information as to soil condition. After completion of the project there were all sorts of problems with the soil.

The Commission's advice was asked and then ignored in the construction of the new high school in Milbridge. The site chosen was rated the poorest by the Commission. It was chosen because of considerations other than soil suitability. After the building was constructed, the school had trouble with settling, cracking walls, and sewerage

treatment, which necessitated an additional \$90,000 expenditure which was not supposed to be part of the original package.

Highways, Parks and Recreation

The Commission has also given assistance to other State agencies who may or may not have their own engineers such as the Highway Commission. They are contacted by the Parks and Recreation Commission to recommend suitable portions of park land for sand and gravel roads.

Interrelationship With Other State Agencies

Executive Director is member	*Environmental Task Force *Water Resources Advisory Board
Representation on Committee ex officio includes	Commissioner of Agriculture Commissioner of Forestry Commissioner of Inland Fish and Game Commissioner of Sea and Shore Fisheries
Working Relationship with	Sanitary Engineer Division, Dept. of Health & Welfare Corps of Engineers Highway Commission Parks and Recreation Commission Municipalities

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26. MAINE LAND USE REGULATION COMMISSION

The Maine Land Use Regulation Commission, established by the 104th Legislature, consists of seven members including the Director of Parks and Recreation, the Forest Commissioner, the State Planning Officer

134. 12 M.R.S.A. 681-689 as added by P.L. 1969, c.494.

and four other members appointed by the Governor with the advice and consent of Council for a term of four years. The four members are to respectively represent the public, conservation interests, forest pro-
 135
 duct industry interests and general land owner interests.

The State purpose of the Legislature in enacting this bill was the desirability

...to extend the principles of sound planning, zoning and subdivision control to the unorganized and deorganized townships and mainland plantation of the State in order to preserve public peace, health, safety and general welfare, and to prevent the further spread of unplanned residential, recreational, commercial and industrial development detrimental to the use or value of these areas; to prevent the intermixing of incompatible industrial, commercial, residential and recreational activities; to prevent the development along lakes, ponds and public roads of substandard structures or structures located in too close a proximity to such waters or roads; and, to prevent the despoilation, pollution and inappropriate use of lakes and ponds in these mainland plantations and unorganized areas; and to preserve ecological balance in these mainland plantations and unorganized areas.

This chapter shall apply only to unorganized and deorganized townships and mainland plantations and shall not apply to Indian reservations.¹³⁶

While not designed primarily to preserve the ocean frontage, this Act would apply to any unorganized territories or plantations, if any, on the ocean. The Act in effect is a zoning ordinance for the territory covered. Certain provisions of this Act have also been applied
 137
 to more populated areas. Two provisions of this Act are worthy of

mention here. One such provision is that in areas that are not served by a community sewer, lot sizes must be at least 20,000 square feet

135. 12 M.R.S.A. 683 as added by P.L. 1969, c.494.

136. 12 M.R.S.A. 681 as added by P.L. 1969, c.494.

137. Compare 12 M.R.S.A. 4801-6 as added by P.L. 1969, c.365.

for single family residential purposes. Variations may be made in this minimum standard provided approval is given by the State Department of Health and Welfare on the basis of percolation tests, soil type, and soil observation holes made in a representative manner, and recommendations by a registered engineer. This is in contrast to the usual tests including only percolation tests. (See remarks of Executive Director of Soil Conservation Commission, p. 63). The other section refers to tax assessment, the section reads:

Taxation. For purposes of property tax assessment, it shall be presumed that any zoning classification hereunder is permanent in the absence of clear proof to the contrary. The State Tax Assessor shall consider the effect upon value of any restrictions to which the use of the land is subjected. Restrictions shall include, but are not necessarily limited to, zoning restrictions and any recorded contractual provisions limiting the use of land entered into with the Federal or State Government or any subdivision or agency thereof.¹³⁹

Interrelationship With Other State Agencies

Commission consists of heads of	Director of Parks and Recreation Commission Forest Commissioner State Planning Officer
Variations in lot size	to be approved by the State Dept. of Health & Welfare
Zoning classifications shall be considered by	State Tax Assessor

138. 12 M.R.S.A. 688 as added by P.L. 1969, c. 494.

139. 12 M.R.S.A. 686 §13 as added by P.L. 1969, c. 494. See also Resolves 1969, c. 34 which proposes an amendment to the Constitution to enable certain lands to be valued for tax purposes at current use rather than at potential value. The referendum will be on November 3, 1970.

27. HEALTH AND WELFARE DEPARTMENT

The Department of Health and Welfare is headed by a Commissioner who is appointed by the Governor with advice and consent of Council for a term of three years, or during the pleasure of the Governor and Council.¹⁴¹ The Department's interest in the ocean is directed toward products of the sea that affect the health of individuals, and refuse that goes into the ocean that has either a direct or indirect effect on individuals. With the exception of the Division of Sanitary Engineering, the great bulk of the work of this Department is not ocean oriented.

Fisheries

The Department has only a secondary interest in fish. The Commissioner has an immediate interest in shellfish only in moments of great catastrophe, such as an outbreak of hepatitis, when it is necessary to close flats and to stop shipment in interstate commerce. The rigid regulations for labeling areas and conditions under which shellfish are harvested, found in the laws of the Department of Sea and Shore Fisheries, are health measures to assure continued surveillance, and effective and immediate control of any situation detrimental to health. Shellfish have a tendency to concentrate all sorts of foreign substances which may make an otherwise harmless element lethal. The actual testing of shellfish is not carried on by the Department of Health and Welfare. Rather minimal state resources to conduct this

140. 22 M.R.S.A. 1-4495. Interview with Commissioner of Health and Welfare, Dr. Dean Fisher, March 13, 1969.

141. 22 M.R.S.A. 1.

work are found in the Department of Sea and Shore Fisheries, the Marine Laboratory at Boothbay and to a small extent in the Environmental Improvement Commission. Some clams are tested at the Agricultural Experiment Station in Orono.

The Department is involved in the licensing of sea food only to the extent that they license restaurants in which it is served. Shellfish are strictly licensed under laws of Sea and Shore Fisheries, as mentioned above. Fish other than shellfish, unless it is in interstate commerce, is under no retail licensing procedure. ¹⁴² The only regulation, or built-in protection to the consumer, is fish's own advertisement of its advanced or imminent decomposition.

Should Maine become involved in processing fish for food protein concentrate, it is doubtful that the Health Commissioner would have any jurisdiction over this activity. It is the Commissioner's opinion that this would fall under the Maine Department of Agriculture in its capacity as administrator and enforcer of the Federal pure food and drug laws.

Water Pollution

The Commissioner sits as a member of EIC and is very knowledgeable about public water supply and the problem and extent of pollution going into fresh and tidal streams. (See next section, Division of Sanitary Engineering).

142. 12 M.R.S.A. 4303.

Radioactivity

By virtue of the responsibility assigned to him under the Atomic
Development Act,¹⁴³ the Commissioner is concerned with the concentration
of radioactivity. He points out that the principal concern over radio-
active waste products is whether there is a significant amount of cal-
cium in the area of the waste discharge. If there is no known amount
of calcium in the ecological system, then there will be no concentra-
tion which will increase the hazard of radioactivity to individuals.
The Commissioner is to determine the presence of concentrations of ra-
dioactivity which would affect a public water supply, or concentrations
of radioactivity in plant or living marine resources used for human
consumption.

One of the earliest involvements of the Department with the ocean
in recent times was a contract with the U.S. Atomic Energy Commission
to maintain a constant surveillance of the Kittery Naval Base and the
atomic submarines that were to be built there. At the inception of
the program, the Navy was anxious to get background on what were nor-
mal radiation levels. At that time nobody knew much about the tech-
niques of surveillance or even what kind of samples should be taken.
For example, should there be a sample of living animals or plants,
and if so, which living animals and plants? There was also no infor-
mation about the incidents of radioactivity concentration in marine
organisms in their pre-naval yard state. This study was done in the

143. 10 M.R.S.A. §103 re duties.

interest of determining the effects on the ecology and the food supply of repairing and refueling nuclear-powered submarines. Later, this same capability was put to use to monitor radioactivity in milk. This was occasioned by the fact that Maine is part of the Boston milk shed, and at one point in time Massachusetts was refusing to accept milk from Maine people because of alleged radioactivity in the air.

A spot assignment was given to this Department during the visit of the nuclear powered ship Savannah to Maine. The Health and Welfare Department was responsible for taking a count of the radioactivity both before and after the Savannah was in port. The Commissioner reported that there was no increase in the radioactivity level in Maine waters.

Interrelationship With Other State Agencies

Chairman is member

Environmental Improvement
Commission¹⁴⁴
Wetlands Control Board
New England Interstate Water
Pollution Control Commission
*Environmental Task Force
*Advisory Board Water Resource
Center
*State Planning Council

Department assigned
specific duties

Atomic Energy Development Act
Maine Land Use Regulation
Commission

28. DIVISION OF SANITARY ENGINEERING, DEPARTMENT OF HEALTH AND WELFARE

Through the Division of Sanitary Engineering, the Department of Health and Welfare is responsible for enforcing the State Plumbing

¹⁴⁴. Commissioner of Health and Welfare was eliminated as a statutory member of this commission by amendment to the EIC laws, P.L. 1969, c.499 §1.

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Code. Towns may have their own ordinances, but minimum standards must comply with the State Code. A license must be obtained for the installation of plumbing from an official who is responsible to the State rather than an employee of local government. The fee for the license is divided between the State and local government. If the local government has its own inspector, he reports both to the State and the municipality and that portion of the State fee which would have gone to the inspector goes directly to the municipality.

The Department of Health and Welfare is personally responsible for the inspection of FHA, VA, or other federal projects. The Department is also responsible for making inspection in licensing plumbing installations in schools.

Plumbing Code, Pollution, and Zoning

Asked if the Plumbing Code were adequate to solve the pollution problem, the Commissioner said, "of course not," because there is no control of the other end of the process -- the treatment plant or what is discharged through the sewers.

The Commissioner thought Maine law was quite inadequate regarding
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 shore front sewerage, be it on the lake or on the ocean. He sees the solution in some sort of State approval for adequacy of lot size and location of lots for housing, be it for individual or developers, in terms of contours and characteristics of the land. There should also

145. 32 M.R.S.A. 3301-3507; Maine State Plumbing Code, 1966.

146. See requirements passed by 104th Legislature, P.L. 1969, c.494; P.L. 1969, c.365.

be regulation of density and assurance that developments are far enough back from the water supply to prevent pollution. The pollution problem is intensified by certain aspects of land development. Fifty (50) foot lots with private sewers are a contributing factor to pollution. Often developments are built on land that is not fit for human habitation. Swamp land that is unsuitable for anything, is filled in and sold for development purposes. Even with suitable land, the high density on shore front lots means that any sewerage system cannot function properly. Ground waters become polluted from inorganic compounds even in houses with their own individual sewerage systems. Simple tests of percolation are not sufficient to protect the water supply given some of the above mentioned considerations.

Ecology

In protection of marine life there are problems other than simple coliform bacteria counts. For instance, the ecology of an estuary might be upset by a solid sediment which would disrupt the food chain in an estuary even though such sediment might have a very low bacteria count.

The problem of eutrophication has not been to date a problem to tidal estuaries because of the cleansing action of the tidal flow. In some instances the nitrates and nutrients can be utilized in the food chain. The capacity of the ocean to absorb pollution, however, is not unlimited.

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29. ENVIRONMENTAL IMPROVEMENT COMMISSION

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The Environmental Improvement Commission consists of ten members appointed by the Governor with advice and consent of Council,

147. 38 M.R.S.A. 361-463 as amended by P.L. 1969, c.431, P.L. 1969, c.499; 38 M.R.S.A. 581-597 (Air) as added by P.L. 1969, c.474.

148. The Water Improvement Commission became the Water, Air and Environment Commission in 1967 (P.L. 1967, c.475); the name was changed to the Environmental Improvement Commission in 1969. (P.L. 1969, c.431 §9.

149. Commissioner of Health and Welfare was eliminated as a statutory member by P.L. 1969, c.499.

two of whom represent manufacturing interests of the State, two of whom represent municipalities, two of whom represent the public generally, two of whom represent conservation interests in the State, and two other members knowledgeable in matters relating to air pollution. The members serve for a term of three years.

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It is the duty of the Environmental Improvement Commission to recommend standards to the Legislature for quality of water in the inland streams and territorial waters of Maine. It is to enforce the standards so set and to consult and advise persons, corporations, or municipalities who pollute Maine's waterways.

It shall be the duty of the commission to study, investigate and from time to time recommend to the persons responsible for the conditions, ways and means, so far as practicable and consistent with the public interest, of controlling the pollution of the air, rivers, waters and coastal flats of the State by the deposit therein or thereon of municipal sewage, industrial waste and other substances and materials insofar as the same are detrimental to the public health or the animal, fish or aquatic life, or to the practicable and beneficial use of said air, rivers, waters and coastal flats. The Commission shall make recommendations to each subsequent Legislature with respect to the classification of the rivers, waters and coastal flats and sections thereof within the State, based upon reasonable standards of quality and use.

The commission shall make recommendations to each Legislature with respect to abatement of pollution of the air, rivers, waters and coastal flats and sections thereof within the State for the purpose of raising the classifications or standards thereof to the highest possible classification or standards so far as economically feasible, such recommendations to relate to methods, costs and the setting of time limits for compliance.¹⁵¹

150. 38 M.R.S.A. 361 (Supp.).

151. Id.

The Attorney General has ruled that the authority of the Commission extends three miles out to sea from the shore line and waters between an island and mainland within three miles of the coast line.¹⁵² The territorial jurisdiction of the Environmental Improvement Commission, coupled with its other statutory powers, makes this Commission the only State agency at the moment that has the authority to deal with oil pollution in the ocean in general, and in Casco Bay in particular. Implicit in the Chapter on Marine Boundaries, *infra*, and discussed in the Chapter on Pollution, *infra*, is the fact that the proposed ordinances to regulate the activities of King Resources on Long Island, which are under consideration by the Portland City Council, can only extend to Portland's geographical limits. The geographic boundaries are determined by corporate charters granted by the Legislature.¹⁵³ In the absence of a specific grant, the geographic boundaries of Portland would stop at low water mark. As far as it has been possible to ascertain, no water area has been included in Portland's territory, although islands have been specifically mentioned.

