IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 2:57-cv-76
	)	
MAINE LOBSTERMEN'S ASSOCIATION and LESLIE DYER,	)	
	)	
Defendants.	)	

MEMORANDUM OF THE UNITED STATES IN RESPONSE
TO THE MOTION OF THE MAINE LOBSTERMEN'S ASSOCIATION
TO TERMINATE THE FINAL JUDGMENT

The Maine Lobstermen's Association, Inc. ("MLA"), the successor in interest to the Maine Lobstermen's Association ("Association"), the original defendant in this action,[1] has moved to terminate the Final Judgment entered in *United States v. Maine Lobstermen's Association and Leslie Dyer*, Civil No. 5-76 (D. Me. filed Oct. 15, 1957) on August 5, 1958 ("1958 Final Judgment"). A copy of the 1958 Final Judgment is attached as Exhibit A to the Unopposed Motion of the Maine Lobstermen's Association to Terminate the Final Judgment Entered on August 5, 1958 and Memorandum of Law ("MLA's Unopposed Motion to Terminate and Memorandum").

After soliciting public comments on the proposed termination, the United States has concluded that this final judgment is no longer necessary to protect competition. The 1958 Final Judgment long ago accomplished its purpose of restoring competition in the Maine lobster industry, and the MLA and its members remain fully bound by a more

[1] Leslie Dyer, the other defendant named in the Final Judgment, was the Association's former President and is now deceased.

robust Sherman Act than existed in 1958. Moreover, the final judgment may be deterring the MLA from engaging in legitimate, lawful advocacy and educational efforts related to fisheries management regulations. Therefore, the United States supports the MLA's motion to terminate the 1958 Final Judgment.

I. BACKGROUND

A. The Complaint and the 1958 Final Judgment[2]

On October 15, 1957, the United States filed a civil complaint against the Association and its then-president Leslie Dyer. It was alleged that the defendants and unnamed co-conspirators[3] engaged in a combination and conspiracy to fix, stabilize and maintain the prices for live Maine lobsters sold by Association members and non-member lobstermen to lobster dealers from about June 1957 until the filing of the complaint.

The complaint further alleged that the four month long conspiracy limited and suppressed competition in the sale of live Maine lobsters to lobster dealers; raised the price of live Maine lobsters sold to lobster dealers, and, hence, to consumers; and reduced the supply of live Maine lobsters available for sale by causing large numbers of Maine lobstermen temporarily to suspend lobstering operations.

The Final Judgment, entered on August 5, 1958, sought to restore competition in the Maine lobster industry by prohibiting price fixing among Association members (and any other Maine lobstermen) and prohibiting certain other conduct. To achieve that end,

[2] The following background is taken from the complaint filed in this action, which is attached as DOJ Exhibit A.

[3] The unnamed co-conspirators included the remaining officers of the Association, Association delegates, its executive council, and individual members of the Association.

it perpetually enjoined the defendants[4] from entering into or adhering to any agreement or understanding to (a) fix prices or other terms for the sale of live Maine lobsters; (b) influence or suggest prices or other terms for the sale of live Maine lobsters; or (c) reduce, curtail or limit the catch or supply of live Maine lobsters. In addition, the Final Judgment enjoined the defendant Association from using its facilities or organization to promulgate, adopt, carry out or enforce any agreement or plan to reduce, curtail, or limit the catch or supply of live Maine lobsters.

B. Developments Since the Entry of the Final Judgment

The Maine lobster industry has changed significantly since the Final Judgment was entered in 1958. As the MLA states in its brief, federal and state environmental, economic, and fisheries management regulations have fundamentally altered the industry,[5] and the MLA's role has evolved in response to these changes. The present MLA has no involvement in the commercial harvest, sale, or distribution of lobster. Rather, the MLA is a trade organization dedicated to advocacy for a sustainable lobster resource and the fishermen and communities that depend on it.[6]

C. Notice and Comment

The MLA has published several notices in two separate publications of its intent to request termination of the 1958 Final Judgment which specifically invited any interested persons to submit comments or relevant information about these plans to the

[4] The provisions of the Final Judgment are deemed applicable to the named defendants, and any of the Association's members, officers, agents, servants, employees, subsidiaries, successors and assigns, and all persons in active concert or participation with any defendant who shall have received actual notice of the Final Judgment by personal service or otherwise.

