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December 20, 1998

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

VIA FEDERAL EXPRESS

Re: Pollock Conservation Cooperative - Request For Business Review Letter

Dear Mr. Klein:

We are writing to you on behalf of the Members (as defined below) and on behalf of Pollock Conservation Cooperative, a Washington nonprofit corporation (the "Cooperative") to request that the Department of Justice provide us with a statement of its enforcement intentions with respect to the proposed activity described below, pursuant to 28 C.F.R. § 50.6.

Alaska Ocean Seafood, L.P., a Washington limited partnership ("Alaska Ocean"), Alaska Trawl Fisheries, Inc., a Washington corporation ("Alaska Trawl"), American Seafoods Company, a Washington corporation ("American"), Arctic Fjord, Inc., a Washington corporation ("Arctic Fjord"), Arctic Storm, Inc., a Washington corporation ("Arctic Storm"), Glacier Fish Company LLC, a Washington limited liability company ("Glacier"), Highland Light Seafoods, LLC, a Washington limited liability company ("Highland Light"), Starbound Ltd. Partnership, a Washington limited partnership ("Starbound") and Tyson Foods, Inc., a Delaware corporation ("Tyson"), (together, the "Members") have formed the Cooperative, and propose to conduct a cooperative fish harvesting arrangement under its auspices.

As more fully explained below, the Cooperative is intended to function as a harvesting association through which the Members would allocate among themselves certain percentages of the total allowable catch ("TAC") for the catcher/processor sector

of the Bering Sea/Aleutian Islands ("BS/AI") pollock fishery (the "Pollock Fishery") and certain other groundfish fisheries. The purpose of the proposed mutual harvest allocation agreement is to enable the Members to improve their utilization of pollock and other groundfish (the "target species" of the fisheries), to reduce their incidental catch (or "bycatch") of important non-target species such as salmon, herring, crab and halibut (together, the "prohibited species"), and to disperse their fishing effort in time and area, consistent with the principles of the "Reasonable and Prudent Alternatives" ("RPAs") imposed by the National Marine Fisheries Service ("NMFS") in connection with its Endangered Species Act ("ESA") "Section 7 consultation" concerning the Steller sea lion.

The following documents are enclosed for your reference:

1) A copy of the American Fisheries Act (Division C, Title II of Public Law 105-277) (the "AFA"), with the related Statement by Senator Stevens and the related Section by Section analysis. The AFA took effect October 21, 1998. It imposes a new U.S. ownership requirement as of 2001 on fishing vessels operating in U.S. waters, allocates BS/AI pollock resources among several industry sectors as of January 1, 1999, and restricts the eligibility of certain vessels to harvest and process BS/AI area resources as of January 1, 1999 and the eligibility of others as of January 1, 2000.

2) A copy of the RPAs adopted by NMFS in connection with the ESA Section 7 Consultation conducted with respect to authorization of the BS/AI and Gulf of Alaska pollock fisheries of 1999 through 2002, to analyze their potential impact on the Steller sea lion population of those areas. Also enclosed is a copy of the RPA Section of the related NMFS "Biological Opinion".

3) Alaska pollock product distribution data and charts, prepared in connection with the fall 1998 proceedings of the Groundfish Forum (an international seafood producer trade association).

4) Product-by-sector tables produced for the North Pacific Fishery Management Council (the "Council") in connection with Council's recent consideration of the second re-authorization of the "inshore/offshore" BS/AI pollock allocation ("I/O 3").

5) Documents concerning the markets for BS/AI pollock products, i.e., (a) a "Product Mix and Market" analysis prepared for the Council in connection with I/O 3; (b) "Processing Sector Ownership Interests and Patterns" analysis prepared for the Council in connection with I/O 3; (c) 1996 U.S. pollock catch data, and production tables for the BS/AI shoreside plants operated by UniSea, Westward Seafoods, Trident Seafoods and Alyeska Seafoods, reflecting raw pollock deliveries to those plants (as reported to EPA); and (d) corporate profiles for Nippon Suisan (100% owner of UniSea) and Maruha (100% owner of Westward Seafoods and 50% owner of Alyeska Seafoods).