While the EIC may have broad enough authority to draw up necessary regulations for the Long Island situation, it is submitted that present statutes and regulations are inadequate to accomplish the purpose, and the agency has neither the fiscal, physical, or personnel resources to undertake the task. Subject to federal pre-emption in the field, the State Legislature has the alternatives of (1) changing Portland's boundaries to include these waters; (2) delegating the responsibility

152. 1961-62, Attorney General Reports, p. 163.

153. See Chapter on Marine Boundaries.

to Portland; (3) delegating the responsibility to an existing agency; (4) creating a new agency; or (5) an alternative, which hopefully will not be selected, is to do nothing.

This Commission has evolved from the Sanitary Water Board which was created in 1941.¹⁵⁴ The forerunner board is interesting in that it consisted of the Commissioner of Health and Welfare, the Commissioner of Agriculture, the Commissioner of Inland Fish and Game, and the Commissioner of Public Utilities. The Sanitary Water Board evolved into the Water Improvement Commission in 1951.¹⁵⁵ In 1967 the function of the regulation of air pollution was added to the duties of this agency.¹⁵⁶

Because of the importance of pollution control to every agency concerned with marine resources, the laws and the machinery to control pollution will be discussed in detail in the Chapter on Pollution.

It is only within the last ten years that there has been a general public awareness of the problem and the extent of pollution.¹⁵⁷ Ten years ago the Chief Engineer of the Water Improvement Commission was practically ostracized at a legislative hearing where he presented

154. P.L. 1941, c.209.

155. P.L. 1951, c.383.

156. P.L. 1967, c.475.

157. Interview with Raeburn McDonald, Chief Engineer of Environmental Improvement Commission, Feb. 10, 1969; Robert Dow, Chief Research Director, Sea and Shore Fisheries, Nov. 26, 1969.

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suggestions for controls on certain streams. At that time pollution regulation was not politically palatable. Today Legislators and Government officials of all political persuasion vie with each other to establish their credentials for pollution control.

The legal structure and the financial commitment for controlling and eradicating pollution have not yet caught up with the public awareness and the political acceptability. ^{158a} Added to this are more complex and technologically sophisticated standards by which clean water must be measured.

The more refined demands for pollution control are well illustrated by the rather graphic description by the Commissioner of Health and Welfare. The Commissioner stated 20 years ago that water was acceptable if it didn't stink. Ten years ago water was acceptable if it wasn't lumpy, until several years ago water was acceptable if it were clear. Now with the different demands of industry and the large number of organic and inorganic compounds and detergents going into the water supply, standards other than clarity and lack of turbidity must be considered in setting criteria for water quality. These additional demands cover the need for regulations for Ph factor, thermal, and ¹⁵⁹ radioactive pollution.

158. Interview with Raeburn McDonald.

158a. Evidence of political acceptability is found directly in voter approval of a \$50 million bond issue ratified Nov. 4, 1969.

159. Interview with Dr. Dean Fisher, Commissioner of Health and Welfare, March 13, 1969. See P.L. 1969, c.431.

Interrelationship with Other State Agencies

Chairman is member	New England Interstate Water Pollution Control Commission Wetlands Control Board *Environmental Task Force Pesticides Control Board *Advisory Board Water Resources Center
Represented	Maine Mining Bureau

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30. NEW ENGLAND INTERSTATE WATER POLLUTION CONTROL COMMISSION

The New England Interstate Water Pollution Control Commission was established by virtue of the New England Interstate Water Pollution Control Compact which was drawn up under the consent given by Congress for two or more states to enter into compacts for cooperative effort and mutual assistance for the prevention and control of water pollution.¹⁶¹ The Compact became effective upon adoption by two contiguous New England States.¹⁶² The membership consists of five commissioners from each signatory state.¹⁶³

The five members for Maine are the Commissioner of the Department of Health and Welfare, the Chairman of the Maine Environmental Improvement Commission, and three more Commissioners, one representing municipal interests, one representing industrial interests, and one representing

160. 38 M.R.S.A. 491-537.

161. 38 M.R.S.A. 536; Federal Water Pollution Control Act, June 30, 1948, as amended, 33 U.S.C.A. §466B.

162. 38 M.R.S.A. 501.

163. 38 M.R.S.A. 493.

the general public, who are appointed by the Governor with advice
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 and consent of Council for a period of three years.

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31. BOARD OF PESTICIDES CONTROL

The Board of Pesticides Control was established in 1965 to regulate, in the public interest, the application of pesticides. The Board is composed of the Commissioner of Agriculture, the Commissioner of Health and Welfare, the Forest Commissioner, the Commissioner of Inland Fisheries and Game, the Commissioner of Sea and Shore Fisheries, the Chairman of the Public Utilities Commission, Chairman of the Highway Commission, and the Chairman of the Environmental Improvement
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 Commission.

A licensing procedure is set up for the use of pesticides. Certain restrictions are placed on their use and provision is made in the statute for financial responsibility of those seeking licenses. Appropriate penalties have been provided for those who are guilty of license
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 violations.

This Board is related to oceanography because of the effect that pesticides have on marine life. Lobsters, for instance, are closely akin to insects and are highly susceptible to DDT. In addition to the

164. 38 M.R.S.A. 532.

165. 22 M.R.S.A. 1451-1465 as added by P.L. 1965, c.447.

166. 12 M.R.S.A. 1452.

167. See Regulations under the Maine Pesticide Control Law pursuant to 22 M.R.S.A. 1459.

toxic effect on marine life, there is also a potential danger to human life because of the characteristic of shellfish to concentrate these pesticides.

32. PEST CONTROL COMPACT

This Pest Control Compact was ratified by the Maine Legislature in 1967.¹⁶⁸ Its purpose is to provide interstate cooperation in pest eradication and control programs. The Forest Commissioner is the administrator for the State of Maine.

33. ADVISORY BOARD WATER RESOURCES CENTER

The Water Resources Center was set up at the University of Maine, Orono, in May, 1965, under the Federal Water Resources Research Act of 1964¹⁶⁹ with the purposes of sponsoring a broad program of water-related research activities encompassing technical, political, social, legal, economic, and other aspects, and training scientists competent to evaluate and solve water problems on a regional and national scale.¹⁷⁰ While not a State governmental agency in a strict sense, the participation of so many State officials on its advisory board gives it a quasi-governmental status or at least an influential voice bearing on

168. 12 M.R.S.A. 1111-1128 as added by P.L. 1967, c.485.

169. P.L. 88-379, 78 Stat. 329.

170. Annual Report Water Resources Center, University of Maine, Orono, Maine, June 1967.

state Water Resource problems and for that reason it is included here. The composition of the Advisory Board further amplifies the interrelationship of State agencies in managing natural resources. Representation as of May, 1969 included:

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The President of the University of Maine
 The Executive Secretary of the Soil Conservation Commission
 Director of Darling Research Center
 State Conservationist of the U.S. Department of Agriculture
 Commissioner of Agriculture
 Chief of Research, Department of Sea and Shore Fisheries
 Commissioner of Health and Welfare
 District Chief Engineer of the Geological Survey,
 U.S. Department of Interior
 Chairman and Chief Engineer of the Environmental Improvement
 Commission
 Member of the Administrative Weather Bureau, Environmental
 Science Service, U.S. Department of Commerce
 Environmental Science Service of the Department of Commerce
 Commissioner of Inland Fisheries and Game
 Director of Parks and Recreation
 Director of the Division of Sanitary Engineering,
 Department of Health and Welfare
 Bridge Engineer, Maine State Highway Commission
 Forestry Commissioner
 Dean of the University of Maine Law School

34. ENVIRONMENTAL TASK FORCE

In the Spring of 1969, the Governor appointed an Environmental Task Force charged with suggesting a "comprehensive plan for the orderly development of Maine's future," in effect an environmental policy for the State. In addition to asking for recommendations on pending legislation, the Governor requested the Task Force "to assemble all pertinent and measurable facts on our environment, identify all the vital problems affecting that environment, and hopefully...point the way to the solution of these problems so that our environment not only

171. Agenda - Annual Meeting of the Advisory Committee of the Maine Water Resources Center, May 15, 1969.

will be protected but may be enhanced.

In addition to selected non-governmental members, composition of the Task Force included:

The Chairman of the Environmental Improvement Commission
 The Commissioner of Economic Development
 Commissioner of Health and Welfare
 Commissioner of Agriculture
 Commissioner of Sea and Shore Fisheries
 The Forestry Commissioner
 Director of Parks and Recreation Commission
 The Planning Director
 Executive Secretary of the Soil Conservation Commission
 Chairman of the Natural Resources Committee of the
 104th Legislature
 President of the University of Maine.

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35. KEEP MAINE SCENIC COMMITTEE

The Keep Maine Scenic Committee was created in 1965 as an outgrowth of a Keep Maine Scenic Committee established by the Governor in 1962.

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This advisory committee to the Parks and Recreation Commission shall consist of eleven members appointed by the Governor. The Chairman of the Committee is also appointed by the Governor. A Keep Maine Scenic program is to be maintained in the Maine State Parks and Recreation Commission. The program shall include "research, education,

172. Maine Environmental Bulletin, Natural Resources Council of Maine, April, 1969. The Task Force held a hearing Nov. 7, 1969 on the impact of unplanned developments along the Maine Coast.

173. Id.

174. 12 M.R.S.A. 633 added by P.L. 1965, c.312.

175. Biennial Message of Governor Reed, Laws of Maine 1965, p.1113.

promotion and enforcement, for the protection of Maine's natural beauty and elimination of offensive litter and other unsightly conditions on roadsides, streets, waterways and beaches in parks and other public areas. One of the inspirations for this committee was the pictorial report of the junked cars and litter on Maine's coast line.

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36. SCENIC HIGHWAY BOARD

The Scenic Highway Board created by the 104th Legislature consists of thirteen members including the Chairman of the State Highway Commission, the Director of Parks and Recreation, the Commissioner of Inland Fisheries and Game, the Forest Commissioner, the Commissioner of Economic Development, and the Director of State Planning, or their delegates. The Governor appoints a member representing conservation groups, a member representing the outdoor advertising industry of Maine, a member representing the vacation-travel industry, a member representing municipal governments and a member from the general public who shall serve for a term of three years. The Governor also appoints the chairman of the board; a representative of the State Highway Commission serves as secretary. The intent of the Legislature in creating this Board was stated as follows:

176. 12 M.R.S.A. 632 (Supp.).

177. McKee, John. As Maine Goes, Bowdoin College, Museum of Art, 1966.

178. 23 M.R.S.A. 231-235 as added by P.L. 1969, c.453. cf. New Hampshire Revised Statutes. Chapter 249-A: 1-12 (Supp.).

179. 23 M.R.S.A. 233 as added by P.L. 1969, c.453.

The State of Maine possesses vast and unique scenic resources which contribute to the economic well-being of the State and provide pleasure to its citizens and visitors. It is the policy of the State to preserve and enhance these scenic values commensurate with controlled economic development to provide for a compatible atmosphere for growth. Action is needed to maintain for the benefit of future generations the essential characteristics of the Maine countryside.¹⁸⁰

The Board is instructed to develop and adopt procedures, rules and regulations for the designation and development of a system of scenic highways and the preservation of scenic value in the highway corridor. Factors which the Board must consider in designing the system include scenic value, safety, economic impact. It is to work with municipalities and other State agencies. Compatibility with other conservation plans is to be considered. It is to make recommendations to the State Highway Commission, the Parks and Recreation Commission and the Forestry Department as to the placement of rest areas, picnic areas, scenic overlooks and other developments that would enhance the scenic value and use of the highway corridors. Such recommendations are not binding on such agencies.¹⁸¹

Funds of \$1,500 a year for each of the next two years have been allocated for this function.¹⁸²

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37. PENOBSBOT BAY AND RIVER PILOTAGE COMMISSION

The Penobscot Bay and River Pilotage Commission, as created by the

180. 23 M.R.S.A. 233 as added by P.L. 1969, c.453.

181. 23 M.R.S.A. 234 as added by P.L. 1969, c.453.

182. P.L. 1969, c.453 §2.

183. 38 M.R.S.A. 85-105 as added by P.L. 1969, c.410.

104th Legislature, consists of three members appointed by the Governor and Council for a term of three years. One member is to be a licensed pilot of the Penobscot Bay and River Pilots Association, one a representative of interests of Penobscot Bay and River industry, and one, with a marine background, is to represent the public.

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The purpose of the Act is to provide for a system of state pilotage for the Penobscot Bay and River in order to provide maximum safety from the dangers of navigation for vessels entering or leaving the waters of this area; to maintain a state pilotage system devoted to the preservation and protection of lives, property and vessels entering or leaving the waters of Penobscot Bay or River at the highest standard of efficiency, and to insure an adequate supply of pilots well qualified to discharge their duties in aid of commerce and navigation.

Every foreign vessel and every American vessel under register, with a draft of 9 feet or more, entering or departing from any port or harbor within the waters of Penobscot Bay or River north of the line drawn from Marshall Point Line at Port Clyde, and thence to Matinicus Rock Light, thence to Western Head Isle au Haut, shall take a pilot licensed under this chapter. Vessels under enrollment or fishing vessels or vessels powered by sail are excluded from provisions of this chapter.

The Commission has its own dedicated revenue from licenses and a percentage of the pilot's income. This is the first instance of a regional state pilot system. Other provisions with regard to the appoint-

ment of pilots for any port may be found in 38 M.R.S.A. 81-84.

38. MAINE STATE PARKS AND RECREATION COMMISSION

The Maine Parks and Recreation Commission consists of five members, the Commissioner of Inland Fisheries and Game and the Forestry Commissioner, ex officio, and three citizens appointed by the Governor with advice and consent of Council. Not more than two of the citizen members may be of the same political party. The executive officer of the Commission, the Director of Parks and Recreation Commission, is not a statutory officer although he has been assigned duties by statute. The only provision in the statute for his appointment is the authority given to the Commission to employ such employees and other personnel as deemed necessary.