[5] For example, since the mid-1990's, the Atlantic States Marine Fisheries Commission has limited the catch of Maine lobsters by implementing minimum and maximum size restrictions, restrictions on landing egg-bearing females, and limits on the number of traps allowed. In addition, the State of Maine established lobster policy councils, which explicitly allow lobstermen, on an area basis, to vote to limit the time of day fishing can occur and the number of traps allowed.

[6] *See* MLA's Unopposed Motion to Terminate and Memorandum at pp. 6-8.

Antitrust Division of the U.S. Department of Justice ("Division"). Notice first appeared in the May 11, 2011 issue of the *Portland Press Herald* and the May 2011 issue of *The Monthly Newsletter of the Maine Lobstermen's Association* (both the print and online versions).[7] Then, on March 19, 2012, the MLA issued a press release which repeated the MLA's intention to request a termination of the Final Judgment, referred to the original Notice, and invited interested persons to submit comments to the Division.[8] In addition, the MLA republished the Notice on February 3, 2014 in the *Portland Press Herald/Maine Sunday Telegram* and the February 2014 edition of *Landings*.[9]

The Division has not received any written comments in response to the Notices or the press release published by the MLA. The Division contacted numerous market participants to evaluate the impact on the industry of terminating the judgment,[10] a few of whom expressed generalized concerns that termination of the decree could embolden the MLA or its members to price fix or refrain from fishing until the price for the catch increases.[11] Such concerns are unwarranted, however. For the reasons discussed below, the 1958 Judgment is not necessary for the United States to take appropriate action should such anticompetitive conduct occur.

---

[7] Copies of proofs of publication from the *Portland Press Herald* and *The Monthly Newsletter of the Maine Lobstermen's Association* are attached as Exhibit E to the MLA's Unopposed Motion to Terminate and Memorandum.

[8] The press release is attached as Exhibit F to the MLA's Unopposed Motion to Terminate and Memorandum.

[9] Copies and proofs of publication from the *Portland Press Herald/Maine Sunday Telegram* and *Landings* are attached as Exhibit E to the MLA's Unopposed Motion to Terminate and Memorandum.

[10] The MLA's request for judgment termination was received prior to the Division's change in protocol for judgment termination matters discussed below and thus the Division conducted an investigation to evaluate the impact of the judgment termination, if any, on the industry. Under the new protocol, such an investigation generally would not be necessary. *See infra* p. 7.

[11] Some of these same concerns were mentioned in press articles discussing the downturn in pricing for Maine lobster that has occurred over the last several seasons. *See*, *e.g.*, "Lobster price plummet prompts talk of industry shutdown," Bangor Daily News (July 11, 2012); "Are lobstermen keeping their traps shut?" Portland Press Herald (July 14, 2012).

II. ARGUMENT

Termination of the 1958 Final Judgment, now 56 years old, is in the public interest as continuation of the judgment is no longer necessary to protect competition. The 1958 Final Judgment long ago accomplished its purpose of restoring competition in the Maine lobster industry, and the MLA has certified that it not aware of any violations of the Final Judgment since its entry in 1958.[12] Significantly, as a result of amendments to the Sherman Act in the past half century, the 1958 Final Judgment is obsolete and no longer needed. The MLA and its members will remain fully subject to the federal antitrust laws after the termination of the decree.

A. Applicable Legal Standard for Termination of the 1958 Final Judgment

This Court has jurisdiction to terminate the 1958 Final Judgment. Section IX of the judgment provides that:

> "Jurisdiction of this Court is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, for the enforcement or compliance therewith, and punishment of violations thereof."

Under Rules 60(b)(5) and (b)(6) of the Federal Rules of Civil Procedure, "[o]n motion and just terms, the court may relieve a party…from a final judgment…[when] applying it prospectively is no longer equitable; or (6) for any other reason that justifies relief." *See In re Pearson*, 990 F.2d 653, 657 (1st Cir. 1993) and *Williams v. Atkins*, 786 F.2d 457, 459 (1st Cir. 1986); *see also United States v. IBM Corp.*, 163 F.3d 737, 738 (2d Cir. 1998) (affirming grant of motion by the United States and defendant to terminate antitrust final judgment.).

