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5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF OREGON  
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8 UNITED STATES OF AMERICA, )  
9 Plaintiff, )  
10 v. )  
11 ALL COAST FISHERMEN'S MARKETING )  
12 ASSOCIATION, INC., )  
13 Defendant. )  
14

Civil Action No.: 82-233FR  
Filed - February 19, 1982

15 COMPLAINT

16 The United States of America, plaintiff, by its attorneys,  
17 acting under the direction of the Attorney General of the United  
18 States, brings this civil action against the above-named defendant  
19 to obtain equitable relief and complains and alleges as follows:

20 1.

21 JURISDICTION AND VENUE

22 1. This complaint is filed and this action is instituted by  
23 the United States of America under Section 4 of the Sherman Act,  
24 15 U.S.C. § 4, to prevent and restrain the continuing violation of  
25 Section 1 of the Sherman Act, 15 U.S.C. § 1, as hereinafter  
26 alleged.

27 2. The defendant has its principal place of business,  
28 transacts business and is found in the District of Oregon.

1 II.

2 DEFENDANT

3 3. The All Coast Fishermen's Marketing Association, Inc.  
4 (hereinafter "ACFMA") is made a defendant herein. ACFMA is an  
5 Oregon non-profit corporation with its principal place of business  
6 in Charleston, Oregon. It has approximately 200 members, most of  
7 whom are commercial fishermen. ACFMA was formed in the early  
8 1970s for the purpose of representing its members in the marketing  
9 of salmon, crab, shrimp, and black cod.

10 III.

11 CO-CONSPIRATORS

12 4. Various firms and individuals, not made defendants in  
13 this complaint, have participated as co-conspirators in the  
14 violation alleged herein and have performed acts and made  
15 statements in furtherance thereof.

16 IV.

17 DEFINITIONS

18 5. As used herein, the term:

19 (a) "Person" means any individual, partnership, firm,  
20 association, corporation or other entity;

21 (b) "Seafood" means either fish or shellfish;

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

25 (d) "Ex Vessel Price" means the price paid fishermen by  
26 processors for seafood; and

27 (e) "Member" means any person who has signed a  
28 membership agreement with ACFMA.

V.

TRADE AND COMMERCE

6. Commercial fishermen catch salmon, crab, shrimp, and black cod off the coast of Oregon, California, and Washington and deliver it to processors located in various ports along the Oregon coast.

7. Processors pay commercial fishermen based on the total pounds delivered. The amount of compensation is determined by multiplying the ex vessel price for the particular seafood by the number of pounds that a fisherman has delivered to the processor.

8. In 1980 approximately 18,610,000 pounds of crab, 27,200,000 pounds of shrimp, and 5,729,000 pounds of salmon were delivered by commercial fishermen to processors in Oregon. The ex vessel dollar value was in excess of \$9 million for crab, \$15 million for shrimp, and \$13 million for salmon.

9. Some of these commercial fishermen are members of ACFMA, which, prior to the start of each fishing season, negotiates with processors for an ex vessel price to be paid its member fishermen for the particular species involved.

10. ACFMA will negotiate only with processors that have signed a dealer's agreement with ACFMA. The agreement provides, among other things, that the processor withhold poundage fees from the price paid to fishermen for seafood and remit the fees to ACFMA. ACFMA uses the poundage fees to finance its operations.

11. In 1934 the Fishermen's Collective Marketing Act, 15 U.S.C. §§ 521-522, was passed, authorizing two or more fishermen to act together in associations or cooperatives to catch, produce, prepare for market, process, handle and market

1 seafood. These joint activities among members of cooperatives,  
2 are exempt from the antitrust laws, provided the cooperative has  
3 been formed and operates in conformity with the statute's terms  
4 and limitations. For example, members of a cooperative cannot  
5 engage in joint pricing and marketing actions with nonmembers. In  
6 addition, immunity does not and has never extended to joint acts  
7 to compel or coerce nonmembers to join the association or to  
8 comply with its prices or its policies.

