

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ALL COAST FISHERMAN'S MARKETING)
 ASSOCIATION, INC.,)
)
 Defendant.)
 _____)

Civil No. 82-233

FINAL JUDGMENT

Filed: July 13, 1982

Entered: October 25, 1982

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on February 19, 1982, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issues of fact or law herein and upon consent of the parties hereto, it is hereby,

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

This Final Judgment applies to the defendant and to its officers, directors, agents, employees, members, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

III

As used in this Final Judgment:

(A) "ACFMA" means the defendant, All Coast Fisherman's Marketing Association;

(B) "Person" means any individual, sole proprietorship, partnership, firm, association, corporation or any other legal or business entity;

(C) "Seafood" means either fish or shellfish;

(D) "Processor" means any person who obtains raw seafood from fishermen for the purpose of resale in fresh, frozen or canned form;

(E) "Ex Vessel Price" means the price per pound paid to fishermen by processors for seafood;

(F) "Poundage Fee" means a specified amount of money per pound of seafood delivered to a processor which a processor pays to a fish marketing association; and

1 (G) "Member" means any person on the membership roster of the
2 defendant as of January 1, 1981 and who has not submitted a
3 signed letter of resignation.

4 IV

5 Defendant is enjoined and restrained from:

6 (A) Participating in any discussion, communication, or
7 agreement with any nonmember commercial fisherman regarding:

- 8 1. the ex-vessel price or negotiations about the ex-vessel
9 price that the defendant will offer processors;
10 2. any terms and conditions to be offered for the sale of
11 seafood; or
12 3. refraining from fishing while defendant is negotiating
13 with processors on an ex-vessel price.

14 (B) Requesting or coercing nonmember commercial fishermen to:

- 15 1. refrain from fishing, or
16 2. sell fish to processors at ACFMA's ex-vessel price or
17 under terms and conditions set by ACFMA.

18 (C) Requesting or coercing processors to:

- 19 1. collect or remit any poundage fee on seafood delivered by
20 nonmember commercial fishermen, or
21 2. limit in any manner the amount of seafood purchased from
22 nonmember commercial fishermen.

23 (D) Provided that nothing in subparagraph (A) of this section
24 shall prohibit defendant from making public announcements by
25 public posting, radio, television or otherwise of the status of
26 negotiations with processors or of the position of defendant with
27

1 respect thereto.

2 V

3 (A) Defendant shall:

4 1. within sixty (60) days after the date of entry of
5 this Final Judgment, send a copy of this Final
6 Judgment together with a letter identical in text to that
7 attached to this Final Judgment as Appendix A, to each
8 commercial fisherman who is currently a member of the
9 Association;

10 2. within sixty (60) days after the date of entry of
11 this Final Judgment, send a copy of this Final Judgment
12 together with a letter identical in text to that attached
13 to this Final Judgment as Appendix A, to each commercial
14 fisherman who belonged to the Association at any time
15 during the period January 1, 1977 through December 31,
16 1980 and who is currently not a member of the
17 Association; and

18 3. serve a copy of this Final Judgment together with a
19 letter identical in text to that attached to this Final
20 Judgment as Appendix A, upon all of its future members as
21 they become members.

22 (B) Defendant shall:

23 1. within sixty (60) days after the date of entry of
24 this Final Judgment, send a copy of this Final Judgment
25 together with a letter identical in text to that attached
26 to this Final Judgment as Appendix B, to each processor
27 who is a signatory to an ACFMA Dealer Agreement;

28 2. serve a copy of this Final Judgment together with a

1 letter identical in text to that attached to this Final
2 Judgment as Appendix B, upon each processor who in
3 the future signs an ACFMA Dealer Agreement as it becomes
4 a signatory; and

5 3. file with this Court and serve upon the plaintiff
6 within ninety (90) days after the date of entry of this
7 Final Judgment an affidavit as to the fact and manner of
8 compliance with subsection A and this subsection B of
9 this Section V.

10 (C) Defendant shall conduct at least one meeting during 1982
11 of all of its members during which an attorney retained by
12 defendant will explain the applicability of federal and state
13 (Oregon) antitrust laws to the marketing of seafood by
14 commercial fishermen in Oregon. Reasonable notice of the
15 above-described meeting will be provided to plaintiff, who
16 through its attorneys may attend the meeting to insure
17 compliance with this provision.

18 (D) Defendant shall prepare every year and retain in its
19 files a current and verified membership list. Such a
20 membership list shall be used as the principal means of
21 determining who may attend ACFMA meetings at which prices,
22 terms or conditions for the sale of members' seafood will be
23 discussed.

