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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

STATE OF OREGON, ex rel., Attorney General HARDY MYERS,	
STATE OF WASHINGTON, ex rel., Attorney General CHRISTINE O. GREGOIRE,	
STATE OF CALIFORNIA, ex rel., Attorney General DANIEL LUNGREN, and	
UNITED STATES OF AMERICA,	CIVIL ACTION NO. CV 97 234-MA
Plaintiffs,	
v.	CONSENT DECREE
JEFF MULKEY, JERRY HAMPEL, TODD WHALEY, BRAD PETTINGER, JOSEPH SPEIR, THOMAS TIMMER, RICHARD SHELDON, DENNIS STURGELL, ALLEN GANN and RUSSELL SMOTHERMAN,	Entered: June 16, 1997
Defendants.	

Plaintiffs, through their respective attorneys, and defendants, through their respective attorneys or appearing pro se, have stipulated to entry of this Consent Decree in

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1 accordance with the terms of the Antitrust Procedures and
2 Penalties Act, 15 U.S.C. § 16 and that this Consent Decree shall
3 be a consent judgment as the term is used in 15 U.S.C. § 16(a).
4 WHEREAS: Plaintiffs, State of Oregon, State of Washington,
5 State of California, and the United States Department of Justice
6 through their respective attorneys, filed their complaint on
7 February 11, 1997, alleging a violation of the Sherman Act, 15
8 U.S.C. § 1 and counterpart state statutes, Oregon Revised
9 Statutes 646.725; Revised Code of Washington § 19.86.030, and
10 California Professional & Business Code §§ 16720-16770;
11 WHEREAS: Defendants Jeff Mulkey, Jerry Hampel, Todd Whaley,
12 Brad Pettinger, Joseph Speir, Thomas Timmer, Richard Sheldon,
13 Dennis Sturgell, Allen Gann and Russell Smotherman deny any
14 liability with respect to all matters which are the subject of
15 the complaint;
16 WHEREAS: There has been no determination by the Court that
17 a violation of law occurred;
18 WHEREAS: The plaintiffs and defendants desire to resolve
19 their dispute without adjudication of any issue of law or fact;
20 and
21 WHEREAS: The Consent Decree shall not be evidence against
22 nor an admission by any party with respect to any issue of law or
23 fact;
24 NOW, THEREFORE, before the taking of any testimony, and
25 without trial or adjudication of any issue of law or fact herein,
26 ///

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and upon the consent of the parties hereto, IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over the subject matter herein and each of the parties consenting hereto. This Court has jurisdiction over Counts I through VIII of the Complaint pursuant to 15 U.S.C. § 4, 15 U.S.C. § 26, and 28 U.S.C. § 1367(a). The Complaint states claims upon which relief may be granted against defendants under 15 U.S.C. § 1 and related pendent state antitrust claims under ORS 646.725, 646.760 and 646.770; RCW § 19.86.030; and Cal Prof & Bus. Code §§ 16720-16770.

II. DEFINITIONS

As used in this Consent Decree:

A. "Association" means any group of fishermen organized under the Fisherman's Collective Marketing Act, 15 U.S.C. § 521 or under the companion laws of the State of California, Cal. Corp. Code § 130.26, the State of Washington, RCW § 24.36, and/or the State of Oregon.

B. "Commercial Seafood Fishermen" means fishermen who fish for and catch seafood products and sell the seafood products to purchasers.

C. "Ex-vessel price" means the price paid by purchasers to fishermen for seafood products.

D. "Person" means any individual, sole proprietorship, partnership, firm, corporation or any other legal or business entity.

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1 E. "Purchasers" mean commercial seafood processors,
2 commercial seafood canneries, retail stores and/or restaurants.
3 F. "Seafood" and "Seafood Products" mean crab, crab meat,
4 and any and all other crab products, whether fresh, raw, cooked,
5 frozen, canned, or otherwise preserved or prepared for
6 consumption.

