



**DEPARTMENT OF JUSTICE**  
Antitrust Division

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February 29, 2000

Bruce M. Hull, Esq.  
Harris & Hull  
1420 Fifth Avenue, Suite 2650  
Seattle, Washington 98101

Dear Mr. Hull:

This is in response to your request on behalf of the Akutan Catcher Vessel Association (“ACVA”) and its members 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 ACVA members would allocate amongst themselves the fixed quota of Bearing Sea/Aleutian 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.<sup>1</sup> 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”),

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<sup>1</sup> The “CDQ” Groups are Western Alaskan Native villages that receive an allocation as part of an economic development program.

(forty percent), and on-shore processing plants (fifty percent). ACVA's members own the catcher vessels that supply Trident Seafoods Corporation ("Trident") and have satisfied the requirements of Sections 208 and 210 of the AFA. Trident has an ownership interest in a number of the catcher vessels that will be supplying it Pollock under the proposed joint harvesting agreement.<sup>2</sup>

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).

ACVA and its members assert that their proposal to sub-allocate the quota for the groups 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 proposed Agreement affects only harvesting activity; it allocates the fixed annual catcher vessel quota among all the members of that group. The proposed collective activity does not extend to processing, marketing or sales of any of the Members' production.

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 catcher vessels that supply Trident 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."<sup>3</sup> From a consumer perspective, the harvesting

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<sup>2</sup> 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.

<sup>3</sup> 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

agreement does not reduce the output of processed Alaskan Pollock or the end products into which it is incorporated -- e.g., surimi. 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 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, 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,

/S/

Joel I. Klein  
Assistant Attorney General

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Whiting allocated to the group by the United States Government.