24 VI

25 For the purpose of determining or securing compliance with
26 this Final Judgment, and subject to any legally recognized
27 privilege, from time to time:

28 (A) Duly authorized representatives of the Department of
FINAL JUDGMENT - Page 5

1 Justice shall, on written request of the Attorney General or
2 the Assistant Attorney General in charge of the Antitrust
3 Division, and on reasonable notice to the defendant made to
4 its principal office, be permitted, subject to any legally
5 recognized privilege:

6 1. Access during the office hours of the defendant to
7 inspect and copy all books, ledgers, accounts,
8 correspondence, memoranda, and other records, and
9 documents in the possession or under the control of such
10 defendant corporation, who may have counsel present,
11 relating to any matters contained in the Final Judgment;
12 and

13 2. Subject to reasonable convenience of the defendant
14 corporation and without restraint or interference from
15 it, to interview any officers, directors, agents,
16 partners, employees or members of such defendant
17 corporation, any of whom may have counsel present,
18 regarding any such matters.

19 (B) Defendant, upon the written request of the Attorney
20 General or the Assistant Attorney General in charge of the
21 Antitrust Division, shall submit such reports in writing with
22 respect to any of the matters contained in this Final
23 Judgment, as may from time to time be requested, subject to
24 any legally recognized privilege.

25 No information obtained by the means provided in this Section
26 VI shall be divulged by any representative of the Department of
27 Justice to any person other than a duly authorized representative
28 of the Executive Branch of the United States, except in the course
FINAL JUDGMENT - Page 6

1 of legal proceedings to which the United States is a party, or for
2 the purpose of securing compliance with this Final Judgment, or as
3 otherwise required by law.

4 If at any time information or documents are furnished by the
5 defendant to plaintiff, defendant represents and identifies in
6 writing the materials in any such information or documents which
7 is of a type described in Rule 26(c)(7) of the Federal Rules of
8 Civil Procedure, and defendant marks each pertinent page of such
9 material "Subject to claim of protection under Rule 26(c)(7) of
10 the Federal Rules of Civil Procedure," then 10 days notice shall
11 be given by plaintiff to defendant prior to divulging such
12 material in any legal proceeding (other than a Grand Jury
13 proceeding) to which the defendant is not a party.

14 VII

15 Jurisdiction is retained by this Court for the purpose of
16 enabling any of the parties to this Final Judgment to apply to
17 this Court at any time for such further orders or directions as
18 may be necessary or appropriate for the construction or carrying
19 out of this Final Judgment, for the modification of any of the
20 provisions hereof, for the enforcement of compliance herewith, and
21 for the punishment of any violation hereof.

22 VIII

23 This Final Judgment shall be in full force and effect for a
24 period of ten (10) years following entry of this decree.
25
26
27
28

IX

The Entry of this Final Judgment is in the public interest.

Dated: October 25, 1982

/s/ Judge Helen J. Frye
United States District Judge

APPENDIX A

Dear Fisherman:

This letter and the enclosed Final Judgment are being sent to you as part of the settlement of a lawsuit brought by the United States against the All Coast Fisherman's Marketing Association (United States v. All Coast Fisherman's Marketing Association, Civil No. 82-233). You should read the Final Judgment carefully and note that you are affected by its provisions. The purpose of this letter is to help explain the provisions in the Final Judgment.

The essence and intent of the Final Judgment is that the All Coast Fisherman's Marketing Association may not in any way interfere with the pricing or marketing activities of non-member fishermen. The principal purpose of the Judgment is to prohibit the Association and its members from engaging in any joint activity with non-members concerning the price of seafood. Under the law and this Judgment, the Association and its members may act together to establish and maintain prices for seafood for the membership, but in doing so the Association must act independently without consultation with, agreement with or intimidation of non-member fishermen. A non-member fisherman, in turn, is an independent businessman who must be allowed to market his seafood independent of the Association. He is free to decide on his own whether or not to fish while the Association is "tied up," what quantity of seafood to sell to processors and the price at which to sell the seafood. You, as a member of the Association, must not attempt in any manner to influence the decision of a non-member in regard to his pricing or marketing practices.

APPENDIX B

Dear Processor:

This letter and the enclosed Final Judgment are being sent to you as part of the settlement of a lawsuit brought by the United States against the All Coast Fisherman's Marketing Association (United States v. All Coast Fisherman's Marketing Association, Civil No. 82-233). You should read the Final Judgment carefully and note that you are affected by its provisions. The purpose of this letter is to help explain the provisions in the Final Judgment.

The essence and intent of the Final Judgment is that the All Coast Fisherman's Marketing Association may not in any way interfere with the pricing or marketing activities of non-member fishermen. Under the law and this Judgment, the Association is prohibited from assessing or collecting, either directly or indirectly, poundage fees for the seafood delivered by non-member fishermen. The Association is also prohibited from requiring that processors purchase seafood from non-member fishermen at the Association's prices. Finally, the Association is prohibited from requiring that non-member fishermen be placed on the same poundage limits as Association members. You, the dealer, are entitled to allocate such limits as you see fit.