



**DEPARTMENT OF JUSTICE**  
Antitrust Division

**JOEL I. KLEIN**

*Assistant Attorney General*

---

*Main Justice Building*  
*950 Pennsylvania Avenue, N.W.*  
*Washington, D.C. 20530-0001*  
*(202) 514-2401 / (202) 616-2645 (f)*

[antitrust@justice.usdoj.gov](mailto:antitrust@justice.usdoj.gov) (internet)  
<http://www.usdoj.gov> (World Wide Web)

February 29, 2000

Charles E. Yates, Esq.  
120 Lakeside Avenue  
Suite 230  
Seattle, Washington 98122

Dear Mr. Yates:

This is in response to your request on behalf of the Offshore Pollock Catchers Cooperative (“OPCC”) and its members<sup>1</sup> for the issuance of a business review letter pursuant to the Department of Justice’s Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department of Justice’s antitrust enforcement intentions with respect to a proposed joint harvesting agreement in which OPCC’s members would allocate amongst themselves the fixed quota of Bearing Sea/Aleutian Island (“BS/AI”) Alaskan Pollock allotted to the members as a group by the United States Government under the American Fisheries Act (“AFA”) and regulations thereunder.

The United States Government, for environmental and economic reasons, has determined to limit the amount of certain species of fish that may be harvested from United States waters in a given year. This conservation policy is administered by the Department of Commerce in a program that has substantial private industry participation. An annual harvest quota has been established for Alaskan Pollock caught in the “BS/AI” waters. In addition to determining the maximum amount of BS/AI Alaskan Pollock that may be harvested, the regulatory program divides the total quota between three groups. Effective January 1, 1999, the American Fisheries Act allocates 10% of the total quota to Community Development Quota Groups.<sup>2</sup> The remaining ninety

---

<sup>1</sup> OPCC’s members are: American Seafoods Company, Harvester Enterprises, Inc., Forum Star, Inc., Neahkahnie Fisheries, Inc., Muir Milach, Inc., Tracy Anne, Inc. and Sea Storm, Inc.

<sup>2</sup> The “CDQ” Groups are Western Alaskan Native villages that receive an allocation as part of an economic development program.

percent is divided between “Mothership” processors (ships that have on-board processing capabilities but do not catch the fish) (ten percent), vessels that catch and process their own fish on-board (“catcher/processors” or “C/Ps”), (forty percent), and on-shore processing plants (fifty percent). The statute further specified that 8.5 percent of the 40 percent allocated to the catcher-processors shall be reserved for catcher vessels named in Section 208(b) of the AFA. OPCC’s members own all of the catcher vessels that qualify under Section 208(b) of the Act. Entry into the Alaskan Pollock fishery is limited. Licenses were issued to qualifying vessels at a prior qualifying date and are transferable.

Under the regulatory plan, the entire sub-allocation of each group of processors may be harvested by each licensed participant. This is referred to as an “olympic” system because it provides each individual processor with the incentive to harvest as much as possible of its sector’s total allotment as fast as it can (any amount not harvested by one member of the group will be lost to other members of the group).

OPCC and its members assert that their proposal to sub-allocate the quota for the catcher vessel groups amongst all the licensed catcher vessels will allow them to avoid the inefficiencies encouraged by the “olympic” system. By removing the urgency from their harvesting, they claim that they will be able to “maximize the value of product obtained from the fish”, and reduce the amount of incidental by-catch of other fish species that the Government seeks to protect.

Pollock is used to produce a number of different products. Historically, the largest volume product has been “surimi”, a protein paste made by repeatedly macerating and washing the flesh of the fish to remove all water soluble fats and other impurities, and then blending in certain cryoprotectant compounds such as sorbitol. Pollock is also used to produce fillet products of two types: “deep skinned”, which is a fillet with both the outer skin and the immediately adjacent fat layer removed, and the standard fillet, which has only the outer skin removed.

In 1997, approximately 4 million metric tons of Alaskan Pollock was harvested on a worldwide basis. United States Alaskan Pollock production is primarily distributed into the Southeast Asian market (the vast majority as surimi), and secondarily distributed into the United States, half fillets and half surimi. Russian Alaskan Pollock production is primarily distributed into Russia and Asia with a relatively small amount being distributed into the United States as fillets. Chinese, Japanese and Polish Alaskan Pollock production is primarily distributed into the Asian market, secondarily into Europe, and includes a relatively small amount of fillets for United States consumption.

The proposed Agreement affects only harvesting activity; it allocates the fixed annual catcher vessel quota among all the members of that group. The proposed collective activity does not extend to processing, marketing or sales of any of the Members' production.

On the basis of the information and assurances that you have provided to us, it does not appear that the proposed elimination of the olympic system race to gather the governmentally-fixed quota of Alaskan Pollock for the catcher vessels would have any incremental anticompetitive effect in the regulated output setting in which the harvesting agreement would take place. The Department of Justice has previously concluded that reliance on an olympic race system to gather a fixed quota of fish "is both inefficient and wasteful" because it is likely to generate "inefficient overinvestment in fishing and processing capacity."<sup>3</sup> From a consumer perspective, the harvesting agreement does not reduce the output of processed Alaskan Pollock or the end products into which it is incorporated -- e.g., surimi. On the contrary, if the Applicant's assertion that "haste makes waste" is true, then eliminating the race will increase processing efficiency and concomitantly the output of Alaskan Pollock products. Since the prices paid for Alaskan Pollock products by consumers will be determined by the intersection of supply and demand for those products, elimination of the race to gather an input whose output is fixed by regulation seems unlikely to reduce output or increase price under any likely scenario.

To the extent that the proposed agreement allows for more efficient processing that increases the usable yield (output) of the processed Alaskan Pollock and/or reduces the inadvertent catching of other fish species whose preservation is also a matter of regulatory concern, it could have procompetitive effects.

For these reasons, the Department is not presently inclined to initiate antitrust enforcement action against the proposed harvesting agreement. This letter, however, expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right, in appropriate circumstances, to bring any enforcement action in the future if the actual operation of the proposed agreement proves to be anticompetitive in any purpose or effect.

---

<sup>3</sup> Comments of the Department of Justice filed in Department of Commerce Docket No. 911215-1315, January 30, 1992 (involving Alaskan Pollock). On May 20, 1997 the Department of Justice issued an affirmative Business Review Letter to counsel for the Whiting Conservation Cooperative with respect to its proposal to allocate amongst its members the total quota of Pacific Whiting allocated to the group by the United States Government.

Page 4

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,

/S/

Joel I. Klein  
Assistant Attorney General