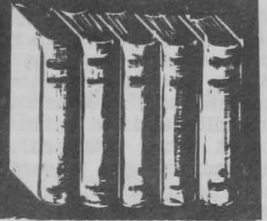




# FEDERAL ACTIONS



## Food and Drug Administration

**CANNED OYSTERS--QUALITY AND FILL OF CONTAINER:** The Federal Security Administrator on August 3 denied the petition of a West Coast oyster company for a change in the definition and standard of identity and the standard of fill of container for canned oysters established by the Administrator's final order of March 10, 1948. The Administrator's supplemental findings of fact, conclusions, and order were published in the Federal Register of August 12, and were based on the recent hearing ordered by the Ninth Circuit Court of Appeals. (See Commercial Fisheries Review, July 1948, p. 45). The previous findings are modified to the extent necessary to take into consideration the "blanching" method of preparing the oysters for canning but make no change in the earlier requirement for fill of container.

Full text of the order, as it appeared in the Federal Register of August 12, 1948, follows:

### TITLE 21—FOOD AND DRUGS

#### Chapter I—Food and Drug Administration, Federal Security Agency

[Docket No. FDC-50]

#### PART 33—SHELLFISH; DEFINITIONS AND STANDARDS OF IDENTITY; QUALITY AND FILL OF CONTAINER

##### CANNED OYSTERS

In the matter of establishing definitions and standards of identity and amending the standard of fill of container for canned oysters.

*Final order; supplemental findings of fact, conclusions, and order.* By virtue of the authority vested in the Federal Security Administrator by the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701; 52 Stat. 1046, 1055; 21 U. S. C. 341, 371), and on the basis of evidence received at a public hearing held at the direction of the United States Circuit Court of Appeals for the Ninth Circuit beginning on July 7, 1948, the following findings of fact, conclusions, and order are made:

##### DEFINITIONS AND STANDARDS OF IDENTITY

*Findings of fact.* 1. Finding 6<sup>1</sup> is modified so that the second sentence shall read: The proportion of oysters to liquid in the finished food depends on the quantity of oysters placed in the container before packing medium is added and on the extent to which such oysters have been precooked by pre-steaming in the shell or blanching after removal from the shell (R. 728, 977).

2. Finding 7 is modified by adding the following at the end thereof:

At the commencement of the 1947-1948 canning season, Willapoint Oysters, Inc., and other canners of Pacific oysters, began the commercial practice of preparing oysters for canning without pre-steaming in the shell.<sup>2</sup> Oysters were purchased as raw shucked oysters or were shucked at the canneries. They were, after washing, immersed in a hot brine solution, the salt content of which ranged from approximately 3 to 10 percent, and blanched in the hot brine for a period from 30 to 60 seconds. After removal from the brine solution, the oysters were washed in fresh water, cooled, and held in warm water until they were ready to be placed in the cans. The cans, after filling with a put-in weight of approximately 7½ oz. of blanched oysters, a salt tablet and water, were sealed and processed by heat, using the regular cannery procedure. When this blanching method of preparation is employed, or when modified methods are used, the treatment of oysters in the boiling brine solution causes the raw oysters to lose water and soluble solids into the brine solution. This loss approximates 16% by weight from the raw oysters. Such loss is not significantly different from the loss which occurs when Pacific oysters are subjected to a light pre-steaming in the shell. After processing in the can, the canned oysters prepared from blanched oysters are practically indistinguishable from those prepared from oysters that have been pre-steamed in the shell, although

blanched oysters have a slightly different flavor and the liquid drained from canned oysters that have been prepared for canning by blanching has more fine particles of oyster material in suspension than does similar liquid drained from cans prepared after pre-steaming the oysters in the shell. (R. 713-716, 773, 800, 803, 811-815, 820-826, 829, 844-845, 847-848, 875, 902-906, 1144-1147, Ex. 33)

##### STANDARD OF FILL OF CONTAINER

*Findings of fact.* The following findings of fact are made in addition to those forming part of the order previously promulgated (13 F. R. 1337):

9. Pacific oysters prepared for canning by the blanching method are no better than canned Pacific oysters prepared for canning by pre-steaming in the shell. A substantial segment of persons in the industry and large scale purchasers regard them as inferior because of the material suspended in the

<sup>1</sup> This refers to a finding in the order promulgating a definition and standard of identity for canned oysters and amending the standard of fill of container therefor, published in 13 F. R. 1337.