6) The Articles of Incorporation of the Cooperative, and the Cooperative Membership Agreement (the "Agreement"). The Agreement specifies the terms under which the Members propose to conduct a cooperative fishery resource harvesting arrangement;

7) A spreadsheet based on information compiled from industry sources, which shows the optimal increase in pollock products available to the U.S. market that could result from a cooperative harvesting arrangement for the catcher/processor sector of the Pollock Fishery.

8) A copy of a report from Pacific Whiting Conservation Cooperative to the National Research Council, which describes the increases in production and decreases in incidental catch of certain non-target species obtained by implementing a comparable cooperative harvesting arrangement in the Pacific coast whiting fishery.

1. Fishery Management. The BS/AI pollock resource is commonly considered to be composed of two stocks: the "Eastern Bering Sea" stock, and the "Aleutian Basin" stock. These stocks are fished in both the U.S. and Russian 200 mile "fishery conservation zones". Consequently, you will see references to foreign catch of Alaska pollock (in the Groundfish Forum data for example), even though no foreign vessels fish in U.S. waters. The Eastern Bering Sea and Aleutian Basin are currently managed as separate areas.

Pollock Fishery management policy is established by the North Pacific Fishery Management Council (the "Council"), one of the regional councils constituted under the Magnuson-Stevens Fisheries Conservation and Management Act (16 USC §1801 et. Seq.) (the "Magnuson-Stevens Act").

The Council sets the annual allocation levels for the resources under its jurisdiction, and sub-allocates harvesting rights to certain of those resources among various fishing gear and processing sectors. Upon adoption by the Council, BS/AI and Gulf of Alaska fishery management policy is implemented through regulations drafted and promulgated by the NMFS. The NMFS Alaska Regional Office, located in Juneau, Alaska, has management jurisdiction over the Pollock Fishery. The federal management regulations for the Pollock Fishery (and all other fisheries under Council jurisdiction) are at 50 C.F.R. § 679.

As a general matter, the fisheries under Council jurisdiction are managed on a quota-driven basis, i.e., the Council and NMFS set an annual total allowable catch ("TAC") based on stock size estimates and other biological and economic considerations, allocate prohibited species catch ("PSC") amounts for each fishery or fisheries complex, open the fisheries on selected seasonal opening dates, and each sector of the fishery remains open to all eligible harvesters until the earlier of the TAC for that season and sector having been harvested, the PSC cap for the fishery having been reached, or the seasonal closing date. At their current levels of capitalization, the Pollock Fishery and almost all other groundfish fisheries under Council jurisdiction are constrained by their TAC or their PSC allocation, i.e., the fisheries are fully utilized up to their regulatory limit.

The BS/AI Pollock Fishery is managed on the basis of three major management areas: the Eastern Bering Sea, the Aleutian Islands, and the "Bogoslof" area, with individual biomasses, allowable biological catches and TACs being calculated for each area. See map at Tab 2A. The BS/AI Pollock Fishery TAC has generally averaged between 1 and 1.5 million metric tons per year since the mid 1970's. See "Figure 13" catch data at Tab 2. The Council has proposed that the Eastern Bering Sea TAC be set at 992,000 metric tons for 1999, and that the Aleutian Islands and Bogoslof areas be placed on "bycatch only" status; in other words, no directed pollock fishery would be allowed in either area.

The Pollock Fishery has been allocated among three major groups since 1992: (i) Community Development Quota groups (the "CDQ Groups") which are composed of Western Alaskan Native villages that receive an allocation as part of a fishery-related economic development program; (ii) the "inshore" sector, composed of catcher vessels that deliver their catch to processing plants built onshore or anchored at a single location within State of Alaska waters; and (iii) the "offshore" sector, composed of "catcher/processors", i.e., vessels that catch and process fish, and the "mothership"

fleet, which is composed of catcher vessels that deliver their product to mobile processing vessels that do not catch fish themselves, and such processing vessels.

