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11 UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA, ) Civil No. C-82-3355 SC  
14 )  
15 Plaintiff, ) Filed: July 16, 1984  
16 )  
17 v. )  
18 )  
19 DEL NORTE FISHERMEN'S MARKETING )  
20 ASSOCIATION INC., )  
21 )  
22 Defendant. )  
23 \_\_\_\_\_ )

24 COMPETITIVE IMPACT STATEMENT

25 Pursuant to Section 2(b) of the Antitrust Procedures and  
26 Penalties Act, 15 U.S.C. § 16(b)-(h), the United States submits  
27 this Competitive Impact Statement relating to the proposed Final  
28 Judgment submitted for entry in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On July 6, 1982, the United States filed a civil antitrust  
complaint alleging that the Del Norte Fishermen's Marketing  
Association, Inc. ("DNFMA") conspired to restrain competition

1 among commercial fishermen in violation of Section 1 of the  
2 Sherman Act, 15 U.S.C. § 1. The Complaint asks the Court to find  
3 that the DNFMA has violated Section 1 of the Sherman Act and  
4 further requests the Court to enjoin the continuance of the  
5 conspiracy.

6 Entry of the proposed Final Judgment will terminate the  
7 action, except that the Court will retain jurisdiction over the  
8 matter for further proceedings which may be required to interpret,  
9 enforce or modify the Judgment or to punish violations of any of  
10 its provisions.

11 II.

12 PRACTICES GIVING RISE TO THE  
13 ALLEGED VIOLATION

14 Defendant DNFMA is an Association incorporated in the State of  
15 California whose members are commercial fishermen, the majority of  
16 whom operate out of the Port of Crescent City. DNFMA is a  
17 cooperative, formed pursuant to the Fishermen's Collective  
18 Marketing Act of 1934 ("FCMA"), 15 U.S.C. §§ 521-522, which  
19 permits fishermen to act together to catch, produce, prepare for  
20 market, process, handle and market seafood. Under the FCMA, these  
21 joint activities are exempt from the antitrust laws as long as  
22 only members participate in such activities. The exemption does  
23 not apply where fishermen who do not belong to the Association  
24 (nonmembers) engage in joint marketing and pricing activities with  
25 members. In addition, the immunity does not extend to acts of  
26 coercion, harassment or vandalism designed to force nonmembers to  
27 comply with DNFMA's prices or policies.

1           The Government contends, and was prepared to show at trial,  
2           that beginning in or about 1975 and continuing up until the time  
3           the Complaint was filed, DNFMA conspired to restrain competition  
4           among commercial fishermen in violation of Section 1 of the  
5           Sherman Act. The conspiracy consisted of an agreement and concert  
6           of action between DNFMA and co-conspirators to fix the "ex vessel"  
7           prices offered to processors by commercial fishermen and to  
8           eliminate competition among commercial fishermen in the sale of  
9           seafood. In furtherance of this conspiracy DNFMA: (1) entered  
10          into agreements with nonmember commercial fishermen not to fish  
11          until the DNFMA had settled with processors on an "ex vessel"  
12          price; (2) entered into agreements with nonmember commercial  
13          fishermen to sell seafood at DNFMA's prices; and (3) compelled,  
14          through threats, harassment and vandalism, nonmember commercial  
15          fishermen to comply with DNFMA's prices and policies.

16          The Government had also contended that DNFMA's "poundage fee"  
17          agreement with processors, whereby processors are required to pay  
18          a certain dollar amount per pound to the DNFMA for all seafood  
19          they purchase from either members or nonmembers, was part of the  
20          conspiracy to restrain competition between member and nonmember  
21          fishermen. For reasons explained in the following pages, the  
22          Government has decided not to press that allegation.

23          This conspiracy fixed the "ex vessel" prices of seafood sold  
24          by commercial fishermen, eliminated price and other forms of  
25          competition among commercial fishermen in the sale of seafood, and  
26          deprived processors of the benefits of free and open competition  
27          in the sale of seafood.

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III.

EXPLANATION OF THE PROPOSED  
FINAL JUDGMENT

The United States and DNFMA have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission by either party with respect to any issue of fact or law.

Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section IX of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that the DNFMA discontinue all practices which restrain competition among commercial fishermen.

A. Prohibitions and Obligations

Under Section IV of the proposed Final Judgment, DNFMA is enjoined from participating in any discussion, communication or agreement with nonmembers regarding: (1) the "ex vessel" prices being negotiated between processors and DNFMA; (2) any terms or conditions to be offered for the sale of seafood; or (3) refraining from fishing while DNFMA is negotiating with processors on an "ex vessel" price. Section IV also enjoins DNFMA from requesting or coercing nonmember commercial fishermen to refrain from fishing or to sell fish to processors at DNFMA prices or



1 under terms or conditions set by DNFMA. DNFMA is further enjoined  
2 from any interference with nonmember commercial fishermen's  
3 business, including but not limited to: preventing the unloading  
4 or transportation of seafood by blocking hoists, unloading docks,  
5 delivery trucks, or other equipment used to unload or transport  
6 seafood; vandalizing facilities, motor vehicles, fishing vessels,  
7 or fishing gear, including crab pots and live boxes; and actual or  
8 threatened physical violence against the person or property of  
9 nonmember fishermen and their families. Finally, Section IV  
10 enjoins DNFMA from requesting or coercing processors to place any  
11 restrictions on the amount of or price paid for seafood purchased  
12 by processors from nonmember commercial fishermen.