Jurisdiction Over Park Lands

The Commission "shall have jurisdiction, custody and control in, over and upon all state parks and memorials and national parks which are under control and management of the State, excepting Baxter State Park. Wilderness or natural areas or both, shall be established and

185. 12 M.R.S.A. 601-907 as amended.

186. 12 M.R.S.A. 602.

187. See 10 M.R.S.A. 5051 as amended by P.L. 1969, c.6; 38 M.R.S.A. 321-28 (Supp.).

188. 12 M.R.S.A. 602 (10).

managed primarily to preserve the natural character and features of such areas and any use or development which threatens such character and features shall be prohibited..."¹⁸⁹ A 1967 amendment broadened the definition of parks to include,

Any area of land largely in a natural condition and containing natural features of scenic, ecological or scientific interest or importance. The presence of manmade development shall not preclude an area from this classification if such developments either are not likely to remain or leave a permanent mark upon the natural character of the area, or if they are essential to the operation of the area as a wilderness or natural area, or both, and detract minimally from its natural character.¹⁹⁰

General Duties

General powers and duties assigned to the Parks and Recreation Commission include acquiring land for park purposes, making studies and recommendations to the Governor on recreational resources and facilities, and evaluating the State's needs both in the Public and private areas; making regulations for and exercise of jurisdiction over State parks and memorials; cooperating with federal government on leasing park land, planning, development, and receiving Federal funds for park and recreational purposes; assisting State, county and municipal agencies¹⁹¹ in the study and planning of their recreational needs.¹⁹²

189. 12 M.R.S.A. 602 as amended by P.L. 1967, c.190 §2.

190. 12 M.R.S.A. 601 (2) (E) as amended by P.L. 1967, c.190 §1.

191. In an interview with Norman C. Maxwell, Park Planner of the Parks and Recreation Commission, March, 1969, it was stated that the State Commission had neither the personnel nor finances to carry out this statutory duty.

192. 12 M.R.S.A. 602 as amended by P.L. 1967, c.190 §1; P.L. 1969, c.22.

Duties with Regard to Boating Facilities

Specific duties were assigned to the Parks and Recreation Commission in 1963 and 1967 with regard to boating facilities. ¹⁹³

The Director of Parks and Recreation is to decide when hazards to boating exist and then, within the funds available, place aids to navigation and regulatory markers on the water. ¹⁹⁴ His authority extends to any waters within the territorial limits of the State, and the marginal sea adjacent to the State. ¹⁹⁵ No city, county, or person shall mark the waters of the State in any manner in conflict with ¹⁹⁶ the marking system prescribed by the Director of the Commission.

The Director is to acquire, construct, and maintain, within funds available, public facilities for boats in the waters of the State, including but not limited to launching ramps, parking sites and access roads. He shall decide where the facilities shall be located and ¹⁹⁷ which facilities shall be constructed by the Highway Commission.

He may make grants-in-aid to political subdivisions for the construction and maintenance of boating facilities, but he shall determine where they shall be located and which facilities shall be constructed ¹⁹⁸ under this financial inducement.

193. P.L. 1963, c.367; P.L. 1967, c.103.

194. 38 M.R.S.A. 321 (Supp.).

195. 38 M.R.S.A. 321.

196. 38 M.R.S.A. 323 as added by P.L. 1965, c.173.

197. 38 M.R.S.A. 321.

198. 38 M.R.S.A. 325 as added by P.L. 1967, c.103.

He may lease land from political subdivisions, quasi-public organizations, individuals and corporations for no more than 99 years, and he may lease concessions to private individuals or corporations for not more than 30 years.

The Commission must give approval to the Forest Commissioner to allow him to issue permits for the erection and maintenance of permanent causeways, marinas, bridges, or fill in great ponds.

Dedicated Revenue

Although originally the Parks and Recreation Commission's predecessor agency operated on dedicated revenue, it found that its seasonal income did not coincide with its year-round needs and an unbalanced budget in the Spring induced the Commission to go back to regular appropriation. An exception to funding from general appropriations is dedicated revenue from the Boat Facilities Fund set up within the State Parks and Recreation Commission, and funded by that portion of the Gasoline Tax allocated to the Commission and fees collected from use of boating facilities.

199. 38 M.R.S.A. 324 as added by P.L. 1967, c.103.

200. 12 M.R.S.A. 514 (3) (C) as amended by P.L. 1967, c.544 §21.

201. Interview with Norman C. Marwell, March, 1969.

202. 36 M.R.S.A. 2903 A as amended by P.L. 1965, c.395; P.L. 1967, c.27.

203. 38 M.R.S.A. 323 as amended by P.L. 1965, c.173.

Summary

There are certain deficiencies in the statutes covering the Maine Parks and Recreation Commission which probably can for the most part be explained by the fact that the statutes have not been recently revised. This deficiency includes the out-dated qualification of political representation on the Commission. ²⁰⁴ The compensation to the members of the Commission of \$10.00 per day is clearly inadequate if this is to be a paid job; and there is a diffusion of duties throughout the Statutes which are not in all instances properly cross-referenced. From merely studying the Statutes, one gets the impression that this Commission has not fully emerged from the shadow of the Forestry Department and the Department of Inland Fisheries and Game. This impression is reinforced by the supremacy of Inland Fisheries and Game and Forestry regulations over Park and Recreation Commission ²⁰⁵ recommendations and regulations. In actuality, the Commission and the Commissioner seem very much a going concern. Recreational aspects of ocean development will be dealt with in more detail infra.

204. Political appointment may still be the order of the day, but such a requirement is not written into the laws with regard to appointing a governing body of any of the other Maine natural resource agencies. See however, representation of minority party on State Highway Commission, p. 43, and Maine Mining Commission, p. 100-1.

205. 12 M.R.S.A. 605.

Interrelationship with Other State Agencies

Representation on Commission by	Commissioner of Inland Fish & Game, ex officio Forestry Commissioner, ex officio
Gives consent to Forestry Commission	to issue permits for erection of and maintenance of permanent causeways, bridges, marinas or filling in great ponds.
Instructs Highway Commission	on access and parking sites, and boat and launching ramps.
Shares boat gasoline tax with	Department of Sea and Shore Fisheries Department of Inland Fish and Game.
Director sits as member of	Maine Recreation Authority Maine Land Use Regulation Commission Scenic Highway Board *Environmental Task Force *Water Resources Advisory Board Regional Planning Commissions in wildlands or unorganized territories
Director gives advice and assistance	to municipalities

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39. FORESTRY DEPARTMENT

The Forestry Department is headed by a Commissioner who is appointed by the Governor with advice and consent of Council for a term of four years. He must be a trained forester or a person of skill and experience in the care and preservation of forest lands. His primary duties are to provide for fire, disease, and pest control for

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206. 12 M.R.S.A. 501-516 as amended

207. 12 M.R.S.A. 501 (Supp.).

Maine forests, be they on private or public land. His other duties involve leasing campsites, selling timber and grass cutting and stumpage rights, granting permits for the mining of sand and gravel from public lands and from beneath great ponds.

208

Responsibility State and Privately Owned Land

The Forest Commissioner is responsible for the administration of 17 million acres of land, most of which is in private ownership. As Land Agent he is responsible for public reserve lands and all other State Lands not otherwise provided for by law. This would include State owned islands in great ponds and in the sea.

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The question has been raised whether, according to the letter of the statutes, he is responsible for the submerged lands of the territorial sea and under tidal estuaries. The Commissioner asserted that he was sure it was not the Legislature's intent to bestow this authority upon his Department. If it should be determined that these lands are his responsibility, the Forest Commissioner states he is ready, willing, and eager to divest himself of this responsibility. With the exception of this questionable authority, the area of greatest contact of the Forest Commission with marine resources relates to the extensive use of insecticides by the Forest Commission. The Forest Commissioner said, as far as he knows, the Forest Commission either in its own right or as administrator of public reserved lands, has no land with ocean frontage.

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208. 12 M.R.S.A. 514-515 (Supp.).

209. 12 M.R.S.A. 504 (Supp.).

210. Interview with Austin Wilkins, Forest Commissioner, Dec. 17, 1968.

Pesticides

Several years ago there was a bad outbreak of spruce budworm in the Oxbow area of Maine. This area had a multi-million dollar payroll. If the ravages of this disease were not stopped and eliminated, this payroll was in jeopardy. At that time the only known cure available was DDT. There was no doubt that DDT had an adverse effect on fisheries, but a decision had to be made on the relative disadvantages of using DDT versus not using DDT. In that particular instance DDT was used against the recommendation of other natural resource agencies. The rationale was that a dead forest with all its problems of erosion, silt and sediment, etc. would have resulted in a much greater detriment to the fishing industry than would the ill effects of DDT. The problem as far as DDT is concerned is now academic for other chemicals 211 are now available which are effective in checking spruce budworm. The question of resolution of conflicting uses, however, is still very much alive. At the time there was no state machinery to resolve the decision. Presumably, the Pesticides Control Board would now rule on questions of this nature.

Dedicated Revenue

Of the approximately two and one half million dollar a year in the Forest Commission budget almost a million dollars is derived from the tax assessed on lands within the Maine Forestry District and a half a million dollars is from Federal matching funds. This revenue 212

211. Interview with Austin Wilkins, Forest Commissioner

212. 12 M.R.S.A. 1601-7.

is used to provide fire protection and disease protection and is also used to pay part of the actual salaries of the Commissioner and the Deputy Commissioner of Forestry. From the economic point of view of owners of forest land, a separate department funded by revenues from their lands, which is spent on their land, makes sense. From the point of view of the Forest Commissioner, the fact that such a large percentage of the land he manages is private and the existence of this dedicated revenue are reasons why his department should not be combined with other natural resource agencies.

Interrelationship With Other State Agencies

Commissioner is member	Scenic Highway Board Maine Land Use Regulation Commission Soil Conservation Commission Parks and Recreation Commission Wetlands Control Board Board of Pesticide Control *Environmental Task Force *Water Resource Center Advisory Board
Administrator of	Pest Control Compact
Represented on	Maine Mining Bureau
As Land Agent keeps records of claims issued by	Maine Mining Bureau
To grant permits for dredging in great ponds, erect causeways, marinas, or fill great ponds, must consult with	Maine Mining Bureau Environmental Improvement Commission Commissioner of Inland Fisheries and Game State Parks and Recreation Commission
To sit as member of	Regional Planning Commissions in wildlands and unorganized territories.

40. MAINE MINING BUREAU

The Maine Mining Bureau has been thrust into the forefront of State agencies having to do with the development of marine resources by virtue of its grant of a lease to King Resources for prospecting for oil in the Gulf of Maine. This is particularly ironic because the Bureau is ill-equipped by authority, composition, staff, and appropriations to be operationally, as opposed to administratively, responsible for any large scale operation, much less one of the most glamorous and potentially profitable of all oceanographic enterprises.

The Maine Mining Bureau is composed of seven members, one each from the Departments of Agriculture, Forestry, Economic Development, Inland Fisheries and Game, Sea and Shore Fisheries, Environmental Improvement Commission, and the State Geologist. ²¹⁴ Prior to the 104th Legislature, the Bureau had responsibility for regulating prospecting and mining activity on land owned or held in trust by the State, with the exception of sand, gravel, and water. The legislative authority for the Maine Mining Bureau to issue mining and prospecting leases in the offshore and submerged lands of Maine's territorial sea, if any, could only have been based on a section of the Statute that had originally been designed to authorize the following of a vein or a lode

213. 10 M.R.S.A. 2101-2111 as amended by P.L. 1969, c.508, P.L. 1969, c.301.

214. 12 M.R.S.A. 2101 as amended by P.L. 1969, c.508. This amendment substituted a member from the Department of Sea and Shore Fisheries, to replace a representative from the Department of State. It is submitted that the mere addition of a member from the Department of Sea and Shore Fisheries does not provide the necessary safeguard to marine life.

from the State owned land on the shore as it continued under water in
 a tidal estuary.²¹⁵ Subsequently, the necessity of continuing the vein
 or lode was removed from the statutes, but the basis for authority to
 mine on the ocean floor was still somewhat tenuous. The Forestry Com-
 mission had the responsibility for sand and gravel on State owned lands
 under great ponds. Prior to 1969, no State agency was responsible for
 mining sand, water, and gravel on submerged lands of tidal estuaries
 or of the territorial sea. The 104th Legislature gave the Maine Mining
 Bureau a rather ambiguous negative jurisdiction over the removal of
 sand and gravel from the territorial sea.²¹⁶

The responsibility and jurisdiction of the Maine Mining Bureau
 was substantially enlarged by the 104th Legislature by two bills. The
 bill revising Maine Mining Laws²¹⁷ was undoubtedly intended to clarify
 the authority and jurisdiction of the Maine Mining Bureau by defining
 and extending the statutory authority of this Bureau in Maine's terri-
 torial sea. If read literally, however, the new legislation replaces
 uncertainty and lack of jurisdiction with confusion and chaos -- and
 apparently negates the Maine Mining Bureau's authority to grant leases
 for the prospecting and mining of oil and gas on the ocean bottom, al-
 though giving it responsibility for the conservation and regulatory
 measures for such exploitation. It may be inferred that this act con-
 templated that licensing and leasing for exploration and exploitation
 of petroleum resources would be dealt with in the new statute dealing
 exclusively with those resources. As noted below, such was not the case.

215. P.L. 1939, c.304.

216. 10 M.R.S.A. 2109 as amended by P.L. 1969, c.508.

217. P.L. 1969, c.508.

The other bill, The Oil and Gas Conservation and the Development
 218 Control Act, had the stated purpose of "the prevention of waste of
 oil and gas, the protection of correlative rights and public natural
 219 resources..." Its authority is to apply to all lands located in the
 State, however owned, including submerged lands on the continental
 shelf within the territorial seaward boundaries of this State, and any
 other land owned or administered by any government or any agency or po-
 litical subdivision thereof over which the State under its police power
 220 has jurisdiction. The Act provides for the issuance of certificates
 of clearance for transportation and delivery of oil and gas and certif-
 icates of compliance with the oil and gas laws and regulations of the
 State, but it does not provide for issuance of licenses or leases to
 221 prospect or drill for oil.