The Pollock Fishery TAC is further allocated by seasons and sub-areas, to disperse fishing effort in time and space. Under the NMFS management regime that has been in place for some time, the Pollock Fishery is divided into "A" and "B" seasons. The TAC is then split between the "A" and "B" seasons, on a sector-by-sector basis. The Pollock Fishery is also allocated by area, i.e., certain sectors are restricted from fishing in certain sub-areas during certain times of year. There are also areas that close upon certain prohibited species bycatch limits being reached (for example, a "salmon savings area" and various "crab zones").

This allocation structure has now been modified and adopted as a matter of Federal law under the AFA. Under the AFA allocation formula (which takes effect January 1, 1999), the CDQ Groups receive 10% of the total BS/AI pollock TAC; then NMFS deducts an amount of pollock necessary to cover the incidental catch (or "bycatch") of that species in non-pollock fisheries; and then the remainder (the "directed fishing allowance") of BS/AI pollock is allocated 50% to the inshore sector, 40% to the catcher/processor sector, and 10% to the mothership sector. See Section 206.

The AFA also defines the classes of vessels eligible to harvest fish for each sector. The class of catcher vessels eligible to harvest fish for delivery onshore is defined through a landing requirement. See Section 208(a). The classes of (i) catcher vessels eligible to deliver to catcher/processors, (ii) catcher vessels eligible to deliver to motherships, (iii) eligible motherships, and (iv) catcher/processors eligible to harvest and process BS/AI pollock are defined through lists of known qualified vessels, with a landing requirement in each case extending eligibility to unnamed but potentially qualified vessels. See Sections 208(b), (c), (d) and (e). The Act also provides that a minimum of 8.5% of the catcher/processor allocation must be "available for harvest" by eligible catcher vessels. See Section 210(c).

The AFA imposes restrictions on the vessels and processors eligible to harvest or process BS/AI pollock that limit the extent to which they may harvest or process non-pollock species. See, e.g. Section 211. Specifically, the eligible catcher/processors are prohibited from, in the aggregate, exceeding the percentage of harvest of non-pollock groundfish equivalent to the total harvest by both eligible and ineligible catcher processors in 1995, 1996 and 1997, relative to the total amount available to be harvested by the offshore component during these years. See Section

211(b)(2)(A). The eligible catcher/processors are also prohibited from exceeding the percentage of prohibited species taken in their directed fisheries equivalent to the amount harvested by the eligible and ineligible catcher processors during 1995, 1996 and 1997. See Section 211(b)(2)(B). The Act also specifically restricts the amount of Atka mackerel that can be harvested by catcher processors. See Section 211(b)(2)(C).

An additional set of management measures has been imposed under the ESA. The Steller sea lion was listed as a "threatened" species under the ESA in 1990, and the western population was declared an "endangered" species in 1995. As noted above, the Department of Commerce recently undertook a Section 7 consultation under the ESA with respect to the 1999 Pollock Fishery, and on December 16, the agency issued RPAs which were intended to mitigate the potential impact of the Pollock Fishery on the BS/AI Steller sea lion population.

The "Reasonable and Prudent Alternatives" chapter of the Biological Opinion and the RPAs adopted by NMFS on December 16 are enclosed at Tab 2. As you can see, the fundamental principles underlying the RPAs are that pollock fishing efforts should be reduced in critical habitat areas (as defined in the Biological Opinion), and should be dispersed in space and time both inside and outside of critical habitat. See, Biological Opinion, Section 8.1, "Principles for Reasonable and Prudent Alternatives." Both the seasonal and spatial distribution of catcher/processor, mothership and inshore fishing efforts have been modified accordingly by emergency rule.

