CHAPTER 87

FISH MARKETING ASSOCIATIONS

SUBCHAPTER 1

GENERAL PROVISIONS

§2001. Short title

This chapter shall be known as the "Fish Marketing Act".

§2002. Purposes

This chapter is enacted in order to promote, foster and encourage the intelligent and orderly marketing of fish and fishery products through cooperation; to eliminate speculation and waste; to make the distribution of fish and fishery products between producer and consumer as direct as can be efficiently done; and to stabilize the marketing of fish and fishery products.

§2003. Definitions

As used in this chapter:

1. Association. "Association" means any corporation organized under this chapter.

2. Fishery products. "Fishery products" includes fish, crustaceans, mollusks and marine products for human consumption.

3. Member. "Member" includes members of associations without capital stock and holders of common stock in associations organized with shares of stock.

§2004. Nonprofit associations

Associations shall be deemed "nonprofit," inasmuch as they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers of fishery products.

§2005. General corporation law; applicability

The provisions of the general laws relating to business corporations and all powers and rights thereunder, apply to associations, except where such provisions are in conflict with or inconsistent with the express provisions of this chapter.

§2006. Registration as dealers in securities

Associations organized under this chapter shall be subject to Title 32, chapter 13. The fee charged for registration or renewal shall be $10.

§2007. Anti-trust laws; exemption

An association shall be deemed not to be 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 chapter shall be considered not to be illegal nor in restraint of trade nor contrary to any statute enacted against pooling or combinations.

§2008. Statutory construction

Any provisions of law which are in conflict with this chapter shall not be construed as applying to associations. Any exemptions under any laws applying to fishery products in the possession or under the control of the individual producer shall apply similarly and completely to such fishery products delivered by its members, in the possession or under the control of the association.

§2009. Merger or consolidation

Any 2 or more associations may be merged into one such constituent association or consolidated into a new association. Such merger or consolidation shall be made in the manner prescribed for domestic business corporations.

SUBCHAPTER 2

ORGANIZATION

§2051. Authority to form association

Five or more persons, a majority of whom are residents of this State, engaged in the fishery business, may form an association, with or without shares of stock, under this chapter.

§2052. Articles of incorporation

Articles of incorporation shall be signed, acknowledged and filed in the manner prescribed for domestic business corporations.

§2053. Contents

The articles of incorporation shall state:

1. Name. The name of the association;

2. Purposes. The purposes for which it is formed;

3. Location. The municipality and county where the principal office for the transaction of business of the corporation is to be located;

4. Directors. The number of directors thereof, which shall be not less than 3 and may be any number in excess thereof; the term of office of such directors; and the names and residences of those who are to serve as directors for the first year, or until election and qualification of their successors.

§2054. Shares; number; par value

If the association is organized with shares of stock, the articles shall state the number of shares which may be issued and if the shares are to have a par value, the par value of each share, and the aggregate par value of all shares; and if the shares are to be without par value, it shall be so stated.

§2055. Classes

If the shares are to be classified, the articles shall contain a description of the classes of shares and a statement of the number of shares of each kind or class and the nature and extent of the preferences, rights, privileges and restrictions granted to or imposed upon the holders of the respective classes of stock.

§2056. Membership; voting power

If the association is organized without shares of stock, the articles shall state whether the voting power and the property rights and interest of each member are equal or unequal; and if unequal the general rule or rules applicable to all members by which the voting power and the property rights and interests, respectively, of each member may be and are determined and fixed; and shall provide for the

admission of new members who shall be entitled to vote and to share in the property of the association with the old members, in accordance with such general rule or rules.

§2057. Amendments

The articles of incorporation of any association may be altered or amended in the manner and for the purposes prescribed for domestic corporations.

§2058. Adoption, repeal and amendment; vote; delegation of authority

Each association shall, within 30 days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with this chapter. A majority vote of the members or shares of stock issued and outstanding and entitled to vote, or the written assent of a majority of the members or of stockholders representing a majority of all the shares of stock issued and outstanding and entitled to vote, is necessary to adopt such bylaws and is effectual to repeal or amend any bylaws, or to adopt additional bylaws. The power to repeal and amend the bylaws, and adopt new bylaws, may, by a similar vote, or similar written assent, be delegated to the board of directors, which authority may, by a similar vote, or similar written assent, be revoked.

§2059. Prohibited transfers

The bylaws shall prohibit the transfer of the common stock or membership certificates of the associations to persons not engaged in the fishery business.

