

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 496

S.P. 187

In Senate, February 8, 1991

Reference to the Committee on Marine Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BRAWN of Knox

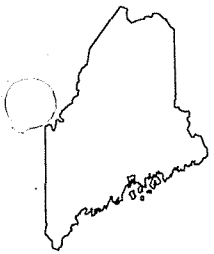
Cosponsored by Representative TOWNSEND of Eastport, Senator BUSTIN of Kennebec and Senator VOSE of Washington.

STATE OF MAINE

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

An Act to Improve Inspection and Grading of Maine Sardines.

(EMERGENCY)



Emergency preamble. Whereas, Acts of the Legislature do not
2 become effective until 90 days after adjournment unless enacted
as emergencies; and

4
Whereas, the sardine season begins in June and the financial
6 and administrative changes contained in this legislation should
be in effect before the season commences; and

8
Whereas, in the judgment of the Legislature, these facts
10 create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
12 necessary for the preservation of the public peace, health and
safety; now, therefore,

14
Be it enacted by the People of the State of Maine as follows:

16
Sec. 1. 32 MRSA §4151, sub-§§5 and 6 are enacted to read:

18
5. Kippers. "Kippers" means all fillets packed in
20 hermetically sealed containers that are not classified as
sardines, but have herring as their predominant contents.

22
6. Steaks. "Steaks" means all laterally cut portions
24 packed in hermetically sealed containers that are not classified
as sardines, but have herring as their predominant contents.

26
Sec. 2. 32 MRSA §4155, as amended by PL 1979, c. 62, §2, is
28 repealed.

30
Sec. 3. 32 MRSA §4156, as amended by PL 1985, c. 748, is
repealed.

32
Sec. 4. 32 MRSA §4157, sub-§3, as enacted by PL 1979, c. 62,
34 §4, is repealed.

36
Sec. 5. 32 MRSA §4157, sub-§4, as amended by PL 1989, c. 639,
38 §1, is further amended to read:

40
4. Labeling. Fish packed in accordance with this section
and the regulations rules adopted under Title 36, section 4701,
may be plainly and conspicuously marked "Maine Sardines." Except
42 as provided in section 4157-A, fish Fish that are packed in a
manner inconsistent with this section and the regulations shall
44 rules under Title 36, section 4701, may not be sold for
consumption in the United States unless each can and case is
46 plainly and conspicuously marked with the word "herring," and the
word "sardine" does not appear.

48
Sec. 6. 32 MRSA §4157, sub-§5, as amended by PL 1989, c. 639,
50 §1, is repealed.

2 Sec. 7. 32 MRSA §4157, sub-§6, as enacted by PL 1979, c. 62,
§4, is repealed.

4 Sec. 8. 32 MRSA §4157-A, as amended by PL 1989, c. 639, §2,
is repealed.

6 Sec. 9. 36 MRSA §4692, sub-§§1-A and 4 are enacted to read:

8 1-A. Kippers. "Kippers" means all fillets packed in
10 hermetically sealed containers that are not classified as
sardines, but have herring as their predominant contents.

12 4. Steaks. "Steaks" means all laterally cut portions
14 packed in hermetically sealed containers that are not classified
as sardines, but have herring as their predominant contents.

16 Sec. 10. 36 MRSA §4695, 2nd ¶, as amended by PL 1981, c. 614,
18 §1, is further amended to read:

20 An excise tax of 30¢ ~~35¢~~ per case, as defined in section
22 4692, ~~subsections 1 to 3~~ subsection 1, is levied and imposed upon
the privilege of packing sardines, and an excise tax of 15¢ per
24 case, as defined in section 4692, subsection 1, is levied and
imposed upon the privilege of packing kippers and steaks.

26 Sec. 11. 36 MRSA §4697, as amended by PL 1983, c. 85, §2, is
further amended to read:

28 **§4697. Reports of production and payment of tax**

30 Every packer shall, on or before the 10th day of each month,
32 report to the State Tax Assessor the quantity of sardines,
kippers or steaks packed by him the packer during the preceding
34 calendar month, on forms furnished by the State Tax Assessor, and
pay to the State Tax Assessor the tax of 30¢ ~~35¢~~ per case on all
36 sardines reported as packed, and 15¢ per case on all kippers or
steaks reported as packed. If the State Tax Assessor determines
38 that overpayment of tax has been made, he the State Tax Assessor
shall make a refund. In making additional assessment or refund
40 determinations, the State Tax Assessor shall rely on the records
of the ~~Department of Agriculture, Food and Rural Resources~~ Maine
42 Sardine Council concerning the quantity of sardines, kippers or
steaks packed in each sardine plant, for sale and suitable for
44 human consumption. Any packer may pay to the State Tax Assessor
in advance a sum of money based on an estimate of his the
46 packer's tax for a given number of months, and this sum shall ~~be~~
is a credit against future monthly reports of that packer.

