



AgEcon SEARCH
RESEARCH IN AGRICULTURAL & APPLIED ECONOMICS

The World's Largest Open Access Agricultural & Applied Economics Digital Library

This document is discoverable and free to researchers across the globe due to the work of AgEcon Search.

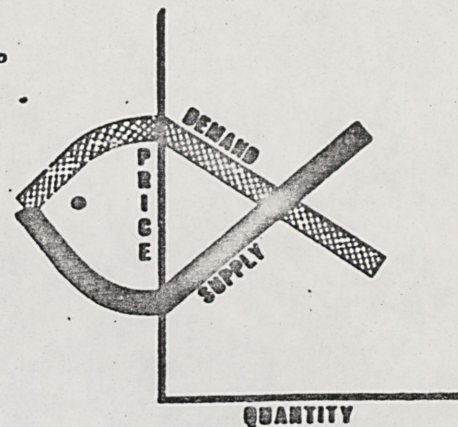
Help ensure our sustainability.

Give to AgEcon Search

AgEcon Search
<http://ageconsearch.umn.edu>
aesearch@umn.edu

*Papers downloaded from **AgEcon Search** may be used for non-commercial purposes and personal study only. No other use, including posting to another Internet site, is permitted without permission from the copyright owner (not AgEcon Search), or as allowed under the provisions of Fair Use, U.S. Copyright Act, Title 17 U.S.C.*

ANNUAL SHELF



NOT FOR QUOTATION

GIANNINI FOUNDATION OF
AGRICULTURAL ECONOMICS
LIBRARY

OCT 8 1975

Fishery Activities
with
Fishery Cooperatives

by

Fred L. Olson

March 1972

File Manuscript No. 161

U.S.
NATIONAL MARINE FISHERIES SERVICE
ECONOMIC RESEARCH DIVISION

LIBRARY SHEET

LIBRARY
AGRICULTURAL ECONOMICS
FOUNDATION

1958-59

Fishery Activities

with

Fishery Cooperatives

Fred L. Olson

March 1972

Index

	Page
I. NMFS obligations	1
A. Fishery Cooperative Marketing Act of 1934	1
B. Title II of the Agricultural Marketing Act of 1946	1
II. Goals	1
III. Extent NMFS is now meeting obligations and goals	2
A. Files	2
B. Procedure to follow in meeting obligations of the Fishery Cooperative Marketing Act of 1934.	4
IV. Background	5
V. Future Plans	10
A. Fishery Cooperative Policy	10
B. Cooperation with the Farmer Cooperative Service, USDA	10
C. Project Proposal	11
VI. Appendix	13

(P) 11/30/72

I. NMFS Obligations

A. Fishery Cooperative Marketing Act of 1934

Section 2 of the Fishery Cooperative Marketing Act of June 25, 1934 (48 Stat. 1213; 15 U.S.C. 521-522, section 4(e) of 1939 Reorganization Plan (53 Stat. 1433), and Reorganization Plan 4 of 1970 require the Secretary of Commerce to insure that fishery cooperatives do not "...monopolize or restrain trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof..." .

B. Title II of the Agricultural Marketing Act of 1946

With regard to technical services and research back up, NMFS has no specific obligations for cooperatives but does have general responsibilities under Title II of the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. Sec. 1622

- Par. (a) Determination of methods of processing, packaging, marketing, etc; publication of results.
(b) Determination of costs.
(d) Elimination of artificial barriers to free movement.
(e) Development of new markets.
(i) Development of facilities for assembling, processing, transporting, etc.
(m) Promotion of research for handling, storing, preserving, etc.
(n) General research, services, and activities.)

II. Goals

In the area of cooperatives the goals of the Market Research and Services Division are to:

1. Insure compliance with the Fishery Cooperative Marketing Act of 1934 and
2. Improve the marketing structure in the fishing industry including consideration of new, federated, or consolidated fishery cooperatives.

III. Extent ~~of~~ NMFS is now meeting obligations and goals

A. Files

The kind of files that NMFS is legally required to keep on cooperatives are not defined. Files of articles of incorporation, by-laws, marketing agreements and contracts, names and addresses of officers, etc., however, are a minimum that would be needed to identify those organizations as qualifying under the Fishery Cooperative Marketing Act of 1934. In addition annual operating statements and balance sheets can be positive evidence that fishery cooperatives are not in violation of section 2 of the Fishery Cooperative Marketing Act.

Since Dr. Fred L. Olson became responsible for cooperatives, all of the financial data have been separated and secured in a file with a lock. In the Appendix is a brief summary of the financial data now available in this file. Even this statement overstates the financial information available because either the operating statement or balance sheet or both are missing or inadequate for previous years.

Number of fishery cooperatives on file in NMFS by latest date of financial data and region, 2/25/72.

Region	Latest data of financial data on file in NMFS													Total
	None	Before												
		1961	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	
----- Number of fishery cooperatives -----														
FNE	30	1	1	0	1	0	1	0	1	1	7	0	2	45
FSE	14	1	1	0	1	2	0	0	4	1	0	0	0	24
FNW	10	4	0	0	0	0	0	0	0	0	0	1	2	17
FSW	18	5	1	0	1	3	0	0	0	0	0	0	0	28
FAK	13	3	2	0	0	0	0	0	0	0	0	0	1	19
U.S. Total	85	14	5	0	3	5	1	0	5	2	7	1	5	133

We have information on 133 active and inactive fishery cooperatives in our files of which we have no financial information on 85.

For 14 fishery cooperatives the latest financial information is before 1961. In recent years we have financial information on 5 fishery cooperatives for calendar year 1971, 1 for 1970 and 7 for 1969.

The rest of the cooperative files are inadequate:

1. The active cooperatives are not kept separate from the inactive ones,
2. All of the nonfinancial information on each cooperative is not in one file or series of files. Some of the lists of officers are in the files updating the list of fishery cooperatives,

3. The articles of incorporation and by-laws on the active cooperatives are incomplete or not up to date,
4. No systematic procedure is followed that all of the fishery cooperatives are surveyed annually. There might be several organizations or unions without cooperative in their name that might qualify under the Act, and
5. The information is not secured in each file in a chronological order.

B. Procedures to follow in meeting obligations of Fishery Cooperative Marketing Act of 1934.

The outline of procedure for handling complaints under the Fishery Cooperative Marketing Act of 1934, NMFS forms for identifying fishery cooperative associations and listing financial and other useful information are in the Appendix. Also in the Appendix are the rules of procedure for issuance of cease and desist orders under this Act, Part 290 of Title 50 Code of Federal Regulations (CFR), which were first published on pages 8742 and 8743 of the Federal Register of August 31, 1962. These rules of procedure are still in effect according to a conversation with Herbert L. Blatt.

The Memorandum of Understanding between the Department of the Interior and the Federal Trade Commission is for turning all complaints against fishery organizations, who fall under the Act of 1934 to BCF. This memorandum is in the process of being updated. Old and revised copies are in the Appendix. NMFS has a procedure for handling complaints under the Fishery Cooperative Marketing Act of 1934.

This is shown in the following abbreviated Diagram of Procedure for Handling Complaints under the Fishery Cooperative Marketing Act of 1934.

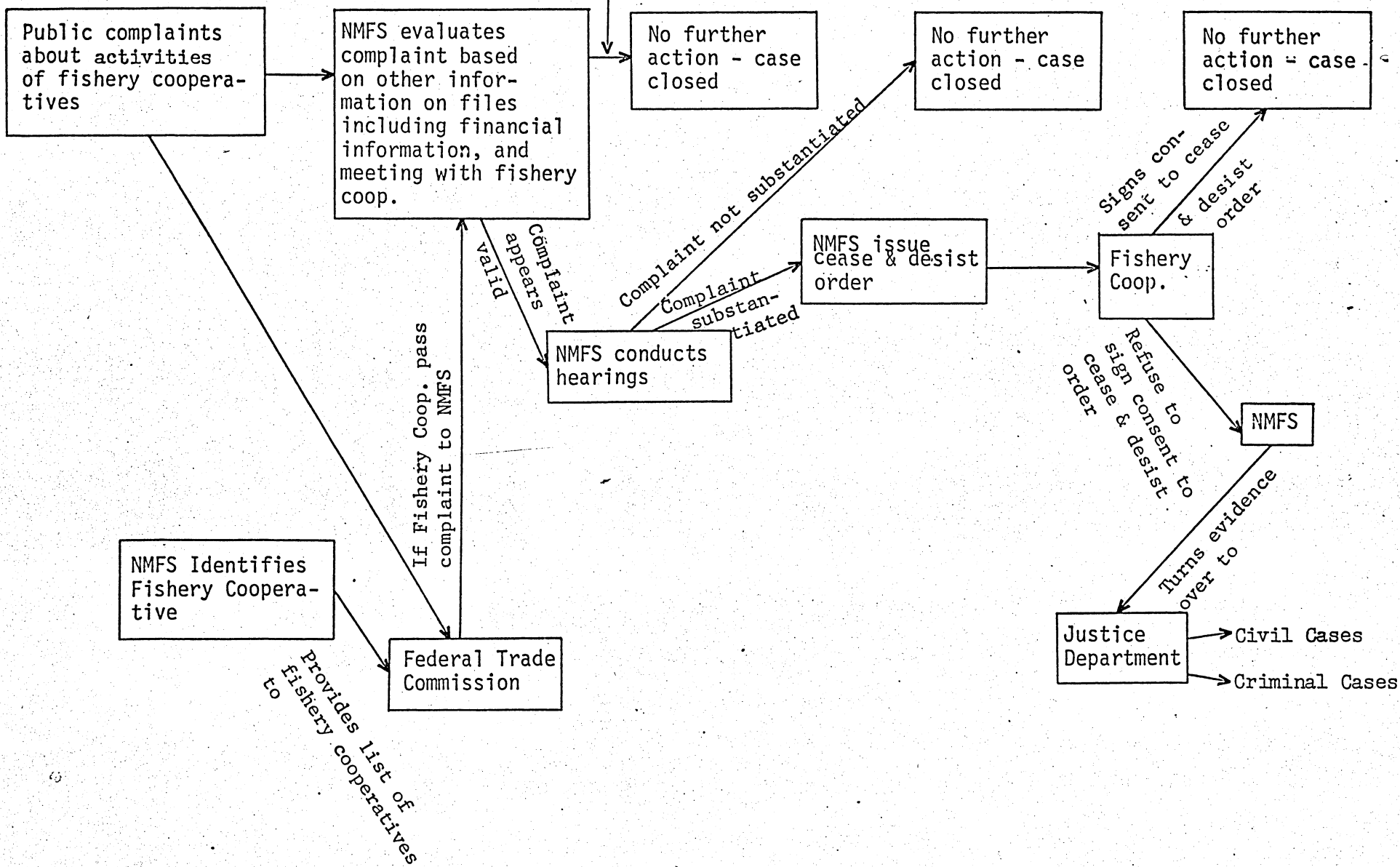
IV. Background

Nearly all of the complaints against fishery cooperatives and all of the actions have been on the West Coast. The fishery marketing structure there is much different than on the Atlantic and Gulf Coasts. On the Pacific Coast many of the fishery associations are bargaining associations which do not handle or process the fish and their only muscle or strength is a strike which brings about complaints. They bargain for annual prices for wet fish and salmon for canning.

All of the anti-trust action against fishery cooperatives have been by the Federal Trade Commission (FTC) the last action being in 1962. (See appendix. In addition the Federal Trade Commission also had a Docket 6376 against Puget Sound Salmon Cannery). No action for violations of the Fishery Cooperative Marketing Act of 1934 has ever been taken by old Bureau of Commercial Fisheries (BCF) in the Department of the Interior or the National Marine Fisheries Service (NMFS). BCF and NMFS have clear guidelines for handling complaints, conducting hearings, issuing cease and desist orders, and turning evidence over to the Department of Justice for prosecution when there has been violations of the Fishery Cooperative Marketing Act of 1934.