2. Fishery Production and Product Distribution. Pollock is used to produce a number of different product forms. Historically, the largest volume product has been "surimi", a protein paste made by repeatedly macerating and washing the flesh of the fish to remove all water soluble fats and other impurities, and then blending in certain cryoprotectant compounds such as sorbitol. Pollock is also used to produce fillet products of two types: "deep skinned", which is a fillet with both the outer skin and the immediately adjacent fat layer removed, and the standard fillet, which has only the outer skin removed. The third major product is roe, which has a very high value in the export market. Roe is obtained from pollock during the period immediately prior to and through the initial stages of spawning activity, which generally occurs between late February and mid-March. Pollock is also used to produce headed and gutted ("h&g") "block" and "mince" products. The by-products of the pollock processing process (such as the skin, viscera and trimmings) are used to produce fishmeal.

In 1997, approximately 4 million metric tons of Alaska pollock was harvested on a worldwide basis. The distribution of catch and production of the resource is illustrated on the Groundfish Forum charts and data summary at Tab 3. As the charts show, U.S. Alaska pollock production is primarily distributed into the Southeast Asian market (the vast majority as surimi), and secondarily distributed into the U.S., at about half fillets and half surimi. Russian Alaska pollock production is primarily distributed into Russia and Asia in h&g form, with a relatively small amount being distributed into the U.S. as fillets. Chinese, Japanese and Polish Alaska pollock production is primarily distributed into the Asian market, secondarily into Europe, and includes a relatively small amount of fillets for U.S. consumption.

The chart labeled "World Alaska Pollock Resource Flow" shows that in 1997 fillets composed about 70% of the Alaska pollock product distributed in the U.S., and surimi composed about 30%. On the other hand, production for export to Asia was approximately 65% surimi, with the balance being primarily h&g product (almost all of which would have come from Russia).[1]

This product distribution structure is likely to change in the short term, and perhaps in the long term. The 1997 distribution is based on the sectoral allocation in place prior to the AFA. The allocations at that time were 65% offshore (i.e., to the combined catcher/processor and mothership fleets) and 35% inshore (to shoreplants and internal waters floating processors). The AFA restructures the allocation to 50% offshore (40% to catcher/processors and 10% to motherships) and 50% inshore. The 15% shift is significant, because the product mixes produced by the sectors vary significantly, for both logistical and business strategy reasons.

The tables at Tab 4 are from the analysis performed for the Council in connection with I/O 3. They provide a breakdown of products by sector for the years 1991, 1994, 1996 and 1997. As the tables show, in the open access (i.e., non-CDQ fisheries), the catcher/processor fleet has consistently produced the majority of U.S. Alaska pollock fillet and deep skinned fillet products.

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[1] Note that the Groundfish Forum data concerning the distribution of pollock products is expressed in terms of round metric tons of harvest, rather than the finished metric tons of product. The actual amounts of product will be a fraction of round weight that varies by product form, from approximately, 13% (for deep skinned fillets) to 18-25% for surimi (depending on the efficiency of the recovery process) to approximately 65% for h&g product. These fractions are commonly referred to as "product recovery rates".

3. The Market. The relative proportions of surimi and fillets produced from U.S. Alaskan pollock are determined by price and market demand, the regulatory environment, and logistical considerations. The "product mix and markets" analysis prepared for the Council in connection with I/O 3 (at Tab 5(a)) summarizes the status of the market for U.S. Alaska pollock products, identifies potential market impacts of changing allocations between the inshore and offshore sectors, and provides background on the prices of products available to U.S. consumers. While a tremendous number of variables affect the market structure, some fundamental elements can be identified that are relevant to the proposed Cooperative harvesting arrangement.

- Almost all U.S. fillet product is consumed domestically, while pollock surimi is primarily produced for export to Asia.

- The catcher/processor sector produces a substantially greater amount and proportion of fillets than the shoreside sector.