[12] *See* Exhibit J to MLA's Unopposed Motion to Terminate and Memorandum.

Where, as is the case here, the United States supports a defendant's request for termination of an antitrust final judgment, the reviewing court determines whether termination is in the "public interest." *IBM Corp.*, 163 F.3d 737, 738 (2d Cir. 1998); *see also United States v. American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983); *United States v. Baroid Corp.*, 130 F. Supp. 2d 101, 103 (D.D.C. 2001); *United States v. Loew's Inc.*, 783 F. Supp 211, 213 (S.D.N.Y. 1992). Exercising "judicial supervision," *IBM Corp.*, 163 F.3d at 740, the court should approve a consensual decree termination where the United States has provided a reasonable explanation to support the conclusion that the termination is consistent with the public interest. *Loew's*, 783 F. Supp. at 214. Deference is given to the Antitrust Division's position in light of its antitrust expertise. *Baroid*, 130 F. Supp. 2d at 103.

B. Division Policy for Perpetual, Pre-1980 Judgments

The Antitrust Division has recognized that perpetual decrees can needlessly burden the parties, the courts, and the competitive process. These considerations, among others, led the Division in 1979 to establish a policy of including in every final judgment a so-called "sunset" provision that, other than in exceptional cases, would result in the judgment's automatic termination after a set period of time, usually ten years. The change in policy was based on a judgment that perpetual decrees were not in the public interest.[13] As a result, the only antitrust consent decrees to which the United States is a

[13] Significant changes in the antitrust laws as well as the recognition that markets may evolve substantially over time led to the abolition of perpetual decrees. Specifically, certain conduct previously considered *per se* illegal under the antitrust laws is now evaluated under a rule of reason standard. In addition, conduct that is still considered *per se* illegal is subject to a more robust Sherman Act, thereby eliminating the need for a redundant decree. Furthermore, in the past, many decrees included ancillary provisions designed to prevent the recurrence of specific conduct. Changes in industry structure and circumstances over several decades can make these ancillary provisions obsolete or more burdensome than intended. Indeed, such provisions may interfere with legitimate, lawful conduct and are difficult to justify decades after the anticompetitive conduct has ended.

party that remain in effect are those entered within the past ten years, or before the change in policy in 1979, when the sunset policy was adopted.[14]

Since 1979, the Division's policy statements have long encouraged parties to perpetual "legacy decrees" to seek the Division's consent to their termination. Throughout the 1980's and 1990's, the Division continued its policy of reviewing existing judgments that, with the passage of time and as a result of changed legal or factual circumstances, had become anticompetitive or for other reasons no longer in the public interest.[15] However, the Division routinely conducted a costly and lengthy full investigation into each legacy decree though it believed all such decrees should be presumptively terminated.

This year, recognizing that hundreds of legacy perpetual decrees such as the MLA decree are getting older and older, the Division updated its process for terminating or modifying qualifying legacy decrees. Under the change in process, the Division no longer subjects legacy defendants to full investigation, including significant discovery, and presumes that the age of the decree is itself a sufficient factual basis for the United States to support termination.[16] The 2014 streamlined process requires the parties to certify that they are in compliance with the decree and have disclosed all known past violations; they will notify other defendants bound by the decree; and will publish

---

[14] For similar reasons, in 1994, the Federal Trade Commission ("FTC") decided to place sunset provisions in all of its consent orders. At the same time, it administratively effectively terminated all of its existing legacy decrees through its rulemaking authority. 60 Fed. Reg. 58514 (Federal Trade Commission Nov. 28, 1995).

[15] *See* U.S. Department of Justice, Antitrust Division, DOJ Bull. No. 1984-04, *Statement of Policy by the Antitrust Division Regarding Enforcement of Permanent Injunctions Entered in Government Antitrust Cases* (attached as DOJ Exhibit B).

[16] U.S. Department of Justice Press Release, *Antitrust Division Announces New Streamlined Procedure for Parties Seeking to Modify or Terminate Old Settlements and Litigated Judgments* (March 28, 2014) (attached as Exhibit H to the MLA's Unopposed Motion to Terminate and Memorandum).

notification of their intent to seek termination or modification.[17] Because the MLA's request for termination pre-dated the Division's updated process, the Division conducted a substantial investigation. However, the presumption that old, legacy decrees are no longer in the public interest is itself sufficient in the large majority of cases to justify termination.