13 Section V of the proposed Final Judgment requires DNFMA to  
14 revise its dealer agreements to comply with the terms of the Final  
15 Judgment. It also requires DNFMA to prepare and maintain each  
16 year a current membership list to be used as a principal means of  
17 determining who may attend DNFMA meetings at which price-related  
18 subjects will be discussed. DNFMA is further obligated under  
19 Section V to send a copy of the Final Judgment, along with a  
20 letter explaining the Judgment, to all of its members and to all  
21 processors who have signed a DNFMA dealer agreement. This  
22 requirement applies to all fishermen who have belonged to the  
23 Association at any time since 1977 and to each new member as he or  
24 she joins, as well as to all processors who are currently  
25 signatory to a dealer agreement and to each new processor who  
26 becomes signatory.

1 To ensure understanding of the Final Judgment, Section V  
2 requires DNFMA to hold a membership meeting during which an  
3 attorney will explain how federal and state (California) antitrust  
4 laws apply to the sale and marketing of seafood in California by  
5 commercial fishermen.

6 As stated above, the Government had originally contended that  
7 DNFMA's "poundage fee" agreement with processors, which requires  
8 processors to pay a certain dollar amount per pound to DNFMA for  
9 all seafood they purchase from either nonmembers or members, was  
10 part of the conspiracy to restrain competition between member and  
11 nonmember fishermen. The Government still views the poundage fee  
12 agreement as an artificial restraint on the prices at which  
13 nonmember fishermen can sell their catches. However, after  
14 considering the difficulty of collecting empirical evidence to  
15 support the Government's theory, the DNFMA's willingness to agree  
16 to all other relief sought by the Government, and the expense of,  
17 going to trial, versus the benefits an injunction would achieve,  
18 the Government decided that, in this case, it would not press the  
19 poundage fee issue further. However, to minimize the potential  
20 adverse impact of the poundage fee on nonmembers, the parties  
21 agreed that nonmembers whose catches are subject to DNFMA's  
22 poundage fee shall have access to all DNFMA services, except those  
23 related to price determination, on the same basis as DNFMA  
24 members. Therefore, Section V of the proposed Final Judgment  
25 provides that, whenever the poundage fees paid by a processor to  
26 DNFMA are based on total seafood poundage delivered in the port to  
27 that processor, including seafood caught by nonmembers, DNFMA  
28 must: (1) make any dock hoist operated by DNFMA available to all

1 commercial fishermen, without any discrimination between members  
2 and nonmembers as to priority of usage; (2) disseminate and make  
3 available to all commercial fishermen, including nonmembers, all  
4 commercial fishing industry information on the same basis it makes  
5 that information available to its members, and (3) allow nonmember  
6 fishermen access to educational activities sponsored by DNFMA such  
7 as seminars and equipment demonstrations.

8 **B. Scope of the Proposed Final Judgment**

9 Section VIII of the proposed Final Judgment provides that the  
10 Final Judgment shall remain in effect for 10 years.

11 Section II of the proposed Final Judgment provides that the  
12 Final Judgment shall apply to DNFMA and to DNFMA's officers,  
13 directors, agents, employees, members, subsidiaries, successors  
14 and assigns, and to all other persons in active concert or  
15 participation with any of them who shall have received actual  
16 notice of this Final Judgment.

17 **C. Effect of the Proposed Judgment on Competition**

18 The relief set out in the proposed Final Judgment is designed  
19 to prevent recurrence of the activities alleged in the Complaint.  
20 The proposed Final Judgment's provisions are intended to ensure  
21 that only members of DNFMA participate in any marketing or pricing  
22 decisions made by the DNFMA and that nonmembers be allowed to make  
23 marketing and price decisions independently, without any  
24 interference by DNFMA.

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IV.

ALTERNATIVES TO THE PROPOSED  
FINAL JUDGMENT

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The alternative to the proposed Final Judgment would be a full trial of the case. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted since the proposed Final Judgment provides almost all the relief that the United States sought in its Complaint.

V.

REMEDIES AVAILABLE TO PRIVATE  
LITIGANTS

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Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney fees. Under the provisions of Section 5(a) (15 U.S.C. § 16(a)), this Final Judgment has no prima facie effect in the lawsuits which may be brought against DNFMA.

VI.

PROCEDURES AVAILABLE FOR  
MODIFICATION OF THE PROPOSED JUDGMENT

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As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed judgment should be modified may submit written comments to Gary R. Spratling, Acting Chief, San Francisco Office, Department of Justice, Antitrust Division, 450 Golden Gate Avenue, San Francisco, California 94102, within the 60-day period provided by the Act. The comments and the



1 Government's responses to them will be filed with the Court and  
2 published in the Federal Register. All comments will be given  
3 due consideration by the Department of Justice, which remains free  
4 to withdraw its consent to the proposed judgment at any time prior  
5 to its entry if it should determine that some modification of the  
6 judgment is necessary to the public interest. The proposed  
7 judgment itself provides that the Court will retain jurisdiction  
8 over this action, and that the parties may apply to the Court for  
9 such orders as may be necessary or appropriate for the  
10 modification or enforcement of the judgment.

11 VII.

12 DETERMINATIVE DOCUMENTS

13 No materials and documents of the type described in Section  
14 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. §  
15 16(b)) were considered in formulating this proposed judgment.  
16 Consequently, none are filed herewith.

17 Dated: July 16, 1984

18 /s/ Gary R. Spratling  
19 GARY R. SPRATLING

20 /s/ Richard B. Cohen  
21 RICHARD B. COHEN

22 /s/ Jonathan R. Howden  
23 JONATHAN R. HOWDEN

24 Attorneys U.S. Department  
25 of Justice