<sup>2</sup> The method used by Willapoint Oysters, Inc., was worked out by Mr. E. H. Bailey, president of the firm, in the kitchen of his home using a pressure cooker and a hand closing machine. He furnished no data as to the maximum fill obtainable, and despite one year's experience with the method, no attempts, experimental or commercial, have been made to increase the fill beyond 5 ounces drained weight. (R. 713, 751, 767-770, 776, 1037-1038)

liquid and because the oysters are more tender and break more readily. Willapoint Oysters, Inc., the principal producer of canned oysters prepared for canning by the blanching method has not differentiated canned oysters prepared from blanched oysters from canned oysters prepared from pre-steamed oysters either by labeling, advertising, or merchandising representations. No changes in labeling have been made by any canners using the blanching method in order to inform purchasers of canned oysters of the method used in preparing their oysters for canning. The same labeling is used for pre-steamed and for blanched oysters. (R. 757, 760, 800, 803, 824, 847-848, 878-882, 1057, Ex. 23, 24, 31)

10. In order to attain a given drained weight of canned oysters, the changes which take place in the oysters during the preparation for and in the canning process must be taken into account. The most significant change is the loss of liquid and the cooking of the oyster meats when oysters are subjected to heat treatment. The total quantity of liquid which separates, based on the weight of raw oysters, is approximately the same whether the oysters are packed into the can raw, given partial cooking in boiling salt water prior to placement in the can (as occurs in the blanching process), or partly cooked in the shell by steaming. (R. 38, 55, 163, 826, 877, 1129, 1143-1144, Ex. 11 (g), 11 (e), Ex. 33)

11. When raw oysters are used to fill the can and no water is added as a packing medium, all of the liquid draining from the oysters because of heat treatment is retained in the can and forms the packing medium. This results in the maximum retention of oyster flavor, but the liquid in the can after processing is quite murky, and this is objectionable to many purchasers. To attain a drained weight of approximately 7 ounces from the No. 1 EO can, it is necessary to put in approximately 11 ounces of raw Pacific oysters. (R. 32, 41, 124, 722-723, 784, 848, 1046)

12. During the blanching process such as described in modified finding 7 under Identity, the raw oysters are partly cooked and lose some liquids. The loss in weight is approximately 16%.<sup>3</sup> As a result of this loss of liquid during blanching, there is less loss in the can during processing than with raw oysters. To attain a drained weight of 7 ounces from the No. 1 EO can, a lesser put-in weight is required than for raw oysters, i. e., about 9½ ounces are necessary with the degree of cooking during the blanching process employed by Willapoint Oysters, Inc. To attain a drained weight of 5 ounces using similarly blanched oysters a put-in weight of only 7½ ounces is necessary. This quantity of blanched oysters does not fill the can. Water is added to the blanched oysters in the can to serve as part of the packing medium; it fills space in the can not filled with oysters.

The lower put-in weight permits a canner to replace 2 ounces of blanched oysters with 2 ounces of water. (R. 825-826, 830, 854, 859-866, 869-871, 875, Ex. 33)

13. When the practice of presteaming oysters in the shell is used, it is customary to steam them sufficiently to cause the shells to open. This is an economical method of opening oysters prior to removal from their shells. When this practice is employed there usually is a slightly greater loss of liquid than occurs in blanching. As a result there is slightly less liquid lost in the can during heat processing than with blanched oysters. Using Pacific oysters that have been pre-steamed enough to cause the shells to open, a put-in weight of about 9 ounces in the No. 1 EO can is needed to give a drained weight of approximately 7 ounces. Canned oysters prepared from presteamed oysters have less of the original oyster flavor than when raw oysters are used, and slightly less oyster flavor than when blanched oysters are used. (The difference is more pronounced as between the liquids. It is a common practice for canners of oysters on the Gulf and Atlantic coasts to presteam somewhat more than do canners of Pacific oysters. With heavily presteamed oysters, the meats are cooked more in the shells and are subject to less loss of liquids in the can, in fact, in many instances a put-in weight of around 7½ ounces will yield a drained weight of approximately 7 ounces. Water is added as a packing medium. (R. 718, 824, 829, 847, 978, 1039, 1054, 1062)

