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WILLIAM L. WHITTAKER, CLERK

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil No. C-82-3355-SC
)	
v.)	
)	<u>FINAL JUDGMENT</u>
DEL NORTE FISHERMEN'S MARKETING)	
ASSOCIATION, INC.,)	
)	
Defendant.)	

Plaintiff, the United States of America, having filed its Complaint herein on July 6, 1982, and plaintiff and defendant, by their respective attorneys, having each 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 evidence against or admission by either party with respect to any such issue;

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

1 ORDERED, ADJUDGED, AND DECREED as follows:

2 I

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

7 II

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

13 III

14 As used in this Final Judgment:

- 15 (A) "DNFMA" means the defendant, Del Norte Fishermen's
16 Marketing Association, Inc.;
- 17 (B) "Person" means any individual, sole proprietorship,
18 partnership, firm, association, corporation or any other
19 legal or business entity;
- 20 (C) "Seafood" means either fish or shellfish;
- 21 (D) "Processor" means any person who obtains raw seafood from
22 fishermen for the purpose of resale in fresh, frozen or
23 canned form;
- 24 (E) "Ex Vessel Price" means the price per pound paid to
25 fishermen by processors for seafood;
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- 1 (F) "Poundage Fee" means a specified amount of money per
2 pound of seafood delivered to a processor which a
3 processor pays to a fish marketing association as
4 consideration for the processor's right to do business
5 with the association; and
6 (G) "Member" means any person who has joined the defendant
7 and who has not submitted a signed letter of resignation.

8 IV

9 Defendant is enjoined and restrained from:

- 10 (A) Participating in any discussion, communication, or
11 agreement with any nonmember commercial fisherman
12 regarding:
13 1. the ex-vessel price or negotiations about the
14 ex-vessel price that the defendant will offer
15 processors;
16 2. any terms or conditions to be offered for the sale
17 of seafood; or
18 3. refraining from fishing while defendant is
19 negotiating with processors on an ex-vessel price.
20 (B) Requesting or coercing nonmember commercial fishermen to:
21 1. refrain from fishing; or
22 2. sell fish to processors at the DNFMA ex-vessel price
23 or under terms or conditions set by the DNFMA.
24 (C) Otherwise interfering with the business of nonmember
25 commercial fishermen by means of, but not limited to:
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1. preventing the unloading or transportation of seafood by blocking the hoists, unloading docks, delivery trucks or other equipment used to unload or transport seafood;
2. vandalizing unloading facilities, motor vehicles, fishing vessels, or fishing gear, including crab pots and live boxes; and
3. actual or threatened physical violence against the person or property of nonmember fishermen or their families.

(D) Requesting or coercing processors to place any restrictions on the amount of or price paid for seafood purchased from nonmember commercial fishermen.

(E) Provided that nothing in subparagraph (A) of this section shall prohibit defendant from making public announcements by public posting, radio, television or otherwise of the status of negotiations with processors or of the position of defendant with respect thereto.

V

(A) Defendant shall within thirty days after the date of entry of this Final Judgment revise its dealer agreements where necessary to comply with the terms of this Final Judgment.

(B) Whenever the poundage fees paid by a processor to defendant are based on the total seafood poundage delivered in the port, including that delivered by nonmembers, defendant shall:

- (1) make any dock hoist which defendant has the right to operate available to all commercial fishermen, on an equivalent basis without any discrimination between members and nonmembers as to priority of usage or the price charged for usage;
- (2) disseminate and make available to all commercial fishermen, including nonmembers, all commercial fishing industry information (except as prohibited in Paragraph IV A), such as, but not limited to, weather reports, governmental agency announcements and governmental agency regulations; and
- (3) allow nonmember commercial fishermen access to any fishing industry informational or educational activities (except as prohibited in paragraph IV A) sponsored by defendant, such as, but not limited to, seminars, lectures or gear and equipment demonstrations.

(C) Defendant shall:

- (1) within sixty (60) days after the date of entry of this Final Judgment, send a copy of this Final Judgment, together with a letter identical in text to that attached to this Final Judgment as Appendix A, to each commercial fisherman who has belonged to the DNFMA at any time since January 1, 1977; and
- (2) serve a copy of this Final Judgment, together with a letter identical in text to that attached to this Final Judgment as Appendix A, upon all of its future members as they become members.

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1 (D) Defendant shall:

2 (1) within sixty (60) days after the date of entry of
3 this Final Judgment, send a copy of this Final
4 Judgment together with a letter identical in text to
5 that attached to this Final Judgment as Appendix B,
6 to each processor who is signatory to a DNFMA Dealer
7 Agreement; and

8 (2) serve a copy of this Final Judgment, together with a
9 letter identical in text to that attached to this
10 Final Judgment as Appendix B, upon each processor
11 who in the future states an intent to sign a DNFMA
12 Dealer Agreement before it signs such an agreement.