ABBREVIATED DIAGRAM OF PROCEDURE FOR HANDLING COMPLAINTS UNDER THE FISHERY COOPERATIVE MARKETING ACT OF 1934

Complaint not substantiated



The question arises as to whether NMFS should be passive and only react to complaints or actively look for fishery cooperatives who might be in violation and bring action against these cooperatives. Three types of action can be taken--the issuance of cease and desist orders followed by civil or criminal suits. To our knowledge civil or criminal suits for undue price enhancement have never been brought against a fishery cooperative.

The Fishery Cooperative Marketing Act of 1934 authorizes associations of fishermen to collectively purchase goods and services for their production and to market and process their products. At the same time it protects the public from "undue price enhancement." Undue price enhancement is a very imprecise term. What is undue price enhancement? Price discrimination? Dumping? Can there be undue price enhancement in fishery products when over half of the products we consume are imported, without collusion with foreign producers?

Can one imagine NMFS taking action against a fishery cooperative without a complaint? What fishery cooperative, with any legal resources, would sign a cease and desist order when no complaints were brought against them by the public (not the Federal Government) or their competitors? What court would uphold NMFS in a civil or criminal suit against a fishery cooperative with no complaint from competitors or consumers of the product of a fishery cooperative?

The USDA has similar responsibilities for agricultural cooperatives under the Capper Volstead Act of 1922 as NMFS has for fishery cooperatives under the Fishery Cooperative Marketing Act of 1934. It is interesting to note that this responsibility rests with the Consumer Marketing Service which has other regulatory responsibilities and not with the Farmer Cooperative Service which improves the effectiveness and well-being of agricultural cooperatives. Dr. Ronald D. Knudson, Staff Economist, Consumer and Marketing Service, phone 111-4383, is particularly concerned about this area.

Take the Associated Milk Producers, Inc. (AMPI) with 40,000 members in the midwest. (There are only 10,000 members of all U.S. fishery cooperatives combined.) AMPI has been practicing price discrimination between markets in the midwest by flooding one market after another with fluid milk, negotiating premiums over Federal milk market order prices, restraining trade in the transportation of milk, meeting over an hour with President Nixon to raise the Federal support price of milk (separate from Federal milk market order prices) which has amounted to over \$125 million in greater returns to AMPI members.

Three civil suits are now in the courts--one from Ralph Nader, one by the USDA because of complaints from AMPI competitors and one from the Justice Department because of adverse public reaction.

AMPI would not sign a cease and desist order. No criminal suit has been brought against AMPI because the USDA and the Justice Department do not feel that they could win a criminal suit in the courts against AMPI.

With this as a background there is an extremely small chance that any fishery cooperative of the size that exist today could be convicted of "undue enhancing prices."

NMFS still should be in a position to handle complaints against fishery cooperatives. This means maintaining a current roster of fishery cooperatives, up-dating the Memorandum of Understanding between FTC and NMFS and maintaining active files on individual fishery cooperatives to determine if they qualify under the Fishery Cooperative Marketing Act of 1934. A current financial file on each cooperative is not required or essential but is useful in positively stating which fishery cooperatives are not unduly enhancing prices. This information is also a rich source of prices, marketing costs, market structure, and needed to determine the financial health of fishery cooperatives in general.

All of the above activities are descriptive and nice to know, but do not contribute to improved well being of the fishing industry.

Improving the market structure or guiding the changing marketing structure in the fishing industry in a positive direction would contribute to improved well being of the fishing industry and society.

V. Future Plans

A. Fishery Cooperative Policy

In Appendix is a draft of Fishery Cooperative Policy that is recommended for approval by NMFS.

B. Cooperation with the Farmer Cooperative Service, USDA.

In the past there has been very little coordination between the Farmer Cooperative Service, USDA and BCF or NMFS regarding fishery cooperatives. This is more important now because food processing and marketing firms, including cooperatives, are integrating both vertically and horizontally. This means that more and more firms are in both fishery and agricultural food products. (See Ray A. Goldberg, "Profitable Partnerships: Industry and Farmer Co-ops." Harvard Business Review, Volume 50, Number 2, March-April 1972).

To further this development a Memorandum of Understanding is suggested between the Department of Commerce (National Oceanic and Atmospheric Administration) and Department of Agriculture (Farmer Cooperative Service) on Feasibility Studies of Fishery Cooperatives (see Appendix).

NMFS -- OFFICE OF RESOURCE UTILIZATION

PROJECT PROPOSAL AND IDENTIFICATION

Division	Market Research and Services	
Program	Washington Operations	
Subprogram	Cooperatives	
Project	Fishery Cooperative Marketing Act of 1934	
Commenced	Continuous	Completion date
Location	Washington, D.C.	

Man years:	<u>FY 1972</u>	<u>FY 1973</u>	<u>FY 1974</u>	<u>FY 1975</u>
Prof. staff				
Full time	<u>0.2</u>	<u>0.2</u>	<u>0.2</u>	<u>0.2</u>
Part time	<u>.0</u>	<u>.0</u>	<u>.0</u>	<u>.0</u>
	<u>0.2</u>	<u>0.2</u>	<u>0.2</u>	<u>0.2</u>
Other staff				
Full time	<u>0.1</u>	<u>0.1</u>	<u>0.1</u>	<u>0.1</u>
Part time	<u>.1</u>	<u>.1</u>	<u>.1</u>	<u>.1</u>
TOTAL	<u>0.4</u>	<u>0.4</u>	<u>0.4</u>	<u>0.4</u>

BUDGET ALLOCATION

Salaries	<u>5.0</u>	<u>5.0</u>	<u>5.0</u>	<u>5.0</u>
Benefits	<u>.4</u>	<u>.4</u>	<u>.4</u>	<u>.4</u>
Supplies and equipment	<u>.1</u>	<u>.1</u>	<u>.1</u>	<u>.1</u>
Travel and transportation	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>
Equipment rental	<u>.1</u>	<u>.1</u>	<u>.1</u>	<u>.1</u>
Contract services	<u>.0</u>	<u>.0</u>	<u>.0</u>	<u>.0</u>
Services of other federal agencies	<u>1.4</u>	<u>1.4</u>	<u>1.4</u>	<u>1.4</u>
Printing				
Other	<u>.0</u>	<u>.0</u>	<u>.0</u>	<u>.0</u>
TOTAL	<u>8.0</u>	<u>8.0</u>	<u>8.0</u>	<u>8.0</u>

PROJECT DESCRIPTION

PROJECT DESCRIPTIONObjective and Need

The Fishery Cooperative Marketing Act of 1934 is administered by the National Marine Fisheries Service. The objective of this project is to effectively and efficiently administer this Act.

Work Plan

- A. Annually publish one publication listing organization qualifying under the Fishery Cooperative Marketing Act of 1934 and fishery organizations, associations, unions, etc., that do not come under the Fishery Cooperative Marketing Act of 1934.
- B. Keep this list current and on file with the Federal Trade Commission.
- C. Handle all complaints against fishery cooperatives under the Fishery Cooperative Marketing Act of 1934.

APPENDIX

- A. Fishery Cooperative Marketing Act of 1934.
- B. Part 290 of Title 50 Code of Federal Regulations.
- C. F.R. Coc. 62-8744, August 30, 1962, Proposed Rules of Procedure for Issuance of Cease and Desist Orders by Government.
- D. Procedure for Handling Complaints under the Fishery Cooperative Marketing Act of 1934 (48 Stat. 1213, 15 U.S.C. 521 and 522).
- E. Number of fishery cooperatives on file in NMFS by latest date of financial data, State, and region.
- F. Form No. 2-115 Identifying Fishery Cooperative Associations.
- G. Form No. 2-112 Fishermen's Cooperative Association Survey.
- H. Memorandum of Understanding Between the Department of the Interior (Fish and Wildlife Service) and the Federal Trade Commission Regarding Fishery Cooperative Marketing Practices, April 23, 1959.
- I. Memorandum of Understanding Between the Department of Commerce (National Oceanic and Atmospheric Administration) and the Federal Trade Commission Regarding Fishery Cooperative Marketing Practices.
- J. Anti-Trust Litigation Involving United States Fishermen's Organizations since passage of Fishery Cooperative Marketing Act of 1934 by David W. Windley, Fall 1971, 18 pages.
- K. National Marine Fisheries Service Policy on Cooperatives.
- L. Federal Trade Commission Docket No. 6141, 6368, 6623.
- M. Federal Trade Commission Agreement Containing Consent Order to Cease and Desist.
- N. Draft Memorandum of Understanding Between the Department of Commerce (National Oceanic and Atmospheric Administration) and Department of Agriculture (Farmer Cooperative Service) on Feasibility Studies of Fishery Cooperatives.

[PUBLIC—No. 464—73D CONGRESS]

[H.R. 9233]

AN ACT

Authorizing associations of producers of aquatic products.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That persons engaged in the fishery industry, as fishermen, catching, collecting, or cultivating aquatic products, or as planters of aquatic products on public or private beds, may act together in associations, corporate or otherwise, with or without capital stock, in collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged.

The term "aquatic products" includes all commercial products of aquatic life in both fresh and salt water, as carried on in the several States, the District of Columbia, the several Territories of the United States, the insular possessions, or other places under the jurisdiction of the United States.

Such associations may have marketing agencies in common, and such associations and their members may make the necessary contracts and agreements to effect such purposes: *Provided, however,* That such associations are operated for the mutual benefit of the members thereof, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum and in any case to the following:

Third. That the association shall not deal in the products of non-members to an amount greater in value than such as are handled by it for members.

Sec. 2. That if the Secretary of Commerce shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Commerce may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of

Commerce shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade. On the request of such association or if such association fails or neglects for thirty days to obey such order, the Secretary of Commerce shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all the records in the proceedings together with a petition asking that the order be enforced and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Commerce and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review therein, the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court shall, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer, or agent thereof, engaged in carrying on its business, or on any attorney authorized to appear in such proceeding for such association and such service shall be binding upon such association, the officers and members thereof.

Approved, June 25, 1934.

By Reorganization Plan No. II of May 9, 1939, the functions of the Secretary of Commerce, as expressed in Section 2, were transferred to the Secretary of Interior.

APPENDIX A

§ 281.2

Title 50—Wildlife and Fisheries

official of the country named in the published finding and the certificate must be authenticated with respect to the signature and official position of the person executing the same by a consular officer or consular agent of the United States. Such certificate of authentication shall be attached to the Certificate of Eligibility and be substantially in the following form:

 ----- ss:

 I, -----
 (Name of consular officer or consular agent)
 ----- of the United States of
 (Title)
 America at -----, duly com-
 (Place)
 missioned and qualified, do hereby certify
 that -----
 (Name of foreign official)
 whose true signature and official seal are,
 respectively, subscribed and affixed to the
 annexed certificate, was, on the ----- day
 of -----, 19-----, the date
 thereof, -----
 (Title of foreign official)
 duly commissioned and qualified, to whose
 official acts faith and credit are due.

In witness whereof I have hereunto
 set my hand and affixed the seal of the
 ----- at
 ----- this
 ----- day of -----, 19-----

 (Signature)

 (Name and full title of officer)

(c) If the tuna fish are offered for entry under paragraph (c) of the Certificate of Eligibility, the certificate must be executed by a consular officer or consular agent of the United States and be

accompanied by the declaration(s) required by 19 CFR 10.79. The "Declaration of Master and Two Members of Crew on Entry of Products of American Fisheries," required by 19 CFR 10.79, must contain a further statement as follows: "We further declare that the said tuna fish were caught by us in full compliance with Part 280, Title 50, Code of Federal Regulations, and such other conservation laws and regulations as were applicable at the time the fishing operation was in progress."