14. The put-in weight of oysters, because of variable losses which occur in the can during processing, is not an accurate measure of fill of container for canned oysters. It would be a reasonably accurate measure if all oysters were pre-cooked to the same degree before weighing into the cans. (R. 178, 877, 977, 979, 1062, 1143-1144)

15. The liquid draining from oysters as a result of heating has food value and flavor. But it is of much less value to the consumer than is the meat of the oyster. The liquid drained from canned oysters, except where oysters without any blanching or pre-steaming are used, comes largely from the water added by the canner as packing medium. The smaller the put-in weight of oysters, the more water is added by the canner to form a packing medium. (R. 781, 827, 831, Ex. 28, 33)

16. Canned oysters which yield from the No. 1 can a drained weight of 5 ounces are slack-filled.<sup>4</sup> As the drained weight of oysters is increased above 5 ounces, up to 7 ounces, only minor difficulties are encountered by the canner. No new equipment is necessary; no change in canning procedure is required. It is only necessary for the employees filling the empty cans to place more oysters in those cans as they start down the packing line. It may be necessary to use more care to prevent salt tablets from bouncing out of the cans.

Sometimes a portion of the top oyster is clipped off by the sealing operation. This frequently occurs with a fill designed to yield 5 ounces drained weight but the relative incidence of clipping between a fill designed to yield 5 ounces and one devised to yield 6½ ounces is not shown by the record. (R. 775, 779, 786, 803, 806, 808, 823, 832, 848, 854, 861, 866, 869, 871, 875, 908, 1113, 1115, 1117-1124, Ex. 32)

17. The factors of quality in canned oysters that are most important to consumers are not disclosed by the record. The appearance factors discussed in the record and referred to as twisted and broken oysters, browning, and pressure are factors which were emphasized by a committee appointed by Pacific oyster canners to show why they should not be required to increase the fill of container that has been used by them. Except for pressure, the other conditions—twisted and broken oysters and browning—occur regularly in cans filled to yield 5 ounces drained weight. With slack-filled cans, the condition called pressure naturally is not encountered. Based on the number of oysters showing these defects, there is no real difference between canned oysters filled to yield 5 ounces of drained weight and those filled to yield 6½ ounces drained weight whether oysters were pre-steamed or blanched. On a can basis, the can with more oysters tends to have more damaged oysters than a can with fewer oysters, since the percentage of oysters damaged in the canning procedure is about the same without respect to fill. (R. 204, 214-218, 785, 786, 881, 912, 918, 983-985, Ex. 19, 33)

18. Except for slight differences in flavor and appearance, the food value of the liquid packing medium taken from canned oysters is approximately the same in cans having the same drained weight of oysters, regardless of method of preparing the oysters for canning. As drained weight increases, the quantity of liquid packing medium decreases. This decrease is due to less water being added to fill empty spaces in the can before sealing. The flavor and food value of the liquid packing medium, however, is inversely proportional to the amount of water added as a packing medium. (R. 823, 830, Ex. 33)

**Conclusions.** The following additional conclusions are made on the basis of the evidence of record and the foregoing findings:

There is no basis for making separate standards of fill of container for canned oysters based upon the method of preparing oysters for canning.

It will not promote honesty and fair dealing in the interest of consumers to

<sup>3</sup> By variations of salinity of brine, temperature and time of heating, the loss of liquid may be as great as, or even greater than, with presteaming. (R. 768, 771, 826, 877, 907, 1042, 1062, 1129, 1143)

<sup>4</sup> This is very graphically shown by Exhibit 32.

base the fill of container requirement for canned oysters on the amount of oyster meat put into the can before processing, or on the method used in preparing oysters for canning.