48 Sec. 12. 36 MRSA §4698, as amended by PL 1979, c. 731, §19,
50 is further amended to read:

52 **§4698. Inspections**

2 The State Tax Assessor or his a duly authorized agent shall
4 have has authority to enter any place of business of a packer, or
6 any car, boat, truck or other conveyance in which sardines,
8 kippers or steaks are to be transported, and duly inspect any
10 books or records of any packer for the purpose of determining
12 what sardines, kippers or steaks are taxable, or for the purpose
14 of determining the truth or falsity of any statement or return
 made by any packer, and he ~~shall have~~ the assessor has authority
 to delegate such those powers to the ~~Commissioner of Agriculture,~~
 ~~Feed and Rural Resources~~ Maine Sardine Council, his its deputies,
 agents, servants or employees, and to the Commissioner of Marine
 Resources, his or any of the commissioner's deputies, agents,
 servant or employees.

16 **Sec. 13. 36 MRSA §4699, sub-§2, ¶A,** as repealed and replaced
18 by PL 1979, c. 26, §6, is amended to read:

20 A. For the purpose of merchandising and advertising Maine
22 sardines, kippers or steaks for food under the direction of
 the Maine Sardine Council;

24 **Sec. 14. 36 MRSA §4699, sub-§2, ¶B,** as amended by PL 1973, c.
 513, §22, is further amended to read:

26 B. For conducting research and investigation of methods of
28 propagating and conserving clupeoid fish, particularly the
30 clupea harengus, with a view of improving both the quality
32 and quantity of ~~the same~~ these fish in Maine waters, and for
34 the implementation of all feasible methods of improving,
 propagating and conserving ~~the same~~ these fish, under the
 joint direction of the Commissioner of Marine Resources and
 the Maine Sardine Council; and

36 **Sec. 15. 36 MRSA §4699, sub-§2, ¶C,** as amended by PL 1979, c.
 731, §19, is further amended to read:

38 C. For gathering, studying, classifying and ~~distributing~~
40 distributing information and data concerning quality,
42 grades, standards, methods of packing and character of the
44 manufactured sardine, kipper or steak products, in order to
46 determine and improve ~~their~~ quality and aid in merchandising
48 and advertising them under the direction of the Maine
 Sardine Council. ~~The information and data and the services~~
 ~~of the personnel who collect and classify it may be made~~
 ~~available to the Commissioner of Agriculture, Food and Rural~~
 ~~Resources for use in promulgating, establishing and~~
 ~~modifying official grades for sardines and for use in~~

2 assigning--and--determining--grades--of--sardines--and--in
enforcing-applicable-provisions-of-the-law.

4 Sec. 16. 36 MRSA §4699, sub-§2, ¶D, as amended by PL 1979, c.
731, §19, is repealed.

6 Sec. 17. 36 MRSA §4699-A, as amended by PL 1979, c. 541, Pt.
8 A, §229, is further amended to read:

10 **§4699-A. Refund on sardines exported**

12 In the event sardines, kippers or steaks upon which an
14 excise tax has been paid under section 4695 are exported from the
United States, the packer who has paid the tax ~~after-September-3,~~
16 ~~1965--shall-be~~ is entitled to a refund of all of such tax upon
application to the Maine Sardine Council.

18 Sec. 18. 36 MRSA §§4701 and 4702 are enacted to read:

20 **§4701. Rules**

22 1. Grades. The Maine Sardine Council may, in a manner
24 consistent with Title 5, Part 18, and after public hearings,
adopt rules establishing official grades for sardines, kippers or
26 steaks packed within the State, and for marking, branding or
labeling of sardines, kippers or steaks and the use of the
28 grades. The hearings must be held in places reasonably
convenient for the packers. Notice of the hearings and of the
30 final action must be sent, by registered mail, to all license
holders under Title 32, section 4153.

32 A. The grades may specify the number of fish per container,
34 the amount, quality and nature of the packing medium or
fill, the quality, appearance, odor, character, taste and
36 texture of the fish packed, the style of pack, their
workmanship and arrangement in the container, the quality of
38 the substances in the container, the size and type of the
container and tolerances allowing for reasonable variation
from grades.

40 B. In establishing the rules, the Maine Sardine Council may
42 consider packing practices in the State and in other
jurisdictions, consumer expectancy, habits and desires, the
44 types of fish available, conditions of sanitation, tastes
and preferences of varying parts of the consumer public,
46 marketing practices and market experience.

