DEPARTMENT OF JUSTICE
Antitrust Division

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Dear Mr. Sullivan:

This is in response to your request on behalf of the Mothership Fleet Cooperative (the Cooperative"), its members and their owners for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department of Justice's antitrust enforcement intentions with respect to a proposed joint harvesting agreement in which the Cooperative's members would allocate amongst themselves the fixed quota of Bearing Sea/Aleution Island ("BS/AI") Alaskan Pollock allotted to the members as a group by the United States Government under the American Fisheries Act ("AFA") and regulations thereunder.

The United States Government, for environmental and economic reasons, has determined to limit the amount of certain species of fish that may be harvested from United States waters in a given year. This conservation policy is administered by the Department of Commerce in a program that has substantial private industry participation. An annual harvest quota has been established for Alaskan Pollock caught in the "BS/AI" waters. In addition to determining the maximum amount of BS/AI Alaskan Pollock that may be harvested, the regulatory program divides the total quota between three groups. Effective January 1, 1999, the American Fisheries Act allocates 10% of the total quota to Community Development Quota Groups.[1] The remaining ninety percent is divided between "Mothership" processors (ships that have on-board processing capabilities but do not catch the fish) (ten percent), vessels that catch and process their own fish on-board ("catcher/processors" or "C/Ps"),

[1] The "CDQ" Groups are Western Alaskan Native villages that receive an allocation as part of an economic development program.

(forty percent), and onshore processing plants (fifty percent). The Cooperative's initial members will be eighteen catcher vessels that supply three Motherships that process Alaskan Pollock. The Cooperative Agreement satisfies co-operative allocation requirements of Sections 208 and 210 of the AFA. Some of the member catcher vessels are owned, at least in part, by processors.[2]

Under the regulatory plan, the entire sub-allocation of each group of processors may be harvested by each licensed participant. This is referred to as an "olympic" system because it provides each individual processor with the incentive to harvest as much as possible of its sector's total allotment as fast as it can (any amount not harvested by one member of the group will be lost to other members of the group).

The Cooperative and its members assert that their proposal to sub-allocate their collective quota amongst its members will allow them to avoid the inefficiencies encouraged by the "olympic" system. By removing the urgency from their harvesting, they claim that they will be able to "maximize the value of product obtained from the fish", and reduce the amount of incidental by-catch of other fish species that the Government seeks to protect. The collective action contemplated by the Cooperative's members will be limited to joint harvesting, i.e., allocating to individual members a portion of the total quota allotted to the group.

On the basis of the information and assurances that you have provided to us, it does not appear that the proposed elimination of the olympic system race to gather the governmentally-fixed quota of Alaskan Pollock for the Mothership processors of Alaska Pollock would have any incremental anticompetitive effect in the regulated output setting in which the harvesting agreement would take place. The Department of Justice has previously concluded that reliance on an olympic race system to gather a fixed quota of fish "is both inefficient and wasteful" because it is likely to generate "inefficient overinvestment in fishing and processing capacity."[3] From a consumer perspective, the harvesting agreement does not reduce the output of processed Alaskan Pollock or the end products into which it is incorporated. On the contrary, if the Applicant's assertion that "haste makes waste" is true, then eliminating the race will increase processing efficiency and concomitantly the output of Alaskan Pollock

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[2] In response to a request from the Department of Commerce, the Department of Justice's Office of Legal Counsel interpreted Section 210(b) of the AFA to allow processor-owned catcher vessels to join joint harvesting cooperatives under the AFA. As a consequence, the partial integration that exists here does not disqualify the Cooperative and its members from the antitrust exemption afforded by the AFA.

[3] Comments of the Department of Justice filed in Department of Commerce Docket No. 911215-1315, January 30, 1992 (involving Alaskan Pollock). On May 20, 1997 the Department of Justice issued an affirmative Business Review Letter to counsel for the Whiting Conservation Cooperative with respect to its proposal to allocate amongst its members the total quota of Pacific Whiting allocated to the group by the United States Government.

products. Since the prices paid for Alaskan Pollock products by consumers will be determined by the intersection of supply and demand for those products, elimination of the race to gather an input whose output is fixed by regulation seems unlikely to reduce output or increase price under any likely scenario.

To the extent that the proposed agreement allows for more efficient processing that increases the usable yield (output) of the processed Alaskan Pollock and/or reduces the inadvertent catching of other fish species whose preservation is also a matter of regulatory concern, it could have procompetitive effects.

For these reasons, the Department is not presently inclined to initiate antitrust enforcement action against the proposed harvesting agreement. This letter, however, is limited to the proposed conduct between the members; it does not apply to any communications or agreements between or among processors with respect to the marketing of processed products. Moreover, this letter expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right, in appropriate circumstances, to bring any enforcement action in the future if the actual operation of the proposed agreement proves to be anticompetitive in any purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,

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Joel I. Klein
Assistant Attorney General