The Oil and Gas Conservation bill pays only lip service to main-
 taining environmental integrity. Although its title would indicate
 that it is concerned with conservation of deposits of oil and gas under
 Maine's territorial sea, the main thrust of the bill is aimed at regu-
 lating the market for oil and the profits of the operators rather than
 protection of the resource. Some of the language of the Act undoubt-
 edly was borrowed from the State Railroad Commission of Texas (agency

218. 10 M.R.S.A. 2151-2166 as added by P.L. 1969, c.301.

219. 10 M.R.S.A. 2152 as added by P.L. 1969, c.301.

220. 10 M.R.S.A. 2155 as added by P.L. 1969, c.301.

221. 10 M.R.S.A. 2153 as added by P.L. 1969, c.301.

responsible for control of gas and oil production in Texas. See Revised Civil Statutes of Texas Title 102), but the Act is relatively meaningless until such time as oil is produced from under Maine's territorial sea in substantial quantities, and is completely inadequate for the protection of living marine resources if oil should be found there.

Another Act passed by the 104th Legislature provided for the conservation and rehabilitation of land affected in connection with mining.²²² It established the Maine Mining Commission and gave it responsibility for conservation and rehabilitation measures with regard to mining practices on private as well as State owned land. There is no statutorily required cooperation between this Commission, the State Geologist, and the Maine Mining Bureau, although all will be dealing with the same subject matter.

Because of the potential importance of mineral resources of the sea bed, the statutes governing the Mining Bureau are analyzed in greater detail in a separate chapter, *infra*. In brief, the observation may be made here that the Maine Mining Bureau should be given a better statutory framework if it is the agency that the Legislature wants to be responsible for the exploitation of mineral resources. A clear statutory distinction should be made between mining activity on dry land and on submerged land; and greater protection should be written into the statutes for the preservation and protection of marine living resources.

222. 10 M.R.S.A. 2201 - 2212 as added by P.L. 1969, c.472.

Dedicated Revenue

The Maine Mining Bureau has non-lapsing dedicated revenue from
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 all fee, rental, and royalty moneys accruing from operations under
 prospector's permits, licenses to mine, or mining leases. Such money
 is to be paid into the Maine Mining Bureau for administration and con-
 trol of all prospecting, development or mine activity conducted in
 areas administered by the Bureau. The Bureau may, with the approval
 of the Governor and Council, assign such sums as it deems proper to
 other State agencies for preservation, development, or replacement of
 224
 natural resources. A new source of dedicated revenue under the Oil
 and Gas Development Act was added to the coffers of the Maine Mining
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 Bureau to administer the Act. Prior to 1963 money from mining and
 prospecting activity on public lands was dedicated to the education
 fund for the unorganized territories in accordance with statutory re-
 quirements dating back to pre-statehood Massachusetts law regarding
 public reserved land.

222. P.L. 1969, c.508.

223. The section of the Maine Mining Bureau statute dealing with mining
 underwater provides that "the same royalty (emphasis supplied) as
 provided in §2105 shall be paid to the State on all hard mineral
 or metal commodities under the territorial sea, produced from
 mineral deposits situated beneath bodies of water, where title to
 the land beneath the water is in the State..." (10 M.R.S.A. 2109
 as amended by P.L. 1969, c.508 §11). This still leaves money
 from leases as part of the dedicated revenue.

224. 10 M.R.S.A. 2105.

225. 10 M.R.S.A. 2162 as added by P.L. 1969, c.301.

Interrelationship with Other State Agencies

Bureau's Chief Administrator is also	Director of Division Science Technology and Mineral Resources, Dept. of Economic Development.
Approval necessary	for leases, licenses, or permits granted by the Forestry Commissioner for mining of gravel and sand in great ponds and on State owned lands and public reserved lots. Also must give approval for erection of causeways, bridges, or marinas in great ponds. ²²⁶
Representation on Bureau	includes members from Departments of: Sea and Shore Fisheries Forestry Agriculture Environmental Improvement Commission Inland Fish and Game Department of Economic Development

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41. MAINE MINING COMMISSION

The Maine Mining Commission created by the 104th Legislature consists of five members appointed by the Governor with advice and consent of Council for a term of five years. One member is to represent mining interests, one is to represent conservation interests and the remaining three are to be public representatives. Two of the public members are to be trained in the field of either geology, planning, biological science or civil engineering. No more than three members

226. 12 M.R.S.A. 514 as amended by P.L. 1967, c.544 §21.

227. 10 M.R.S.A. 2201-2213 as added by P.L. 1969, c.472.

of the Commission can be of the same political party. The Commission is to employ a director whose compensation shall be set by the Governor and Council.
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The declared policy of this Act is to encourage the prudent development of the State's mineral resources where mining operations are conducted, to provide for the reclamation of affected lands and to encourage their productive use. "Area of land affected" means
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the area of land from which overburden, product, or byproduct is taken or on which it is to be deposited, or will by natural forces be deposited, and includes all land excavated or cleared of vegetation in the operation.

Detailed provisions are made for the exercising and carrying out of the functions of this Commission, which presumably apply to State owned as well as private land. It would be hard to conceive that the legislative intent of this Act was the reclamation of land other than in the sense of terra firma. Proceeding from an analogy of responsibility under the Maine Mining Bureau for both land and submerged land, however, there is nothing in this Act which would completely exclude the Maine Mining Commission from regulating reclamation in tidal estuaries or presumably even the territorial sea. The Act, however is clearly not appropriate to, or drawn up for, this purpose. The relationship with the State Geologist, with the Division of Science, Technology and Marine Resources of the D.E.D., or with the Maine Mining Bureau has not been spelled out in this Act.

228. 10 M.R.S.A. 2203 as added by P.L. 1969, c.472.

229. 10 M.R.S.A. 2202 as added by P.L. 1969, c.472.

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The inevitable dedicated revenue was provided for in this Act. Fees collected and other funds received by the Maine Mining Commission are to be placed in a non-lapsing reclamation fund.

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42. DEPARTMENT OF INLAND FISHERIES AND GAME

The Department of Inland Fish and Game is headed by a Commissioner appointed by the Governor with the advice and consent of Council for a term of three years. The Department operational divisions include the Engineering Division, the Fisheries Research and Management Division, the Hatchery Division, the Game Research and Management Division, and the Information and Education Division. The Warden service is divided into ten subdivisions which do not coincide with county lines.

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The Department is responsible for the management of inland fish and game, and preservation of Maine's wildlife and fish in the inland streams. The Department shares responsibility with the Department of Sea and Shore Fisheries for anadromous fish: "All sea salmon, shad, alewives and smelts wherever found that migrate from the ocean into fresh water shall be under the concurrent jurisdiction of the Commissioner of Sea and Shore Fisheries and the Commissioner of Inland Fisheries and Game." The joint jurisdiction for salmon has been formal-

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230. 10 M.R.S.A. 2210 as added by P.L. 1969, c.472.

231. 12 M.R.S.A. 1901-3405.

232. 12 M.R.S.A. 1951.

233. 12 M.R.S.A. 2559.

ized under the Atlantic Sea Run Salmon Commission.

Fishways and Dams

While the two Departments share joint responsibility for anadromous fish, the Commissioner of Inland Fish and Game has the sole responsibility for the construction and repair of fishways on dams which will enable the migratory species to return to fresh water to spawn.²³⁵ If the Commissioner so directs, a fishway must be constructed on a dam. A petition for a fishway may be originated by a petition of two hundred citizens from a municipality or municipalities in which such dam or artificial construction exist, by a majority of County Commissioners, or by the Inland Fish and Game Legislative Committee. The statute providing that the Commissioner may require the owner or occupant to provide a suitable fishway is permissive and not mandatory, and citizens have no de jure claim to installations of fishways that the Commissioner has denied.²³⁶

While the Commissioner of Inland Fish and Game has no responsibility to authorize the building of a dam or even a veto of such construction, there is a statutory requirement that he as well as the Chairman of the Public Utilities Commission be notified. While dams do hinder or prevent the migration of anadromous fish, they also serve to keep

234. 12 M.R.S.A. 3601. See Section 45, p.

235. 12 M.R.S.A. 2201-4; P.L. 1965, c.386.

236. Dumont v. Spears, Me. 245 A. 2d 151 (1969); 12 M.R.S.A. 2201.

out some destructive fish.

Cooperation on Federal Grants and Programs

The Department of Inland Fisheries and Game and the Department of Sea and Shore Fisheries have been closely cooperating in carrying out programs financed by the Federal government for the restoration of anadromous fish.²³⁸

A more recent example of cooperation between the two departments was the joint effort in drawing up the plans for a research project entitled A Statewide Comprehensive Fish, Wildlife, and Marine Management Plan to be financed by a variety of Federal programs. This ambitious project will attempt to catalogue present water and land uses according to species and projections of future species abundance, land and water use and opportunities, and plans for management of these resources. Information of the type derived from this study is absolutely essential in any final formulation of the State Comprehensive Plan.²³⁹ The necessity of keeping such information current is also apparent. Although both departments have enthusiastically endorsed this project and have contributed key personnel to its planning and implementation, the planners have run into housekeeping problems because of the separation of these two agencies, e.g. fiscal accounting of what funds had

237. Interview with Commissioner of Inland Fish and Game, Ronald Spears, March 11, 1969.

238. P.L. 88-309, 16 U.S.C.A. 779.

239. See 5 M.R.S.A. 3301 (Supp.).

240

already been expended. Perhaps what the State Legislature has rent asunder, Federal funds will eventually reunite.

Pollution and Fishways

The decision to build or not to build a fishway often runs the Alfonse-Gaston gambit of "there is no point of putting up fish ladders, if there is such terrible pollution in the river" and "there is no point in cleaning up the river if there are no fish ladders." ²⁴¹ The stake of this Department in unpolluted streams and lakes is quite high. Although they have no statutory authority to do anything about it, members of this Department as well as the Department of Sea and Shore Fisheries are often in attendance at hearings of the Environmental Improvement Commission.

Game Management

The Commissioner, in carrying out his responsibility for game and wild birds, may acquire land by gift, bequest, or otherwise for the location, construction, maintenance, and convenient operation of game management areas, fish hatcheries, and feeding stations. His authority enables him to take by eminent domain that which he cannot obtain ²⁴² by other methods. When game management areas are bordered by tidal ²⁴³ flats, such authority extends to low water mark on said flats.

240. Meeting attended by Donald Christie of Department of Inland Fish and Game, and Philip Groggins of Department of Sea and Shore Fisheries at TRIGOM Office, July 7, 1969.

241. Interview with Commissioner Ronald Speers, March 11, 1969.

242. 12 M.R.S.A. 2151.

243. 12 M.R.S.A. 2155.

Aquaculture

For purposes of fish culture and scientific research, the Commissioner may set apart inland waterways for a period not exceeding ten
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years.

Licenses and Residency

The Commissioner issues various resident and nonresident licenses
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for fishing, hunting, and a combination of the two. Resident licenses may be issued to any citizen of the United States who is domiciled in Maine with the intention of residing here, and has resided in this State in three months prior to the date on which the application for
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the license is filed. All aliens are to be classified as non-residents. Any alien, however, may obtain a resident license if he has resided in this State continuously for one year and pays taxes on real
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estate in the municipality in which he or she resides.

Joint Responsibility Boats and Watercraft

The Commissioner of Inland Fisheries and Game and the Commissioner of Sea and Shore Fisheries are joint heads of the Bureau of Water Craft
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Registration and Safety. See Section 44, p.110 for a description of this Bureau.

244. 12 M.R.S.A. 2106. See also 12 M.R.S.A. 2105, 2151-2 as amended by P.L. 1965, c.448 §23, P.L. 1967, c.494 §3.

245. 12 M.R.S.A. 1901, c.301-327;;32 M.R.S.A. c.65.

246. 12 M.R.S.A. 1901.

247. 12 M.R.S.A. 1901 (1).

248. 38 M.R.S.A. 201-241.

Dedicated Revenue

The Department of Inland Fish and Game is financed through dedicated revenue in an amount of over two and a half million dollars per annum²⁴⁹ obtained from the sale of hunting and fishing licenses and from money recovered in fines for violations. None of the revenue generated from these sources finds its way into the general fund. The only tangible economic contribution to the cause of general government contributed from hunting and fishing is from the multiplier effect of money pumped into the economy from hunting and fishing in the State.²⁵⁰ Estimates of this amount vary depending on the estimator.²⁵¹

While this Department is the preserve of sportsmen, occasionally there are outcries of "not enough" even from users of this highly subsidized State activity. For example, in a hearing before the Legislative Fish and Game Committee of the 104th Legislature, great opposition came from the sportsmen to a proposal to raise the cost of the resident fishing license. The feeling of at least one sportsman was that, "the Department should make an honest economy effort within itself", another suggested "that additional revenue come from violators of fishing and hunting regulations, not additional taxes from honest sportsmen."²⁵¹

249. State of Maine Condensed Summary of Financial Report, June 30, 1969 listed revenues of \$2,699,341 for Inland Hunting, Fishing and related licenses.

250. Estimates of from \$19-\$30 a day per family were quoted by Mr. Norman Marwell, Park Planner of the Parks and Recreation Commission for persons using Maine's recreational facilities.

251. Maine Sunday Telegram, April 27, 1969, p.7B.

Chaos of Statutory Codification

One would be forced to agree with the Commissioner of Inland Fisheries and Game that the laws of his Department are a mess, insofar as trying to find anything is concerned. This is true despite a provision in the statute ²⁵² that a revision of all public laws relating to inland fish and game shall be issued at the adjournment of the Legislature. This is in fact done, but the revision consists for the most part of merely inserting new sections into the code and deleting other sections in accordance with current legislative enactments. A further impediment to making sense out of Inland Fisheries and Game Laws is that much of the "law" is in the form of rules and regulations which are issued by the Commission at the direction of the Legislature in the form of Resolves, or instituted by the Commissioner or the public ²⁵³ under procedures outlined by statute. These regulations for the most part concern closed times, area and gear restrictions. They are printed in a pamphlet entitled Maine Open Water Fish Laws - Summary. One must have both the Revision and the pamphlet to know what law ²⁵⁴ governs.

252. 12 M.R.S.A. 1963.