48 2. Substandard grade. Sardines, kippers or steaks that are
officially designated as substandard grade, for which a
50 certificate is issued, may not be sold for consumption in the
United States unless each can in the lot has the words
52 "Substandard Grade, Good Food - Not High Quality" printed in 2

lines across the cover of all cans in letters not less than 1/8
of an inch in height and enclosed in lines that are not less than
1/32 of an inch in width. This wording must be printed on all
wrappers, labels, cartons or other outer coverings of the cans
with a permanent type of indelible ink, or by means of other
approved procedure. The words "Substandard Grade" must appear in
letters not less than one inch in height on both ends of the
shipping container.

3. Embargo. The Maine Sardine Council, or any duly
authorized agent of the Maine Sardine Council shall detain or
place an embargo upon sardines, kippers or steaks officially
designated as substandard grade, for which a certificate is
issued, by marking or tagging the sardines, kippers or steaks and
warning all persons not to remove or dispose of them by sale or
otherwise until permission for removal or disposal is given by
the executive director. These sardines, kippers or steaks must
be detained or placed under embargo until the goods are marked in
accordance with this section or the executive director has
received a bond covering the export provisions of this section.
Orders for detention or embargo issued under this section are not
considered to be licensing or an adjudicatory proceeding, as
those terms are defined by Title 5, Part 18.

**§4702. Sardines for export; exempt from quantity and quality
provisions of Maine Sardine Law**

Sardines that satisfy the requirements of the Maine Food
Law, but not the requirements of the Maine Sardine Law, may be
exported by complying with the shipping carton marking and
bonding provisions of this section.

1. Labels. The cover of each can of sardines that satisfy
the requirements of the Maine Food Law, but not the requirements
of the Maine Sardine Law must be labeled with the name of the
packer. Each shipping carton must be marked plainly and
conspicuously with the words "FOR EXPORT" in letters not less
than 1/2 inch high.

2. Detention; embargo. The executive director shall detain
or place an embargo upon any such sardines by marking or tagging
them. Orders for detention or embargo issued under this section
are not considered to be licensing or an adjudicatory proceeding
as those terms are defined by the Maine Administrative Procedure
Act. The executive director may not release the sardines from
detention or embargo until the packer provides a bond with good
and sufficient sureties in an amount not less than twice the
value of the sardines, running to the executive director and
successors in that office, conditioned that the sardines must be
exported to a foreign country to be named in the bond and may not
be reimported into the United States by any person, or in such
other amount and upon such other conditions as may be established

2 by the executive director. If the packer is regularly engaged in
4 the business of exporting sardines, the packer may provide one
6 bond in the amount of \$10,000 to cover all such exports,
8 conditioned that the sardines must be exported to a foreign
10 country and may not be reimported to the United States by any
12 person and that the packer inform the executive director of the
value and foreign country of destination of each shipment in
writing prior to release of the embargo and such additional
documentary evidence as the executive director may require within
45 days of the date of the shipment. A packer is deemed to be
regularly engaged in the business of exporting sardines if the
packer makes 2 or more shipments in any one year.

14 3. Military procurement. Shipments to United States
16 military procurement agencies that do not meet market
18 requirements within the United States, its territories and
possessions as specified by the Maine Sardine Law are not deemed
to be exported to a foreign country.

20 Emergency clause. In view of the emergency cited in the
22 preamble, this Act takes effect when approved.

24 **STATEMENT OF FACT**

26 Currently, Maine's sardine packers are the only food
28 processors in the State who are taxed by the State to enable the
30 Department of Agriculture, Food and Rural Resources to inspect
32 the sanitary condition of their processing facilities. In
34 addition to these periodic inspections, Maine sardine processing
facilities are also periodically inspected by the United States
Food and Drug Administration through a program fully funded by
the Federal Government.

36 To change this situation and strengthen the sardine
38 industry's marketing-oriented grading program, the Maine Sardine
Council proposes to change the Maine sardine inspection and
grading programs in this bill in 3 basic ways.

40 1. The authorization for the sardine inspection program is
42 repealed.

44 2. The Maine Sardine Council would assume the authority to
46 operate the sardine grading program and expand the program's
48 scope to include the grading of kippers and steaks. Grading
personnel costs, now supported by the sardine inspection tax,
would be paid entirely from the council's dedicated revenue
excise tax funds.

50 3. The sardine excise tax would increase by 5¢ per case to
52 a total of 35¢ per case and be expanded to include a 15¢ per case
tax on the production of canned kippers and herring steaks in

2 this State. This tax increase will allow for the full funding of
the grading program's needs.

4 These changes will remove the tax burden from Maine's
6 sardine packing companies by repealing the authorization for the
sardine inspection program and will allow the Maine Sardine
8 Council to operate the sardine grading program, which is now
partially funded and operated by the Department of Agriculture,
10 Food and Rural Resources with revenue from the sardine inspection
tax.