§ 281.3 Removal of import restrictions.

Upon a determination by the Bureau Director that the conditions no longer exist which warranted the imposition of import restrictions against the country named in the finding published pursuant to section 281.6, the Bureau Director, with the approval of the Secretary of the Interior, shall publish a finding to such effect in the FEDERAL REGISTER. Effective upon the date of publication of such finding, the prior existing import restrictions therein shall terminate: *Provided*, That for a period of 1 year from such date of publication every shipment of fish in any form of the species subject to regulation or under investigation by the Commission shall continue to be denied entry unless the shipment is accompanied by a certification executed by an authorized official of the country of export and authenticated by a consular officer or consular agent of the United States, certifying that no portion of the shipment is comprised of fish which are of species under regulation and which were prohibited from entry under the prior existing import restrictions.

SUBCHAPTER I—FISHERY MARKETING COOPERATIVES

PART 290—ISSUANCE OF CEASE AND DESIST ORDERS BY THE GOVERNMENT

Sec.	
290.1	Scope of rules.
290.3	Institution of proceeding.
290.8	Complaint.
290.4	Notice of hearing.
290.5	Service of documents.
290.6	Hearing official.
290.7	Intervention.
290.8	Hearing.
290.9	Preliminary decision by hearing official.
290.10	Argument before the Secretary.
290.11	Preparation and issuance of final decision and order.

AUTHORITY: The provisions of this Part 290 issued under sec. 2, 48 Stat. 1213; 15 U.S.C. 522, 1939 Reorganization Plan No. II, 53 Stat. 1433.

SOURCE: The provisions of this Part 290 appear at 31 F.R. 16099, Dec. 15, 1966, unless otherwise noted.

§ 290.1 Scope of rules.

The Act of June 25, 1934 (48 Stat. 1213; 15 U.S.C. 521-522), the functions under which were transferred to the Secretary of the Interior by 1939 Reorganization Plan No. II, hereinafter in these rules referred to as the Act, in section 2 thereof provides a remedy whereby the associations of producers of aquatic products

authorized by section 1 of the Act may be ordered by the Secretary of the Interior to cease and desist from monopolizing or restraining trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof. These rules implement section 2 of the Act by establishing the procedure to be followed by the Secretary of the Interior or his authorized representative, hereinafter referred to in these rules as the Secretary, in the enforcement of the section. For rules governing practice generally before the Department of the Interior see Part 1 of Title 43, Code of Federal Regulations.

§ 290.2 Institution of proceeding.

(a) *Application to institute proceeding.* Any person having any information that an association of producers of aquatic products is monopolizing or restraining trade may file with the Secretary an application requesting the institution of such proceeding as is authorized under the Act. The application shall be in writing, signed by or on behalf of the applicant, and shall include a concise statement of the facts constituting the alleged activities and the name and address of the applicant together with the name and address of the association against which the applicant complains.

(b) *Status of the applicant.* The person filing an application as described in paragraph (a) of this section shall have no legal status in the proceeding which may be instituted as a result of the application, except where the applicant may be permitted to intervene therein, in the manner hereinafter provided, or may be called as a witness, and the applicant's identity shall not be divulged except with the applicant's prior consent or upon court order.

(c) *Who may institute.* If, after investigation of the matter complained of in the application described in paragraph (a) of this section, or upon application of another Federal agency, or after investigation made on his own motion, the Secretary has reason to believe that any association organized under the provisions of the Act is engaging in monopolization or restraint of trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof, he will institute a proceeding. Proceedings will be instituted only upon complaint issued by the Secretary.

§ 290.3 Complaint.

(a) *Service.* The complaint shall be served upon the association by being sent by certified mail with return receipt requested to its principal place of business or by being left with a responsible person at the association's principal place of business.

(b) *Contents.* The complaint shall state in concise terms the allegations of fact which constitute a basis for the proceeding and shall require the association to show cause why an order should not be issued requiring it to cease and desist from the activities alleged therein to be in restraint of trade.

§ 290.4 Notice of hearing.

There shall also be served upon the association a notice of hearing, which shall be attached to the complaint or contained therein, and which shall specify a day and place not less than thirty days after service thereof to appear, introduce evidence, and make arguments to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade.

§ 290.5 Service of documents.

Copies of all pleadings, briefs, memoranda, letters, and other documents filed by or on behalf of any party or which are otherwise submitted to an official conducting any part of the proceeding for consideration in connection therewith, shall be served upon all parties or their representatives in person or by certified mail.

§ 290.6 Hearing official.

The hearing for the purpose of taking evidence and hearing arguments to determine whether an order should be issued requiring the association to cease and desist from monopolization or restraint of trade shall be conducted by a hearing official designated by the Secretary. No person shall be assigned as hearing official who (a) has any pecuniary interest in the matter or business involved in the proceeding, or (b) has participated in the investigation preceding the institution of the proceeding, in the preparation of the complaint, or in the development of the evidence to be introduced in the proceeding.

§ 290.7 Intervention.

Upon written application, interested parties shall be permitted to intervene in

16

the proceedings when the hearing official or the Secretary shall determine that the interests of justice will be served thereby.

§ 290.8 Hearing.

(a) *Departmental counsel.* The case against the association shall be presented by a Departmental counsel appointed for that purpose. The Bureau of Commercial Fisheries shall be responsible for the case against the association and the Bureau shall be considered a party within the purview of these rules.

(b) *Conduct of hearing.* Insofar as feasible, hearings shall be informal. Parties may offer oral and written evidence, subject to the exclusion by the hearing official, in his discretion, of irrelevant, immaterial, repetitious, or hearsay evidence.

(c) *Briefs.* Briefs may be submitted on behalf of interested parties at any time prior to the 30 days after the termination of the hearing.

(d) *Examination of witnesses.* Attention of witnesses shall be invited to 18 U.S.C. 1001. Testimony may be received under oath or affirmation. All witnesses may be examined or cross-examined by the hearing official and by representatives of any party.

(e) *Transcript.* The hearing official shall make provision for a complete transcript of the hearing. A copy of the transcript shall be available to interested parties upon payment of a fee prescribed by the Chief Clerk of the Department of the Interior pursuant to Part 2 of Title 43, Code of Federal Regulations, or pursuant to any applicable Departmental contract covering reporting services.

§ 290.9 Preliminary decision by hearing official.

(a) *Issuance of preliminary decision.* Following the hearing and upon completion of the time allowed for filing briefs, the hearing official shall issue a decision embodying his findings of fact and conclusions of law on all issues as to whether the association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced thereby. The decision of the hearing official shall be made a part of the record and a copy thereof shall be served upon all parties to the proceeding.

(b) *Filing of exceptions.* Within 30 days after service of the decision of the hearing official any party to the proceeding may file with the hearing official exceptions to his decision. This document of exceptions shall set forth separately and specifically each error asserted.

(c) *Transmittal of record.* The hearing official, immediately following the period allowed for the filing of exceptions, shall transmit to the Secretary the entire record of the proceeding.

§ 290.10 Argument before the Secretary.

(a) *Oral argument.* Unless a party has included in the exceptions a request for oral argument before the Secretary or has filed a separate request for oral argument prior to the expiration of the last date for filing such exceptions, the right to such oral argument shall be deemed to have been waived.

(b) *Briefs.* The parties may file written briefs either in addition to oral argument or in lieu thereof.

(c) *Scope of argument.* Except where the Secretary determines that argument on additional issues would be helpful, argument, whether oral or on brief, shall be limited to the issues raised by the exceptions. If the Secretary determines that additional issues should be argued, the parties or their representatives shall be given reasonable notice of such determination, so as to permit preparation of adequate argument on all the issues argued.

§ 290.11 Preparation and issuance of final decision and order.

As soon as practicable after the receipt of the record from the hearing official, or in case further proceedings were had before the Secretary, as soon as practicable thereafter, the Secretary, upon the basis of and after due consideration of the record as a whole, including that of any proceedings before him, shall prepare a final decision and an order based upon the decision. If the Secretary has found that the association is engaged in monopolization or restraint of trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced thereby, the order shall rectify the facts found by him and direct such association to cease and desist from monopolization or restraint of trade. The Secretary shall cause this order to be served upon the association. On the

request of the association, or if it fails and neglects for 30 days to obey such order, the Secretary shall, in accordance with the Act, file in the district court in the judicial district in which the association has its principal place of busi-

ness a certified copy of the order and of all the records in the proceeding together with a petition asking that the order be enforced and shall give notice to the Attorney General and to the association of such filing.

SUBCHAPTER J—CONTINENTAL SHELF

PART 295—LIVING ORGANISMS OF THE CONTINENTAL SHELF

Sec.
295.1 Purpose.
295.2 List of species.

Authority: The provisions of this Part 295 issued under 78 Stat. 196; 16 U.S.C. 1025.

Source: The provisions of this Part 295 appear at 23 F.R. 16114, Nov. 2, 1968, unless otherwise noted.

§ 295.1 Purpose.

The purpose of these regulations is to list those species determined by the Secretary of the Interior, in consultation with the Secretary of State, to constitute a Continental Shelf fishery resource, i.e., living organisms belonging to sedentary species, which at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil of the Continental Shelf.

§ 295.2 List of species.

CRUSTACEA

Tanner Crab—*Chionoecetes tanneri*.
Tanner Crab—*Chionoecetes opilio*.
Tanner Crab—*Chionoecetes angulatus*.
Tanner Crab—*Chionoecetes bahdi*.
King Crab—*Paralithodes camtschatica*.
King Crab—*Paralithodes platypus*.
King Crab—*Paralithodes brevipes*.
Stone Crab—*Menippe mercendria*.

MOLLUSKS

Red Abalone—*Haliotis rufescens*.
Pink Abalone—*Haliotis corrugata*.
Japanese Abalone—*Haliotis kamtschaticana*.
Queen Conch—*Strombus gigas*.

SPONGES

Glove Sponge—*Hippiospongia canaliculata*.
Sheepswool Sponge—*Hippiospongia lachne*.
Grass Sponge—*Spongia graminea*.
Yellow Sponge—*Spongia barbera*.

THE NATIONAL ARCHIVES
LITTERA SCRIPTA MANET
FEDERAL REGISTER

VOLUME 27

1934

NUMBER 170

Washington, Friday, August 31, 1962

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 290]

ISSUANCE OF CEASE AND DESIST ORDERS BY GOVERNMENT

Proposed Rules of Procedure

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the act of June 25, 1934 (48 Stat. 1213, 15 U.S.C. 521-522), and section 4(e) of 1939 Reorganization Plan (53 Stat. 1433), it is proposed to amend Title 50, Code of Federal Regulations, by adding a new Subchapter I as set forth below. The purpose of these amendments is to prescribe rules of procedure governing the enforcement of section 2 of the act of June 25, 1934, which provides for the issuance of cease and desist orders against associations of producers of aquatic products monopolizing or restraining trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendments to the Director, Bureau of Commercial Fisheries, Washington 25, D.C., within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

Part 290, reading as follows, is added to 50 CFR, Subchapter I—Fishery Marketing Cooperatives:

- 290.1 Scope of rules.
- 290.2 Institution of proceeding.
- 290.3 Complaint.
- 290.4 Notice of hearing.
- 290.5 Service of documents.
- 290.6 Hearing official.
- 290.7 Intervention.
- 290.8 Hearing.
- 290.9 Preliminary decision by hearing official.
- 290.10 Argument before the Secretary.
- 290.11 Preparation and issuance of final decision and order.