- Reductions in catcher/processor production from the BS/AI pollock resources will result in a direct short term decrease in fillet product available to the U.S. market.

- While the relatively weak Asian economies and correspondingly lower surimi prices can be expected to change product mix decisions for U.S. producers, many pollock fishery processors are constrained as to capacity and capability, and therefore may not be able to respond to changes in market signals, at least in the short run.

Taken together these factors strongly suggest that the shift in pollock quota from the catcher/processor sector (which is also referred to as the "at-sea" sector in the "product mix and markets" analysis) to the inshore (also referred to as the "shoreside" sector) effected by the AFA will have at least a short run adverse impact on the interests of the U.S. consumer.

However, there are additional factors to suggest that this market impact is likely to extend beyond the short term. The U.S. companies that own four of the major shoreside plants that produce BS/AI pollock products are subsidiaries owned in whole or in part by large Japanese seafood companies. According to an ownership analysis prepared for the Council in connection with I/O 3 (at Tab 5(b)), Maruha owns 100% of

Westward Seafoods and 50% of Alyeska Seafoods; Nippon Suisan Kaisha (or "Nippon Suisan") owns 100% of UniSea; and Nichiro owns 100% of Peter Pan Seafoods in King Cove.

It is common knowledge in the industry that a substantial majority of the BS/AI inshore pollock harvest is processed at the Westward, UniSea and Alyeska plants in Dutch Harbor and the Trident plant in Akutan.[2] This is significant because of the character of their ownership. Nippon Suisan (UniSea's owner) and Maruha (Westward's owner) are two of the largest seafood companies in the world, and both of them are highly vertically integrated into the Japanese market. See the Nippon Suisan and Maruha corporate data at Tab 5(d). Both companies have a very strong incentive to operate their U.S. subsidiary plants to produce surimi for their Japanese product distribution network (where they can capture the rent associated with adding value at several steps in the distribution process) rather than producing products for sale in the U.S. market. It is not unreasonable to expect, therefore, that the UniSea and Westward plants will produce a larger amount of surimi than the fillet-to-surimi price ratio might otherwise justify, and that the surimi they produce will be directed first into their parent corporations' distribution network, and into U.S. distribution only when their parent corporations' demands are met.

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[2] This conclusion is supported by the limited plant-specific data available. According to the Council I/O 3 analysis, the 1996 inshore pollock catch was 395,339 metric tons. See Tab 5(c). During 1996, the inshore "A" season (i.e., January 1 - April 15) allocation was 45% of the total annual allocation. Applying this percentage to the shoreside catch, the "A" season harvest from the shoreside allocation should have been approximately 177,902 mt. The waste water discharge reports filed with EPA in 1996 by Westward, UniSea, Trident and Alyeska contain an estimate of pollock or surimi-related raw product delivered to the respective plants during January through March of 1996 (See Tab 5(c)). According to the EPA reports, these plants processed a total of 138,625 mt of pollock/surimi raw product during that period, which would have been approximately 78% of the total estimated inshore catch for the period. The UniSea and Westward plants processed approximately 28% and 20% of the total estimated catch for the period, respectively.

Given this set of circumstances, it is also reasonable to expect that the shift in allocation from the catcher/processor sector to the inshore sector effected by the AFA is likely to reduce the amount of pollock products available for the U.S. market to an extent that could affect the market's fundamental price structure, and therefore measures that offset that reduction could be especially important for the U.S. consumer.

It is also significant to note that, to the extent such price differential might normally create an incentive for a new entity to begin processing BS/AI pollock from the inshore allocation, the AFA has foreclosed that possibility until December 31, 2004 by restricting eligibility to do so to those processors that were in operation during 1996 and 1997, unless the BS/AI pollock TAC increases to a level more than 10% above the 1997 TAC, or unless there is a loss or total constructive loss of an existing eligible shoreside processor.