C. The 1958 Final Judgment's Provisions are Unnecessary Under Current Antitrust Statutes and May Impede Legitimate Lawful Activity

The MLA's 1958 Final Judgment is a good example of why the Division presumes that old judgments should be terminated. Since 1958, profound changes in the antitrust laws have rendered the decree's provisions unnecessary. The Final Judgment's core provisions prohibit the *per se* antitrust violation of price fixing and include other provisions that may affirmatively impede legitimate and lawful Association activities. *See, e.g.*, Sections IV and V. After the passage of over half a century, judgment provisions that in substance require defendants to abide by the antitrust laws add little, if anything, to antitrust compliance.[18] The remedies available under current antitrust statutes for criminal antitrust violations such as hard-core price fixing and market allocation are more severe than those for contempt of an outstanding civil judgment and therefore serve as a greater deterrent to antitrust recidivism than the threat of contempt

[17] In the United States' view, decrees entered prior to 1979 presumptively should be terminated, except in limited circumstances, such as when there is a pattern of noncompliance with the decree or there is longstanding reliance by industry participants on the decree. Such circumstances are not present in this case.

[18] As noted in Section II, supra, in 1974 Congress amended the Sherman Act to make violations a felony, punishable by substantial fines and jail sentences. In 2004, Congress increased the statutory maximum penalty for a Sherman Act violation by a corporation to a $100 million fine and by an individual to ten years in prison and a $1 million fine. With these enhanced penalties for *per se* violations of the antitrust laws, the Division concluded that antitrust recidivists could be deterred more effectively by a successful criminal prosecution under the Sherman Act than by criminal contempt proceeding under provisions of an old final judgment aimed at preventing a recurrence of price fixing and other hard-core antitrust violations. *United States v. Columbia Artists Mgmt., Inc.*, 662 F. Supp. 865, 867 (S.D.N.Y. 1987).

proceedings. Since the early 1990's the Division has emphasized deterring and punishing cartel activity by seeking stiff corporate fines and by holding culpable individuals accountable by seeking jail sentences.[19] Given the changes in the Sherman Act and the strong history of enforcement, there is no need to rely on this Court's contempt powers to deter *per se* antitrust violations.

In addition, termination of the decree is in the public interest because ancillary provisions in the decree may be impeding the MLA's legitimate, lawful advocacy and educational efforts related to fisheries management regulations.[20] For example, Section V of the Final Judgment, which prohibits the MLA from "using….[its] facilities ….to promulgate, adopt, carry out or enforce any contract, agreement, understanding, plan or program to reduce, curtail or limit the catch or supply of live Maine lobsters" could interfere with the MLA's advocacy activities with respect to regulations being imposed on the industry. This type of interference with lawful activities is the type of unnecessary constraint that led the Division to abandon perpetual decrees 35 years ago.

D. Notice Procedures Before Termination of the 1958 Final Judgment

The MLA has published several notices in two separate publications of its intent to terminate the 1958 Final Judgment which specifically invited any interested persons to submit comments or relevant information about these plans to the Division. Notice first appeared in the May 11, 2011 issue of the *Portland Press Herald* and the May 2011 issue of *The Monthly Newsletter of the Maine Lobstermen's Association* (both the print and

[19] The Division's enforcement statistics show that over the last five years the Division has collected an average of $785 million in criminal fines. In addition, since 1990 the percentage of individuals being sent to prison for cartel activity has doubled, to roughly 78%, and the average prison sentence for defendants has tripled to almost 25 months. *See* http://www.justice.gov/atr/public/division-update/2013/criminal-program html.

[20] *See* MLA's Unopposed Motion to Terminate and Memorandum at pp. 13-14.

online versions).[21] Then, on March 19, 2012, the MLA issued a press release which repeated the MLA's intention to request a termination of the Final Judgment, referred to the original Notice, and invited interested persons to submit comments to the Division.[22] In addition, the MLA republished the Notice on February 3, 2014 in the *Portland Press Herald/Maine Sunday Telegram* and the February 2014 edition of *Landings*.[23] The United States received no written comments in response to the notices the MLA published and, as discussed above, the generalized concerns raised by a few market participants are unwarranted.