7 III. APPLICABILITY

8 The provisions of this Consent Decree shall apply to
9 plaintiffs and defendants and to all of defendants' managers,
10 agents, employees, affiliates, and to those persons in active
11 concert or participation with them who receive actual notice of
12 this Consent Decree by personal service or otherwise.

13 IV. INJUNCTION

14 A. Defendants are enjoined from forming or participating
15 in, or continuing to participate in any agreement, plan, scheme,
16 arrangement or undertaking, with any other commercial seafood
17 fisherman, the purpose or effect of which is:
18 1. To set, fix, or stabilize the ex-vessel price of
19 seafood or any price terms or conditions for the sale of seafood,
20 directly or indirectly, either (i) through coercion or
21 intimidation, or threats of coercion or intimidation, including,
22 but not limited to, the use or threat of use of physical force or
23 reprisal against persons or property or (ii) where antitrust
24 immunity is not provided under federal or state law;
25 2. To reduce, limit or eliminate the supply of seafood,
26 directly or indirectly, either (i) through coercion or

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1 intimidation, or threats of coercion or intimidation, including,
2 but not limited to, the use or threat of use of physical force or
3 reprisal against persons or property or (ii) where antitrust
4 immunity is not provided under federal or state law; and
5 3. To impede, obstruct, or prevent any person from
6 processing, purchasing or selling or offering to purchase or sell
7 seafood, directly or indirectly, either (i) through coercion or
8 intimidation, or threats of coercion or intimidation, including,
9 but not limited to, the use or threat of use of physical force or
10 reprisal against persons or property or (ii) where antitrust
11 immunity is not provided under federal or state law.
12 B. Defendants are also enjoined from compelling any
13 fisherman or other person to become a member of, or to
14 participate in the activities of, any association through
15 coercion or intimidation, or threats of coercion or intimidation,
16 including, but not limited to, the use or threat of physical
17 force or reprisal against persons or property.
18 C. This Consent Decree shall not be interpreted to limit or
19 constrict any rights to form or participate as a member in
20 activities of a fishermen's marketing association granted to
21 defendants by the Fishermen's Collective Marketing Act (15 U.S.C.
22 §521) or other similar state statutes. Oregon law shall be
23 interpreted to permit defendants to engage in fishermen marketing
24 association activities which are immune or exempt from antitrust
25 liability under 15 U.S.C. § 521, unless and until the Oregon
26 legislature amends any existing law or passes any new law that

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provides a different standard of immunity or exemption than what is provided under 15 U.S.C. § 521.

V. PAYMENT TO STATES

A. In settlement of all of plaintiffs' claims set forth in the complaint, and pursuant to ORS 646.760 and ORS 180.095, RCW 19.86.080 and 19.86.090, and Cal Prof. & Bus. Code 16750, defendants agree to pay to the Oregon Department of Justice the total sum of Ninety Thousand Eight Hundred Seventy Four dollars ($90,874.00) in this matter for reimbursement of attorneys fees and investigative costs incurred herein.

B. The plaintiffs' apportioned shares of defendants' payments and the use of such shares shall be determined exclusively by the plaintiffs. Oregon's share of said payments shall be deposited into the Oregon Department of Justice Consumer Protection and Education Revolving Account and shall be used as provided by Oregon law.

C. Payments shall be made by certified check and made payable to the Oregon Department of Justice in accordance with the schedules set forth in the Settlement Agreement between the parties to this Consent Decree.

VI. SECURING COMPLIANCE WITH CONSENT DECREE

For the purpose of securing compliance with this Consent Decree defendants shall fully and completely cooperate in any future investigation for violations of this Consent Decree or any matters related to this Decree in accordance with the following conditions:

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1 A. Any information provided to plaintiffs under this
2 Consent Decree shall be kept confidential by plaintiffs and shall
3 not be disclosed to third parties except as necessary to enforce
4 the Consent Decree, as otherwise previously agreed, and/or as
5 permitted or required under applicable state or federal law.
6 B. The defendants shall have the right to be represented by
7 counsel in any process permitted by this Consent Decree section,
8 including those described in Paragraph C.
9 C. Subject to any legally recognized privilege, the
10 defendants agree that duly authorized representatives of
11 plaintiffs shall, on written request and on reasonable notice to
12 Defendant, be permitted:
13 1. Access during the office hours of the defendant to
14 inspect and copy all books, ledgers, accounts,
15 correspondence, memoranda, and other records and documents
16 in the possession, custody or control of such defendant
17 relating to any matters contained in this Consent Decree;
18 and
19 2. To interview defendant or any employee or agent of
20 defendants regarding any matters contained in this Consent
21 Decree, under oath if requested, subject to reasonable
22 convenience of the defendant and without restraint or
23 interference from defendant.
24 D. Subject to any legally recognized privilege, the
25 defendants further agree that upon written request from duly
26 authorized representatives of the plaintiffs to a defendant,

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1 defendant shall submit written reports, under oath if requested,
2 with respect to any of the matters contained in the Consent
3 Decree.

4 VII. VIOLATIONS OF CONSENT DECREE

5 A. In the event that one or more of the plaintiffs believe
6 that one or more of the Defendants have violated any provisions
7 of this Consent Decree, plaintiffs, either jointly or
8 individually, may move the Court for an Order for Show Cause for
9 violation of this Consent Decree, based upon affidavits stating
10 factual grounds, after notice by regular mail to the last known
11 address of the defendants allegedly involved and to their
12 attorneys of record.

13 B. After a hearing at which defendants involved shall have
14 a reasonable opportunity to present evidence and legal argument,
15 the Court may enter an order which, among other remedies, may
16 require each defendant involved to pay a penalty to the moving
17 plaintiffs of up to fifteen thousand dollars ($15,000) per
18 violation and any other sanction the Court deems appropriate.

19 C. Upon a defendant's failure to pay the penalty provided
20 in this section, or for any other violation of this Consent
21 Decree, the moving plaintiffs, either jointly or individually,
22 may exercise all remedies available at law or in equity,
23 including plaintiff United States seeking an order of criminal
24 contempt.

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1 VIII. ENFORCEMENT OF CONSENT DECREE

2 A. Plaintiffs shall have concurrent authority to enforce
3 any provision of this Consent Decree against any party to this
4 Consent Decree.

5 B. The authority to enforce this Consent Decree shall be
6 in addition to any other enforcement action authority plaintiffs
7 may have in prosecuting new violations of state or federal
8 antitrust laws.

9 C. Nothing contained in this Consent Decree shall limit the
10 rights of the United States from utilizing other investigative
11 alternatives, such as the Civil Investigative Demand process
12 provided by 15 U.S.C. § 1311 and § 1314, or a federal grand jury.
13 Nothing contained in this Consent Decree shall limit the rights
14 of the States of Oregon, California and Washington from utilizing
15 other investigative alternatives, such as their civil
16 investigative authority and, if applicable, their grand jury
17 authority.

18 IX. RETENTION OF JURISDICTION

19 Jurisdiction shall be retained by the United States District
20 Court for the District of Oregon to enable any party to apply for
21 further orders and directions as are necessary and appropriate
22 for enforcement, compliance, construction, or modification of
23 this Consent Decree.

24 X. SCOPE OF CONSENT DECREE

25 This Consent Decree and the Settlement Agreement represent
26 the complete agreement of the parties. Nothing in this Consent

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Decree or the Settlement Agreement shall give standing to any person not a party to this Consent Decree to seek any relief related to it.

XI. LENGTH OF CONSENT DECREE

This Consent Decree shall be in full force and effect for a period of five (5) years following entry of this decree.

XII. PUBLIC INTEREST

Entry of this Consent Decree is in the public interest. Except as provided in this Consent Decree for future action taken pursuant to Section IX, this proceeding in all other respects is hereby dismissed with prejudice with respect to defendants.

APPROVED AND ORDERED this 16 day of June, 1997.

Malcolm F Marsh
United States District Court Judge

Presented by:

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