253. 12 M.R.S.A. 1960.

254. The revision was originally printed in the Session laws. After 1953, probably because of bulk, they were issued under separate cover, which also contains laws and regulations of the Water Craft Registration and Safety Bureau. The separate printing of departmental and related law would appear to be common practice in many of the departments.

The Department of Sea and Shore Fisheries law is handled somewhat differently. Legislative directives as to area, time, and gear are promulgated as Private and Special Legislation. Regulations of the Department are for the most part confined to enumeration of areas closed for shell fish either because of contamination and pollution or as a conservation measure. The public laws, the private and special legislation, and the regulations are printed biennially under the same cover.

Inter-relationship with Other State Agencies

Commissioner is member of	Scenic Highway Board Wetlands Control Board Board of Pesticides Control *Water Resources Advisory Board
Is Co-head of	Bureau of Watercraft Registration and Safety
Is member ex officio of	Atlantic Sea Run Salmon Commission Parks and Recreation Commission Water and Soil Conservation Committee
Represented on	Maine Mining Bureau
Must approve	Permits from Forestry Department for mining gravel; erecting causeways, bridges, or fill in great ponds.
Duties	With regard to Atomic Energy Development
To sit as member of	Regional Planning Commissions in wildlands or unorganized territories.

43. ADVISORY COUNCIL INLAND FISHERIES AND GAME

The Advisory Council for Inland Fish and Game is composed of seven members, one each from each Councilor District, appointed by the Governor with consent of Council for a term of six years. It is their duty to render to the Commissioner information and advice concerning the administration of the Department. The make-up of this advisory council reflects its geo-political orientation.

44. BUREAU OF WATERCRAFT REGISTRATION AND SAFETY

The Bureau of Watercraft Registration and Safety is composed of the Commissioner of Inland Fish and Game and the Commissioner of Sea and Shore Fisheries who head the Bureau, and such clerical and administrative personnel as the two Commissioners find necessary to adequately perform the administrative duties assigned to this Bureau.

Dedicated Revenue

This Bureau is financed from the Watercraft Fund. All fees collected for certificates, licenses, and permits by the Bureau are to be paid to the Treasurer of the State and accrue to this fund. The fund is non-lapsing but at the end of the fiscal year any excess may

254. 12 M.R.S.A. 1955.

255. 38 M.R.S.A. 201-241 as amended.

256. 38 M.R.S.A. 231.

257. 38 M.R.S.A. 203.

be divided between the Department of Inland Fisheries and Game and the Department of Sea and Shore Fisheries in proportion to the amount of revenue paid into the fund from inland waters and coastal waters respectively. The purpose of this Bureau is to provide an agency to register watercraft and to insure safety²⁵⁸ of persons and property in connection with the use and operation of watercraft. The Bureau heads acting jointly may adopt regulations to establish administrative procedures, to govern the use and operation of watercraft upon the waters of this State, and to govern safety equipment for watercraft, including the type, quality, and quantity of such equipment.²⁵⁹

Pre-emption of Field?

In the statutes establishing this Bureau there is the following language, "No municipality or political subdivision of this State may adopt any ordinance, law or regulation dealing with the operation or numbering of watercraft or any other subject matter of this Sub-²⁶⁰chapter." In this same chapter there are two other sections:

Reckless Operation Prohibited. It is unlawful for any person to operate any watercraft, water²⁶¹ skis, surfboard, or similar device recklessly.

258. See Gratto v. Palangi, 154 Me. 308, 147 A. 2d 455 (1958) for status of law before passage of this Act.

259. 38 M.R.S.A. 231.

260. 38 M.R.S.A. 202.

261. 38 M.R.S.A. 237 (1).

Endangering Persons or Property. Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motor boat, however propelled, upon the tide waters of any municipality or upon any of the offshore waters within the jurisdiction of this State in such a manner as to endanger any person or property shall be punished by a fine of not less than \$10.00 nor more than \$100.00 or by imprisonment for not more than 90 days, or by both.²⁶²

The jurisdiction of the Water Registration and Safety Bureau is within 200 feet of the shore line.²⁶³ It may well be asked whether the State has pre-empted the regulation of surfboarding from the localities. At present in some localities the time and place of surfboarding is regulated under the general police power of the municipality. For example:

It shall be unlawful for any person to use a surfboard for the purpose of surfing in the waters at any public beach in the Town of Scarborough, except in those locations which may be established by the Board of Selectmen after public hearing. The Board of Selectmen shall provide such lines or markers sufficient to designate the area. Any person violating the provisions of this ordinance shall be subject to fine of not less than \$10.00 nor more than \$100.00 plus costs for each offense, which fine and costs shall be recovered on complaint to the use of the Town of Scarborough. Passage as amended.²⁶⁴

Designated area for surfing at Higgins Beach shall be as follows:

Surfing shall be allowed from Champion Street to the Spurwink River from June 1st to September 15th. The remainder of the year the entire Beach is available for surfing.²⁶⁵

262. 38 M.R.S.A. 282.

263. 38 M.R.S.A. 201 (16) and 38 M.R.S.A. 237 (4).

264. Article 41-1966 (as amended) Town Meeting of Scarborough.

265. Selectmen's Action: June 14, 1966 Meeting. (Scarborough).

Enforcement

It is provided that the regulations of the Water Registration Bureau shall be enforced by both Inland Fisheries and Game and Sea and Shore Fisheries Wardens, State Police Officers, and all other law enforcement officers in the State having authority to enforce this sub-²⁶⁶chapter and to arrest persons in violation. If the municipal regulations coincide with the State's, there would seem to be no conflict except for the fact that fines recovered should be part of the dedicated revenue for the Watercraft Fund, as provided for by statute, and should²⁶⁷ be transmitted to the Bureau rather than accrue to the towns.

268

45. ATLANTIC SEA RUN SALMON COMMISSION

The Atlantic Sea Run Salmon Commission is composed of the Commissioner of Inland Fisheries and Game, ex officio; the Commissioner of Sea and Shore Fisheries, ex officio; and a third member appointed by the Governor and Council for a term of four years. The third member's²⁶⁹ only listed qualification is that he must be a citizen of Maine.

It is the duty of this Commission to make regulations for the taking of Atlantic salmon. The authority of the Commission in making regulations is limited to setting (1) the time when taken, (2) the

266. 38 M.R.S.A. 205.

267. 38 M.R.S.A. 203; 38 M.R.S.A. 205.

268. 12 M.R.S.A. 3601-4.

269. 12 M.R.S.A. 3601.

method by which taken, (3) the number taken, (4) the weight taken, (5) the length taken. The Commission is specifically forbidden to infringe upon the jurisdiction of the EIC.

The Salmon Commission is authorized to purchase or lease, within this State, land, dams, and other structures, to acquire flowage rights, mill privileges, and rights-of-way, and to build dams and other structures, for the purpose of conservation of the Atlantic sea run salmon, provided prior rights of towns are not affected thereby. An attempt to take property by eminent domain for the purposes of this Commission was declared void by the Maine Supreme Court: "although the Legislature has clearly provided for the acquiring of property by 'purchase or lease' for the public purpose of conservation of the species, there is conspicuously lacking any determination that the public exigencies require the taking of any property for this purpose. This omission stands in sharp contrast to the expressed authority conferred upon the Commissioner of Inland Fisheries and Game to take property by eminent domain for game management areas, fish hatcheries and feeding stations..."

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46. SEA AND SHORE FISHERIES ADVISORY COUNCIL

The Sea and Shore Fisheries Advisory Council consists of five members appointed by the Governor with advice and consent of Council

270. 12 M.R.S.A. 3603.

271. 12 M.R.S.A. 3602.

272. Smith v. Speers, Me. 253 A.2d 701 (1969); Me. 254 A.2d 272 (1969).

273. 12 M.R.S.A. 3551-2.

for a term of three years. The duties of the Council are to give the Commissioner advice and consent concerning the administration of the Department. There are two mandatory meetings a year and others upon the request of the Chairman or Vice Chairman.

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47. DEPARTMENT OF SEA AND SHORE FISHERIES

The Department of Sea and Shore Fisheries is headed by a Commissioner appointed by the Governor with advice and consent of Council for a term of four years. The Department has a common heritage with the Department of Inland Fish and Game in legislation of 1867²⁷⁵ which set up a Commission to take steps relative to the restoration of "sea fish" to the rivers and inland waters of Maine. By successive acts of the Legislature, the duties of the Commission were expanded. As early as 1871 the State took the initiative in salmon breeding; in 1873 it began to pay attention to lobsters.²⁷⁶ In 1880 it was given the power to enforce the laws for the protection of game, as well as those relating to inland and marine fisheries.²⁷⁷ The first wardens were appointed by the Governor with advice and consent of Council, which explains the political orientation of the warden service which continued until relatively recently.

274. 12 M.R.S.A. 3401-4656 as amended.

275. Resolves 1867, c.78.

276. State Administrative Consolidation in Maine. National Institute of Public Administration, 1930, p.169.

277. P.L. 1880 c.209.

In 1895 the duties which had previously been handled by one body were separated. Jurisdiction over inland fish and game was vested in three Commissioners; the jurisdiction over Sea and Shore Fisheries was transferred to a separate Commissioner.

278

The purposes of this Department are: conserving marine life, scientific research, promoting and developing the Maine coastal fishing industry, and implementing, administering, and enforcing State laws relating to sea and shore fisheries.

279

The present Department of Sea and Shore Fisheries is composed of the three main divisions, the Marine Research Division, the Coastal Warden Division, and the Public Relations and Marketing Division. Historically the Department has been primarily an enforcement agency. Despite 19th century interest in research, it has only been within the last two decades that research of any magnitude has been carried on within the Department. Even this significant increase in effort, has failed to meet the demonstrated needs for more knowledge and hence more research about marine species prevalent in Maine's waters.

280

Corps of Engineers

The Department has been designated to be the State agency which is to cooperate in advising the United States Corps of Engineers in

278. P.L. 1895, c.104.

279. 12 M.R.S.A. 3451 as amended by P.L. 1967, c.337 §2.

280. For discussion of 12 M.R.S.A. 3701-3703 as added by P.L. 1967, c.527 pertaining to encouraging research by private interest, see Chapter 3 infra.

ascertaining that activity in relation to navigation, i.e. dredging, filling, blasting, etc., is not detrimental to Maine's marine resources. Although assigned this non-statutory function, the Department has been given no specific appropriation to carry out this advisory and watch-dog function.

Relationship with the Department of Inland Fish and Game

In Section 42, p.102 supra, the many facets of contact between the Department of Sea and Shore Fisheries and the Department of Inland Fisheries and Game were described. These included the joint jurisdiction for migratory fish,²⁸¹ the Atlantic Sea Run Salmon Commission,²⁸² the Bureau of Watercraft Registration and Safety,²⁸³ their interest in fishways and pollution, and joint responsibility for a state wide comprehensive fish, wildlife, and marine management plant.

Reciprocity with New Hampshire

Provision is made in the statutes for reciprocity in violations of Sea and Shore Fishery laws or Inland Fish and Game laws of the State of New Hampshire or the State of Maine when:

281. 12 M.R.S.A. 2559, 3405.

282. 12 M.R.S.A. 3601.

283. 38 M.R.S.A. 231.

...committed or attempted to be committed by any person or persons fishing in any waters or portion thereof lying between the State of New Hampshire and the State of Maine, any warden or other person, who is authorized to make arrests for violations of the sea and shore fisheries laws and the inland fish and game laws of the State of New Hampshire, shall have power and authority to make arrests on any part of such waters between the State of New Hampshire and the State of Maine or the shores thereof and to take the person or persons so arrested for trial to the state in which the violation was committed and there to prosecute such person or persons according to the laws of such state.²⁸⁴

Multi-State Cooperation

Maine has joined with other Atlantic Seaboard States in the Atlantic States Marine Fishery Commission. See Section 48, p.120.

International Cooperation

The Maine Commissioner of Sea and Shore Fisheries has represented the United States on the International Commission for the Northwest Atlantic Fisheries which was established in 1949.^{284a} Membership on this Commission includes Canada, Denmark, France, West Germany, Iceland, Italy, Norway, Poland, Portugal, Rumania, the Soviet Union, the United Kingdom and the United States.

This Commission works with member governments toward achieving maximum productivity of the fisheries of the Northwest Atlantic. Large research programs by member nations are coordinated by various panels of the Commission. Recommendations on regulations are also made by Commission panels. Mesh regulations have been adopted for two ocean

284. 12 M.R.S.A. 3054.

284a. 16 U.S.C.A. 981-991 as amended.

areas resulting in increased yield of haddock. Recently the decrease of haddock has ignited great activity by this Commission in seeking methods to conserve this resource.

Constituency

The constituency of the Department of Sea and Shore Fisheries is composed of individual fishermen, wholesale fish dealers, retail dealers, and processors. In some instances their aims and goals are identical; on other occasions their interests may be diametrically opposed. For example, a wholesale seafood dealer that was part of a company or corporation that had its own fishing fleet might take a different view on a given law than a wholesaler or retailer who bought all the fish he resold.

Status of Sea and Shore Fishery Laws

The format in which the laws pertaining to Sea and Shore Fisheries are encased is much more logical and homogenous than the similar status of the laws of the Department of Inland Fisheries and Game. With relatively little rearrangement, the laws of the Sea and Shore Fisheries could be recapitulated to achieve logical grouping and ease of location and use. This optimistic appraisal does not include all the private and special laws which are an integral part of the body of laws relating to marine fisheries. The primary purpose of this report, however, is to inquire into the economic and scientific validities of these laws rather than their organizational structure. A thorough analysis and discussion of these laws will be found in a separate chapter, *infra*.