The United States believes that the 2011 and 2014 notices published by the MLA of its plans to seek to terminate the 1958 Final Judgment, along with its 2012 press release, provided sufficient public notice and opportunity to comment on the pending motion to terminate the 1958 Final Judgment. Given the multiple opportunities for the public to raise issues relevant to whether the decree should be terminated, the Division believes that the Court can terminate the decree without further public notice.[24]

---

[21] Copies of proofs of publication from the *Portland Press Herald* and *The Monthly Newsletter of the Maine Lobstermen's Association* are attached as Exhibit E to the MLA's Unopposed Motion to Terminate and Memorandum.

[22] The press release is attached as Exhibit F to the MLA's Unopposed Motion to Terminate and Memorandum.

[23] Copies and proofs of publication from the *Portland Press Herald/Maine Sunday Telegram* and *Landings* are attached as Exhibit E to the MLA's Unopposed Motion to Terminate and Memorandum.

[24] In *United States v. Swift & Co.*, the court noted its responsibility to implement procedures that will provide non-parties adequate notice of, and an opportunity to comment upon, antitrust judgment modifications proposed by consent of the parties:

> Cognizant . . . of the public interest in competitive economic activity, established chancery powers and duties, and the occasional fallibility of the Government, the court is, at the very least, obligated to ensure that the public, and all interested parties, have received adequate notice of the proposed modification . . . .

1975-1 Trade Cas. (CCH) ¶ 60,201, at 65,703 (N.D. Ill. 1975) (footnote omitted). Although the *Swift* case addressed post-filing notice, since 1999 the Division has required pre-filing notice and opportunity for comment so that the United States can consider any such comments in making its decision to support a motion to terminate.

III. CONCLUSION

For the foregoing reasons, the United States consents to the termination of the 1958 Final Judgment, subject to its right to withdraw its consent to the motion at any time prior to entry of an order terminating the Final Judgment. If the Court agrees that termination of the Final Judgment is in the public interest, the United States requests that the Court enter an order terminating the 1958 Final Judgment. *See* Exhibit A to the Stipulation Between Parties in Support of the Unopposed Motion of the MLA, Inc. to Terminate the Final Judgment.

Dated: June 25, 2014

Respectfully submitted,

/s/ Michele B. Cano
Michele B. Cano
michele.cano@usdoj.gov
United States Department of Justice
Antitrust Division
Transportation, Energy & Agriculture Section
450 Fifth Street, N.W., Suite 8000
Washington, DC 20530
Telephone: 202-307-6455

Attorney for the United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

I hereby certify that on June 25, 2014, I electronically filed the foregoing Memorandum of the United States in Response to the Motion of Maine Lobstermen's Association to Terminate the Final Judgment with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

James W. Brannan
jwb@brannanlaw.net
15 Limerock Street
P.O. Box 1021
Rockland ME 04841

Mary Anne Mason
mamason@crowell.com
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004

Matthew J. Piehl
mpiehl@crowell.com
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004

/s/ Michele B. Cano
Michele B. Cano
United States Department of Justice
Antitrust Division
Transportation, Energy, and Agriculture Section
450 Fifth Street, N.W., Suite 8000
Washington, DC 20530
Telephone: (202) 307-0813
Attorney for the United States of America
michele.cano@usdoj.gov

DOJ
EXHIBIT A

TEA
60-11-94
BB 1363

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MAINE

UNITED STATES OF AMERICA, Plaintiff	)	Civil Action
v.	)	No. 5-76
MAINE LOBSTERMEN'S ASSOCIATION and LESLIE DYER, Defendants	)	Filed: October 15, 1957

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendants and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted against the defendants under Section 4 of the Act of Congress of July 2, 1890 (c. 647, 26 Stat. 209, 15 U.S.C., Sec. 4) as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendants as hereinafter alleged of Section 1 of said Act.