It will promote honesty and fair dealing in the interest of consumers to base the fill of container requirements on the drained weight of oysters and to require the same drained weight whether the oysters used were packed into the can,

raw or were blanched or were presteamed in the shell before placement in cans.

A reasonable requirement for canned oysters packed with the blanching process which will promote honesty and fair dealing in the interest of consumers is that the drained weight of oysters be not less than 59% of the water capacity of the can.

*It is ordered.* That no change be made in the definition and standard of identity

for canned oysters or in the standard of fill of container established by my final order of March 10, 1948.

(Secs. 401, 701, 52 Stat. 1046, 1055; 21 U. S. C. 341, 371)

Dated: August 3, 1948.

J. DONALD KINGSLEY,  
Acting Administrator.

[F. R. Doc. 48-7278; Filed, Aug. 11, 1948; 8:52 a. m.]



## Department of the Interior

AMENDMENTS TO ALASKA COMMERCIAL FISHERIES REGULATIONS: The Assistant Secretary of the Interior in the Federal Register of July 29 ordered miscellaneous amendments to the regulations pertaining to the Alaska Commercial Fisheries.

As a result of investigations by field personnel of the Fish and Wildlife Service, it has been determined that Dushkin Lagoon is not a spawning area and that fishing therein will enable full utilization of the resource and will not be harmful to the runs of salmon in Volcano Bay.

Furthermore it has been determined by field biologists that the herring population of the Prince William Sound-Resurrection Bay region is of larger size and composed of older age fish than was anticipated and, therefore, can yield without injury an additional 30,000 barrels to the commercial fishery.

Accordingly Dushkin Lagoon was reopened to salmon fishing during the open season for the entire area which closed August 12, 1948. The herring catch limitation in the Resurrection Bay and Prince William Sound areas was increased from 150,000 to 180,000 barrels for the period of June 15 to August 20, 1948.

CATCH QUOTA FOR KODIAK HERRING INCREASED: An increase of 30,000 barrels in the controlled catch quota for the Kodiak Island herring fishery was announced October 5, by the Fish and Wildlife Service's Branch of Alaska Fisheries. This amendment to the Alaska commercial fisheries regulations became effective immediately upon publication in the Federal Register of October 8, 1948.

Requests by the fishing industry and investigations by Service biologists in Alaska prompted the Service to increase the controlled catch quota for the second time since the opening of the 1948 herring season on July 1.

The original 1948 quota was set at 300,000 barrels. On September 3, the quota was increased to 360,000 barrels; it was filled by the end of September. This second increase brings the total 1948 controlled catch quota for Kodiak herring to 390,000 barrels.

In 1947, the Service set a controlled catch quota of 400,000 barrels for the Kodiak herring fishery, but fishermen recorded a catch of only 388,000 barrels.





