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December 23, 1999

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Assistant Attorney General  
Antitrust Division  
Department of Justice  
Tenth and Constitution Avenue, N.W., Room 3109  
Washington, D.C. 20530

SENT VIA FEDERAL EXPRESS

Re: Westward Fleet Cooperative - Business Review Letter Request

Dear Mr. Klein:

We are writing to you on behalf of the Westward Fleet Cooperative, a Washington nonprofit corporation (the "Cooperative") to request that the Antitrust Division (the "Division") provide us with a statement of its enforcement intentions with respect to the proposed activity described below, pursuant to 28 C.F.R. § 50.6. Copies of the Cooperative's Articles of Incorporation, Bylaws and Membership Agreement are enclosed for your reference.

The Cooperative's members are the managing owners of twelve vessels that deliver pollock to the Westward Seafoods, Inc. plant in Dutch Harbor, Alaska. The Cooperative is intended to function as a harvesting association through which its members sub-allocate among themselves percentages of the aggregate allocation that the Cooperative expects to receive pursuant to Section 210 of the American Fisheries Act (Division C, Title II of Pub. L. 105-277; the "Act"). The mutual harvest allocation is intended to enable the members to facilitate improved utilization of pollock by the processor(s) to which they deliver, to reduce their incidental catch of non-target species, and to disperse fishing efforts in time and area, consistent with the "Reasonable and Prudent Alternatives" imposed by the National Marine Fisheries Service in connection with its Endangered Species Act "Section 7 consultation" concerning the Steller sea lion.

We understand that the Division is familiar with the Bering Sea pollock fishery. We believe statements concerning the regulated output of the fishery, its fully utilized status and the pro-competitive effect of fishery cooperatives made in prior

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business review letter requests concerning cooperative harvesting arrangements within that fishery remain accurate. We request that the Division analyze the proposed activities of the Cooperative accordingly.

We also understand that the Division has in the past applied the analysis and holdings of U.S. v. Hinote (823 F. Supp. 1350 (D.Miss. 1993)) in determining whether a proposed fishery cooperative is eligible for the antitrust exemption extended to organizations formed under the Fishermen's Collective Marketing Act (15 U.S.C. § 521 et seq.). We have received a copy of the Memorandum from Randolph D. Moss of the Department of Justice Office of Legal Counsel for Andrew J. Pincus of the Department of Commerce dated December 10, 1999 (the "Memorandum"). We note that the Office of Legal Counsel has concluded that processor-owned catcher vessels may join fishery cooperatives formed under the Act. Therefore, we have not provided ownership information concerning the nature and extent of vertical integration in the vessels participating in the Westward Fleet Cooperative. We will gladly provide that information if the Division so desires.

Please feel free to contact us if you have questions or concerns regarding this matter, or need additional information.

Very truly yours,

MUNDT MacGREGOR L.L.P.

  
Joseph M. Sullivan

JMS:mg

Enclosures

cc: Westward Fleet Cooperative Members

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