Interrelationship with Other State Agencies

Commissioner is member	Scenic Highway Board Wetlands Control Board *Environmental Task Force Board of Pesticides Control Soil and Water Conservation Committee
Co-head	Bureau of Watercraft Registra- tion and Safety
Commissioner appoints	Maine Sardine Council
Ex officio	Atlantic Sea Run Salmon Commission Atlantic States Marine Fish- eries Commission
Represented on	Maine Mining Bureau *Water Resource Center Advisory Board
Commissioner U.S. Representative	to International Commission for the Northwest Atlantic Fisheries

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48. ATLANTIC STATES MARINE FISHERIES COMMISSION

The Atlantic States Marine Fisheries Commission was created in 1959 by the Atlantic States Marine Fisheries Compact to promote the better utilization of fisheries, marine, shell and anadromous, of the Atlantic seaboard.²⁸⁶ Each state that is a signatory to this Compact²⁸⁷ sends three representatives to the Commission. In Maine the three Commissioners are the Commissioner of Sea and Shore Fisheries, ex officio, a legislator who is a member of the Maine Commission on Inter-

285. 12 M.R.S.A. 4601-4656.

286. 12 M.R.S.A. 4601.

287. Art. 3 of Compact, 12 M.R.S.A. 4603.

state cooperation, ex officio, and a third member appointed by the Governor with advice and consent of Council for a period of three years. This third member must have a knowledge of, and interest in, marine fishery problems.

288

This compact has now been joined by New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida.

289

In the opinion of many, this Commission had limited usefulness, or what usefulness it had has been superseded by bi-state agreements. It should be pointed out, however, that this Commission was very instrumental in the passage of P.L. 89-309, which provided financial help for commercial fisheries, research and dissemination of information for the restoration of anadromous fish.

290

291

49. MAINE SARDINE COUNCIL

The Maine Sardine Council consists of seven members appointed by the Commissioner of Sea and Shore Fisheries. These members are to be chosen from "practical sardine packers, operating within the State, who shall have been actively engaged in packing sardines for not less

288. 12 M.R.S.A. 4652.

289. 12 M.R.S.A. 4651 as amended.

290. Interview with Ralph Curtis, Legal Advisor to Bureau of Commercial Fisheries, April 14, 1969.

291. 36 M.R.S.A. 4693.

than five years and each shall be so actively engaged during his continuance in office." Members of the Council serve without pay. They are authorized to select and employ an executive secretary-advertising and merchandising manager to administer the advertising, merchandising, research and development program, in concurrence with the Commissioner of Sea and Shore Fisheries and with the advice and cooperation of the Commissioner of Economic Development.

At the time of the creation of the Sardine Council, the then Commissioner of Sea and Shore Fisheries was borrowed to become the first executive secretary of the Sardine Council. The temporary loan of this personnel was never repaid and he has remained in the position of executive director.

This Council was set up in 1950 to help promote and stabilize the sardine industry. Simultaneous with the creation of the Council, a sardine tax was imposed upon the industry to be levied at the rate of \$²⁹².25 per case as a tax on the privilege of packing sardines. Proceeds from this tax are used for administrative expenses and for the purpose of merchandising and advertising Maine sardines for food, for the development and expansion of foreign markets and "for conducting research and investigation of methods of propagating and conserving clupeoid fish, particularly the clupea harengus, with a view of improving both the quality and quantity of the same in Maine waters, and for the implementation of all feasible methods of improving, propagating and conserving the same." This is to be carried out under

the joint direction of the Commissioner of Sea and Shore Fisheries, and the Maine Sardine Council. The funds are to be further used "for gathering, studying, classifying and distributing information and data concerning quality, grade, standard, methods of packing, and character of the manufactured sardine products in order to determine and improve their quality and aid in merchandising and advertising them under the direction of the Maine Sardine Council with the advice and cooperation of the Commissioner of Economic Development." Such information is to be made available to the Commissioner of Agriculture for use in promulgating, establishing and modifying official grades for sardines and for use in assigning and determining grades of sardines and enforcing applicable provisions of law.

293

The sardine industry has been hard hit in the last several years, because of the scarcity of sardines. When the sardines became more plentiful the industry was faced with an increase in the imports of sardines. The total share of the Maine sardine industry in the national market dropped from 65% to 35% in five years and the trend is continuing. In other countries, the sardine industry is highly subsidized. The Executive Director of the Maine Sardine Council feels that if there is not some relief for the Maine sardine industry that it cannot be economically competitive. A petition filed recently by the Maine Sardine Council with the U.S. Tariff Commission for a limiting quota on sardine imports was denied. While recognizing that

294

293. 36 M.R.S.A. 4699.

294. Interview with Richard Reed, Executive Secretary of the Maine Sardine Council, March 11, 1969.

124.

increased imports were of concern to most Maine canneries, the Tariff Commission investigation concluded that such imports were not due "in major part" to trade agreement concessions.

295

Interrelationship with Other State Agencies

Council appointed by

Commissioner of Sea and Shore Fisheries

Cooperates with

Commissioner of Economic Development
Commissioner of Agriculture
Maine Sardine Advisory Board

296

50. SARDINE INDUSTRY ADVISORY BOARD

The Sardine Industry Advisory Board consists of seven members appointed for terms of three years by the Commissioner of Agriculture after consultation with members of the sardine industry. The members of this Board are to be practical sardine packers as defined in 36 M.R.S.A. 4693.

297

This Board is under the aegis of the Department of Agriculture as is the function of licensing and inspecting sardine packers. A fee of \$.03 to \$.08 per case is levied on sardine packers to help finance this inspection.

298

299

295. United States Tariff Commission, Canned Sardines. TC Publication 291 Washington, D.C., July, 1969.

296. 32 M.R.S.A. 4152

297. Id.

298. 32 M.R.S.A. 4155.

299. 32 M.R.S.A. 4156.

51. DEPARTMENT OF AGRICULTURE

The Department of Agriculture is headed by a Commissioner who is appointed by the Governor to serve at his pleasure.

301

Regulatory and Promotional

The Department is primarily a regulatory and promotional agency. The regulatory aspects relate to the cultivation and processing of agricultural products. The Department is responsible for the administration of State pure food and drug laws, and, in limited areas, acts as the federal inspection agent. In areas such as the sardine industry of Maine, which is well regulated and monitored by State law, the federal inspection is intermittent or perfunctory. There is pending in Congress a bill (S 2958) which would bring fishery products under the comparable regulatory and inspection standards now applied to meat and meat products. Should such federal legislation be enacted, it is not known whether the Department of Agriculture or the Department of Sea and Shore Fisheries would be involved in its administration.

Sardines

As seen in the placing of the regulation and inspection of sardines, there is precedent for putting the new function under the Department of Agriculture. In 1929 there was dissatisfaction with

302

300. 7 M.R.S.A. 1-3704 as amended; Interview with Commissioner of Agriculture, Maynard Dolloff, March 4, 1969.

301. 7 M.R.S.A. 1 (Supp.).

302. P.L. 1929, c.304.

the inspection function as being carried on by federal officials. There was feeling that some persons were being shown favoritism while others were victims of unequal treatment and that inspection should be a state rather than a federally administered program. At that time the Department of Sea and Shore Fisheries did not possess the capability for such a function, hence its placement in the Department of Agriculture which had a demonstrated competence in this field in carrying out a similar responsibility with regard to agricultural products.³⁰³

The Commissioner of Agriculture appoints the members of the Sardine Industry Advisory Board discussed, supra. The specific responsibility of the Department of Agriculture as to seafood is limited to the inspection of sardine packing, but under the State pure food laws, it has comparable power as to any food product, including seafood.

Fish Meal

The Department of Agriculture is secondarily concerned with products from the sea because of the large poultry industry in Maine. Nationally a large proportion of poultry feed consists of fish meal. This relatively cheap source of nutrition, whether it is processed in Maine or elsewhere, contributes to the low prices for which poultry may be sold. The Department of Agriculture would have statistics on the proportion of fish meal used in poultry feed in Maine.³⁰⁴ It

303. Interview with Ronald W. Green, Commissioner of Sea and Shore Fisheries, December 17, 1968.

304. See 7 M.R.S.A. 485; 7 M.R.S.A. 691-701.

would be interesting to evaluate figures on the total use of fish meal products used in Maine and to what extent state needs are being supplied by state based industry.

The Department of Agriculture is also indirectly tied in with marine resources by the use of pesticides in agricultural endeavors. When pesticides find their way into tidal streams, be it from run offs, erosion, or pollution originating in fresh water streams, marine life and human life may be adversely affected. The Department has further contact with marine resources, not as a departmental function, but by representation on the various boards and committees having to do with natural resources. Although its general statutory powers are broad enough to include the inspection of all fish products used for human consumption, the Department's limited personnel and appropriations have precluded more than token activity in this field. Its only vital involvement with marine resources pertains to sardines.

Inter-relationship with Other State Agencies

Commissioner is member of	Scenic Highway Board State Soil Conservation Commission Board of Pesticides Control *Environmental Task Force *Water Resources Advisory Board
Represented on	Maine Mining Bureau
Appoints	Sardine Industry Advisory Board
Works with	Department of Economic Development Maine Sardine Council

52. ATTORNEY GENERAL

The Attorney General is a constitutional officer of the State of Maine who is elected biennially for a two year term by the Legislature. He is responsible for the enforcement of laws having to do with marine resources both as a constitutional officer and in the exercise of the common law powers of that office.

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Accordingly, as the chief law officer of this state, he may, in the absence of some expressed legislative restriction to the contrary, exercise all such power and authority as public interest may, from time to time require, and may institute, conduct, and maintain all such suits and proceedings as he deems necessary for the enforcement of the laws of this state, the preservation of order, and the protection of the public rights.³⁰⁷

The Attorney General is required to give his written opinion upon questions of law submitted to him by the head of any State department, State board, or commission, or by either branch of the Legislature.

308

In some State departments, assistant attorneys-general have been assigned to work full time for and within the department. This, however, is not true with regard to the agencies most closely related to marine resources. In some instances assistant attorneys-general specialize in the work of one agency and are almost exclusively responsible for its legal proceedings, but they are also responsible for other agencies. For example, two assistant attorneys-general devote

305. Constitution of Maine, Art. IX Sec. 11; 5 M.R.S.A. 191-205.

306. 5 M.R.S.A. 191; State v. Fisheries Co., 120 Me., 121, 113 A. 22 (1921).

307. State V. Fisheries, supra, p.123.

308. 5 M.R.S.A. 195.

almost all of their time to the enforcement of the laws of the Environmental Improvement Commission. The Attorney General's office also reviews leases, licenses, permits, etc., drawn up by such agencies as the Maine Mining Bureau when requested to do so by such agencies. Many of these leases are on file in the Attorney General's office. Assistance is also available, within the limitations of personnel resources, for drafting legislation, when requested by Legislators.

The role of the Attorney General with regard to agencies involved with marine resources could best be described as part-time advisor rather than house counsel. A possible advantage of this system is that the assistant attorneys-general have a more objective outlook on proposed legislation, regulations, etc. or litigation in which the agency is involved or wishes to initiate. This "objectivity" is achieved, however, only at the expense of a lack of familiarity with the intricate day to day workings of a particular agency or department and the opportunity to gain a thorough knowledge of the inter-relationship of one department with another. In most cases, it means that advice is given only when requested.

309

53. STATE MUSEUM

The State Museum has been brought into the marine scene by virtue of an Act "to provide for the preservation of archaeological artifacts and natural science specimens for the benefit of the people of the

309. 27 M.R.S.A. 81 as added by P.L. 1965, c.502 §1.

State..." which are "found on, in or beneath State-controlled land." 310
 State-controlled land for the purposes of this Act is designated as
 "any land or water area owned by the State or under the primary admin-
 istrative jurisdiction of any State department, with the exception of
 those lands contained within Baxter State Park or the three Indian
 Tribal Reservations within the State. Such State-controlled land in-
 cludes, but is not restricted to State parks, State recreation areas,
 wilderness and wildlife preserves, navigable bodies of inland, estuar-
 ine or coastal waters and highway rights-of-ways or other easements. 311

Pirates' Gold?

The museum is to issue permits for the removal of these archaeo-
 logical artifacts or natural science specimens. In addition to the
 clear cut intention of this statute to establish State ownership of
 historical material obtained from archaeological digs or isolated dis-
 coveries, it also would seem to require permits to search for buried
 treasure or retrieval of ancient shipwrecks off the coast, similar to
 the effect of treasure-trove statutes in Florida. The definition of
 specimen, "'specimen' means any items, set of items, or parts of items
 collected as representative samples of geological media or biological
 forms found within the State," 312 could be interpreted to include any-
 thing from the first manganese nodules recovered from the ocean bottom
 to jurisdiction over a dead whale or other species of living or dead
 marine organisms found in the ocean.

310. 27 M.R.S.A. 371 as added by P.L. 1969, c.398.

311. 27 M.R.S.A. 373 §7 as added by P.L. 1969, c.398.

312. 27 M.R.S.A. 373 §6.

ACADEMIC PARTICIPATION IN OCEANOGRAPHY

Maine has a long history of cooperation between educational institutions and State government to the mutual advantage of both. The fact that the University of Maine was established as a land grant college has been a contributing factor in this relationship. The designation of University department heads as statutory members of various State boards and agencies and the participation of State government personnel in academic councils reflects this inter-dependency. There is every indication that the same cooperative climate is being and will continue to be extended to sea as well as land grant areas of interest. In addition to the Water Resource Center mentioned in Section 33, p. 80 , the following academic institutions are funded in whole or in part by direct appropriations from the Legislature.

54. DARLING RESEARCH CENTER

Four years ago the Darling Research Center at Walpole, Maine was established as a marine research and graduate teaching center of the University of Maine. Since that time the activities of the center have grown in size and importance. Masters and doctoral degrees in oceanography may be obtained at the institute. A wide range of independent research in marine biology, ecology, and related oceanographic

313. See Portland Press Herald, October 16, 1969 for announcement of the University of Maine's intention to organize a Coastal Environment Research Center to study the interrelation of man and the sea.

areas is being carried on at the center and in field studies being made from the Labrador Seas down through the Gulf of Maine to Boston. Funding for the center is obtained primarily through the University budget. Funds are augmented by specific grants from private industry, the Legislature and from various federal sources. Recently Maine Yankee Atomic Power Co. made a \$418,132 grant to the center to conduct studies to determine the effect of the new plant on the marine environment.