2. The defendants have their principal places of business and are found within the District of Maine.

II

DEFENDANTS

3. Maine lobstermen's Association, hereinafter referred to as "MLA," is hereby made a defendant herein. MLA is an unincorporated

trade association comprised of independent entrepreneurs, namely, approximately 2100 lobster fishermen, hereinafter referred to as "lobstermen," who independently catch and market their lobsters. MLA does not collectively catch, produce, prepare for market, process, handle or market in interstate commerce the products of its members. It has its principal place of business in Rockland, Maine.

4. Leslie Dyer of Vinalhaven, Maine, is hereby made a defendant herein. During the period of time covered by this complaint he has been president of MLA.

5. The acts alleged in this complaint to have been done by MLA were authorized, ordered or done by the officers, agents, or employees of said defendant MLA, including the individual defendant named herein.

III

CO-CONSPIRATORS

6. Persons, firms and businesses not named as defendants herein have participated with the defendants in the offense hereinafter alleged and have performed acts and made statements in furtherance of said offense. Said co-conspirators include, but are not limited to, the remaining officers of MLA not named as defendants herein, the MLA delegates, its executive council, and members of MLA.

IV

NATURE OF TRADE AND COMMERCE INVOLVED

7. The industry involved herein is the production, sale and distribution of live Maine lobsters. The species of lobster involved is Homarus americanus, hereinafter referred to as live Maine lobsters, and is to be

distinguished from other edible crustaceans indigenous to other parts of the world, such as African rock lobster, crayfish, spiny lobster and king crab. The largest producing area of Homarus americanus in the United States is off the Maine coast.

8. Live Maine lobsters are obtained by the use of traps, which are baited and deposited on the ocean floor in locations known to be lobster-producing areas. The size of a commercial lobsterman's operation depends on the number of traps used by him, and usually varies from 50 traps to 750 traps. Some lobstermen use oar-propelled dories. The more substantial lobstermen with a greater number of traps use motor-propelled launches which are quite seaworthy and enable these lobstermen to place their traps at greater distances from their base of operations, and in many cases, in more productive areas. These more substantial lobstermen are also able to haul their traps almost all year round.

9. Most lobstermen haul their traps daily and sell their entire catch that same day to buyers or lobster dealers. In some instances, short term storage facilities known as "cars" are provided by buyers or dealers, in which lobstermen may store their catch until they are ready to sell. Generally speaking, however, lobstermen do not accumulate any inventory of lobsters but sell on a day-to-day basis. Depending upon the size of the operation, lobstermen's gross annual incomes range from a minimum of $2000 to a maximum of $15,000, the mean being approximately $6000.

10. Lobsters are crustaceans which in midsummer usually go through the process of "shedding" their hard outer shell. In this "shedding" process, the lobster bursts its old shell and begins growing a new shell, pink in color, and paper-like in substance. During this period the lobster is relatively dormant. As the new shell forms, the lobster becomes ravenously hungry and is easily attracted to the bait in the lobster trap. At this time, the lobster catch is substantially increased.

11. Live Maine lobsters are a perishable product, but particularly so during the "shedding" season when the tempo of distribution must be accelerated because of their poorer-keeping quality. Ordinarily, a hard shell lobster may be safely kept in the channels of distribution for five to seven days, while a "shedder" lobster must reach the ultimate consumer within 72 hours from the time it reaches the lobster dealer. There is customarily a price differential during the "shedding" season in favor of hard shell lobsters.

12. During the year 1956, approximately 20,572,000 pounds of live Maine lobsters, valued at $9,100,000, were caught and sold by some 6000 full and part-time commercial, licensed lobstermen fishing in Maine coastal waters. These lobsters are sold to lobster dealers located principally in the Portland and Rockland, Maine areas. These dealers operate dockside facilities for receiving, cleaning, storing, packing, icing, and shipping live Maine lobsters, and they employ all modern means of freight transportation, including air, rail and refrigerated motor carriers to distribut these lobsters throughout the United States. The principal customers of these dealers are chain stores, hotels, restaurants and clubs. In excess of 75 per cent of live Maine lobsters caught annually are shipped by Maine dealers in interstate commerce to customers located outside the State of Maine. Members of the defendant MLA account for approximately 60 per cent of the total annual Maine catch of live lobsters.