4. The Producers. The Members are all vertically integrated fishing companies that harvest, process and market their fishery products. As noted above, the AFA limits the vessels eligible to operate as catcher/processors in the Pollock Fishery. Among them, the Members own or operate under bareboat charter all of the eligible catcher/processors named in the AFA. The Members' vessels are listed on Exhibit B to the Membership Agreement.

Most Members are members of the United States Surimi Commission ("USSC"), a Washington nonprofit corporation chartered as an Export Trading Company by the U.S. Department of Commerce. As permitted under the Certificate of Review issued by the Secretary of Commerce, USSC members may agree on the prices at which surimi, pollock roe and whitefish meal will be sold in certain export markets, and may establish the quantities of those products for sale in those markets.

5. The Proposed Collective Harvesting Arrangement. The Cooperative Membership Agreement (at Tab 6) provides a detailed description of the reasons for and nature of the proposed joint harvesting arrangement. The following section summarizes key aspects of the proposed arrangement.

Even though the Pollock Fishery resource is allocated among the shoreside, mothership and catcher/processor sectors under the AFA, absent an agreement otherwise, participants within each sector would be expected to prosecute the fishery on an "olympic" basis, under which each sector's sub-allocation will be fully available to all participants. Under this management system, each sector's participants

have an incentive to take as much as possible of their sector's allocation as quickly as possible, because the amount each fails to harvest will be harvested by one or more of the others. Olympic fishers maximize catch, even if it reduces their product recovery rates below the optimum achievable level, and employ more harvesting and processing capacity than optimal. Further, olympic fishers have a strong disincentive to take measures to reduce their incidental catch of non-target species, if such measures impair their harvest rates.[3]

The purpose of the Cooperative harvesting arrangement is to permit the Members to allocate among themselves the percentage of the Pollock Fishery catcher/processor allocation that each of them will harvest. Because the Cooperative allocation arrangement would eliminate olympic competition among the Members with respect to the Pollock Fishery, it would enable Members to reduce their costs and increase their product recovery rates. The spread sheet enclosed at Tab 7 shows the optimal cumulative increase in productivity that could be achieved under the arrangement, which has been estimated at 26% for the catcher processor ("CP") sector, with a corresponding 10,195 metric ton increase in consumer products for the U.S. market.[4] The total increase in deep skinned fillet ("D/S" on the spreadsheet), fillet and block production for both the domestic and foreign markets is approximately 10,800 metric tons.[5] The expected sources of increased productivity include the ability to better match the harvest rate to the optimal processing rate, and appropriate processing line modifications. Because all processing, marketing and sales will remain fully competitive among Cooperative Members, reduced costs coupled with increased production will result in lower consumer prices and better inter-brand competition.

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[3] For academically oriented discussions of the losses associated with "olympic" fishery management, see Hardin, Garret, 1968, The tragedy of the commons, Science, 162: 1243-48. For a more practically oriented discussion of the same topic, see Section 2, "Analysis of Alternatives" in the Final Environmental Impact Statement for the Individual Fishing Quota Management Alternative for the Fixed Gear Sablefish and Halibut Fisheries of the Gulf of Alaska and Bering Sea/Aleutian Islands Areas, September 15, 1992, National Marine Fisheries Service.

[4] Personal communications from industry sources.

[5] Note that, consistent with the product-by-sector tables at Tab 4, the "fillet" amount on the spread sheet includes block and IQF ("individual quick frozen") product.

In addition to improving production generally, the Cooperative harvesting arrangement would have a disproportionately greater benefit for U.S. consumers. The arrangement would allow the catcher/processor sector to maximize production, and (as described above), the catcher/processor sector supplies a larger percentage and amount of fillets to U.S. markets, relative to the product mix produced by the mothership and shoreside sectors.

Further, by permitting its members to slow their operations to a pace that matches their processing capacity, rather than maximizing their harvesting capacity, the arrangement should facilitate production of a higher percentage of fillet product within the catcher/processor sector. As the Pacific Whiting Conservation Cooperative's report to the National Research Council (at Tab 8) points out, when the Pacific coast whiting fleet was able to conduct its operations under a cooperative harvesting arrangement, it was able to produce a significantly greater amount of fillet product.

