

MAINE STATE LEGISLATURE

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(Governor's Bill)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1585

H. P. 1443

House of Representatives, May 7, 1981

Out of Order, Referred to the Committee on Marine Resources. Sent up for concurrence and Ordered Sent Forthwith.

EDWIN H. PERT, Clerk

Presented by Representative Fowlie of Rockland.

Cosponsors: Senator Brown of Washington, Representative Post of Owls Head and Representative Hanson of Kennebunkport.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Create a Maine Groundfish Association.

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

12 MRSA c. 621, sub-c. III is enacted to read:

SUBCHAPTER III

MAINE GROUND FISH ASSOCIATION

§ 6581. Findings and purpose

The Legislature finds that the Gulf of Maine supports a large industry harvesting and, to a limited degree, processing groundfish. The opportunity for increasing the value added to landed fish, and hence realizing the full economic potential of the industry, is not achieved because the industry does not have the collective capacity to process and market high quality fish to existing and untapped markets.

It is the purpose of this subchapter to increase groundfish processing within the State, maximize the value added of groundfish products, and increase the economic return to all sections of the groundfish industry by means of establishing programs designed to enhance the quality, promotion and marketing of Maine groundfish products. The Maine Groundfish Association shall promote industry-wide cooperative initiatives to establish groundfish quality control, Maine

groundfish brands, as well as innovative marketing programs and distribution systems.

§ 6582. Definitions.

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Groundfish. "Groundfish" means all bottom-dwelling fish, including, but not limited to, cod, haddock, pollack, hake and cusk.

2. Groundfish industry. "Groundfish industry" means harvesters and processors of groundfish or groundfish products.

3. Maine groundfish brand label. "Maine groundfish brand label" means the official State of Maine brand label which may be displayed by groundfish products produced in accordance with the Maine Groundfish Brand Label Program of the Maine Groundfish Association and with the Department of Marine Resources' groundfish inspection and certification rules.

§ 6583. Maine Groundfish Association; establishment

There is established the Maine Groundfish Association, referred to in this subchapter as the association. The association shall exist as a not-for-profit corporation with a public purpose, and the exercise by the association of the powers conferred by this subchapter shall be deemed and held to be an essential governmental function.

§ 6584. Association membership

Association members shall consist of persons classified as harvesters, processors and general members.

1. Harvester membership. Association members in this classification shall be those persons who derive the majority of their income from commercial fishing activities, who hold a state commercial fishing license and pay dues as established by the board of directors.

2. Processor membership. Association members in this classification shall be those persons who derive the majority of their income from the processing of groundfish, who hold a state wholesale seafood license and pay dues as established by the board of directors.

3. General membership. Association members in this classification shall include all other persons interested in the groundfish industry and who pay dues as established by the board of directors.

§ 6585. General powers

1. Quality control and inspection. The association may develop a quality control and inspection program to be known as the Maine Groundfish Brand Label Program. The quality control and inspection standards of the Maine Groundfish Brand Label Program shall be consistent with the inspection and certification rules promulgated by the Department of Marine Resources.

2. **Promotion.** The association shall promote marketing of groundfish products landed and processed by and through the State by association members in accordance with the Maine Groundfish Brand Label Program.

3. **Joint marketing programs.** The association shall support and may undertake joint marketing operations among association members who comply with and whose products are produced in accordance with the Maine Groundfish Brand Label Program.

4. **Information gathering.** The association may gather, analyze and distribute information to assure that the marketing objectives of the association are achieved.

5. **Suit.** The association may sue or be sued in its own name.

6. **Application for and receipt of funds.** The association may apply for and receive funds from any private source or government entity, whether by way of grant, donation or loan or any other manner consistent with the purposes of this subchapter.

7. **Contracts.** The association may make contracts, including contracts for services. Under no circumstances may the association or its agents obligate a member of the association to purchase or sell any product without the member's prior express approval.

8. **Trademark.** The association may adopt and register a trademark or tradename to be displayed by groundfish products processed in accordance with the Maine Groundfish Brand Label Program. The trademark or tradename may use the name of the State of Maine.

§ 6586. Limitation of powers

The association, notwithstanding sections 6585 and 6588, has no power of authority to enter into contracts, obligations or commitments of any kind on behalf of the State or any of its agencies nor does it have the power of eminent domain or any other power not provided to business corporations generally. Any evidence of indebtedness of the association is not in any way a debt or liability of the State or a pledge of the faith and credit of the State.

§ 6587. Board of Directors

1. **Members.** The association shall have a board of directors of 11 members representing the interests of the groundfish industry and shall consist of 4 directors who are appointed by the Fisherman's Cooperative Association of Maine, 4 directors who are appointed by the Associated Fisheries of Maine and 3 directors, representing each category of association membership, as set forth in section 6584, to be elected by the membership of the association. All directors shall be appointed for a term of 2 years, except that for purposes of the initial board of directors, 2 directors from each category of membership shall be appointed for one year. No person may serve as a director for more than 6 years in succession. All directors must have established membership in the association prior to appointment to the board of directors. The board shall have a chairman, a vice-chairman and a treasurer elected by the members of the board.