§2060. Quorum; voting; qualifications of directors; penalties

The bylaws may provide:

1. Quorum. The number of members constituting a quorum;

2. Voting. The right of members to vote by proxy or by mail or both, and the conditions, manner, form and effects of such votes; the right of members to cumulate their votes and the prohibition, if desired, of cumulative voting;

3. Quorum for directors. The number of directors constituting a quorum;

4. Duties, term, etc. of directors. The qualifications, compensation and duties and term of office of directors and officers and the time of their election;

5. Penalties. Penalties for violations of the bylaws.

§2061. Members; financial rights and obligations

The bylaws may provide:

1. Fees. The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same; and the purposes for which they may be used;

2. Members' payments. The amount that each member is required to pay annually, or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member for services rendered by the association to the member and the time of payment and the manner of collection; and the marketing contract between the association and its members, which every member may be required to sign;
[RR 2025, c. 1, Pt. E, §19 (COR).]

3. Dividends. The amount of any dividends which may be declared on the stock or membership capital, which dividends shall not exceed 8% per annum and which dividends shall be in the nature of interest and shall not affect the nonprofit character of any association organized under this chapter.

SECTION HISTORY

RR 2025, c. 1, Pt. E, §19 (COR).

§2062. -- qualifications; withdrawals; transfers; suspension; valuation of interest

The bylaws may provide:

1. Membership. The number and qualification of members of the association and the conditions precedent to membership or ownership of common stock;

2. Withdrawal. The method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock;

3. Transfer of interest. The manner of assignment and transfer of the interest of members and of the shares of common stock;

4. Cessation of membership. The conditions upon which and time when membership of any member shall cease;

5. Suspension. For the automatic suspension of the rights of a member when the member ceases to be eligible for membership in the association; and the mode, manner and effect of the expulsion of a member; and
[RR 2025, c. 1, Pt. E, §20 (COR).]

6. Valuation of interest. The manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or upon the expulsion of a member or forfeiture of a member's membership, or at the option of the association, the purchase at a price fixed by conclusive appraisal by the board of directors; and the conditions and terms for the repurchase by the corporation from its stockholders of their stock upon their disqualification as stockholders.
[RR 2025, c. 1, Pt. E, §21 (COR).]

SECTION HISTORY

RR 2025, c. 1, Pt. E, §§20, 21 (COR).

§2063. Meetings

The bylaws may provide for the time, place and manner of calling and conducting meetings of the association.

§2064. Districting territory; directors from districts; redistricting

The bylaws may provide that the territory in which the association has members shall be divided into districts and that directors shall be elected from the several districts. In such case, the bylaws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association.

§2065. Directors elected by district representatives; redistricting

The bylaws may provide that the territory in which the association has members shall be divided into districts, and that the directors shall be elected by representatives or advisers, who themselves have been elected by the members from the several territorial districts. In such case, the bylaws shall specify the number of representatives or advisers to be elected by each district, the manner and method of reapportioning the representatives or advisers and of redistricting the territory covered by the association.

§2066. Directors; primary elections to nominate

The bylaws may provide that primary elections shall be held to nominate directors. Where the bylaws provide that the territory in which the association has members shall be divided into districts, the bylaws may provide that the results of the primary elections in the various districts shall be final and shall be ratified at the annual meeting of the association.

§2067. -- staggered terms

The bylaws may provide that directors shall be elected for terms of from one to 5 years, provided that at each annual election the same fraction of the total number of directors shall be elected as one year bears to the number of years of the term of office.

§2068. Executive committee

The bylaws may provide for an executive committee and may allot to such committee all the functions and powers of the board of directors, subject to the general direction and control of the board.

SUBCHAPTER 3

OFFICERS

§2101. Board of directors

The affairs of the association shall be managed by a board of not less than 3 directors, elected by the members from their own number.

§2102. -- meetings

Meetings of the board of directors may be held at any place within or without the State fixed by a quorum thereof unless otherwise provided in the articles of incorporation or bylaws.

§2103. -- vacancies

When a vacancy on the board of directors occurs other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, provided that when the bylaws provide for an election of directors by districts, the vacancy shall be filled by the election of a director from the district in which the vacancy occurs; or the board of directors may call a special meeting of the members in that district to fill the vacancy.

§2104. President; vice-presidents; secretary; treasurer

The directors shall elect from their number a president and one or more vice-presidents. They shall elect a secretary and a treasurer, who need not be directors or members of the association, and they may combine the 2 latter offices and unite both functions and titles in one person. The treasurer may be a bank or any depository and, as such, shall not be considered as an officer, but as a function of the board of directors. In such case, the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as and where authorized by the board of directors. Any vacancy in any office, other than that of director, shall be filled by the board of directors.

§2105. Compensation

An association may provide a fair remuneration for the time actually spent by its officers and directors in its service and for the service of the members of its executive committee.

