

**MUNDT MACGREGOR** LLP  
ATTORNEYS AT LAW

Jay H. Zulauf  
Henry Howard Happel, III  
Wm. Paul MacGregor  
J. David Stahl  
Matthew L. Fick  
Joseph M. Sullivan  
Lisa Riveland Pagán

Janet H. Cheetham  
OF COUNSEL

999 Third Avenue - Suite 4200  
Seattle, Washington - 98104-4082

Telephone : 206 624-5950  
Facsimile : 206 624-5469

December 18, 1999

John H. Chun  
Christopher S. McNulty  
Joe B. Stansell  
Christopher R. M. Stanton  
Melissa A. Weiland  
Libby A. Williams

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

SENT VIA FED EX

Re: Mothership Fleet Cooperative - Business Review Letter Request

Dear Mr. Klein:

We represent the Mothership Fleet Cooperative, a Washington nonprofit corporation (the "Cooperative"). The purpose of this letter is to request that the Antitrust Division (the "Division") provide us with a statement regarding 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 is intended to function as a harvesting association through which its members allocate among themselves a percentage of the total allowable catch ("TAC") for the mothership sector of the Bering Sea pollock fishery. (The mothership sector is allocated 10% of the Bering Sea/Aleutian Islands pollock TAC, net of amounts reserved for Community Development Quotas and bycatch of pollock in other fisheries, under Section 206(b)(3) of the American Fisheries Act, Division C, Title II of Pub. L. 105-277 (the "Act").)

The purpose of the mutual harvest allocation is to enable Cooperative members to improve their utilization of pollock, to reduce their incidental catch of non-target species, and facilitate dispersal of their vessels' 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.

Mr. Joel I. Klein  
December 18, 1999  
Page 2

We understand that the Division is familiar with the Bering Sea pollock fishery. We believe the statements concerning the regulated output of the fishery, its fully-utilized status and the pro-competitive effect of fishery cooperatives contained in business review letter requests submitted on behalf of the members of the Pollock Conservation Cooperative (December 20, 1998) and the members of the Northern Victor Fleet Cooperative (November 3, 1999) remain accurate. We request that the Division evaluate 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.) (the "FCMA"). 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 in the Memorandum, the Office of General Counsel recognized that 13 of 19 of the catcher vessels named as eligible to participate in the mothership sector of the Bering Sea pollock fishery are processor-owned. The Office of General Counsel concluded that Section 210(d) of the American Fisheries Act (which specifically addresses formation of fishery cooperatives in the mothership sector) confirms that Congress expected processor-owned vessels to enter into contracts implementing a fishery cooperative under the FCMA, and that Section 210(d) explicitly extends the FCMA's antitrust exemption to processing activities by motherships. See Memorandum, pages 7 and 15.

Given the conclusions reached in the Memorandum, we have assumed it is not necessary to provide detailed ownership information concerning the catcher vessels and motherships that operate in the mothership sector. However, we would gladly provide that information if the Division so desires.

The Cooperative's membership operates 18 of the 20 vessels known to be eligible to harvest Bering Sea pollock for processing by motherships. (One vessel has been determined to be eligible under the landings provisions of Section 208(c)(21) of the Act in addition to the 19 listed by name.) The Cooperative's Membership Agreement contains provisions intended to prevent the harvesting arrangement among its members from impairing the harvesting activities of vessels operated by non-members. First, the allocation formula establishes the Cooperative members' percentages net of the percentages traditionally harvested by non-members. Second, the Cooperative's

Mr. Joel I. Klein  
December 18, 1999  
Page 3

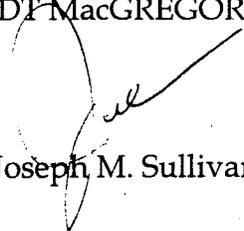
allocation formula specifically contemplates adjusting the members' percentages downward pro rata as may be necessary to accommodate the harvest of non-members, if non-members' harvest could be expected to exceed the allowance made on the basis of their traditional harvest percentages. See Membership Agreement, Section 3.a.(1).

Further, pursuant to the holdings of All Coast Fishermen's Marketing Association v. FTC, 1982-83 Trade Cas. (CCH), par. 65,211 (Ore., 1982) we have orally informed Cooperative members of their obligation not to request or coerce the mothership operators to limit in any way their purchases from non-members. We will provide formal written notice of that obligation to all members prior to commencement of year 2000 pollock fishery operations.

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

Very truly yours,

MUNDT MacGREGOR L.L.P.



Joseph M. Sullivan

JMS:jms  
Enclosures  
cc: Mothership Fleet Cooperative Members