13. There is a continuous flow of live Maine lobsters in interstate commerce from the time they are taken from the waters of the Maine coast by lobstermen, received by lobster dealers, and processed and shipped to destinations throughout the United States outside the State of Maine. The speed of this flow is from three to seven days from the time the lobsters reach the dealers until they reach the ultimate consumer.

V

THE CONSPIRACY

14. Beginning in or about June 1957 and continuing thereafter to the date of the filing of this complaint, the defendants and the co-conspirators have engaged in a combination and conspiracy to fix, stabiliz and maintain the prices for live Maine lobsters sold by both MLA member an non-member lobstermen to lobster dealers, in unreasonable restraint of the aforesaid interstate trade and commerce in live Maine lobsters, in violati of Section 1 of the Sherman Act. The defendants threaten to and will continue this offense unless the relief hereinafter prayed for is granted.

15. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants and the co-conspirators described herein, the substantial terms of which have been an are that the defendants and the co-conspirators agree:

(a) To fix and establish a minimum selling price for live Maine lobsters sold to lobster dealers;

(b) To refrain from catching lobsters until said minimum price was obtained;

(c) To induce and compel all Maine lobstermen, including non-members of MLA, to adhere to the terms of the conspiracy hereinbefore alleged.

16. During the time covered by this complaint, the defendants and co-conspirators, by agreement, understanding and concert of action, have done those things which, as hereinbefore alleged, they conspired and agreed to do.

VI

EFFECTS

17. The combination and conspiracy hereinbefore alleged has had the effects of:

(a) Eliminating and suppressing competition in the sale of live Maine lobsters to lobster dealers;

(b) Creating a high, arbitrary and non-competitive price at which live Maine lobsters were sold to lobster dealers, thereby preventing the free play of competitive forces;

(c) Increasing the price of live Maine lobsters to lobster dealers and thereby directly affecting and increasing the price at which the said dealers must resell lobsters to consumers throughout the United States; and

(d) Interfering with and from time to time reducing the supply of live Maine lobsters available for sale to dealers and subsequent resale to consumers throughout the United States by causing large numbers of lobstermen temporarily to suspend lobstering operations.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendants have combined and conspired to restrain interstate trade and commerce in live Maine lobsters in violation of Section 1 of the Sherman Act.

2. That the defendants and each of them, and the officers, directors, agents and employees of the defendant MLA, and all persons acting on behalf of the defendants, be perpetually enjoined from continuing to carry out, directly or indirectly, the combination and conspiracy to restrain interstate trade and commerce, as hereinbefore alleged, and from engaging in any other combination or conspiracy having a similar purpose or effect, and from adopting or following any practice, plan, program or device having a similar purpose or effect.

3. That the defendants and each of them, and the officers, directors, delegates, members, agents and employees of the defendant MLA, be perpetually enjoined from entering into any agreements, arrangements and understandings

with any other person, firm, business, association or corporation to fix, determine, stabilize or agree upon the prices at which live Maine lobsters will be sold to lobster dealers and buyers, and from enforcing or attempting to enforce adherence to any particular price or price level for live Maine lobsters.

4. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem proper.

5. That the plaintiff recover its costs herein.

Dated: October 15, 1957

/s/ Herbert Brownell, Jr.
HERBERT BROWNELL, JR.
Attorney General

/s/ John J. Galgay
JOHN J. GALGAY

/s/ Victor R. Hansen
VICTOR R. HANSEN
Assistant Attorney General

/s/ Alan L. Lewis
ALAN L. LEWIS

/s/ Baddia J. Rashid
BADDIA J. RASHID

/s/ Philip Bloom
PHILIP BLOOM

/s/ Richard B. O'Donnell
RICHARD B. O'DONNELL
Attorneys, Department of Justice

/s/ Averill M. Williams
AVERILL M. WILLIAMS
Attorneys, Department of Justice

/s/ Peter Mills
PETER MILLS
United States Attorney

DOJ
EXHIBIT B

Appendix 3

Department of Justice

FOR IMMEDIATE RELEASE
FRIDAY, APRIL 27, 1984

AT
202-633-2016

The Department of Justice today issued a policy statement concerning the enforcement and review of outstanding judgments in government civil antitrust cases.