Authority: §§ 290.1 to 290.11 Issued under sec. 2, 48 Stat. 1213; 15 U.S.C. 522; 1939 Reorganization Plan No. II, 53 Stat. 1433.

§ 290.1 Scope of rules.

The Act of June 25, 1934 (48 Stat. 1213; 15 U.S.C. 521-522), the functions under which were transferred to the Secretary of the Interior by 1939 Reorganization Plan No. II, hereinafter in these rules referred to as the Act, in section 2 thereof provides a remedy whereby the associations of producers of aquatic products authorized by section 1 of the Act may be ordered by the Secretary of the Interior to cease and desist from monopolizing or restraining trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof. These rules implement section 2 of the Act by establishing the procedure to be followed by the Secretary of the Interior or his authorized representative, hereinafter referred to in these rules as the Secretary, in the enforcement of the section. For rules governing practice generally before the Department of the Interior see Part 1 of Title 43, Code of Federal Regulations.

§ 290.2 Institution of proceeding.

(a) *Application to institute proceeding.* Any person having any information that an association of producers of aquatic products is monopolizing or restraining trade may file with the Secretary an application requesting the institution of such proceeding as is authorized under the Act. The application shall be in writing, signed by or on behalf of the applicant, and shall include a concise statement of the facts constituting the alleged activities and the name and address of the applicant together with the name and address of the association against which the applicant complains.

(b) *Status of the applicant.* The person filing an application as described in paragraph (a) of this section shall have no legal status in the proceeding which may be instituted as a result of the application, except where the applicant may be permitted to intervene therein, in the manner hereinafter provided, or may be called as a witness, and the applicant's identity shall not be divulged except with the applicant's prior consent or upon court order.

(c) *Who may institute.* If, after investigation of the matter complained of in the application described in paragraph (a) of this section, or upon application of another Federal agency, or after investigation made on his own motion, the Secretary has reason to believe that any association organized under the provi-

sions of the Act is engaging in monopolization or restraint of trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof, he will institute a proceeding. Proceedings will be instituted only upon complaint issued by the Secretary.

§ 290.3 Complaint.

(a) *Service.* The complaint shall be served upon the association by being sent by certified mail with return receipt requested to its principal place of business or by being left with a responsible person at the association's principal place of business.

(b) *Contents.* The complaint shall state in concise terms the allegations of fact which constitute a basis for the proceeding and shall require the association to show cause why an order should not be issued requiring it to cease and desist from the activities alleged therein to be in restraint of trade.

§ 290.4 Notice of hearing.

There shall also be served upon the association a notice of hearing, which shall be attached to the complaint or contained therein, and which shall specify a day and place not less than thirty days after service thereof to appear, introduce evidence, and make arguments to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade.

§ 290.5 Service of documents.

Copies of all pleadings, briefs, memoranda, letters, and other documents filed by or on behalf of any party or which are otherwise submitted to an official conducting any part of the proceeding for consideration in connection therewith, shall be served upon all parties or their representatives in person or by certified mail.

§ 290.6 Hearing official.

The hearing for the purpose of taking evidence and hearing arguments to determine whether an order should be issued requiring the association to cease and desist from monopolization or restraint of trade shall be conducted by a hearing official designated by the Secretary. No person shall be assigned as hearing official who (a) has any pecuniary interest in the matter or business involved in the proceeding, or (b) has

participated in the investigation preceding the institution of the proceeding, in the preparation of the complaint, or in the development of the evidence to be introduced in the proceeding.

§ 290.7 Intervention.

Upon written application, interested parties shall be permitted to intervene in the proceedings when the hearing official or the Secretary shall determine that the interests of justice will be served thereby.

§ 290.8 Hearing.

(a) *Departmental counsel.* The case against the association shall be presented by a Departmental counsel appointed for that purpose. The Bureau of Commercial Fisheries shall be responsible for the case against the association and the Bureau shall be considered a party within the purview of these rules.

(b) *Conduct of hearing.* Insofar as feasible, hearings shall be informal. Parties may offer oral and written evidence, subject to the exclusion by the hearing official, in his discretion, of irrelevant, immaterial, repetitious, or hearsay evidence.

(c) *Briefs.* Briefs may be submitted on behalf of interested parties at any time prior to thirty days after the termination of the hearing.

(d) *Examination of witnesses.* Attention of witnesses shall be invited to 18 U.S.C. 1001. Testimony may be received under oath or affirmation. All witnesses may be examined or cross-examined by the hearing official and by representatives of any party.

(e) *Transcript.* The hearing official shall make provision for a complete transcript of the hearing. A copy of the transcript shall be available to interested parties upon payment of a fee prescribed by the Chief Clerk of the Department of the Interior pursuant to Part 2 of Title 43, Code of Federal Regulations, or pursuant to any applicable Departmental contract covering reporting services.

§ 290.9 Preliminary decision by hearing official.

(a) *Issuance of preliminary decision.* Following the hearing and upon completion of the time allowed for filing briefs, the hearing official shall issue a decision embodying his findings of fact and conclusions of law on all issues as to whether the association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced thereby. The decision of the hearing official shall be made a part of the record and a copy thereof shall be served upon all parties to the proceeding.

(b) *Filing of exceptions.* Within thirty days after service of the decision of the hearing official any party to the proceeding may file with the hearing official exceptions to his decision. This document of exceptions shall set forth separately and specifically each error asserted.

(c) *Transmittal of record.* The hearing official, immediately following the period allowed for the filing of exceptions, shall transmit to the Secretary the entire record of the proceeding.

§ 290.10 Argument before the Secretary.

(a) *Oral argument.* Unless a party has included in the exceptions a request for oral argument before the Secretary or has filed a separate request for oral argument prior to the expiration of the last date for filing such exceptions, the right to such oral argument shall be deemed to have been waived.

(b) *Briefs.* The parties may file written briefs either in addition to oral argument or in lieu thereof.

(c) *Scope of argument.* Except where the Secretary determines that argument on additional issues would be helpful, argument, whether oral or on brief, shall be limited to the issues raised by the exceptions. If the Secretary determines that additional issues should be argued, the parties or their representatives shall be given reasonable notice of such determination, so as to permit preparation of adequate argument on all the issues argued.

§ 290.11 Preparation and issuance of final decision and order.

As soon as practicable after the receipt of the record from the hearing official, or in case further proceedings were had before the Secretary, as soon as practicable thereafter, the Secretary, upon the basis of and after due consideration of the record as a whole, including that of any proceedings before him, shall prepare a final decision and an order based upon the decision. If the Secretary has found that the association is engaged in monopolization or restraint of trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced thereby, the order shall recite the facts found by him and direct such association to cease and desist from monopolization or restraint of trade. The Secretary shall cause this order to be served upon the association. On the request of the association, or if it fails and neglects for thirty days to obey such order, the Secretary shall, in accordance with the Act, file in the district court in the judicial district in which the association has its principal place of busi-

ness a certified copy of the order and of all the records in the proceeding together with a petition asking that the order be enforced and shall give notice to the Attorney General and to the association of such filing.

FRANK P. BRIGGS,
Assistant Secretary of the Interior.

AUGUST 27, 1962.

[F.R. Doc. 62-8744; Filed, Aug. 30, 1962;
8:46 a.m.]

20

Procedure for Handling Complaints under the Fishery Cooperative Marketing Act of 1934 (48 Stat. 1213., 15 U.S.C.A. 521 and 522)

I. Complaints received by the Department of Commerce.

A. Preliminary investigation undertaken on validity of complaint.

1. Market Research and Services Division, National Marine Fisheries Service (NMFS) shall investigate cooperatively with NMFS Regional Offices and the Office of General Counsel, National Oceanic and Atmospheric Administration (NOAA).
2. Nature of complaint shall be brought to attention of association named in complaint without divulging source of allegation.
3. The association named in the complaint shall not be investigated further nor shall any further action be taken unless the association is engaged in a continuing violation of the Act to the date of the investigation.

B. When actual violation of the Act is found to exist, the following procedure shall be initiated by NMFS:

1. The Director shall serve a formalized complaint upon the association.
 - a. Specific charges shall be stated.
 - b. A notice of hearing shall be given the association specifying the time, date, and place where it may appear and present evidence as to why an order to cease and desist should not be issued against it.
 - c. The association shall have a period of not less than 30 days in which to appear and present this evidence.
2. The evidence presented by the association named in the complaint shall be recorded in writing verbatim and made a part of the official record under rules and regulations prescribed by the Director of NMFS.

3. After the evidence has been presented, the Director shall determine from the evidence and all other facts available whether or not the association's activities are monopolistic or in restraint of trade in interstate or foreign commerce to such an extent as to unduly enhance the price of aquatic products.
 - a. If it is determined that the association is not engaged in actions unduly enhancing price, the Director shall release such determination for public distribution, and no further action will be taken.
 - b. If it is determined that the association is indeed acting to monopolize or restrain trade in interstate or foreign commerce to such an extent as to unduly enhance the price of aquatic products, the Director shall serve upon the association an order reciting the facts found by him, directing it to cease and desist from such monopolization or restraint of trade.
4. If the association fails or neglects to obey the order for a period of 30 days, the Director shall:
 - a. File with the Federal District Court, in the judicial district in which such association has its principal place of business, a certified copy of the order, all of the records in the proceedings, together with a petition asking that the order be enforced.
 - b. Give notice to the Attorney General.
 - c. Give notice to the association of such filing.

II. Complaints received by the Federal Trade Commission.

- A. The Federal Trade Commission, under the Memorandum of Understanding between that agency and the Department of the Interior dated April 8, 1959, has agreed to notify NMFS prior to the initiation of an investigation of any organization then currently listed by the Department of Commerce as a cooperative under the provisions of the Fishery Cooperative Marketing Act of 1934.

- B. Complaints received by the Federal Trade Commission on these associations shall be referred to the Director of NMFS for action according to the following procedure:
1. The Director shall accept the complaint from the Federal Trade Commission.
 2. The acceptance of the complaint shall be acknowledged in writing.
 3. The Director shall initiate action upon the complaint by following the procedure for handling complaints and investigations as prescribed above under IA and B.
 4. The Director shall keep the Federal Trade Commission informed of progress in handling the complaint, actions taken, and final disposition.
 5. Should the investigation of a complaint against an association, referred to the Department of Commerce by the Federal Trade Commission, produce evidence that it is engaged in activities that are prohibited by the antitrust acts, the Director shall inform the Federal Trade Commission of such activities.

III. Appeals of Cease and Desist Orders

- A. An association may file an appeal to have a Cease and Desist Order set aside if new facts or circumstances indicate a need to review the complaint.
1. Notice of intent to appeal must be made after association has been served with a Cease and Desist Order.
 2. A formal appeal with supporting documents of facts must be filed in writing not later than 10 days after the association has been served with the Cease and Desist Order.
- B. When an appeal is filed
1. The Director shall make a preliminary review of the complaint in context with the new facts and if it is found that the appeal has merit he shall:

- a. Direct the Market Research and Services Division in cooperation with the appropriate NMFS Regional Office and the Office of General Counsel to investigate the validity of new facts or circumstance.
- C. Where an appeal is filed and the investigation substantiates that new facts or circumstances exist which justify an appeal, the existing general procedures for handling such appeal within the Office of the Secretary of Commerce shall govern.

APPENDIX E

Number of Fishery Cooperatives, by Latest Date of Financial Data on File in the NMFS, for State and Region.

