

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 10

S.P. 20

In Senate, January 5, 1993

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

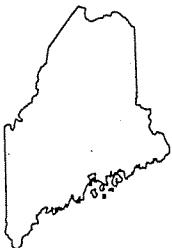
Presented by Senator VOSE of Washington

STATE OF MAINE

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

**An Act to Clarify the Enforcement Authority of the Maine Sardine
Council.**

(EMERGENCY)



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

Whereas, exports of sardines, kippers and steaks are increasing; and

Whereas, effective quality control is essential to ensure the integrity of the grading program for sardines, kippers and steaks; and

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

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

Sec. 1. 32 MRS §4153, as amended by PL 1977, c. 694, §626, is further amended to read:

§4153. License required

No person, firm, corporation, association or society shall pack sardines, kippers or steaks within the State for sale without having first filed with the Commissioner of Agriculture, Food and Rural Resources an application for license, accompanied with a fee of \$50, upon receipt of which application the commissioner shall issue to the person, firm, corporation, association or society making such application a license to pack sardines. Each such license shall ~~cover~~ covers one group of buildings constituting a packing plant in one location. Said ~~The~~ license shall ~~run~~ runs from January 1st and ~~expire~~ expires in a manner consistent with the provisions of the Maine Administrative Procedure Act as to license expiration or on December 31st of each year, whichever is later, unless sooner revoked and shall must be renewed annually thereafter. Before issuing such license or renewing it, the commissioner may by adequate inspection determine that the laws and regulations relating to the packing of sardines, kippers or steaks and the operation of sardine packing plants for sardines, kippers or steaks are being observed.

Sec. 2. 32 MRS §4166, sub-§§2-A and 4-A are enacted to read:

2-A. Council. "Council" means the Maine Sardine Council, as established by Title 5, section 12004-H, subsection 8, or any person authorized by the Maine Sardine Council to act on its behalf.

2 4-A. Lot. "Lot" means not more than the entire output of
3 one packing plant for one day or for one personnel shift,
4 whichever is the shorter period.

6 Sec. 3. 32 MRSA §4166, sub-§5, as enacted by PL 1991, c. 446,
7 Pt. C, §3, is amended to read:

8 5. Packer. "Packer" means any person, partnership,
9 association, firm, corporation or entity--engaged--in--packing
10 sardines--for--sale society licensed under section 4153 to pack
11 sardines, kippers or steaks.

14 Sec. 4. 32 MRSA §4167-A is enacted to read:

16 §4167-A. Council authority; code plans, embargo and petitions

18 The council shall certify the quality and grade of sardines,
19 kippers and steaks packed in this State. The quality or grade
20 certified by the council is prima facie evidence of the quality
21 or grade of the lot.

22 1. Code plan required. Prior to packing sardines, kippers
23 or steaks in any container for which the council has established
24 grades, a packer must have a code plan on file with the council.
25 A code plan filed with the council must indicate the location of
26 the plant, the lot number, and the calendar year of packing and
27 may include other information provided by the packer.

28 A code plan filed with the council remains in effect until
29 amendments to that code plan are submitted to the council by the
30 packer. A packer may not pack, process, manufacture, sell, ship,
31 deliver, consign or possess sardines, kippers or steaks for which
32 a code plan is required unless that packer's code appears legibly
33 and permanently upon the container and the shipping case
34 containing the sardines, kippers or steaks.

35 2. Embargo authority. The council shall embargo any lot
36 of sardines, kippers or steaks that is not labeled in conformance
37 with section 4168, subsection 5 or section 4169, subsection 1.
38 The council shall immediately notify a packer of an embargo
39 action and shall place a tag on each lot subject to embargo.
40 Except as permitted by the council or as ordered by the court
41 under subsection 3, a packer may not destroy, move, sell, or
42 offer to sell any product under embargo by the council. An
43 embargo by the council constitutes a final agency action for the
44 purposes of judicial review under Title 5, chapter 375,
45 subchapter VII.

2 A. The council shall lift an embargo imposed on substandard
3 grade products that do not conform to the labeling
4 provisions of section 4168, subsection 5 only if the council
5 determines that the embargoed products:

6 (1) Will be destroyed by the packer. Prior to
7 destroying any lot, the packer must notify the council
8 in writing of the packer's intent to destroy the lot;

10 (2) Will be offered for sale in the domestic market as
11 substandard grade products and are labeled in
12 conformance with section 4168, subsection 5; or

14 (3) Will be offered for sale in the export market and
15 are in compliance with all provisions of paragraph B.

16 B. The council shall lift an embargo imposed on export
17 products that do not conform to the export provisions of
18 section 4169 only if the embargoed products will be
19 destroyed by the packer with the knowledge of the council or
20 the council determines that:

22 (1) The embargoed products will be exported, will not
23 be reimported into the domestic market and are in
24 compliance with the requirements of section 4169;

26 (2) The packer is bonded in compliance with section
27 4169, subsection 4; and

29 (3) The packer has, in writing, notified the council
30 of the value of the embargoed products and the export
31 destination.

34 Not later than 45 days after the export of any products
35 embargoed under this subsection, the packer shall provide
36 the council with a copy of the shipping manifest bearing the
37 name of the export destination.