314

55. TRIGOM

The Research Institute of the Gulf of Maine (TRIGOM) was incorporated³¹⁵ as an ocean consortium in 1967 by eight Maine institutes of higher learning. The institutes were Bates College, Bowdoin College, Colby College, Gorham State College, Nasson College, St. Francis College, Southern Maine Vocational Technical Institute, and the University of Maine. TRIGOM was designed to provide a focus and a clearing house for marine research in the State. Its purpose as set forth in its certificate of organization is:

To establish a consortium of institutions of higher learning and other entities; to perform scientific research which will be in the public interest, basic or applied; to carry on educational projects with

314. Maine Times, October 17, 1969.

315. Name legalized by P.&S.L., 1967, c.206. At the January 1968 Special Session \$150,000 was added to the U. of M. budget for 1968-69 for "Oceanography", \$50,000 of which was to provide staff for the Consortium of Educational Institutes, (P.&S.L. 1967, c.225).

emphasis on programs most effectively advanced on a cooperative basis; to provide educational and research facilities of a character which can be at the disposal of all member institutions; to act as a focal point for liaison of faculty and students in any and all academic disciplines; and to support education of persons in the different disciplines; and to foster intellectual pursuits in order to secure information and help disseminate such information so that a free exchange of knowledge is available for the benefit of mankind.³¹⁶

With the hiring of an executive director in February, 1969, an appropriation of \$100,000 from the 104th Legislature,³¹⁷ and application for funding for specific projects from industry and the federal government, the activities of the Consortium are shifting into higher gear in coordinating and instigating oceanographic development in Maine.

56. SOUTHERN MAINE VOCATIONAL TECHNICAL INSTITUTE

The Southern Maine Vocational Institute (SMVTI) at South Portland, Maine has an active training program in the operation of oceanographic vessels and equipment with ancillary training in marine science. Two large vessels have been used in the program, the 134 foot Aqualab and the 135 foot Phykos. The latter was on loan from the Smithsonian Institute for a joint program of research involving collection of data on salinity content, oxygen content, direction and velocity of currents, and gathering of biological specimens. The curriculum of the

316. TRIGOM certification of Incorporation.

317. P. & S.L. 1969, c.154.

134.

institute has recently been expanded to include instruction in applied marine biology and technical instruction in aspects of marine aquaculture.

57. MAINE MARITIME ACADEMY

The Maine Maritime Academy located at Castine trains Merchant Marine officers. Approximately 100 commissioned deck and engineering officers are graduated each year. The academy operates a large vessel, the State of Maine, on oceanic training cruises. The Academy has expressed a strong interest in participating in oceanographic activities. ³¹⁸

318. An Inventory of Oceanographic Activities in the State of Maine, D.E.D., 1968.

PART III ATTITUDES AND PHILOSOPHIES ON REORGANIZATION

In the following pages some of the more prevelant reasons for and against major reorganization are discussed.

REASONS AGAINST CONSOLIDATION-REALIGNMENT

Correlation of Departments and Economic Interests

The present set up better serves the economic constituency for which a particular agency is responsible. It is incontestable that certain departments are service organizations for segments or the whole of a particular economic interest. e.g. Forestry Department - pulp and paper industry; Sea and Shore Fisheries - individual fishermen, commercial fisheries, and fish processors; Public Utilities Commission - power companies. This is standard operating procedure both at the State and the Federal level. It should be noted, however, that while it keeps a particular department in close touch with the needs of an industry, it may tend to dilute the capacity of an agency to establish regulatory measures that run counter to the wishes of the industry.

Historically the executive departments have provided continuity to State government. This is understandable because of a constitutionally weak Governor who until 1958 had only a two year term. The position of the chief executive of the State was not even considered a full time job until around 1919. ³¹⁹ The dominant status of department heads has been further enhanced by terms of office which overlap the guber-

319. Laws of Maine, 1919 Special Session, Nov. 4-8, p.95.

natorial tenure and sometimes deprive him of the appointive power for members of his administration.

A vast proportion of all laws dealing with natural resources are either drafted or suggested by persons or corporations who have a monetary interest in their exploitation and development. Legislators and department heads have no independent research and drafting service available to them except for the service the Attorney General's office provides in drafting bills ³²⁰ and the help which the small staff of the Legislative Research Director can spare from statutory defined duties. The absence of an independent drafting service, however, may not be the real reason for the situation. It may be a lack of desire on the part of the departments involved to sponsor such legislation, and the fact that few legislators have been independently inspired to introduce such legislation. On the other hand, outside interests, both for conservation and exploitation, have carefully framed their own acts.

321

Dedicated Revenue

The existence of innumerable dedicated revenues and special funds, which in some instances account for almost all of a department's revenue, is one of the greatest stumbling blocks, perhaps an insurmountable one,

320. 5 M.R.S.A. 196.

321. Maine can take no credit for inventing dedicated revenue. In the reign of George II, there was dedicated revenue for oysters (2 Geo. II, c.19 § IV) which undoubtedly even then followed long established patterns.

to any proposed consolidation. A private exchequer and an absence of legislative accountability gives department heads not only assured income but increased autonomy. New revenues are ear-marked with great regularity, while others which seem quite anachronistic still remain on the books.³²² An example of a tax which is unduly complicated and undoubtedly expensive to administer is the provision for apportioning the tax on gasoline used in boats.³²³ Dedicated revenues are closely related to the industry orientation of the agencies, since the revenues are usually expressly dedicated to furthering industry interests.

Too Big!

It is sometimes argued that consolidation of functions would make things too big: "They want to be another Highway Department."³²⁴ We like things the way they are. Greater size does not guarantee greater efficiency, and in an age of depersonalization there is great emotional appeal to such an argument, but what adherents of this philosophy have discounted is that a grouping together of related interests enables development of greater muscle and coordination in looking out for these interests.

Political Hack - Or Own Axe to Grind

An oft repeated reason against consolidation is that the head of any super-agency would be either a political hack or have his own axe to grind. It would be dishonest to deny the possibility of either of these alternatives, but according to Tudor Gardiner's theory (See p.1)

322. Resolves 1969, c.15 authorized payment out of the Dog Tax for someone's bees that were molested by a bear.

323. 36 M.R.S.A. 2903-A.

324. See Maine Times, April 11, 1969, p.24.

the probability of getting a political hack diminishes with the size and importance of the job. What is needed, perhaps, is a strong administrator who might or might not have his own strong disciplinary bias. If he did have such a bias, it should be identified as such and be representative of the policy of the leadership of State government at that particular time.

Let The Nice Guys Come In First

A major deterrent to consolidation is the mutual respect that department heads and agencies have for each other, and their reluctance to endorse any change that would upset the job tenure or security of some other administrator. Although not every department head is viewed as the most dynamic leader or effective administrator by his peers, the working relationships that have been established with his department more than compensate for actual and theoretical deficiencies. The status quo is preferable to an unknown quantity or some "academic" improvement. This camaraderie should not be underestimated. Based on brief survey conducted in researching this section, it would be impossible to imagine a more cooperative, friendly group of State officials. No request was too small or large and if any question was left unanswered, it was only because it was left unasked. When certain officials were asked if they didn't meet each other practically every day on a different board for a different reason, the answer was in the affirmative, but they preferred meetings to memos. The result is a series of inter-locking boards of directors on the various departments and agencies dealing with natural resources.

Despite this camaraderie, however, there is also a strong sense of "territorial imperative", and encroachment into another department's bailiwick often arouses reactions ranging from suspicion to hostility. Even when cooperation is welcome, the administrative machinery is often not flexible enough to achieve the desired results.

REASONS FOR CONSOLIDATION OF STATE AGENCIES

Number of State Agencies

As mentioned above, there are approximately 50 entities that deal with some aspect of marine resources; the number increases with each legislative session. Perhaps what is called for is not an organization study, but a non-proliferation treaty. ³²⁵ Most new problems that come up are handled by the Legislature on a crash ad hoc basis. An agency or commission is usually set up in response to a dire emergency or in the expectation of some instantaneous economic gain in the exploitation of natural resources.

As a general pattern, the agency is set up with a board composed of from three to five of the department or agency heads involved in the management of some phase of natural resources. To these are added a few other State officials and one or two non-governmental persons.

An advisory council is simultaneously created which, depending on the composition of the board, consists of the same department heads as members ex officio and a cross section of people in the industrial

325. 18 new State entities were created by the 104th Legislature. See Kennebec Journal, October 17, 1969.

field or the general public. The advisory councils vary as to expertise of their members and in their effectiveness. Many never get off the ground or after an initial burst of energy become perfunctory rubber stamps. Even the best, most active, and conscientious are hindered by infrequency of meetings and a lack of time to become deeply involved in matters absolutely necessary to render meaningful and sound policy decisions.

In many instances the agency is created with no funds so that revenue must be eked out of the departmental budget of the members of its board, or else it is endowed with dedicated revenue derived from some phase of its activity.

Lack of Perspective, Common Goal

There is no long range over-all direction or supervision of the management of natural resources or marine resources in this State. The State Planning Office, when it becomes fully operative, by statute should be the possessor of a comprehensive plan for natural resources and the overseer of the execution of such plan. This, however, is hardly a substitute for a working line agency. The Governor's Environmental Task Force, (See Section 34 p. 81) by composition, contains much of the type of talent that should be brought to bear on this problem. But this group has the inherent limitation and disadvantages of all such ad hoc advisory groups.

To achieve an optimum utilization of the State's marine resources and at the same time to assure that irreversible harm is not done to these assets, establishment of guide lines for priority of development

and a coordinated management of these resources is an essential function of State government. A consolidation of State agencies would allow for more orderly planning in carrying out this task. Such an agency would be in a better position to act rather than merely react. In many instances at present there is a tendency not to "rock the boat." If all the agencies were in the same boat, this might make a more interesting voyage.

There is No Court of First Resort

At present, in instances in which there is an impasse between conflicting interests in natural resources development and management, there is no forum for resolution of problems. Undoubtedly there are times when only the Governor can make the decision, or knock heads together to bring about a compromise. This is accomplished through the prestige of his office and his own personal persuasiveness rather than constitutional or statutory express authority. Still, there must be questions of basic policy which could be resolved on a routine day to day departmental basis, weighing all the alternatives. The right of direct appeal to the Governor is one of the things that, for some agency heads, enhances the attractiveness of separate departments. On the other hand, even such persons who want to "stay out" have expressed a willingness to come in, if the consolidated agency was properly constituted.

Administrative Efficiency, Economy

In addition to eliminating duplication and overlapping services and making provisions for functions not now covered by statute, a consolidated agency would provide the legal framework to more ade-

quately manage the State's marine resources. In this survey it has been apparent that in many instances a strong administrator has made poor law work. Would not a strong administrator make a good law work even better? Could not the mutual respect that department heads now have for each other be transferred to and harnessed in a new consolidated department?

The head of a consolidated agency would command a salary higher than that of the head of any of the present component parts, but the increased cost should be more than offset by the economies made possible by such consolidation. On the basis of salary alone, Maine still might be in a poor position in the national market, but in every field, highly qualified people balance the advantages of life in Maine against somewhat higher incomes elsewhere. There are limits to this financial sacrifice, however; an improved salary may make it easier to attract top-grade personnel to Maine.

Expenditures of State Government Would be Subject to Legislative Control

As stated above, some department heads want to retain the separate identity of their departments because dedicated revenues assure a generous departmental budget. The Legislature might find this a compelling reason to consolidate departments, eliminate dedicated revenue and have all expenditures of State Government subject to its review, approval and control. While it might be necessary to retain dedicated revenue with any initial consolidation, both as an inducement to amalgamate and as a transitional funding source, it would not have to be indefinitely continued.

Elimination of dedicated revenue would allow an allocation of State funds according to priorities determined by a consolidated department and the Legislature. There is no necessary correlation between need for the service for which a revenue is earmarked and the amount of the proceeds. A striking example of this is the earmarked non-lapsing fund which will go to the Maine Mining Bureau from the proposed King Resources lease for drilling in the Gulf of Maine. The State Geologist agrees that should oil be found in Maine's territorial waters these funds will become undedicated quite rapidly at the next session of the Legislature.

There are three often quoted rationalizations for dedicated revenues: (1) an industry should be willing to tax itself to provide for the required services; (2) that this service is justified only if it pays its own way; (3) the benefits derived from the tax should go to those who have borne the burden of the tax.

The disadvantages of dedicated revenue are: (1) need cannot always be related to the revenue; (2) such vast amounts of revenue should not be beyond legislative control; (3) a tax that goes to some segment of the economy means that in some instances that segment does not contribute its proportionate share to the general cost of government. e.g., the forestry district tax goes to provide fire protection for forests and the wild lands tax goes to provide services in the unorganized territories.

The objection to dedicated revenue is not of recent origin. In his Inaugural Address of 1923, Governor Percival P. Baxter had the following to say about revenues received by the Department of Inland Fish and Game.

This Department now receives a considerable portion of its fines, license fees and other collections, a plan that resembles the fee system of former days, long since abolished. The argument that if it is given its income those in charge will be more zealous in collecting it is a damaging one, for an Inland Fish and Game Commissioner should be as watchful of the interests of the whole State as he is of his particular department. All departments should be placed upon the same financial basis, the Legislature making definite appropriations and all income received going into the general fund in our State Treasury.³²⁶

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A yard stick to measure the justification of dedicated revenue was advanced by the head of the only department that has constitutionally dedicated revenue:

- (1) Do the proceeds from the revenue fall materially short, or fail to meet the total budget demands of the department?³²⁸
- (2) Are all such revenues subject to legislative review, just as expenditures from the general fund?
- (3) Can it be demonstrated that the funds are well managed and used?

326. Laws of Maine 1923, p.859.

327. Interview with the State Highway Commissioner, David H. Stevens, March 13, 1969.

328. The converse would be repeated year end surpluses, or heavy expenditures toward latter part of fiscal year to clear out surpluses.

PART IV SELECTIVE PROPOSALS FOR GOVERNMENTAL REORGANIZATION

There have been various proposals for governmental reorganization in the past. Included in this section are proposals dating from the Gardiner Report in 1930, the Public Administration Report in 1956 and proposals submitted to the 104th Legislature. A few other suggestions which were deemed important enough by the Chief Executive to have been mentioned in his Inaugural Address or other special messages to the Legislature have been included.