Region & State	Latest Data of Financial Data on File in NMFS													Total
	Before													
	None	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	
	----- Number of Fishery Cooperatives -----													
FNE														
Maine	8	0	1	0	1	0	0	0	0	0	3	0	1	14
Maryland	2	0	0	0	0	0	0	0	0	1	0	0	0	3
Massachusetts	11	0	0	0	0	0	0	0	0	0	3	0	1	15
Michigan	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Minnesota	2	1	0	0	0	0	0	0	0	0	0	0	0	3
New Jersey	2	0	0	0	0	0	0	0	1	0	1	0	0	4
New York	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Ohio	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Rhode Island	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Total	30	1	1	0	1	0	1	0	1	1	7	0	2	45
FSE														
Arkansas	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Florida	7	0	0	0	0	1	0	0	3	0	0	0	0	11
Kansas	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Louisiana	2	0	1	0	1	1	0	0	1	0	0	0	0	6
South Carolina	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Texas	3	0	0	0	0	0	0	0	0	1	0	0	0	4
Total	14	1	1	0	1	2	0	0	4	1	0	0	0	24
FNW														
Oregon	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Washington	8	6	0	0	0	0	0	0	0	0	0	0	2	15
Total	10	6	0	0	0	0	0	0	0	0	0	0	2	17
FSW														
California	17	5	0	0	1	3	0	0	0	0	0	0	0	26
Hawaii	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Total	18	5	1	0	1	3	0	0	0	0	0	0	0	28
FAK														
	13	3	2	0	0	0	0	0	0	0	0	0	1	19
U.S. TOTAL	85	16	5	0	3	5	1	1	5	2	8	0	4	133

NMFS: Form No. 2-115

Date: _____

Office of Management
and Budget No. 42-R1377
Approval expires: Sept. 30, 1975

UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
Washington, D.C. 20235

IDENTIFYING FISHERY COOPERATIVE ASSOCIATIONS

There will be no disclosure of individual returns. Information obtained by this survey will be used only for statistical purposes. Information for individual cooperatives will be held confidential.

1. Legal name of organization _____
2. Mailing address _____
3. Date organized _____, 19__ . Is it incorporated?

Yes	()
No	()
- IF YES, (a) Date incorporated _____, 19__ .
 - (b) Is it incorporated under:
 - (1) a State fishery cooperative law? ()
 - (2) a general corporation law? ()
4. Type of cooperative:
 - (a) Marketing (fish and shellfish) ()
List main species sold _____
 - (b) Purchasing (marine gear and supplies) ()
List main ones sold _____
 - (c) Collective Bargaining Associations ()
Describe _____
5. What are the requirements for membership in association as to the following:

(a) Purchase of common stock	Number of shares	()
(b) Payment of membership dues	Amount	(\$)
(c) Is membership restricted to fishermen (actual producers)		
	Yes	()
	No	()

IF NO, who may become members - explain. _____
- (d) Other membership requirements: Specify _____
6. Number of members or stockholders (those entitled to vote for directors):
 - (a) Fishermen ()
 - (b) Vessel operators ()

8. Is association authorized to issue capital stock?

Yes ()
No ()

IF YES, (a) Amount authorized \$ _____
(b) Amount outstanding \$ _____
(c) Maximum number of shares of voting stock one member may own _____

9. Is voting on the basis of one vote and no more for each member?

Yes ()
No ()

IF NO, what is the basis for voting? _____

10. Do bylaws limit dividends on capital stock?

Yes ()
No ()

IF YES, state limitation. _____

11. Do bylaws provide for payment of patronage dividends or refunds?

Yes ()
No ()

IF YES, how are these paid?

Cash ()
Certificates ()
Other ()

12. Does cooperative perform marketing (or purchasing) services for non-members?

Yes ()
No ()

IF YES, what percentage of the gross dollar volume does this business represent? ()

13. Please provide us with a copy of ARTICLES OF INCORPORATION, BYLAWS, MEMBER MARKETING AGREEMENT OR CONTRACT, LAST OPERATING STATEMENT, and ANNUAL REPORT.

Name of person giving above information _____
Title _____
Address _____

NMFS Form No. 2-112
Date _____
Interviewer: _____

Office of Management
and Budget No. 42-R1376
Approval expires: Sept. 30, 1975

UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
Washington, D.C. 20235

FISHERMEN'S COOPERATIVE ASSOCIATION SURVEY

There will be no disclosure of individual returns. Information obtained by this survey will be used only for statistical purposes. Information for individual cooperatives will be held confidential.

1. Legal name of organization _____

2. Mailing address _____
(Street, P.O., R.R.)

(City) (State) (Zip Code)
3. Address of branches or receiving stations of the cooperative _____

4. Name and addresses of other organizations of which the cooperative is a member or affiliate _____

5. Type of cooperative:
 - (a) Marketing (fish and shellfish) ()
List main species sold _____

 - (b) Purchasing (marine gear and supplies) ()
List main ones sold _____

 - (c) Collective bargaining associations - Describe: ()

6. Number of members or stockholders (those entitled to vote for directors):
 - (a) Fishermen ()
 - (b) Vessel operators ()
 - (c) Others ()
7. Number of fishing vessels owned by members ()
8. Estimated percentage of membership using facilities of cooperative for:
 - (a) Marketing catches ()
 - (b) Buying supplies ()
 - (c) Collective bargaining ()
9. Date of fiscal year or business year ()
10. Gross dollar volume of business during:
 - (a) Last fiscal year (\$)
 - (b) Current fiscal year (\$)

25

11. Estimated percentage of gross business done with: (a) Members () (b) Nonmembers ()
12. What are the requirements for membership in the cooperative association as to the following: (a) Purchase of common stock Number of shares () (b) Payment of membership dues Amount (\$) (c) Is membership restricted to fishermen (actual producers) Yes () No ()

IF NO, who may become members? Explain: _____

(d) Other requirements - Specify _____

13. Does the cooperative offer its members special services on an assessment or fee basis such as the following:

Service	Fee	Service	Fee
Transportation	\$ _____	Cold Storage	\$ _____
Dock Facilities	_____	Icing	_____
Unloading Facilities	_____	Quick freezing	_____
Handling Equipment	_____	Refueling	_____

14. Other services provided members for which no separate fee is charged.

INTERVIEWER: Complete questions 15 and 16 only if unable to obtain a copy of the current Annual Report to Members, Statement of Financial Condition, and Statement of Operations.

15. FINANCIAL INFORMATION: Please give figures from latest financial statements.

ASSETS:		LIABILITIES:	
<u>Current</u>		<u>Current</u>	
Cash	\$ _____	Accounts Payable	\$ _____
Accounts Receivable	_____	Notes Payable	_____
Stock Inventory	_____	Accrued Taxes	_____
Merchandise Inventory	_____	Other:	_____
Other:	_____		_____
Stock in other assns.	_____		_____
	_____		_____
<u>Fixed</u>		<u>Capital and Surplus</u>	
Land	_____	Membership equity:	_____
Leasehold Improvements	_____	Loans from members	_____
Buildings	_____	Finance Fund Certificates	_____
Equipment	_____	Membership Fees	_____
Dock	_____		_____
Facilities	_____	<u>Capital</u>	_____
Cold Storage	_____	Member Investments	_____
Ice Plant	_____	Capital Stock	_____
Transportation Equipment	_____	Authorized Shares	_____
Other:	_____	(Par Value \$ _____)	_____
	_____	Redeemable Revolving Fund	_____
	_____	Certificates	_____
	_____	Other:	_____
TOTAL ASSETS	\$ _____	Incomplete settlements due	_____
		members	_____
		Less: Advances	_____
		Expenses	_____

		TOTAL LIABILITIES	\$ _____

16. SALES AND OPERATIONS EXPENSE INFORMATION: Please give figures from latest statement of sales operations and cost of doing business.

	TOTAL
<u>Sales</u>	
Pounds	
Value	\$ _____
Cents per pound	_____
<u>Direct Expenses</u>	
Dock facilities	\$ _____
Handling (Dock to plant)	_____
Processing	_____
Quick Freezing	_____
Cold Storage	_____
Transportation	_____
Labor	_____
Materials	_____
Other	_____
Total	\$ _____
Net Return Before Overhead	\$ _____
<u>Overhead</u>	
Salaries:	
Administrative	\$ _____
Labor	_____
Maintenance:	
Docks	_____
Equipment	_____
Office	_____
Building	_____
Other	_____
Utilities	_____
Telephone	_____
Stationery and supplies	_____
Insurance:	
Property	_____
Personnel	_____
Taxes:	
State	_____
Federal	_____
Interest:	
Members	_____
Bank	_____
Other:	
Travel and Entertainment	_____
General Office Postage	_____
Donations	_____
Total	\$ _____
<u>To Fishermen</u>	
Average price per pound	_____
Net return	\$ _____

17. What is the association's primary source of borrowed operating capital?

(a) What are the favorable features of this method of borrowing? _____

(b) The unfavorable features? _____

30

18. If the association is using a revolving capital plan in its financing, what do you consider are the:
- (a) Advantages _____
- (b) Disadvantages _____

19. If the association is not using the revolving capital plan in its financing, are there plans to do so?
- Yes ()
No ()

IF YES, explain: _____

20. If the association markets and handles the catches of members, which method of payment is used:
- (a) POOL PAYMENT PLAN - All catches are pooled according to species and grade, and returns are made to fishermen on the basis of average prices received for each pool. ()
- (b) OUTRIGHT PURCHASE PLAN - Fisherman is paid the current market price at time of delivery. Per pound assessment of _____ cents is deducted to cover expenses and set up adequate reserves. ()
- (c) SOLD FOR FISHERMAN'S ACCOUNT - Cooperative sells catch of fisherman and credits his account with returns from sale less marketing costs and Reserve Account funds. ()
- (d) DIRECT BUYER TO FISHERMAN PAYMENT PLAN - Terms of sale are either arranged by or subject to final approval of cooperative (such as through collective bargaining). ()
- (e) OTHER (specify) _____ ()

21. If the association purchases marine gear and supplies for members, describe pricing method used. _____

22. How many employees are hired full time by the cooperative? ()
part time ()
- (a) Total wages and salary expense in last fiscal year (\$)
- (b) Give usual source for hiring employees: _____
- (c) Estimated percentage turnover of regular employees during last fiscal year: ()
- (d) What was the present manager's previous experience? Explain _____

23. Does cooperative have any of the following fringe benefits for its employees?
- (a) Insurance - Health (), Liability (), Life () ()
- (b) Paid vacation - days or weeks per year _____ ()
- (c) Paid holidays - number per year _____ ()
- (d) Sick leave - days or weeks per year _____ ()
- (e) Bonus or other profit sharing plan ()
- (f) Systematic pay increases for satisfactory performance ()
- (g) Retirement plan ()

24. Is the association planning to expand its program or to increase its area of operations to other marketing or production functions?
- Yes ()
No ()

IF YES, please explain: _____

General Remarks: (INTERVIEWER: Write any other information not covered in replies to questions above)

Name of person giving above information _____
Title _____
Address _____

31

Memorandum of Understanding Between the Department of the Interior
(Fish and Wildlife Service) and the Federal Trade Commission
Regarding Fishery Cooperative Marketing Practices

WHEREAS under the Fishery Cooperative Marketing Act (15 U.S.C.A. secs. 521, 522) certain authority has been conferred upon the Secretary of the Interior regarding issuance of cease and desist orders against fishery cooperative marketing associations found to be in restraint of trade if this restraint of trade unduly enhances prices of fishery products, and

WHEREAS the Federal Trade Commission pursuant to the Federal Trade Commission Act (15 U.S.C. secs. 41, et seq.) and the Clayton Act (15 U.S.C.A. secs. 12-14; 18-19; 21) investigates and prosecutes alleged restraints of trade and unfair trade practices in enforcement of such acts, and

WHEREAS the Department of the Interior has a primary responsibility for the economic development of the nation's fishing industry, and

WHEREAS the Bureau of Commercial Fisheries of the Fish and Wildlife Service, Department of the Interior, undertakes to keep itself informed about practices in the fishery industry and in fish production, and to be aware of trade methods applied by fishery cooperatives and other members of the fishing industry,

NOW, THEREFORE, it is agreed that the Federal Trade Commission will notify the Bureau of Commercial Fisheries prior to the initiation of an investigation of an organization listed with the Bureau as a fishery cooperative marketing association, and the Bureau of Commercial Fisheries will provide the Commission with a current list of such associations and will notify the Commission of any investigation of an organization the Bureau proposes to make pursuant to the provisions of the Fishery Cooperative Marketing Act.