38 3. Petition to courts; retrieval or condemnation. The
39 council may petition the District Court for an order to retrieve
40 or condemn any lot of sardines, kippers or steaks embargoed by
41 the council. If the court determines a lot of sardines, kippers
42 or steaks to be in violation of section 4168, subsection 5 or
43 section 4169, the court may, at the packer's expense:

46 A. Order the packer to destroy the embargoed sardines,
47 kippers or steaks;

2 B. Order the packer to retrieve and properly label the
4 embargoed sardines, kippers or steaks as substandard grade
6 products for sale in the domestic market if:

8 (1) The packer is able to retrieve and properly label
10 the embargoed sardines, kippers or steaks as
12 substandard grade products for sale in the domestic
14 market; and

16 (2) The packer has posted a bond payable to the
18 council in the event of noncompliance with an order of
20 the court issued under this paragraph. The bond amount
22 may not be less than twice the value of the sardines,
24 kippers or steaks to be retrieved and properly labeled;
26 or

28 C. Permit the packer to export the sardines, kippers or
30 steaks if:

32 (1) The packer certifies that the sardines, kippers or
34 steaks do not violate laws of the foreign country to
36 which they will be exported;

38 (2) The council determines that the packer has
40 properly labeled the sardines, kippers or steaks for
42 export; and

44 (3) The packer is bonded in compliance with section
46 4169, subsection 4.

48 Any action taken by a packer to comply with an order of the court
50 issued under this subsection must be taken under the supervision
52 of the council. If the court determines a packer to be in
54 violation of section 4168, subsection 5 or section 4169, the
56 court shall order the packer to pay all court costs, fees and
58 expenses associated with the petition filed by the council.

60 **Sec. 5. 32 MRSA §4168, sub-§6, as enacted by PL 1991, c. 446,**
62 **Pt. C, §3, is repealed.**

64 **Sec. 6. 32 MRSA §4169, first ¶, as enacted by PL 1991, c. 446,**
66 **Pt. C, §3, is amended to read:**

68 Sardines, kippers or steaks that satisfy the requirements of
70 the Maine Food Law, but not the requirements of the Maine Sardine
72 Law, may be exported by complying with the shipping carton
74 marking and bonding provisions of this section. For the purposes
76 of this section, the term "exported" includes shipments of
78 sardines, kippers or steaks to the Commonwealth of Puerto Rico,
80 the Virgin Islands, American Samoa, Guam, the Commonwealth of the

2 Northern Mariana Islands and the trust territory of Palau. A
3 packer may not import into the United States any sardines,
4 kippers or steaks exported under this subchapter.

5 **Sec. 7. 32 MRSA §4169, sub-§2, as enacted by PL 1991, c. 446,**
6 **Pt. C, §3, is repealed.**

7 **Sec. 8. 32 MRSA §4169, sub-§4 is enacted to read:**

8 **4. Bonding requirements prior to engaging in export trade.**
9 **A packer must be bonded prior to engaging in the export of**
10 **sardines, kippers or steaks. Such bond or bonds must be payable**
11 **to the council upon the court finding the packer in violation of**
12 **the export provisions of this subchapter. Prior to exporting any**
13 **sardines, kippers or steaks, a packer must submit a copy of the**
14 **bond to the council. The bond amount may not be less than twice**
15 **the value of the sardines, kippers or steaks to be exported,**
16 **except that a packer regularly engaged in export activities may**
17 **post a bond for \$10,000 to cover all exports in one calendar**
18 **year. For the purposes of this subsection, the term "a packer**
19 **regularly engaged in export activities" means a packer who**
20 **exports 2 or more shipments of sardines, kippers or steaks in a**
21 **calendar year.**

22 **Sec. 9. 32 MRSA §4170, as enacted by PL 1991, c. 446, Pt. C,**
23 **§3, is amended to read:**

24 **§4170. Cans to be sealed; lined**

25 **On all cans used for packing sardines, kippers or steaks**
26 **there must be a compound-lined compound-lined gasket or other**
27 **adequate gasket that will hermetically seal the container. All**
28 **cans used for packing sardines, kippers or steaks must be enamel**
29 **lined enamel-lined.**

30 **Sec. 10. 32 MRSA §4170-A is enacted to read:**

31 **§4170-A. Penalties**

32 **A packer who violates any provision of this subchapter**
33 **commits a Class E crime. In addition to any penalty imposed**
34 **under this section, the court may order a packer to forfeit to**
35 **the council all or any portion of any bond required by this**
36 **subchapter.**

37 **Sec. 11. 36 MRSA §4692-A, sub-§4, as enacted by PL 1991, c.**
38 **446, Pt. B, §3, is amended to read:**

39 **4. Packer. "Packer" means any person, partnership,**
40 **association, firm, corporation or entity--engaged--in--packing**

2 sardines-for-sale society licensed under Title 32, section 4153
3 to pack sardines, kippers or steaks.

4 **Emergency clause.** In view of the emergency cited in the
5 preamble, this Act takes effect when approved.

8 **STATEMENT OF FACT**

10 This bill clarifies the embargo authority of the Maine
11 Sardine Council and reinstates the substance of the Maine Revised
12 Statutes, Title 32, former section 4155, pertaining to the
13 council's authority to require packers to file code plans and the
14 council's authority to enforce an embargo through the courts.
15 The provisions of Title 32, former section 4155 that are
16 reinstated in this bill were repealed by Public Law 1991, chapter
17 446, a bill that transferred the administration of the sardine
18 grading program from the Department of Agriculture, Food and
19 Rural Resources to the Maine Sardine Council. This bill further
20 clarifies the penalty applicable to packers who violate the Maine
21 Sardine Law by enacting a penalty provision that is consistent
22 with the penalty that was applicable prior to the enactment of
23 Public Law 1991, chapter 446.

24 The bill also makes several technical changes to ensure the
25 consistent use of terms and definitions pertaining to the
26 licensing of packers and the packing of sardines, kippers and
27 steaks.
28