2. **Voting rights.** No decision of the board is binding without there being an affirmative vote by the majority of each of the 3 categories of membership.

3. **Vacancies.** In the event that the Fishermen's Cooperative Association of Maine or the Associated Fisheries of Maine cease to exist as industry organizations or fail to make appointments to the board of directors in a timely fashion, the board of directors shall appoint members to fill vacant seats on the board so as to maintain the representation as described in this section of the various industry interests.

4. **Ex officio member.** The commissioner or his designee shall be a nonvoting ex officio member of the board of directors.

§ 6588. Powers and duties of the board of directors

1. **Bylaws.** The board may adopt bylaws to carry out the provisions of this subchapter.

2. **Administration.** The board may employ an executive director to administer advertising, marketing and other association programs. The board may fix the executive director's salary. The executive director, with the consent of the board of directors salary. The executive director, with the consent of the board of directors, may employ clerical personnel and other employees.

3. **Industry fee assessment.** The board shall determine a fee schedule for participation in association programs consistent with the purposes of this subchapter. The industry fee assessment shall be payable in addition to membership dues established by the board and shall reflect the actual costs of association services included in a particular association program. All members paying industry fee assessments for participation in association programs shall receive fair and equitable access to the benefits of the Maine Groundfish Brand Label Program.

4. **Monitoring.** The board shall monitor the performance of members who participated in association programs and shall take appropriate remedial action against those participants not adhering to association rules.

§ 6589. Prohibited acts

1. **Association.** The association may not adopt a quality control and inspection program inconsistent with department inspection and certification rules promulgated pursuant to section 6590. In the event that the association adopts a quality control an inspection program inconsistent with relevant department rules, the department shall withhold inspection services under section 6590 and the Attorney General shall bring a civil action to prevent the association or its members from using the name of the State of Maine in the association name or in an association trademark or tradename.

2. **Unauthorized person.** Persons who are not participants in the Maine Groundfish Brand Label Program may not use or display any trademark or tradename adopted and registered by the association for use in that association program. Use of any benefit of association membership or program participation,

including use or display of registered association trademarks or tradenames by unauthorized persons is a Class D crime. Nothing in this subsection shall prevent the association from bringing a civil action against such unauthorized person.

§ 6590. Department rules; inspection services

1. **Rules.** The department shall promulgate inspection and certification rules setting forth quality control standards for the processing of groundfish. The department shall consider the recommendations of the association in promulgating such rules.

2. **Inspection services.** The department shall provide inspection services on a cost-reimbursement basis to association members. Such inspections shall be conducted in accordance with department groundfish inspection and certification rules.

§ 6591. Antitrust laws; exemption

The association shall not be deemed a conspiracy nor a combination in restraint of trade nor an illegal monopoly; nor an attempt to lessen competition or to fix prices arbitrarily or to create a combination or pool in violation of any law of this State; and the marketing contracts and agreements between the association and its members and any agreements authorized in this subchapter shall not be considered illegal nor in restraint of trade nor contrary to any statute enacted against pooling or combinations.

STATEMENT OF FACT

The Maine Groundfish Association provides a mechanism for the various elements comprising the groundfish industry to coordinate for purposes of expanding in-state processing of Maine landed groundfish, hence increasing the value added to the Maine landed product with the express purpose of improving the economic base for the State as a whole and the fishermen and processors in particular.

The Maine Groundfish Association is to be a voluntary organization open to harvesters, processors and individuals particularly interested in the groundfish industry. The underlying concept of the association is that promotion and marketing of Maine groundfish, based on a sound quality assurance program, has clear potential for establishing "market advantage," thus increasing benefit to the industry from increased volume and price. The quality control and assurance program is to be achieved through the Department of Marine Resources' groundfish inspection and certification rules, developed with the advice of the association. These rules provide a basis for the important "3rd party certification of quality," recognizing that "self certification" bears minimal weight in the marketplace to either sellers or consumers of fish. Consistent with department inspection and certification rules, the association may develop a Maine Groundfish Brand Label Program. Groundfish products processed in accordance with the association's Maine Groundfish Brand Label Program and, necessarily, the department inspection and certification rules, would qualify for the official State of Maine groundfish brand label.

A major role of the association is to develop a promotional program based on assured quality. This promotion may be in the form of material or active campaigns in the marketplace.

The association is authorized to create opportunities for its members through market development programs. These opportunities would be made available to association members according to rules developed by the association. Members of the association may create their own opportunities through individual market development efforts, with the understanding that products sold under the Maine groundfish brand label must meet the Maine Groundfish Brand Label Program standards established by the association. Members of the association may avail themselves of association promotion efforts in individual market development efforts.

It is not intended that the association become the owner of groundfish products under any conditions. It is not intended that the association obligate any member's groundfish products, unless authorized by that member. Such authorization may be warranted under market development conditions where immediate assurance of supply is necessary in order to create a market opportunity.