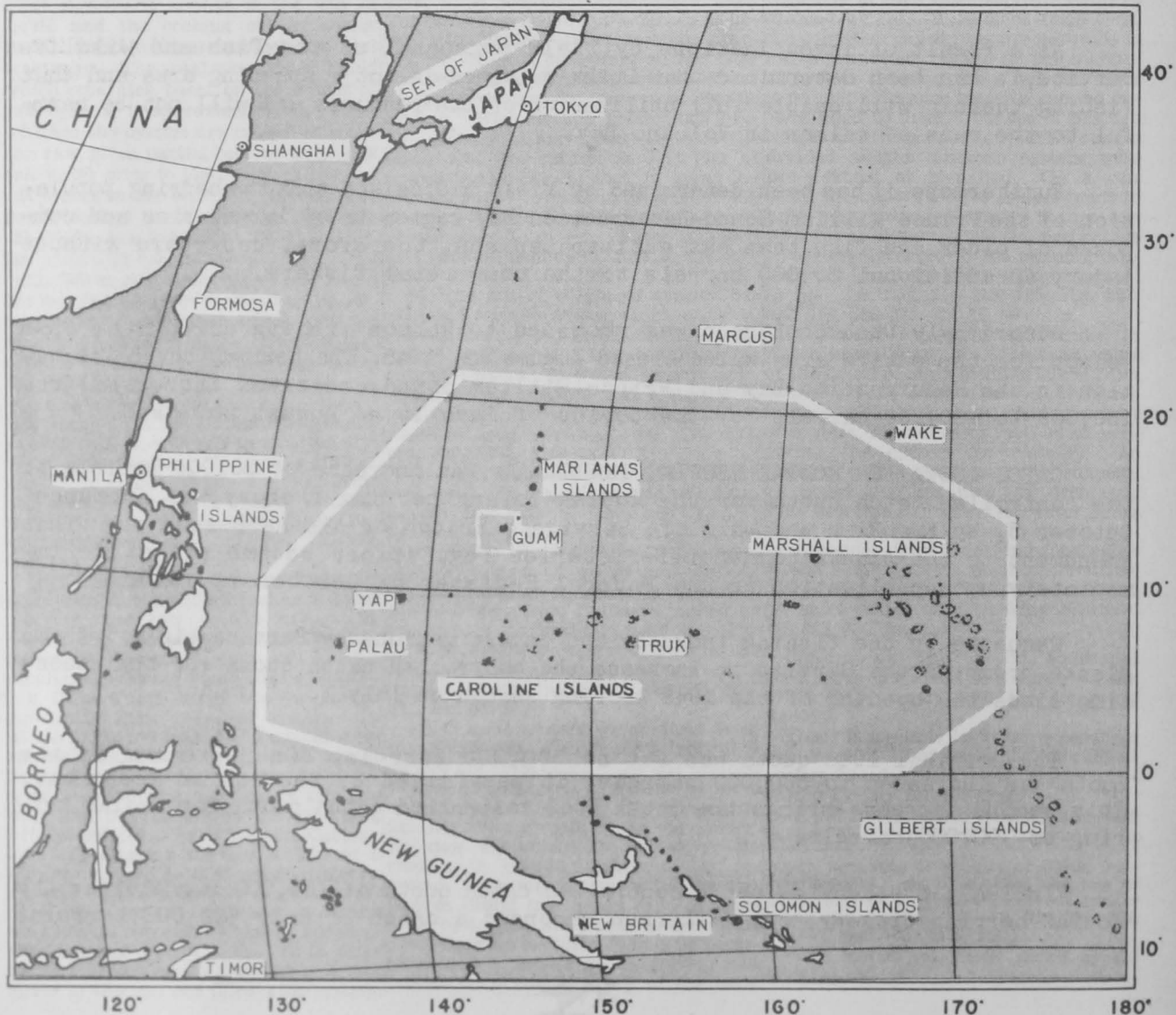
### Interstate Commerce Commission

**HEARING ON FREIGHT RATE INCREASE:** The Interstate Commerce Commission announced on October 7, that it would hold an open hearing commencing November 30, 1948, at its offices in Washington, D.C., on the railroad's petition for an additional eight percent increase in freight rates. This case is docketed as ExParte 168. Officials of the Fish and Wildlife Service are working with the Department of Agriculture in preparing data to be used in presenting the fishing industry's case in connection with these hearings for increased freight rates.



### Department of State

**FISHING IN THE TRUST TERRITORY OF THE PACIFIC ISLANDS:** The policy of this Government relating to commercial fishing operations in the United States Trust Territory of the Pacific Islands was announced September 29, by the Department



U. S. TRUST TERRITORY--MARSHALL AND CAROLINE ISLANDS AND MARIANAS, EXCLUDING GUAM

of State. (The United States Trust Territory of the Pacific Islands consists of islands formerly held by Japan under mandate in accordance with Article 22 of the Covenant of the League of Nations. These islands consist of some 98 islands and island clusters in the Marshalls, Marianas, excluding Guam, and Carolines, and have a total land mass of 846 square miles and a total population of about 48,000 local inhabitants.) The policy was approved by the Departments of State, Army, Navy, Air Force, and Interior as a guide to the administration of the Trust Territory and will have the effect of opening the area to commercial fishing. Rich fishery resources, particularly tuna, are available in the waters around this Territory in an area as large as the continental United States. The Territory, itself, contains scarcely as much land area as the State of Delaware. Several commercial fishing companies have shown interest in beginning fishing operations immediately. It is possible that an industry can be built on the fishery resources that will eventually pay a considerable part of the administrative cost of the Territory.