Wesley A. Skelton
Secretary of the Interior

John W. Gussner
Chairman, Federal Trade Commission

APR - 8 1959

Date

April 23, 1959

Date

(32)

Memorandum of Understanding Between the Department of Commerce
(National Oceanic and Atmospheric Administration) and the
Federal Trade Commission Regarding Fishery Cooperative
Marketing Practices

WHEREAS under the Fishery Cooperative Marketing Act (48 Stat. 1213; 15 U.S.C. 521 and 522) such authority having been transferred to the Secretary of the Interior from the Secretary of Commerce by Reorganization Plan II of May 9, 1939, (Sec. 2) and from the Secretary of the Interior under Reorganization Plan No. 4 of 1970, and

WHEREAS the Secretary of Commerce has the authority under said Act to serve a complaint upon any such aquatic association he has reason to believe is acting to monopolize or restrain trade in interstate and foreign commerce to such an extent that the price of any aquatic products is unduly enhanced by reason thereof, and

WHEREAS the Secretary of Commerce is required under the Act to state his charges against such association, give notice of hearing, specify a day and a place for the hearing and prescribe the rules and regulations under which the evidence shall be presented and to issue a cease and desist order if the evidence justifies such action, and

WHEREAS the Federal Trade Commission pursuant to the Federal Trade Commission Act (38 Stat. sec. 717; 15 U.S.C. secs. 41 et. seq.) and the Clayton Act (38 Stat. secs. 730, 731; 15 U.S.C. secs. 12-14, 18-19, 21) investigates and prosecutes alleged restraints of trade and unfair trade practices in enforcement of such acts; and

WHEREAS the Secretary of Commerce has re delegated his authority to administer the provisions of said Act to the National Oceanic and Atmospheric Administration,

23

NOW, THEREFORE, it is agreed that the Federal Trade Commission will refer to the Department of Commerce for appropriate action, cases requiring investigation of organizations listed by the Department of Commerce as a fishery cooperative marketing association. The Department will provide the Commission a current list of such associations; will notify the Commission of the action taken on cases referred by the Commission and will notify the Commission of any investigation of an organization the Department proposes to make pursuant to the provisions of the Fishery Cooperative Marketing Act.

Secretary of Commerce

Chairman, Federal Trade Commission

Date

Date

20

ANTI-TRUST LITIGATION INVOLVING UNITED STATES FISHERMEN'S
ORGANIZATIONS SINCE PASSAGE OF THE FISHERY COOPERATIVE
MARKETING ACT OF 1934

by

David W. Windley

The Washington College of Law
The American University
FEDERAL TRADE REGULATIONS
Fall Semester 1971

25

In June 1934, Congress enacted the Fishery Cooperative Marketing Act of 1934,^{1/} designed to extend the benefits of cooperation to groups of fishermen choosing to organize for such purposes. The law provided that "persons engaged in the fishery industry...may act together in associations, corporate or otherwise, with or without capital stock, in collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged."^{2/}

The purpose^{3/} of the act generally were to entice fishermen to form in cooperative associations to enjoy the benefits of combined purchasing power for vessels, fuel, ice -- and for marketing their products. With special regard to the last, the purpose of providing legislation allowing organization of the cooperatives was to extend to them the anti-trust privileges enjoyed by agricultural cooperatives under the Clayton Act^{3/} and Capper-Volstead Act,^{4/} the first granting a special dispensation from anti-trust laws,^{5/} and the second allowing agricultural cooperatives to have marketing agencies in common.^{6/}

The Act also provided machinery for policing the cooperatives and insuring against monopolization or restraint of trade. The Secretary of Commerce was empowered to issue cease and desist orders upon a finding

"that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof."^{7/}

The issuance of such cease and desist orders is spelled out in 50 C.F.R. § 290, which provides for filing of the complaint, service of documents, notice of hearing, conduct of hearing, argument before the Secretary, and preparation and issuance of final orders. A complaint may be filed by "any person having any information that an association of producers

of aquatic products is monopolizing or restraining trade."^{8/}

A proceeding, however, may be instituted only upon complaint issued by the Secretary. A hearing is required, and Departmental counsel present the case against the association complained of. If a cease and desist order is issued and the association to whom the order is issued fails to abide by the order

after 30 days, the Secretary may turn the case over to the Department of Justice for enforcement, and the facts found by the Secretary shall be prima facie evidence of the conduct complained of.^{2/} In 1962, this authority was transferred to the Secretary of the Interior.

As of 1970, there were 80 fishery cooperatives in the United States with a combined membership of 9,456 fishermen and 6,895 fishing craft. Of these cooperatives, 14 were in New England (1542 fishermen and 1,078 craft), 3 in the mid-Atlantic (90 members and 46 craft), 14 on the South Atlantic and Gulf (919 fishermen and 577 craft), 40 on the Pacific coast (6,482 fishermen and 5,018 craft), 1 in Hawaii (7 fishermen and 7 craft), and 2 in Puerto Rico (42 fishermen and 4 craft). Of these cooperatives, 27 were engaged in marketing and purchasing, 25 in marketing exclusively, 9 in collective bargaining exclusively, 8 in marketing, purchasing, and collective bargaining,^{10/} and 6 non-specified (docking, insurance, production, other).

It might be noted here that since the passage of the Fishery Cooperative Marketing Act of 1934, no cease and desist orders have been issued by the Secretary of Commerce or Secretary of the Interior.^{11/}

This is not to say that the fish business has not been the subject of anti-trust concern, either by the Federal Government, or aggrieved firms

(3)

or individuals with axes to grind against fishery cooperatives or other fishery associations. There is a history of litigation, both civil and criminal, including 2 decisions by the Supreme Court. Without going further at this time, I will make the following comments as a guide to the material to follow:

- (1) Fishermen's cooperatives enjoy, by analogy, the same anti-trust protection as do farmers cooperatives;
 - (2) Due to the nature of most fishermen's cooperatives (individual
-

entrepreneurs and boatowners (usually limited only to sell their products or buy necessities) and the nature of disputes (usually the price of fish), such cooperatives do not enjoy the protection given labor unions under the Norris La Guardia Act;

(3) The protection they enjoy under the Clayton and Capper-Volstead Acts disappears when they deal with non-members to control the price of fish;

(4) Issuance of cease and desist orders by the Secretary of Commerce and the Secretary of the Interior is not an exclusive remedy for violations of anti-trust laws, and the lack of such orders being issued does not act to bar anti-trust actions by the Department of Justice or aggrieved persons.

Generally, the industry can be divided into three groups of fishermen.

The first group comprises "company" fishermen employed as crew members of large fishing boats owned and operated by the canners, processors, or other buyers of fish. These fishermen comprise a relatively small part of the labor force. Their wages are based on predetermined "shares" of the total value of the catch. They are unable to realize their income until a price is determined for the fish and the catch delivered. The shares and fish prices are established basically on a piece-rate system previously bargained for by the boatowner and the buyer in the contract. Terms of employment (usually the duration of a fishing season) also are specified in the contract.

The second group are the independent fishermen-boatowners who operate their own vessels and supply the buyer. The majority of these independents also comprise a small percentage of the labor force. Traditionally, they make agreements whereby they bind themselves to fish exclusively for a particular buyer for the duration of a season. The contract includes the type of fish to be caught and the quality of the fish to be accepted under particular circumstances. The smaller independents generally join with the "share" fishermen (the third group) in establishing these conditions collectively.

The third group is the "share" fishermen who serve as crew members on the independent boats. Share fishermen are like the "company" fishermen (first group) in that their earnings are based on predetermined shares of the value of the catch. In dealing with the owners of the boats, these fishermen may jointly establish the size of their shares by collective bargaining between the union and the individual boat-owner.^{12/}

The very nature of the industry, however, puts the fishermen at an immediate disadvantage. Usually a fisherman, or fishermen, have few choices of buyers. In many, if not most, fishing ports the buyers are the single local canners, packers, and other processors, who traditionally try to keep prices low as possible. Fishermen, with only one or perhaps two or three buyers, sell their catch at the price set by a buyer or do not sell at all. Fishermen, in an effort to combat this, have organized in an effort to deny a buyer access to fish if he does not pay a price acceptable to fishermen. Prior to passage of anti-trust legislation, the industry was characterized by strong fishermen's unions on one hand,

(4)

-5-

and strong buyer (canner, wholesales, processer) associations on the other.^{13/}

By the mid to late 1920's, Federal courts sitting in equity sought completely to control any moves on the part of the fishermen to organize.^{14/}

The courts determined that the fisherman was an independent employer in business only for himself, and that as an employer he could hire other fishermen to crew his boat. The sole interest of the fishermen was concluded to be to make a profit by demanding a high price for fish from the buyer. The courts felt that if the fishermen organized, either on a cooperative basis or as a union, they would have a monopoly over the supply of fish and eventually wipe out the buyers through price fixing. The courts regarded the buyers' position in the following manner: The buyer had the plants for processing and canning fish. His supply of fish depended on his ability to barter. He was working at a disadvantage in that he was operating against the monopolistic control of the supply and price of fish by the employer-fishermen.^{15/} The courts further held that the fishermen, by establishing and controlling the price of fish were acting in restraint of trade, thereby violating the Sherman Anti-Trust Act. Such decisions were effectual in hindering the economic position of the fishermen. Every time the fishermen asked for an increase in the price of fish, threatening to strike if no gains were made, injunctions issued against the fishermen on the grounds that their strike was interfering with the property rights of the buyer and/or in restraint of trade. The injunctions prohibited strikes. Any fisherman not abiding by the

injunction was acting in contempt of court and sentenced to jail.

The eagerness of the courts to enjoin fishermen strikes severely limited their right to strike.^{16/}

The Fishery Cooperative Marketing Act was an attempt to eliminate this problem, and allow fishermen to organize for marketing of their products without subjecting themselves to prosecution for violation of anti-trust laws. The entrusting to the Secretary of Commerce the supervision of such cooperatives was "to see that they do not abuse this privileged exemption by unduly enhancing the price of any aquatic product by reason of their association."^{17/}

relevant

The first^{18/} case to be decided after the passage of the Fishery Cooperative Marketing Act was Columbia River Packers Assn. v. Hinton, a 1939 case between a salmon canner and a fishermen's union. This case eventually went to the Supreme Court on appeal, and produced a reversal of the Appellate court's finding that fishermen's unions engaging in price fixing were entitled to exemption from anti-trust prosecution under the Norris-La Guardia Act.