The collective harvesting arrangement would also provide the Members with greater incentives and ability to reduce their incidental catch of non-target species of concern. See, e.g. the Pacific Whiting Conservation Cooperative report at Tab 8. Species subject to incidental catch in the Pollock Fishery include salmon, herring, and occasionally crab and halibut. While these stocks are not considered to be threatened or endangered, incidental harvest of them in the BS/AI trawl fishery is of great concern to the trawl fleet, the Council and the interested public. These species are all heavily utilized in other commercial and subsistence fisheries, and as a result "caps" on trawl bycatch have been imposed that (upon being reached) initially close certain highly productive fishing grounds, and ultimately close certain groundfish fisheries themselves, even though the target groundfish species TAC may not have been reached. Reducing the incidental catch of such species could therefore increase not only the duration and productivity of the fisheries that harvest them for distribution to consumers, but could also increase the productivity of other groundfish fisheries prosecuted by the catcher/processor sector (such as cod and yellowfin sole), resulting in additional non-pollock groundfish products being made available to consumers, as well.

In addition to the fishery-related issues, the Cooperative harvesting arrangement will facilitate compliance with the principles and specific terms of the Stellar sea lion RPAs. As noted above, the fundamental principles underlying the RPAs are dispersing fishing effort in space and time, to reduce the concentrated removals from critical habitat and adjacent areas. As the Pacific Whiting Conservation

Cooperative report at Tab 8 notes, when a similar harvesting arrangement was employed in the Pacific coast whiting fishery in 1997 and 1998, it resulted in a direct and immediate reduction in the pace and concentration of fishery removals. In part to reduce cost, and in part to reduce the risk of undesirable bycatch, the companies eligible to employ more than one vessel in the Pacific coast whiting fishery immediately reduced the size of their fleets to the optimum number necessary to harvest the available quota, and the remaining vessels prosecuted the fishery at a substantially lower removal rate.

There is good reason to expect the same result would be achieved in the "B" season Pollock Fishery, and perhaps in the "A" season as well. There is no doubt the catcher/processor sector is overcapitalized; the "A" and "B" Season quota allocations for the catcher/processor sector have been fully harvested in approximately a month per season during the last several years. The Members stand to gain significant economies by removing excess capacity from the Pollock Fishery, which will directly reduce the rate and concentration of removals, consistent with the principles of the RPAs.

Further, the Cooperative harvesting arrangement will help mitigate the potential adverse effect on the consumer associated with complying with the specific terms of the RPAs. The RPAs establish much more extensive closed areas around Steller sea lion rookeries and haul out areas (which happen to overlay prime fishing grounds), and reduce the harvest percentage permitted to be taken in the CVOA during the "A" season (where the Eastern Bering Sea pollock stock tends to be concentrated during that time of year). Together, these measures will have the effect of displacing the catcher/processor fleet from areas of relatively high pollock concentration and abundance. As a result, there will be a significant risk of higher incidental catch of non-target species (as the fleet will be operating in unfamiliar waters, and keeping its nets in the water for longer periods of time because of lower pollock concentrations). Higher bycatch rates could in turn result in premature closure of all fisheries subject to the associate prohibited species "caps". This, in turn, could directly reduce the amount of BS/AI pollock and other groundfish products available to consumers.

By removing the perverse incentive associated with olympic fishing, the Cooperative harvesting arrangement will make it easier for the catcher/processor fleet to "prospect" for concentrations of pollock outside of the areas closed under the RPAs, to refrain from setting gear until optimal pollock concentrations are found, and to cease fishing and move when bycatch rates are excessive. By being able to do so, the fleet

may be able to reduce the potential risk (and related cost) of premature fishery closure. The fleet may also be able to reduce the risk that further Stellar sea lion-related mitigation measures will be required, or obtain relief from the current measures, which would increase Pollock Fishery productivity.

