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August 17, 1999

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Mr. Joel I. Klein
Assistant Attorney General
Antitrust Division
Department of Justice
Tenth and Constitution Avenue, N.W.
Room 3109
Washington, D.C. 20530

SENT VIA FEDERAL EXPRESS

Re: Business Review Letter Request - UniSea Fleet Cooperative

Dear Mr. Klein:

We represent the managing owners of fourteen vessels that deliver pollock to the processing plant operated by UniSea, Inc. ("UniSea") in Dutch Harbor, Alaska. Pursuant to Section 210(b) of the American Fisheries Act (Division C, Title II of Pub. L. 105-277; the "AFA" or the "Act"), the vessel owners propose to form a "fishery cooperative" (the "Cooperative"). On behalf of the vessel owners, we are hereby requesting that the Department of Justice provide us with its enforcement intentions with respect to the proposed activity described below.

Enclosed for your reference are the following draft Cooperative corporate documents:

1. Articles of Incorporation;
2. Bylaws; and
3. Membership Agreement.¹

¹ In addition to the enclosed documents, the Cooperative expects to obtain an "agreement to process" from UniSea that meets the requirements of Section 210(b)(1)(B) of the AFA. If the Antitrust Division wishes to review that document in responding to this request, we will provide a copy.

The Cooperative's primary purpose is to obtain an aggregate annual allocation of Bering Sea/Aleutian Islands pollock pursuant to Section 210(b)(1) of the Act, distribute that allocation among its members, and insure that members' fishing activities comply with the Act's requirements. The Cooperative may also conduct other activities of the type normally conducted by a fishermen's marketing association formed under the Fishermen's Collective Marketing Act (15 U.S.C. §§ 521 - 522; the "FCMA"), including seasonal negotiation of the terms and conditions under which its members will sell their catch to UniSea.

The primary effect of incorporating the Cooperative and implementing the Membership Agreement will be to allow the fleet of catcher vessels delivering to UniSea to move from an "olympic competition" mode of operation to one in which vessels are able to harvest and deliver their catch in an orderly and efficient manner. In addition, the Cooperative will enhance the bargaining capability of its members in connection with their pollock sales to UniSea.

Because the members of the Cooperative may wish to conduct a broad range of activities under the auspices of the FCMA, the Cooperative's organic documents were drafted to satisfy its specific requirements.

- The Cooperative is to be operated for the mutual benefit of its members. See Article II.
- The Cooperative permits a member to hold more than one vote, but not as the result of the amount of capital stock or membership capital a member holds. Rather, members' votes are based on their Cooperative pollock allocation percentage. See Bylaws, Section 5.7. (Note that the Cooperative is formed without stock. See Article IV, Section A.)
- In lieu of limiting each member to one vote, the Cooperative's Articles of Incorporation prohibit it from paying dividends on its membership capital in excess of 8% per annum. See Articles of Incorporation, Article IV, Section E.
- The Cooperative's Articles of Incorporation prohibit it from dealing in the products of non-members in an amount greater in value than the products handled for it by its members. See Article IV, Section F.

In addition, the Cooperative is intended to comply with the FCMA's general requirement that all of its members be "persons engaged in the fishery industry, as fishermen." We understand this requirement to have two elements: (i) each member must be actively engaged in catching, collecting or harvesting aquatic resources; and (ii) each member must qualify under the "vertical integration" standards set forth in United States v. Hinote, 823 F.Supp. 1350 (S.D.Miss. 1993).

The members of the Cooperative each satisfy the first element of the requirement referenced above, as each of them is an entity that operates one or more catcher vessels that harvest pollock for delivery to the UniSea plant.

The Hinote court identifies three factors to be considered in determining whether a vertically integrated person or entity may be a "fisherman" for purposes of the FCMA: The nature of the producer's activities, the degree of integration of the producer, and the functions historically performed by farmers [or in the present circumstances, fishermen] in the industry. See Hinote, 1358.

The fundamental issue addressed in Hinote is not present in connection with the Cooperative's proposed activities; i.e., the processor involved (UniSea) will not own or control any of the catcher vessels delivering to its plant. The Cooperative Membership Agreement specifically requires each member to maintain its vessel(s) free of ownership or control by UniSea and its parents, affiliates and subsidiaries. See Membership Agreement, Section 10. Currently, UniSea holds an interest in F/V Defender Limited Partnership, the entity that owns the vessel DEFENDER. However, we have been informed by both the managing partner of the Defender Limited Partnership and by UniSea that UniSea will divest itself of that ownership interest prior to the Cooperative documents being executed and the Cooperative commencing operations.

While UniSea will not own or control any Cooperative vessels, one of them is owned in part by an entity that has ownership in common with a Bering Sea/ Aleutian Islands ("BS/ AI") pollock processor other than UniSea. Kaare Ness Enterprises, Inc. holds a 50% ownership interest in the vessel NORDIC STAR. Mr. Kaare Ness has informed us that he owns approximately 60% of the shares of Kaare Ness Enterprises, Inc. He has also informed us that he owns stock of Trident Seafoods, Inc. ("Trident"). Mr. Ness did not disclose to us his exact ownership interest in Trident, but he has assured us that he holds less than 25% of Trident's outstanding shares.