Fishing operations will be under the strict control of the High Commissioner of the Trust Territory in order that the welfare of the native inhabitants can be safeguarded and the harvesting of the resources can be undertaken along adequate conservation lines.

Fishing opportunities will be equally available to the fishing enterprises of all nations except that the High Commissioner will have discretion in excluding enterprises for reasons of security or for the purpose of carrying out the obligation to promote the advancement of the inhabitants.

The text of the policy directive is as follows:

- a. With a view to cooperating in the effort to increase world food production and in order to improve the local economy and to obtain information needed for conservation of fishing resources of the area, the territorial waters surrounding the Trust Territory, except those parts closed for security reasons, should be open to the commercial fishing enterprises of all nations on a non-discriminatory basis, except that whenever a country denies rights with respect to fishing and ancillary operations needed and desired by the local inhabitants of the Trust Territory, the Government of the Trust Territory may, if necessary to obtain those rights, deny that country rights in the Trust Territory.
- b. The administering agency, in collaboration with the Fish and Wildlife Service of the Department of the Interior should conduct research as soon as possible with a view to establishing conservation regulations. Fishing grounds within the territorial waters found to be necessary for the local economy should be reserved exclusively for the use and benefit of the local inhabitants.
- c. Immediate steps should be taken to foster the development of aquatic resources, including locally owned and operated commercial fishing, bait culture, and ancillary commercial industries.
- d. With respect to canning and other fish processing industries, the administering agency should give priority to the development of locally owned and operated enterprises.
- e. The administering agency may, under such conditions, as may be agreed upon by the interested departments, grant permission for the establishment and maintenance of shore facilities to outside canneries and other fish processing industries provided that, in determining whether such permission shall be granted and in establishing the conditions under which such permission is to be granted, the interests of the local inhabitants shall be paramount.

- f. Annual licenses should be required of all commercial fishing vessels operating within territorial limits or operating out of local ports. Licenses to non-local fishing vessels should be granted on the understanding that they are subject to revocation or modification wherever security interests or the interests of the inhabitants so require. Licensees should be required to furnish such statistical information regarding fishing operations as the administering agency, in collaboration with the Fish and Wildlife Service, shall deem appropriate.
- g. Local inhabitants should be employed in the complement of a fishing vessel or canning or other ancillary industry licensed for operation in a Trust Territory to the maximum extent consonant with efficient operations. Regulations should be issued prescribing minimum and non-discriminatory wages and standards of working conditions and otherwise protecting locally hired personnel. The employment of non-local personnel in shore establishments should be subject to regulations by the government of the Trust Territory.
- h. Except as provided in paragraph a above, and subject to the right of the High Commissioner of the Trust Territory of the Pacific, within established governmental policy to exclude any individual or group of individuals for reason of security, and the obligation to promote the advancement of the inhabitants, the principle of non-discrimination on the basis of nationality shall be observed in the implementation of the foregoing principles and shall apply to all aspects of commercial fishing and ancillary operations and the regulation thereof in the Trust Territory.



### QUICK-FREEZING DEFINED

The British Ministry of Food has issued the following definition of quick-freezing:

- (a) A quick-frozen fish product is one no part of which took more than two hours to cool from 32° F. to 23° F.;
- (b) A quick-freezing plant is one that is capable of fulfilling the definition (a) given above when dealing with whole fish, or with regularly shaped packs or packages of fillets in molds, cardboard boxes, or normal light-wrapped (cellophane, waxed papers, etc.) the specified cooling range being measured by thermocouples placed at the center of each package.