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THE "GARDINER REPORT", 1930

The 1930 Gardiner Report recommended the creation of a Department of Conservation. This department would include a Bureau of Forestry, composed of the Forestry Department, a Bureau of Fish and Game which would represent the consolidation of the departments of Inland Fish and Game and Sea and Shore Fisheries, and a Bureau of Geology to take over the duties of stream gauging and topographic surveying being performed by the Water Resources Division of the Public Utilities Commission. This Division's work was closely connected with the United States Geological Survey. It was also suggested that the newly created office of State Geologist be transferred to the Bureau of Geology if a cooperative agreement could be worked out with the Federal Government for a study of geological structure of Maine or other mineral resources.

329. State Administrative Consolidation in Maine, National Institute of Public Administration, 1930, p.165.

Authors of the Gardiner Report felt that since the separation of Inland Fish and Game and Sea and Shore Fisheries in 1895 and in the granting of joint jurisdiction to the two separate departments over anadromous fish, the slight progress that had been made toward the propagation and protection of migratory fish had practically come to an end. It was felt that the divided authority which grew out of the theoretical concurrent jurisdiction made it impossible for either agency to accomplish anything. The task of the Inland Commissioner was complicated by stream pollution and the absence of fishways in dams. ³³⁰ Even if these obstacles were overcome, the migration of fish was interfered with by riparian owners in tidal water exercising their legal rights to place weirs along the shores in such a way as to intercept the small number of migratory fish which had survived the deadly effect of the changed conditions along the routes which their ancestors had followed for generations. The Sea and Shore Commissioner was faced with the dilemma of asking riparian owners to surrender their rights to a precarious current income in return for a promised increase in future income, when the development of that future income depended absolutely on the success of the Inland Commissioner in ³³¹ clearing up pollution and providing fishways.

The study went on to remark that restoration of the migratory fish industry is utterly impossible unless the task is again centralized in one agency. But it was felt that centralization alone, without an intelligent clarification and revision of State laws, could accomplish little.

330. Id. p.169.

331. Id.

...Since colonial days, there has been confusion in the laws governing the rights in, and powers over, the lands below high tide. Private owners, the towns, and the state all exercise certain powers and rights, but there is no clear cut line of demarcation between them. If the salmon industry is again to contribute to the wealth of Maine, the rights of private land owners and of towns must be subordinated to those of the state, because the state is the only agency which can safeguard the rights of all the individuals concerned. That it is clearly to the advantage of all to have the state exercise control over riparian lands below high tide is proven by the success of New Jersey in the restoration of her oyster industry. That a state can, in the interests of all the individuals who make up the state, substitute new principles for old in shifting the pre-existing line of demarcation between private and public rights is sufficiently indicated by the experience of California in revising her basic law on riparian rights in waters for irrigation.³³²

The fact that the Public Utility Commission had no power to require fishways in new dams being built seemed inconsistent when the Inland Fish and Game Commissioners were struggling to obtain new fishways for old dams.³³³

The lack of sufficient funds for research in Sea and Shore Fisheries was also highlighted with the recommendation of a fee for lobster licenses to finance research in the field. Other problems confronting Sea and Shore Fisheries were the development of the shell fish industries, which was hindered by conflicting riparian rights, the restoration of migratory fish to inland waters, and the protection of ground fish during the spawning period, which would need close federal and

332. Id. p.170

333. Id. p.170

interstate cooperation. In sum, "The importance of the sea and shore fisheries in the State of Maine is ample argument for abandoning the policy of neglect which has prevailed for a generation."³³⁴

Warden Service

The unification of the warden service was also a reason for proposing the unification joining the Departments of Inland Fish and Game and Sea and Shore Fisheries. It was pointed out that the service in Inland Fish and Game had been upgraded through internal organization, increased funds and adequate uniforms and equipment. No similar support had been forthcoming for Sea and Shore Fisheries. That agency had no boats for its local patrol and inadequate boats for its supervisory patrol and inspection of smacks operating in Maine waters out of ports in other states, although required by law to patrol the entire coast of the State. The Gardiner Report suggested that it could only be determined by experience whether any economies in manpower would be possible, but predicted greater efficiency in the enforcement of laws both for game and sea fisheries.³³⁵

Department of Agriculture

The Department of Agriculture was not included in the proposed consolidation but recommendations were made for a better differentiation of functions between those that should be assigned to the depart-

334. Id. p.172.

335. Id. p.172.

ment and those which should be assigned to the College of Agriculture at the University of Maine. It was suggested that regulatory functions should be assigned to the department, and service functions -- educational, experimental and promotional -- should be carried on by the University.³³⁶

The Maine Development Commission

The authors of the Gardiner Report more or less threw up their hands at the Maine Development Commission (forerunner of the D.E.D.) and recommended adopting a wait-and-see attitude. The pitfalls of this and similar type organizations in other states were noted. These included the difficulty of designing an advertising campaign which would be equally satisfactory to all sections of the State and all economic groups, and of drawing a line between advancing the general interests of the State as a whole rather than advancement of the interest of a particular faction, group, or individual within the State. Experiences in other States included accumulated animosities resulting from erroneous judgment or as unforeseen by-products of a deliberate plan. Adversaries built up with each successive mistake until they developed strength enough, if not to abolish the publicity work, at least to cripple it by reduced appropriations. By its very nature the agency³³⁷ was not deemed "most likely to succeed."

336. Id. p.143-151.

337. Id. p.211-12. See also Maine Sunday Telegram, August 10, 1969, p. 4-A.

PUBLIC ADMINISTRATION SERVICE REPORT, 1956

The 1956 Public Administration Service Report recommended the creation of a Department of Natural Resources to include the Department of Forestry, the Department of Agriculture, the Department of Inland Fisheries and Game, the Department of Sea and Shore Fisheries, the Park Commission and the Water Improvement Commission.

...Each of the six agencies would become bureaus of the new department and each would be supervised by a bureau chief. The department would be headed by a director appointed by the Governor and confirmed by the Council. Bureau chiefs would be appointed by the director under the provisions of the personnel law or by the director with the approval of the Governor. Principal organizational units of the bureau would be divisions headed by supervisors appointed under the provisions of the personnel law; similarly organizational segments of divisions would be called sections and these would be supervised by section heads appointed under the provisions of the personnel law.

The new Department of Natural Resources should include a bureau of administration headed by a chief appointed in the same manner as other departmental bureau chiefs. The bureau of administration would be responsible for the business management of the department, including the administrative work involved in receiving applications for and issuing the myriad of licenses now processed by the separate major agencies described in this chapter. To the degree practicable the bureau should be staffed with administrative personnel now employed by the separate agencies which are proposed for consolidation.

The activities of all the major agencies described in this chapter are inter-related, a fact which must be recognized if the agencies, individually and collectively, are to operate effectively and accomplish their interlaced objectives. Their functions are basically

338. Organization and administration of the Government of the State of Maine, Public Administration Service, 1956.

similar in many instances. The amalgamation of these agencies into one department would focus collective attention and effort on the conservation and development of natural resources; provide for a unified approach to mutual problems; and permit broad program concepts to prevail in lieu of restricted thinking on particular facets of natural resources situations.³³⁹

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A review of the entire section of this report on natural resources is most revealing in that even aside from organizational structure, many of the deficiencies and problems confronting the agencies in 1956 have not been materially alleviated fourteen years later. Specific suggestions on the management of the marine resource agencies include the following.

Department of the Development of Industry and Commerce -- Change name to Department of Economic Development.

The department has responsibility for promoting agricultural and sea food products but it exercises only nominal control over the expenditure of these funds against which the Department of Agriculture and Sea and Shore Fisheries make the commitment. There should be a central control over state expenditures for promoting Maine products and attractions to insure that attention is given to the general interests of the state rather than focused here and there upon the specific products and potentials.³⁴¹

Responsibility for promoting Maine products should be centralized in the Department of Development of Industry and Commerce, taxes on particular products should accrue to the state General Fund, the legislature should make annual appropriations for promotional and research activities, and the creation of promotional plural bodies with special interest members should be discouraged.³⁴²

339. Id. p.205-6.

340. Id. p.205-237.

341. Id. p.25.

342. Id. p.215.

152.

Maine Mining Bureau --

Abolish bureau and transfer functions to the Division of Geology under the new Department of Economic Development.

Inspectors of Dams and Reservoirs --

Abolish.

Atlantic Sea Run Salmon Commission --

Abolish.

Advisory Council Inland Fish and Game --

Advisory Council Sea and Shore Fisheries --

Abolish both councils and substitute Advisory Council for Fish and Game.

State Conservation Committee --

Retain, but membership should be appointed by the Governor without designation by special interest group.

Division of Sanitary Engineering, Bureau of Health --

Transfer personnel performing pollution control work to the Water Improvement Commission.

OTHER SUGGESTIONS FOR GOVERNMENTAL REORGANIZATION

1917

In 1917 Governor Carl E. Milliken had recommended in place of the existing Department of Inland Fisheries and Game and Sea and Shore Fisheries, an unpaid non-partisan commission of five "who shall determine the general policy and appoint the salaried executive officer for each of the fields now represented by these two departments."³⁴³

1949

In his Inaugural Address of January 5, 1949, Governor Frederick G. Payne had suggested the creation of a consolidated department of development, conservation, and research.

343. Laws of Maine, 1917 p.870.

Maine has more natural resources than are found in any other state. In these resources of forests, recreation, agriculture, minerals and sea and shore products, we have a vast potential wealth that can mean increased employment and economic prosperity.

It has been my desire over the years that Maine might adopt a progressive program of industrial and recreational development around these resources. Such a program, well-conceived and adequately financed, will materially benefit all our people...

To succeed in these objectives we must develop promotional and sales techniques along the lines that other states have pursued with increasing success. We must place the force of state government back of our efforts just as other states are doing. We must emulate private business by spending money for development to make money...

I submit for your serious consideration the establishment of a consolidated department of development, conservation and research with one warden force, thereby eliminating any duplication of effort which may now exist in the Departments of Sea and Shore Fisheries, Forestry, and Inland Fish and Game. Such an agency would remove basic inconsistencies and possible diversity of objectives which currently attend the overall approach to related problems by several State departments. This consolidation would result in a more efficient utilization of an able, alert group of men³⁴⁴ making up the several warden forces now functioning.

1955-7

In his Inaugural Address of January 6, 1955 Governor Edmund S. Muskie had urged a study of the State Government machinery,

...But I am convinced that the time has come when we need to take a long and deliberate look at a structure which is the result of the accumulated statutes of the 96 legislatures which have met since 1820. There is need to study this structure in the light of modern laws and practices and the experience not only of this

344. Laws of Maine, 1949, p.1424.

State but of the remaining 47 states. In this way we can effectively evaluate our administrative organization and methods, to determine whether they are suited to carrying on State functions in the most effective manner and to getting the work of State government done in the most economical way.³⁴⁵

He recognized the Gardiner Report as an item of unfinished business.

He specifically recommended inquiry into the advisability of consolidating the conservation departments into a new Department of Conservation.³⁴⁶

In 1957 Governor Muskie recommended the use of the Public Administration Service Report as a guide for governmental reorganization. He endorsed the basic principle of the report that the executive branch of government would be a more effective instrument of service to the people if the Governor were in fact the center of executive authority and responsibility; that changes be adopted which would give him the time and the tools to exercise that authority, to delegate it to appropriate subordinates of his choosing, and to enforce the responsibility for proper execution.

I believe that the full realization of these objectives requires the adoption of a four-year term for the governor, the appointment of department heads by the governor for terms coincident with his own, elimination of the executive council, a reduction in the number of plural bodies which administer the day to day affairs of departments, and consolidation of the 29 major operating agencies and the more than 80 other agencies of state government into a reasonable number of departments.³⁴⁷

345. Laws of Maine, 1955, p.1112.

346. Id.

347. Laws of Maine, 1957, p.1080.

1967

In his Inaugural Address on January 5, 1967 Governor Kenneth M. Curtis recommended a major internal reorganization of the Department of Economic Development. He would transfer the Maine Industrial Building Authority and the Maine Recreational Authority to the D.E.D. as a new Division of Economic Assistance. He further recommended the creation of a Department of Transportation with separate bureaus of ground transportation, aviation and marine transportation. The Maine Aeronautics Commission and the Maine Port Authority would be transferred to this department. He also proposed the creation of an Environmental Improvement Administration in the Department of Health and Welfare with a division of air pollution control and a separate division of water pollution control to which the Water Improvement Commission would be transferred.³⁴⁸

In a special message on economic and natural resources delivered to the Legislature on January 19, 1967, Governor Curtis elaborated on his planned reorganization for the Department of Economic Development. He suggested redesignation of the Division of Geological Survey under the D.E.D. as the Bureau of Natural Resources.

This division has performed excellent services in the expansion of our knowledge of Maine's mineral resources and in the development of our mining industry. But our available natural resources are much broader than those covered by geological exploration. They include the resources of the sea, the land and the forest. Changing the designation of this division would be the first step in expanding the staff and responsibilities to include work with the natural

348. Laws of Maine, 1967, p.1379-80.

resource departments of the State in exploring and proposing commercial development of our natural resources.³⁴⁹

Accompanying his recommendation for the creation of an Environmental Improvement Administration was a recommendation for an advisory council on environmental pollution appointed by the Governor and composed of public officials and private citizens to advise the Governor and administrator on matters involving environmental pollution.³⁵⁰

Proposals Submitted to 104th Legislature

Legislative Document No. 1205 proposed the establishment within the Forestry Department of a Bureau of Geology and Mineral Resources. The Division of Geological Survey of the Department of Economic Development would be transferred to the new bureau.

The creation of a Department of Natural Resources was proposed by Legislative Document No. 1381. The Department would include a Division of Forestry, the Division of Parks and Recreation, the Division of Geological Survey, the Division of Soil and Water Conservation, the Forestry Appeals Board, the Board of Pesticide Control, the Maine Mining Bureau and such other departments, divisions, commissions, bureaus and boards as the Legislature might authorize.

A Water Development Authority was proposed by Legislative Document No. 1216. Great interest in this bill was evidenced by the New England River Basin Commission.³⁵¹

349. Laws of Maine, 1967, p.1402.

350. Laws of Maine, 1967, p.1404.

351. Interview with Gordon S. Hayes, District Engineer, Water Resource Division, U.S. Geological Survey.