9 12. Over 90% of the seafood delivered by commercial fishermen  
10 to processors with facilities on the Oregon coast is shipped  
11 thereafter to locations outside the State of Oregon. The  
12 activities of the defendant, its members, and co-conspirators  
13 which are the subject of the violation hereinafter alleged are in  
14 the flow of and have an effect upon interstate commerce.

15 VI.

16 VIOLATION ALLEGED

17 13. Commencing in or about the year 1971, and continuing  
18 until the date of this complaint, the defendant and its  
19 co-conspirators have engaged in a combination and conspiracy in  
20 unreasonable restraint of the aforesaid trade and commerce in  
21 violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. This  
22 combination and conspiracy is continuing and will continue unless  
23 the relief hereinafter prayed for is granted.

24 14. The aforesaid combination and conspiracy has consisted of  
25 a continuing agreement, understanding, and concert of action among  
26 the defendant and co-conspirators, the substantial terms of which  
27 have been to fix, stabilize, and maintain the ex vessel price  
28 offered processors by and paid to commercial fishermen and to

1 eliminate competition among commercial fishermen for the sale of  
2 seafood to processors.

3 15. In furtherance of the aforesaid combination and  
4 conspiracy, the defendant and co-conspirators have done the things  
5 that they have combined and conspired to do, including, among  
6 other things:

7 (a) agreeing with nonmember commercial  
8 fishermen on the ex vessel price that the defendant  
9 will offer processors;

10 (b) agreeing with nonmember commercial  
11 fishermen not to fish until defendant has settled  
12 with processors on an ex vessel price;

13 (c) compelling, through threats and  
14 harassment, nonmember commercial fishermen (i) to  
15 refrain from fishing until defendant has settled  
16 with processors on an ex vessel price and (ii) to  
17 sell fish to processors at the ACFMA price; and

18 (d) requiring all processors who have entered  
19 into a dealer's agreement with defendant to collect  
20 and pay poundage fees on all seafood delivered by  
21 all fishermen, including nonmember commercial  
22 fishermen.

23 VII.

24 EFFECTS

25 16. The aforesaid combination and conspiracy has had the  
26 following effects, among others:

27 (a) the ex vessel price offered processors by and paid  
28 to commercial fishermen has been fixed, stabilized, and

1 maintained at artificial and noncompetitive levels;

2 (b) price competition in the sale of seafood by  
3 commercial fishermen to processors has been restrained;

4 (c) commercial fishermen have been prevented from free  
5 and open competition in the sale of seafood to processors; and

6 (d) processors of seafood have been deprived of the  
7 benefits of free and open competition in the market for  
8 seafood.

9 PRAYER

10 WHEREFORE, plaintiff prays that:

11 1. The Court adjudge and decree that the defendant and  
12 co-conspirators have engaged in an unlawful combination and  
13 conspiracy in restraint of the aforesaid trade and commerce in  
14 violation of Section 1 of the Sherman Act;

15 2. The defendant, its officers, directors, employees,  
16 agents, successors, assigns, and all other persons acting or  
17 claiming to act on its behalf be perpetually enjoined and  
18 restrained from, in any manner, directly or indirectly,  
19 continuing, maintaining, or renewing the combination and  
20 conspiracy hereinbefore alleged, or from engaging in any other  
21 combination, conspiracy, contract, agreement, understanding, or  
22 concert of action having a similar purpose or effect, and from  
23 adopting or following any practice, plan, program, or device  
24 having a similar purpose or effect;

25 3. The defendant be enjoined from requiring processors to  
26 pay poundage fees to ACFMA for seafood delivered by nonmember  
27 fishermen and that the defendant be required to notify all  
28 processors who presently have dealer agreements with ACFMA that

1 those processors shall only pay poundage fees to ACFMA on seafood  
2 delivered by ACFMA members;

3 4. The defendant be required to distribute to each of its  
4 members a copy of the complaint and final judgment or decree  
5 within 60 days of the date of the entry of such judgment or decree;

6 5. The plaintiff have such other and further relief as the  
7 nature of the case may require and the court may deem just and  
8 proper; and

9 6. The plaintiff recover the costs of this suit.

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