In this case, the controversy arose over a requirement that the defendant union (which had as members 90% of the troll fishermen off the northwest U.S.) imposed on all packers and canners contracting with it, that they not buy fish from fishermen not members of the defendant union. To this end, the union's constitution and by-laws obligated union members not to sell fish to packers or canners not under contract with the union. Towards the end of the 1938 fishing season, independent fishermen tried to sell fish to the plaintiff, but were informed the plaintiff could not buy from them because

42

of the exclusive clause in the contract with the defendant. These later fishermen threatened the plaintiff with criminal prosecution and civil suits under Federal anti-trust laws if the plaintiff did not buy their fish. Faced with trouble from both directions - loss of fish supply from the defendant if it refused to sign the exclusive clause, and faced with suit from the independent fishermen if it did sign, the plaintiff brought an action at the beginning of the 1939 fishing season, seeking (1) to enjoin the defendant from interfering with the plaintiff's purchase of fish from any source, (2) invalidation of the exclusive clause, and (3) treble damages for losses occasioned by defendant's conduct.

The defendant's primary defense was that (1) the issue was a labor dispute and therefore not subject to injunctions under the Norris-La Guardia Act, and (2) that it was a trade association formed under the aegis of the Fishery Cooperative Marketing Act, and as such any determination as to its monopolistic activities was the exclusive prerogative of the Secretary of Commerce. The Court rejected both contentions. With regard to the contention that a "labor dispute" was involved, the court noted that the coverage of the Norris-La Guardia Act extended only to "terms or conditions of employment", which were not involved in the case. The court likened the members of the defendant union to "producers, as cattlemen, grain growers, poultry raisers and orchardists",^{19/} rather than members of a union in the commonly understood sense. The court noted that the union was^a cooperative marketing association, and that the law of cooperative

42

marketing rather than labor law would apply in the dispute. The court noted that the Fishery Cooperative Marketing Act was modelled on the Capper-Volstead Act,^{20/} and rejected the contention that the cease and desist procedure provided for in the Act was exclusive, relying on U.S. v. Borden,^{21/} a 1939 Supreme Court decision which struck down the claim of a farmer's cooperative association that the cease and desist procedure under the Capper-Volstead Act, authorizing the Secretary of Agriculture to issue cease and desist orders when cooperatives were found to be monopolizing or restraining trade, constituted the exclusive remedy.^{22/}

The court of its own raised the question, "in behalf of the consuming public, whose interests are paramount in determining any controversy arising under the Anti-Trust laws... In any year when defendant's members did not 'choose to fish', how would the consuming public get its needs of salmon, tuna, and other marine products from North Pacific waters?... If an exclusive and monopolistic arrangement, as here insisted on, can be legally made as to fish, it can be made as to milk, as to meat, and as to other necessities of life."^{23/}

The court also rejected the defendant's claim that it was analogous to a closed shop in industry, and held the exclusive clause in the contract in restraint of trade and void. The conduct of the defendant was summarized as condemned by all three criteria in the Apex Hosiery v. Leader^{24/} case in that it monopolized the supply, controlled its price, and discriminated between would-be purchasers. Treble damages were allowed and injunction granted.

On appeal,^{25/} the finding that the action of the defendant did not constitute a labor dispute was denied on the ground that the trial court too narrowly construed the "terms or conditions of employment" in the Norris-La Guardia Act. The appellate court held the "terms

or conditions of employment" to extend to contracts for the purchase of fish, and said the trial court was without jurisdiction to hear the case. The Supreme Court, however, reversed the appellate court, holding that the issue present did not constitute a labor dispute under the Norris-La Guardia Act.

"The controversy here is altogether between fish sellers and fish buyers. The sellers are not employees of the petitioners or of any other employer, nor do they seek to be. On the contrary, their desire is to continue to operate as independent businessmen, free from such controls as an employer might exercise...For, the dispute here, relating solely to the sale of fish, does not place in controversy the wages or hours^{26/} or other terms and conditions of employment of these employees."

On remand, the appellate court held that the dispute was not within the protection of the Norris-La Guardia Act.^{27/}

While the previous case was being appealed, another treble damages suit was being litigated further south in the U.S. District Court for the Northern District of California. In *Manaka v. Monterey Sardine Industries*,^{28/} a Nisei fishermen from San Pedro sought damages from a fisheries cooperative which he claimed was conspiring to restrain him from fishing and from marketing his products. The defendant, a cooperative organized under the Fisheries Cooperative Marketing Act, marketed all the fish caught by its members and others in the Port of Monterey, and by negotiation with the canners and unions in the area, set the price at which fish were to be sold. The contracts with the canners provided that the canners would buy fish only from the boats which fished for the cooperative, and provided that the cooperative would assign vessels to fish for each cannery. If a canner wished to have an "outside" vessel, i.e., not a vessel of the cooperative, fish for him, one vessel would be subtracted from each

number assigned to him from the cooperative for each "outside" vessel fishing; also, the other vessels were not supposed to continue fishing if an outside boat fished for a canner.

The cooperative would not buy fish from the plaintiff, nor would any of the cannerys. The court found that as a result of these tactics, the plaintiff could not fish in Monte rey and that he suffered damages as a direct result of these acts. The situation was distinguished from the previous case as not involving a labor dispute because the issue arose as a dispute between the cooperative and an individual, and not between an employer and a union (the Columbia River case had been reversed on appeal when this case was heard, but the Supreme Court had not reversed the appellate court).

The court noted that the cooperative did, by virtue of its contracts with unions, exercise monopolistic control over the business of fishing in the area, and that the Secretary of Commerce ^{had not} issued a cease and desist order did not mean that the conduct complained of did not exist in violation of the Fishery Cooperative Marketing Act.

In ⁱⁿ 1947, *Hawaiian Tuna Packers v. International Longshoremen's and Warehousemen's Union*, ^{29/} treble damages were again allowed a canner for damages occasioned by fishermen uniting to strike and thereby deny him fish for his cannery after his failure to accept their dictated price.

The dispute grew out of a meeting between representatives of a recently organized fishermen's union and the plaintiff, whereby the defendants demanded that the plaintiff buy fish at their price, telling him also that since he had a monopoly on the sale of tuna

46

in the area, he could similarly raise his prices. After the plaintiff refused, he received a letter informing him that the issue had been considered and that the fishermen "by secret referendum ballot" decided they would not crew fishing vessels delivering to his plant. Other vessels attempting to deliver to the plaintiff were coerced.

Citing the Columbia River case, the court found that the conduct constituted a combination and conspiracy to fix prices and an unreasonable restraint of trade in violation of the Sherman Anti-Trust Act. The court said that the dispute did not involve a labor dispute any more than did the Columbia River case, in that the issue was the price of fish. The court found also that the union was not entitled to the protection of the Norris-La Guardia Act because its members had conspired with their employers, the vessels owners, in order to force the canner to pay a higher price for fish, thus the dispute was not solely among workers on one side and an employer on another.

As for the claim that the fishermen were entitled to protection under the Fishery Marketing Cooperative Act, the court noted that the union members involved were all fishermen working on boats owned by others, and thus would not be able to form their own cooperative for marketing fish. The court refused to accept the union's contention that the plaintiff, a canner with a monopoly on the sale of fish in the area, was stopped by the clean hands doctrine.

A pair of criminal cases involving the Atlantic Fishermen's Union of New Bedford, Mass., in 1952 and 1956 upheld the earlier civil decisions rejecting the defenses that (1) the court was without jurisdiction in that the dispute in issue was a labor dispute and as such protected by the Norris-La Guardia Act, and (2) the issuance of cease and desist orders under the Fishery Cooperative Marketing Act was the exclusive prerogative of the Secretary of the Interior. In Atlantic Fishermen's Union v. U.S., ^{30/} defendants were under indictment for violation of criminal provisions of the Sherman Anti-Trust Act; their defenses were curtly rejected in a two column opinion. In Mellugh v. U.S., ^{31/} the court found that where a union conspires with other organizations to monopolize or restrain trade, it enjoys no protection under the Fishery Marketing Cooperative Act even if applicable or from anti-trust laws generally. The court noted that the defendant for several years had conspired to limit the sale of fish, to limit the amounts entering commerce, and to coerce non-cooperating dealers. The court noted that if it had not been for the defendant's illegal restraints, a "much greater" volume of scallops and other fish would have been brought into and sold in New Bedford. ⁴¹ The most recent case reported is Gulf Coast Shrimpers and Oystermans Assn. v. U.S., ^{32/} a 1956 criminal prosecution for violation of the Sherman Act. The association was a corporation organized under the laws of Mississippi. Almost all fishermen landing shrimp and oysters in Mississippi belonged to the association. By agreement among themselves, association members were not permitted to sell their shrimp and oysters below prices set by the association, and neither

46

fishermen nor dealer-members were permitted to buy shrimp or oysters from a fisherman not in good standing with the association. Out of State and non-member fishermen who tried to sell their shrimp and oysters to processors and canners were threatened and sometimes subjected to violence; processors who attempted to buy shrimp and oysters from non-association sources were picketed. The prices were determined earlier by the entire membership at meetings, and later by a 9-member "price control committee" which met for the sole purpose of setting prices. Dealers and processors sometimes attended the meetings of the price control committees to obtain a reduction in the price of shrimp and oysters.

The court found these to be manifest restraints of trade in violation of the Sherman Act, and found no protection for the association under the Norris-La Guardia Act or the Clayton Act. The issue in contest, the price of fish, did not constitute a labor dispute.

Also, the fact that the fishermen had conspired with dealers, i.e., non-labor groups, to set the price of fish eliminated any protection they might otherwise have had under the Norris-La Guardia and Clayton Acts. As for the association's claim that it was entitled to protection under the Fishery Cooperative Marketing Act, the court held that the association did not act as a marketing agency for its members except in fixing the prices to be paid for shrimp and oysters; the members sold their shrimp and oysters directly to dealers. The court also said that when the association undertook to exclude from the market all persons not buying and selling in accordance with its fixed prices, it exceeded whatever protection it might have enjoyed under the Fishery Cooperative Marketing Act.

(19)

In addition to the above, two other cases have been brought to my attention, but other than the citations as given (U.S.A. v. Columbia River Fishermen's Protective Union in 1946, and U.S.A. vs. Local 36 of the International Fishermen and Allied Workers of America, et al, 1950)^{33/} appear nowhere else in the sources I have utilized (West's Decennial Digests, CCH, ALR, CJS, etc.) As commented upon in Miss Trutanic's paper, the negotiated prices agreed to between fishermen and canners were struck down as violative of the Sherman Act, with both parties penalized for conspiracy to fix prices in restraint of trade.

In 1962, the Federal Trade Commission "investigated" the possible restraint of trade implications presented by the joint marketing activities of two northwest fishermen's cooperatives, Northwest Trawlers, Inc., and the Fishermen's Marketing Assn. of Washington, Inc. After discussions between the Bureau of Commercial Fisheries and the Commission, however, in which it was claimed for the cooperatives that they did not constitute independent parties for purposes of conspiracy provisions of sections 1 and 2 of the Sherman Act, per Sunkist Growers, Inc., v. Winckler,^{34/} and U.S. v. Maryland Cooperative Milk Producers, Inc., and Maryland and Virginia Milk Producers Assn. Inc.,^{35/} the Commission apparently dropped its "investigation."^{36/}

As a final commentary, it might be noted that the Dept. of Justice has questioned portions of draft legislation now being prepared to implement the Geneva Convention on Fishing and Conservation of the

Living Resources of the High Seas,^{37/} which would authorize the Secretary of Commerce to utilize "economic factors" in implementing conservation regulations.