13 (E) Defendant shall file with this Court and serve upon the
14 plaintiff within ninety (90) days after the date of entry
15 of this Final Judgment an affidavit as to the fact and
16 manner of compliance with subsection C and subsection D
17 of this Section V.

18 (F) Defendant shall conduct at least one meeting during 1984
19 of all of its members during which an attorney retained
20 by defendant will explain the applicability of federal
21 and state (California) antitrust laws to the marketing of
22 seafood by commercial fishermen in California.

23 Reasonable notice of the above-described meeting will be
24 provided to plaintiff, who through its attorneys may
25 attend the meeting.
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1 (G) Defendant shall prepare every year and retain in its
2 files a current and verified membership list. Such a
3 membership list shall be used as the principal means of
4 determining who may attend DNFMA meetings at which
5 prices, terms or conditions for the sale of members'
6 seafood will be discussed.

7 VI

8 For the purpose of determining or securing compliance with
9 this Final Judgment, and subject to any legally recognized
10 privilege, from time to time:

11 (A) Duly authorized representatives of the Department of
12 Justice shall, on written request of the Attorney General
13 or the Assistant Attorney General in charge of the
14 Antitrust Division, and on reasonable notice to the
15 defendant made to its principal office, be permitted:

- 16 1. Access during the office hours of the defendant to
17 inspect and copy all books, ledgers, accounts,
18 correspondence, memoranda, and other records, and
19 documents in the possession or under the control of
20 such defendant corporation, who may have counsel
21 present, relating to any matters contained in the
22 Final Judgment; and
- 23 2. Subject to reasonable convenience of the defendant
24 corporation and without restraint or interference
25 from it, to interview any officers, directors,
26 agents, partners, employees or members of such
27 defendant corporation, any of whom may have counsel
28 present, regarding any such matters.

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1 (B) Defendant, upon the written request of the Attorney
2 General or the Assistant Attorney General in charge of
3 the Antitrust Division, shall submit in writing such
4 reports with respect to any of the matters contained in
5 this Final Judgment, as may from time to time be
6 requested.

7 No information obtained by the means provided in this Section
8 VI shall be divulged by any representative of the Department of
9 Justice to any person other than a duly authorized representative
10 of the Executive Branch of the United States, except in the course
11 of legal proceedings to which the United States is a party, or for
12 the purpose of securing compliance with this Final Judgment, or as
13 otherwise required by law.

14 If at any time information or documents are furnished by the
15 defendant to plaintiff, defendant represents and identifies in
16 writing the materials in any such information or documents which is
17 of a type described in Rule 26(c)(7) of the Federal Rules of Civil
18 Procedure, and defendant marks each pertinent page of such
19 material "Subject to claim of protection under Rule 26(c)(7) of
20 the Federal Rules of Civil Procedure," then ten (10) days notice
21 shall be given by plaintiff to defendant prior to divulging such
22 material in any legal proceeding (other than a Grand Jury
23 proceeding) to which the defendant is not a party.

24 VII

25 Jurisdiction is retained by this Court for the purpose of
26 enabling any of the parties to this Final Judgment to apply to
27 this Court at any time for such further orders or directions as
28 may be necessary or appropriate for the construction or carrying

1 out of this Final Judgment, for the modification of any of the
2 provisions hereof, for the enforcement of compliance herewith, and
3 for the punishment of any violation hereof.

4 VIII

5 This Final Judgment shall be in full force and effect for a
6 period of ten (10) years following entry of this decree.

7 IX

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

9 Dated:

10 *Dec. 22, 1984*

11 
12 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 Del Norte Fishermen's Marketing Association (United States v. Del Norte Fishermen's Marketing Association, Inc., Civil No. 82-3355). 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 Del Norte Fishermen's Marketing Association may not in any way interfere with the pricing or marketing activities of nonmember fishermen. The principal purpose of the Judgment is to prohibit the Association and its members from engaging in any joint activity with nonmembers 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; however, in doing so the Association must act independently. The Association or its members may not discuss, consult, or reach agreement with nonmember fishermen regarding prices or terms or conditions of sale; nor may the Association or its members engage in any type of coercion of nonmember fishermen to fish at certain times, to sell at the Association price, or to sell under terms or conditions set by the Association.

A nonmember 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 nonmember in regard to his fishing, 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 Del Norte Fishermen's Marketing Association (United States v. Del Norte Fishermen's Marketing Association, Inc., Civil No. 82-3355). 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 Del Norte Fishermen's Marketing Association may not in any way interfere with the pricing or marketing activities of nonmember fishermen. Under the law and this Judgment, the Association is prohibited from requiring that processors purchase seafood from nonmember fishermen at the Association's prices. Also, the Association is prohibited from requiring that nonmember fishermen be placed on the same poundage limits as Association members. You, the processor, are entitled to allocate such limits as you see fit.