The statement advises that, effective May 1, 1984, the Antitrust Division will lodge in its litigating sections and field offices direct responsibility for both the enforcement of the approximately 1500 existing judgments -- which include consent decrees and also the injunction's resulting from trials -- and the review of those judgments for possible modification or termination.

The statement further advises that the Antitrust Division expects defendants and others bound by outstanding judgments to comply with their terms scrupulously.

The Division will periodically conduct inquiries to determine judgment compliance, and will initiate criminal or civil contempt proceedings to deal with violations. The Division encourages persons with knowledge of possible judgment violations to contact its Office of Operations, Room 3214, Main Building, Department of Justice, Washington, D.C. 20530. Such communications will be accorded confidential treatment.

(MORE)

The statement also confirms that the Antitrust Division will continue its program of considering for possible modification or termination judgments that may have become anticompetitive or for other reasons may no longer be in the public interest. Defendants who believe that their judgments ought to be modified or terminated should contact the Division's Office of Operations and furnish the type of information that the Division needs in order to evaluate such requests, as spelled out in the policy statement.

J. Paul McGrath, Assistant Attorney General in charge of the Antitrust Division, explained that the transfer of judgment responsibility to the Division's litigating sections and field offices will complete a process of decentralizing the Division's judgment activity which began in late 1982 when the Division's Judgment Enforcement Section was dissolved and judgment responsibility was divided on an interim basis among other sections.

McGrath emphasized that the Division is committed to enforcing compliance by judgment defendants, and others bound to outstanding judgments, with the terms of those judgments. When the Division obtains evidence of a violation, he said, it will in appropriate cases bring criminal contempt proceedings. McGrath noted that in 1983 a criminal contempt proceeding was brought against H.P. Hood, Inc., for violating the terms of a 1981 consent decree. Hood did not dispute the charges and was fined in excess of $100,000.

(MORE)

McGrath further emphasized that it continues to be the Division's policy to review for possible termination or modification existing judgments that, with the passage of time and as a result of changed legal or factual circumstances, have now become anticompetitive or for other reasons may no longer be in the public interest.

McGrath said this program, initiated in 1981, has proven successful in identifying judgments that unduly restrict legitimate competitive activity and are no longer justified.

Since 1981 some 400 outstanding judgments have been reviewed for possible termination or modification. Seventeen have been terminated or modified and five others are the subject of pending judicial proceedings looking towards termination.

A copy of the policy statement is attached.

# # # #

Statement of Policy by the Antitrust Division Regarding Enforcement and Review of Permanent Injunctions Entered in Government Antitrust Cases

Effective May 1, 1984, the Antitrust Division will lodge in its litigating sections and field offices direct responsibility for the enforcement of permanent injunctions (hereinafter referred to as "judgments") entered in antitrust actions brought by the Department of Justice, and for the review of such judgments for possible modification or termination.

The Antitrust Division expects defendants and others bound by outstanding judgments to comply with their terms scrupulously. The Division will periodically conduct inquiries to determine judgment compliance, and will initiate criminal or civil contempt proceedings to deal with violations. Persons who have reason to believe that judgment violations may have occurred are encouraged to contact the Division's Office of Operations, Room 3214, Main Building, Department of Justice, Washington, D.C. 20530. Such communications will be accorded confidential treatment.

The Division recognizes that, with the passage of time and as a result of changed legal or factual circumstances, existing judgments may become anticompetitive or for other reasons no longer be in the public interest. The Division seeks to identify such outdated judgments, and in appropriate cases will consent to court applications by defendants to modify or terminate them, particularly where the judgments in question unnecessarily or unduly restrict otherwise legitimate competitive activity. Judgment defendants who believe that their judgments ought to be terminated or modified should so inform the Division, through the Office of Operations, and provide to the Division:

(1) a detailed explanation as to (a) why the judgment in question should be vacated or modified, including information as to changes of circumstances or law that make the judgment inequitable or obsolete, and (b) the actual anticompetitive or other harmful effect of the judgment;

(2) a statement of the changes, if any, in its method of operations or doing business that the defendant contemplates in the event the judgment is modified or vacated; and

(3) a commitment to pay the costs of publication of public notice of the termination or modification proceedings in the trade and business press, as the Division may determine to be appropriate.