With regard to the provision appearing in the draft legislation,

"In making any determination as to appropriate conservation measures, the Secretary may take into account relevant economic factors",

the Dept. "would advise adding at the end of that sentence, 'and shall consider whether such conservation measures may unreasonably limit competition.' We believe such language is needed to make clear that the draft bill does not create or authorize any antitrust exemption. This consideration might, for example, lead to regulations limiting total catches...rather than catches by individuals."^{38/}

(5)

FOOTNOTES

1. Act of June 25, 1934 (48 Stat. 1213; 15 U.S.C. 521-522)
2. §1
3. 38 Stat. 731, 15 U.S.C. 17
4. 48 Stat. 388, 7 U.S.C. 291
5. §6
6. §1
7. §2
8. §290.2a
9. §§290.3-290.11, generally
10. Dept. of Commerce, Fisheries of the United States, 1970, P. 72
11. No such comment has been found in the literature, and my diligent efforts have failed to find record or evidence of any such orders being issued, nor even having been seriously considered.
12. M. Trutanic, Anti-Trust for the Sake of Monopsony, unpublished paper undated, pp. 3-4 in my personal files. The paper is a review of anti-trust law in the California tuna industry, and was prepared for Miss Trutanic's graduate studies in economics at Georgetown University. Miss Trutanic's family owns tuna fishing vessels and fish processing plants in California, and she has taken a special interest in reporting on the labor problems in the fishing industry. She currently is an economist with the Environmental Protection Agency, Washington, D.C., specializing in problems arising from pollution caused by fish processing.
13. Id., p.1
14. J. Crutchfield, Collective Bargaining in the Pacific Coast Fisheries: The Economic Issues, 8 Industrial and Labor Relations Review 4 (1947)
15. J. Veatch, Employer and Employee Relationships in the Columbia River Fishing Industry, U. of Wash. 1943
16. Id.
17. Proposed Policy Statement for Guidance of the Fishery Cooperative Section, attachment to letter from R. Lavell, Chief, Fisheries Cooperatives Section, Bureau of Commercial Fisheries, to C. Butler, Assistant Director for Industrial Research, Bureau of Commercial Fisheries, Oct. 7, 1963
18. 34 F. Supp. 970 (D. Ore. 1939)
19. 34 F. Supp. 974

51

20. 34 F. Supp. 974

21. 308 U.S. 188.

22. It should be noted, however, that Borden was decided after this case. This is explained as follows: "The opinion in this case was filed in preliminary form without annotations on May 26, 1939." (Note: Borden was decided Dec. 4, 1939.)

23. 34 F.Supp. 975

24. 310 U.S. 469 (1940)

25. Hinton v. Columbia River Packers Assn., 117 F. 2d 310 (9th Cir. 1941)

26. Columbia River Packers Assn. v. Hinton, 315 U.S. 143 (1942) at 147

27. Hinton v. Columbia River Packers Assn., 131 F.2d 88 (9th Cir. 1942)

28. 41 F. Supp. 531 (N.D.Cal. 1941)

29. 72 F. Supp. 562 (D. Hawaii 1947)

30. 197 F.2d 519 (1st Cir. 1952)

31. 230 F. 2d 252 (1st Cir. 1956)

32. 236 F. 2d 658 (5th Cir. 1956)

33. Trutanic, p. 12.

34. 370 U.S. 19 (1962)

35. 145 F. Supp. 151 (D.D.C. 1956)

36. Letter from R. Wilson, Chief, Div. of Trade Restraints, F.T.C., to W. Stolting, Chief, Branch of Economics, Bureau of Commercial Fisheries, Sept. 10, 1962.

37. T.I.A.S. 5969

38. Letter from R. Kleindeinst, Deputy Atty. General, Dept. of Justice, to G. Shultz, Director, O.M.B., Oct. 1, 1971, p.4.

33

National Marine Fisheries Service

Policy on Cooperatives

To maintain continuous advancement for the fishing industry within a growing society, the 73rd Congress enacted the Fishery Cooperative Marketing Act of 1934. The Act enables fishermen to mutually agree on the conditions that specify the sale of their products according to marketing contracts, without offending current antitrust laws. The Act states that "persons engaged in the fishery industry, as fishermen, catching, collecting, or cultivating aquatic products, or as planters of aquatic products on public or private beds, may act together in associations, corporate or otherwise, with or without capital stocks, in collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged."

The National Marine Fisheries Service administers provisions of the Act and develops policies to aid fishermen who desire improved means to help themselves through group action.

The National Marine Fisheries Service requires Fishery Cooperatives to abide by the provisions that...


- no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein;
- the association shall not deal in the products of non-members to an amount greater in value than such as are handled by it for members;

351

if the Secretary of Commerce shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect.

It is the intention of the National Marine Fisheries Service to uphold these laws and in addition, support Fishery Cooperatives in their desire to further conservation by enhancing the protection and full utilization of aquatic resources. Contributions by the National Marine Fisheries Service toward conservation are intended to help Cooperatives in attaining efficient and orderly marketing by assisting them in...

obtaining leases of lots for fish-houses,
purchasing surplus war material,
holding elections of officers,
writing By-Laws and Articles of Incorporation,
giving technical advice and assistance,
establishing accounts and books for the cooperatives,
aiding in fisheries loans for vessels, gear, and research, etc.



Therefore, I hereby direct:

(1) the Chief of each Division in the Service to:

re-examine his programs each year and, where necessary, reorganize them to carry out the full intent of the law and Service policy so as to offer maximum encouragement to the growth and development of sound cooperatives; and to report each year on such redirection of programs as he has taken in accordance with this policy and continuing efforts to encourage cooperative growth and development.

(2) the Associate Directors to analyze these reports and recommend to me such action as they believe is necessary to effectively enforce this policy.

Philip M. Roedel
Director

56

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of _____

DOCKET NO. _____

AGREEMENT CONTAINING
CONSENT ORDER TO
CEASE AND DESIST

The agreement herein, by and between _____

_____, respondent in Docket _____,
by its duly authorized officer and attorney, and _____
_____, counsel supporting the complaint,
subject to approval by the Bureau of Litigation, Federal
Trade Commission, is entered into in accordance with
Section 3.25 of the Rules of Practice and Procedure of the
Commission. In accordance therewith, the parties hereby
agree that:

1. Respondent _____, is a
corporation existing and doing business under and by virtue
of the laws of the State of _____, with its
office and principal place of business located at _____
_____ Street, in the City of _____,
State of _____.

2. Pursuant to the provisions of the _____
_____ Act, the Federal Trade Commission,
on _____, 19 _____, issued its complaint in this
proceeding against respondent (s), and a true copy was

thereafter duly served on respondent(s).

3. Respondent(s) admit(s) all the jurisdictional facts alleged in the complaint and agree(s) that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

4. This agreement disposes of all of this proceeding as to all parties except as specified below

5. As to that part of this proceeding which is disposed of by this agreement, Respondent(s) waive(s):

- (a) Any further procedural steps before the hearing examiner and the Commission;
- (b) The making of findings of fact or conclusions of law; and
- (c) All of the rights it (they) may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This agreement is for settlement purposes only and does not constitute an admission by respondent(s) that it (they) has (have) violated the law as alleged in the complaint.

9. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent(s). When so entered, it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

ORDER

Signed this day of , 19 .

(NAME OF RESPONDENT CORPORATION)

By _____, President

(Street)

(City and State)

Attorney for Respondent(s)

APPROVED:

Counsel Supporting Complaint

Assistant Director,
Bureau of Litigation.

Director,
Bureau of Litigation.

1/27/72

APPENDIX N

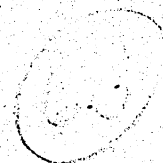
Memorandum of Understanding Between the Department of Commerce
(National Oceanic and Atmospheric Administration) and
Department of Agriculture (Farmer Cooperative Service)
on Feasibility Studies of Fishery Cooperatives

WHEREAS, The Department of Commerce, through its National Oceanic and Atmospheric Administration, is the Federal Agency having primary responsibility for the welfare of the Nation's commercial fishing industry, and

WHEREAS, The Secretary of Commerce administers the Fishery Cooperative Marketing Act (48 Stat. 1213; 15 U.S.C. 521 and 522) such authority having been transferred to the Secretary of the Interior from the Secretary of Commerce by Reorganization Plan No. 2 of May 9, 1939 (Sec. 2) and from the Department of the Interior under Reorganization Plan No. 4 of 1970, and

WHEREAS, The food processing industry is expanding into integrated firms covering both agricultural and fishery products which are forming joint ventures with cooperatives of producers, and

WHEREAS, The Farmer Cooperative Service does research that cooperatives and others join to improve the effectiveness of producer-owned businesses and provides technical and advisory assistance to cooperative management on specific problems of organization and operation, and



WHEREAS, it would appear advisable and the most economical procedure for the Department of Commerce to utilize the Department of Agriculture's Farmer Cooperative Service in the event that agricultural cooperatives consider integrating into the fishery area,

IT IS HEREBY agreed in order to avoid uneconomical and duplicate activity in feasibility studies of cooperatives engaged in the marketing of fishery products that the Department of Commerce will refer to the Farmer Cooperative Service requests for feasibility studies of the cooperative marketing of fishery products by agricultural cooperatives,

WHEREAS, the Farmer Cooperative Service has appropriate personnel and services available to it for conducting feasibility marketing studies, and it is further

IT IS FURTHER HEREBY AGREED that the following procedure shall apply to the handling of such requests:

I. The Farmer Cooperative Service shall advise the Department of Commerce when agricultural cooperatives are considering entering the fishery marketing area,

II. The Department of Commerce shall request the Farmer Cooperative Service to conduct feasibility studies of fishery cooperative marketing firms, the Department of Commerce shall transfer sufficient funds for the financing of these

feasibility studies to the Farmer Cooperative Service as mutually agreed between the two organizations, and the Department of Agriculture shall make the feasibility studies of fishery marketing cooperatives available to the Department of Commerce.

Secretary of Commerce

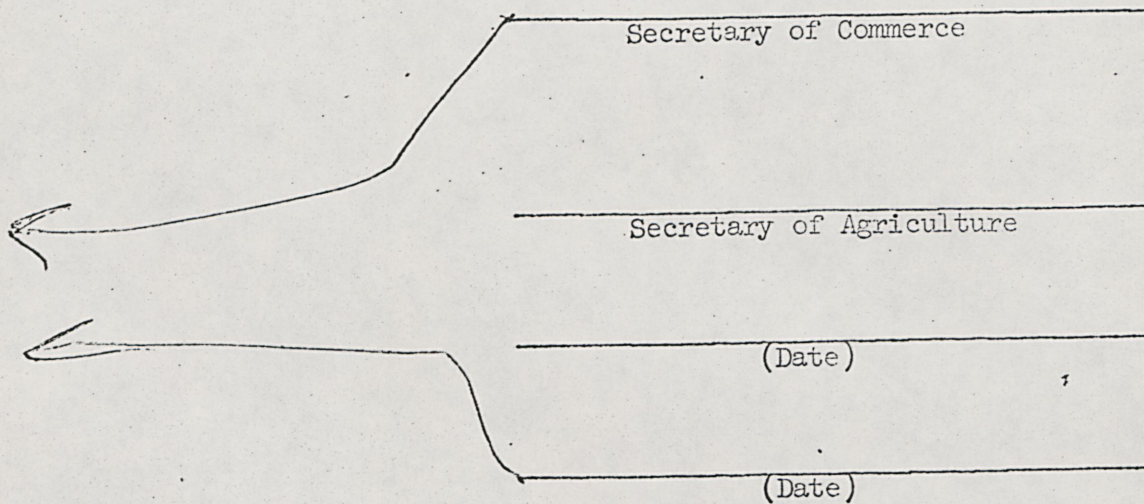
Secretary of Agriculture

(Date)

(Date)

62

feasibility studies to the Farmer Cooperative Service as mutually agreed between the two organizations, and the Department of Agriculture shall make the feasibility studies of fishery marketing cooperatives available to the Department of Commerce.



62

10