5. The Nature of the Harvesting Agreement. The nature of the harvesting arrangement is explained in detail in the Agreement. The following section summarizes key points.

The Agreement is among only the Catcher/Processor sector of the Pollock Fishery. It does not extend to other sectors of the Pollock Fishery, and has limited applicability to fisheries other than the Pollock Fishery.

The Agreement affects only harvesting activity; the proposed collective activity does not extend to processing, marketing or sales of any of the Members' production, nor does it extend to their purchases of fish from others. Rather, the Agreement specifically prohibits any collective activity (including, but not limited to discussions, actions and exchanges of information, other than as appropriate in connection with the fishery management process, and among USSC members as permitted under the USSC Certificate of Review) with respect to their purchasing, processing, marketing and sales of any fishery products.

The Agreement does reference the AFA's requirement that at least 8.5% of the catcher/processor sector's pollock allocation be made available to certain catcher vessels for harvest (the "Catcher Vessel Reserve"). The Harvest Schedule (Exhibit A to the Agreement) that suballocates the catcher/processor sector's AFA percentage is net of the 8.5% Catcher Vessel Reserve. See Section 5 of the Agreement, at Tab 6. The Agreement further provides that all purchases of quota from catcher vessels shall be conducted by Cooperative Members on an individual, fully competitive basis, and not through the Cooperative. In addition, the Agreement provides that while the Members will report the amounts of their individual catcher vessel purchases to a catch monitoring service (to ensure the overall catcher/processor allocation is not exceeded), aggregate catcher vessel purchase amounts will not be reported to individual Members, other than Members being informed when minimum threshold is reached, to prevent overharvest of the catcher/processor sector allocation.

6. Antitrust Considerations. The resource output for the fisheries in which the Members participate is regulated for "sustained yield" purposes under the Magnuson-Stevens Act, allocated by sector under the AFA, and further allocated and limited in connection with social and environmental concerns through bycatch limitations and the ESA RPAs. All groundfish fisheries in which the Members participate are managed on a quota-driven basis, and are constrained either by the target species allocations or allocations of incidental catch. These fisheries are not only fully capitalized, they are over-capitalized, resulting in unnecessarily high costs of production.

Under these circumstances, the introduction of an orderly harvesting arrangement of the type proposed is not only highly unlikely to have an anti-competitive effect, it is highly likely to have a pro-competitive effect, by increasing the amount of product available to the U.S. consumer, reducing the associated costs of production, and reducing the risk of fishery closures to achieve competing social or environmental goals. Therefore, it is our belief that the proposed arrangement should be judged under the "rule of reason" rather than the "per se" test, and should be found to be more pro-competitive than anti-competitive. We therefore look forward to receiving a favorable enforcement intention letter from the Antitrust Division in connection with the Cooperative's proposed activities.

Should you have any questions or concerns regarding this matter, please feel free to contact me.

Very truly yours,

MUNDT MacGREGOR L.L.P.

Joseph M. Sullivan

JMS:hlc

Enclosure
cc: Mr. William M. Daley, Secretary of Commerce (via fax, w/o encl.; via Fed Ex w/encl.)
Mr. Richard Lauber, Chairman, North Pacific Fishery Management Council (via fax w/o encl.; via Fed Ex w/encl.)
Mr. Steve Pennoyer, Director, Alaska Region, NMFS (via fax w/o encl.)
Mr. Richard Cohen, Antitrust Division,
Department of Justice, San Francisco Office (w/o encl.)
Alaska Ocean Seafood, L.P.
Alaska Trawl Fisheries, Inc.
American Seafoods Company
Arctic Fjord, Inc.
Arctic Storm, Inc.
Glacier Fish Company LLC
Highland Light Seafoods, LLC
Starbound Ltd. Partnership
Tyson Foods, Inc.