§2106. Charges; petition

Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by 5% of the members, requesting the removal of the officer or director in question.

§2107. Notice; hearing

The director or officer against whom such charges have been brought must be informed in writing of the charges previous to the meeting and have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing the charges against the director or officer must have the same opportunity. [RR 2025, c. 1, Pt. E, §22 (COR).]

SECTION HISTORY

RR 2025, c. 1, Pt. E, §22 (COR).

§2108. Vote; time; majority required

Except as provided in section 2109, the removal shall be voted upon at the next regular or special meeting of the association and, by a vote of a majority of the members, the association may remove the officer or director.

§2109. District directors; petition; vote of district membership

If the bylaws provide for election of directors by districts with primary elections in each district, the petition for removal of a director must be signed by 20% of the members residing in the district from which the director was elected. The board of directors shall call a special meeting of the members residing in that district to consider the removal of the director. If a majority of the members of that district vote to remove the director, the director must be removed from office. [RR 2025, c. 1, Pt. E, §23 (COR).]

SECTION HISTORY

RR 2025, c. 1, Pt. E, §23 (COR).

SUBCHAPTER 4

MEMBERS

§2151. Qualifications

Under the terms and conditions prescribed in the bylaws, an association may admit as members, or issue common stock to, only such persons as are engaged in the fishery business, including the lessees and tenants of boats and equipment used in such fishery business and any lessors and landlords who receive as rent all or part of the fish produced by such leased equipment.

If a member of a nonstock association is other than a natural person, such member may be represented by any individual duly authorized in writing.

One association may become a member or stockholder of any other association.

§2152. Certificate

When a member of an association established without shares of stock has paid the member's membership fee in full, the member must receive a certificate of membership. [RR 2025, c. 1, Pt. E, §24 (COR).]

SECTION HISTORY

RR 2025, c. 1, Pt. E, §24 (COR).

§2153. Liability for debts

A member is not liable for the debts of the association to an amount exceeding the sum remaining unpaid on the member's membership fee or subscription to the capital stock, including any unpaid balance on any promissory note given in payment thereof. [RR 2025, c. 1, Pt. E, §25 (COR).]

SECTION HISTORY

RR 2025, c. 1, Pt. E, §25 (COR).

§2154. Meetings; place

Meetings of members shall be held at the place as provided in the bylaws; and if no provision is made, in the city where the principal place of business is located at a place designated by the board of directors.

§2155. Expulsion; payment for interest

In case of the expulsion of a member, and when the bylaws do not provide a procedure or penalty, the board of directors shall equitably and conclusively appraise the member's property interest in the association and shall fix the amount of the member's property interest in money, which must be paid to the member within one year after the expulsion. [RR 2025, c. 1, Pt. E, §26 (COR).]

SECTION HISTORY

RR 2025, c. 1, Pt. E, §26 (COR).

SUBCHAPTER 5

STOCK

§2191. Payment; common; ownership limitations

No association shall issue a certificate for stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the member's right to vote. An association, in its bylaws, may limit the amount of common stock which one member may own.

§2192. Common; voting power

One class of stock shall always be known as common stock and voting power may be restricted to holders of common stock.

§2193. Notation of restriction on transfer

There shall be printed upon each common stock certificate a statement that the transfer thereof to any person not engaged in the fishery business is prohibited by the bylaws of the association.

§2194. Purchase by association

An association may, at any time, as specified in the bylaws, except when the debts of the association exceed 50% of its assets, buy in or purchase its common stock at the book value thereof, as conclusively determined by the board of directors and pay for it in cash within one year thereafter.

§2195. Distinction between classes of stock or holders

Except as to the matters and things stated in the articles of incorporation no distinction shall exist between classes of stock or the holders thereof.

§2196. Nonpar issuance

If an association issues nonpar value stock the issue of such stock shall be governed by the laws regulating the issuance of nonpar value stock in domestic corporations.

§2197. Preferred; issuance in payment for purchases by association

Whenever an association, organized with preferred shares of stock, purchases the stock or any property or any interest in any property of any person, it may discharge the obligations so incurred wholly or in part, by exchanging for the acquired interest, shares of its preferred stock to an amount which at par value would equal the fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued.

SUBCHAPTER 6

POWERS

§2231. Authorized activities

An association may engage in any activity in connection with the marketing, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling or utilization of any fishery products produced or delivered to it by its members; or the manufacturing or marketing of the by-products thereof; or any activity in connection with the purchase, hiring or use by its members of supplies, machinery or equipment; or in the financing of any such activities.