Applying the Hinote standards, it does not appear that Mr. Ness's common ownership interest in Kaare Ness Enterprises, Inc. and Trident should disqualify the NORDIC STAR from participating in the Cooperative. The Act requires as a precondition to Cooperative formation that the members agree to deliver pollock only to the processor in association with which a cooperative is formed. See AFA, Sections 210(b)(1)(B) and 210(b)(3). Therefore, the "producer activities" of the Cooperative members are not expected to extend beyond inter-member agreements (establishing mutual pollock percentages, and annual fishing plans, for example) and establishing the terms of pollock-related transactions with UniSea. Mr. Ness's ownership of stock in Trident and in an entity that holds a partial ownership interest in a Cooperative vessel should have no adverse competitive impact in connection with such activities.

Also, the degree of integration is relatively minor, and certainly not of a character or magnitude that would be expected to affect the competitiveness of Cooperative transactions. Mr. Ness holds significantly less than a controlling interest in Trident. The NORDIC STAR is managed by its other 50% owner, Blue Boat Corporation, which we have been informed is free of ownership or control by Mr. Ness. Both Mr. Ness and Blue Boat Corporation representatives inform us that Mr. Ness is not involved in the NORDIC STAR's day-to-day operations, and specifically, that he has no role in deciding to whom the vessel delivers or the price at which it sells its catch. (The vessel's independence from influence by Mr. Ness is illustrated in part by its operation in the fleet delivering to UniSea rather than the fleet delivering to Trident.)

Finally, the nature of the vertical integration involved relative to functions historically performed by fishermen in the industry does not appear to be problematic. Mr. Ness's common ownership interests in Trident and an entity that owns an interest in a Cooperative vessel are not the downward integration of an otherwise fully integrated entity to which the Hinote court objected. Rather, Mr. Ness's common ownership interests stem from his upward integration to diversify his business activity. Mr. Ness is a lifelong fisherman who contributed to the formation of Trident to help create new markets for himself and other fishermen. This activity is not unusual in the farming or fishing industries, and a legal environment that permits it to take place without disadvantage is more likely to have a pro-competitive than anti-competitive effect on the fishing industry.

We are not aware of any other Cooperative members that have ownership in common with pollock processors. However, Section 210(b)(2) of the AFA provides

that fishery cooperatives formed under the Act must allow "qualified catcher vessels" (i.e., vessels that delivered the predominant amount of their prior year's pollock catch to the processor with which the cooperative is associated) to "opt-in" to the cooperative. It is therefore possible that persons or entities with some level of ownership in common with a BS/AI pollock processor will seek admission to the Cooperative in the future. However, such potential members would in any case be required to comply with the restriction on UniSea ownership and control in Section 10 of the Membership Agreement.

Based on the foregoing, we are seeking a favorable enforcement intention letter based on the Cooperative being recognized as a qualifying FCMA "fishermen's marketing association."

As a separate but related matter, the Cooperative's proposed activities should have a pro-competitive effect with respect to the interests of American consumers. By enabling the members' fleet to move from an "olympic competition" to a more rational mode of operation, the Cooperative will facilitate harvest of optimally sized fish, and optimal delivery timing. We have been informed by UniSea that as the combined result of these operational improvements, UniSea will be able to increase its production of fillets for the American market by a substantial amount.

In addition, by rationalizing harvest effort, the Cooperative will enable its members to more precisely control their aggregate harvest level. Under "olympic" management, the National Marine Fisheries Service ("NMFS") bases its season closures on extrapolated catch rates. Because such rates can vary, the agency holds a certain amount of quota in reserve per season to prevent an upward change in rate from resulting in an overharvest. The reserves are relatively small compared to the overall BS/AI pollock allocation, but are rather large in real numbers, often involving thousands of metric tons of pollock. They often are left unharvested, as the fleet's olympic mode daily catch rates often make it impossible for the agency to release a reserve with confidence that it will not be exceeded.

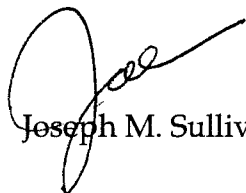
By permitting the fleet itself to closely monitor and control its pollock harvest, the Cooperative, in combination with other inshore sector cooperatives, could provide NMFS with assurances that the overall quota will not be exceeded, with the result being substantially smaller reserves. This should result in a substantially larger amount of product being produced from the same overall BS/AI pollock quota, with commensurate benefit to consumers.

Mr. Joel I. Klein
August 17, 1999
Page 6

Should you have any questions or concerns regarding this matter, please feel free to contact me. We look forward to your response.

Very truly yours,

MUNDT MacGREGOR L.L.P.


Joseph M. Sullivan

:jms

Enclosure

cc: Ms. Margaret Hall (w/o encls.)
Mr. Jeff Hendricks (w/o encls.)
Mr. Gunnar Ildhuso, Jr. (w/o encls.)
Mr. Barry Ohai (w/o encls.)
Mr. Cary Swasand (w/o encls.)
Mr. Reidar Tynes (w/o encls.)
Mr. Fred Yeck (w/o encls.)
Mr. Doug Fryer (w/o encls.)
Mr. Terry Shaff (w/o encls.)
Mr. John Iani (w/o encls.)

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