§2232. Borrowing; advances to members

An association may borrow without limitation as to amount of corporate indebtedness or liability and may make advances to members.

§2233. Agency

An association may act as the agent or representative of any member or members in sections 2231 and 2232.

§2234. Reserves; investments

An association may establish reserves and invest the funds thereof in bonds or in such other property as may be provided in the bylaws.

§2235. Stocks and bonds; acquisition and ownership

An association may purchase or otherwise acquire, hold, own and exercise all rights of ownership in, sell, transfer or pledge the payments of dividends or interest on, or the retirement or redemption of, such shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the warehousing or handling or marketing or packing or manufacturing or processing or preparing for market of any of the fishery products handled by the association.

§2236. Property ownership

An association may buy, hold and exercise all privileges or ownership over such real or personal property as may be necessary or convenient for the conduct and operation of any of the business of the association, or incidental thereto.

§2237. Assessments

An association may levy assessments in the manner and in the amount provided in its bylaws.

§2238. Acts necessary to accomplish purposes

An association may do each and every thing necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects enumerated in this chapter; or conducive to or expedient for the interest or benefit of the association; and contract accordingly; and in addition exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and, in addition, any other rights, powers and privileges granted by the laws of this State to ordinary corporations, except such as are inconsistent with the express provisions of this chapter; and do any such thing anywhere.

§2239. Facilities; use; proceeds

An association may use or employ any of its facilities for any purpose; provided the proceeds arising from such use and employment go to reduce the cost of operation for its members; but the fishery products of nonmembers shall not be dealt in to an amount greater in value than such as are handled by it for its members.

§2240. Interest in other corporations; warehousing corporations; warehouse receipts

An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock and engaged in preserving, drying, processing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing or selling of the fishery products handled by the association, or the byproducts thereof.

If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association against the commodities delivered by it, or to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the usual and current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this State or the United States, its warehouse receipt delivered to the association on commodities of the association or its members, or delivered by the association or its members, shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association.

§2241. Agreements with other associations; cooperation

Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other cooperative or other corporation, association or associations, formed in this or in any other state, for the cooperative and more economical carrying on of its business or any part or parts thereof. Any 2 or more associations may, by agreements between them, unite in employing and using or may separately employ and use the same personnel, methods, means and agencies for carrying on and conducting their respective business.

SUBCHAPTER 7

MARKETING CONTRACTS

§2281. Authority to contract; restrictions

An association and its members may make and execute marketing contracts, requiring the members to sell, for any period of time, not over 15 years, all or any specified part of their fishery products or specified commodities exclusively to or through the association or any facilities to be created by the association.

§2282. Title to products

If the members contract a sale to the association, it shall be conclusively held that title to the products passes absolutely and unreservedly, except for recorded liens, to the association upon delivery or at any other time expressly and definitely specified in the contract.

§2283. Sales and resales; payments to members; deductions

The contract may provide that the association may sell or resell the fishery products delivered by its members, with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest on preferred stock, not exceeding 8% per annum, and reserves for retiring the stock, if any; and other proper reserves; and interest not exceeding 8% per annum upon common stock.

§2284. Breach of contract; liquidated damages; costs

The marketing contract may fix, as liquidated damages, specific sums to be paid by the member to the association upon the breach by the member of any provision of the marketing contract regarding the sale or delivery or withholding of fishery products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees, in case an action is brought upon the contract by the association; and any such provisions are valid and enforceable in the courts of this State; and such

clauses providing for liquidated damages are enforceable as such and may not be regarded as penalties. [RR 2025, c. 1, Pt. E, §27 (COR).]

SECTION HISTORY

RR 2025, c. 1, Pt. E, §27 (COR).

§2285. Enforcement of contract; injunction; specific performance

In the event of any such breach or threatened breach of such marketing contract by a member the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

§2286. Landlord or lessor; presumptions; remedies against

In an action upon such marketing agreements, it is conclusively presumed that a landlord or lessor is able to control the delivery of fishery products produced by the landlord's or lessor's equipment by tenants, or others, whose tenancy or possession or work on such equipment or the terms of whose tenancy or possession or labor thereon were created or changed after execution by the landlord or lessor of such a marketing agreement; and in such actions, the foregoing remedies for nondelivery or breach lie and are enforceable against the landlord or lessor. [RR 2025, c. 1, Pt. E, §28 (COR).]

SECTION HISTORY

RR 2025, c. 1, Pt. E, §28 (COR).

§2287. Specific performance

A contract entered into by a member of an association, providing for the delivery to such association of products produced or acquired by the member, may be specifically enforced by the association to secure the delivery to it of such fishery products, any provisions of law to the contrary notwithstanding.

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