

Appearances

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IN THE MATTER OF
CALIFORNIA FISH CANNERS ASSOCIATION, INC., ET AL.

CONSENT ORDERS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6623. Complaint, Aug. 29, 1956—Decision, July 24, 1957

Consent order requiring a substantial part of the West Coast tuna industry, including an association of cannery owners and its eight corporate members, seven associations of tuna boat owners, and three area unions of fishermen and cannery workers, to cease concerted fixing of prices for the purchase and sale of canned, raw, or frozen tuna fish, and suppressing competition in the industry, including practices of curtailing the volume and raising the price of tuna imported from Japan, maintaining a patrol of all fishing ports coming into San Pedro harbor to unload at the canneries to ascertain that they sold all tuna at the established prices and paid an assessment for the maintenance of the patrol, coercing buyers to pay fixed prices and, on the part of the cannery owners' association, collecting statistics of individual inventories, purchases, sales, etc., for price-fixing purposes; and Order dismissing complaint as to certain respondents.

Before *Mr. Earl J. Kolb*, hearing examiner.

Mr. Fletcher G. Cohn, *Mr. Lewis F. Depro*, *Mr. Arthur Edgeworth* and *Mr. Charles I. Steele* for the Commission.

Covington & Burling, of Washington, D.C., for California Fish Cannery Ass'n, Inc.

Ekdale & Shallenberger, of San Pedro, Calif., for F. E. Booth Co., Inc., Pan-Pacific Fisheries, Inc., South Coast Fisheries, Inc., South Pacific Canning Co., Inc., West Shore Co. and South Pacific Canning Co.

Mr. Herbert R. Lande, of San Pedro, Calif., for California Marine Curing & Packing Co.

Mr. J. Marion Wright, of Los Angeles, Calif., for Franco-Italian Packing Co., Inc.

Mr. M. L. Real, of San Diego, Calif., for High Seas Tuna Packing Co., Inc., Pan-Pacific Fisheries, Inc., The Quaker Oats Co., South Coast Fisheries, Inc., South Pacific Canning Co., Inc., West Shore Co. and South Pacific Canning Co.

Mitchell, Silberberg & Knapp, of Los Angeles, Calif., for The Quaker Oats Co.

Mr. Douglas R. Giddings, of San Diego, Calif., for Breast-o'-Chicken Tuna, Inc., Van Camp Sea Food Co., Inc., Western Cannery Co. and Westgate-California Tuna Packing Co.

Norblad, Wyatt & MacDonald, of Astoria, Ore., for Columbia River Packers Ass'n, Inc.

Mr. John Gerald Driscoll, Jr., of San Diego, Calif., for American Tunaboat Ass'n and its officers, directors and members.

Mitchell & Hilbert, of Los Angeles, Calif., for Fishermen's Association of San Pedro and its officers, directors and members and Mason Case.

Lind & Schmitz, of Wilmington, Calif., for California Commercial Fishermen's Ass'n and Federated Fishermen's Ass'n, Inc. and their officers, directors and members.

Mr. John H. Thomsen, of San Diego, Calif., for Five Star Fish and Cold Storage and its officers, directors and members.

Lycette, Diamond & Sylvester, of Seattle, Wash., for Fishermen's Cooperative Ass'n (of Seattle) and its officers, directors and members.

Turner & Winslow, of Fort Bragg, Calif., for Salmon Trollers Marketing Ass'n, Inc. and its officers, directors and members.

Rose, Klein & Marias, of Los Angeles, Calif., for Cannery Workers & Fishermen's Union of the Pacific and its officers, trustees and members.

Margolis, McTernan & Branton, of Los Angeles, Calif., for Local No. 33, Fishermen and Allied Workers Division, International Longshoremen & Warehousemen's Union and its officers, trustees, members of the Executive Board and members.

Gilbert, Nissen & Irvin, of Los Angeles, Calif., for Seine and Line Fishermen's Union of San Pedro and its officers, trustees, members of the Executive Board and members.

DECISION OF THE COMMISSION

On August 29, 1956, the Federal Trade Commission issued its complaint in this proceeding, charging that the corporations, firms and persons therein named as respondents had engaged in unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act. After service of the complaint, six agreements were entered into between counsel supporting the complaint and certain of the respondents or counsel for various of them, each of which agreements contained a consent order in disposition of all of the issues of this proceeding with respect to the respondents to whom such agreements relate. The term "respondents" as used hereinafter refers to the aforesaid respondents to whom the agreements relate and excludes other parties respondent in this proceeding. Under procedures provided in section 3.25(e) of the Commission's Rules of Practice, the agreements have been submitted by counsel to the Commission for its consideration.

Pursuant to such agreements, the respondents have admitted all jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts have been duly made in accordance with such allegations. The agreements further provide that the respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings as to the facts or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. The agreements further state that they are for settlement purposes only and do not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The respondents additionally have agreed that the order to cease and desist shall have the same force and effect as if entered after full hearing, and that it may be altered, modified or set aside in the manner provided by statute for other orders, and that the complaint may be used in construing the terms of the order.

For reasons stated in its accompanying opinion, the Commission has determined that the agreements containing the consent orders to cease and desist provide for an appropriate disposition of this proceeding as to the parties designated in such agreements, and the same are accepted and ordered filed; and

Having determined that this proceeding is in the public interest, the Commission hereby makes the following findings, for jurisdictional purposes, and order:

PAR. 1. (a) Respondent California Fish Cannery Association, Inc., is a membership corporation, organized and existing under the laws of the State of California, with its principal office and place of business located in the Ferry Building, Terminal Island, California.

Respondent California Marine Curing & Packing Co. is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 333 Cannery Street, Terminal Island, California.

Respondent Franco-Italian Packing Co., Inc., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 223 Fish Harbor Wharf, Terminal Island, California.

Respondent Pan-Pacific Fisheries, Inc., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 350 Sardine Street, Terminal Island, California.

Respondent South Coast Fisheries, Inc., is a corporation organized and existing under the laws of the State of California, with

its principal office and place of business located at 820 Ways Street, Terminal Island, California.

Respondent Star-Kist Foods, Inc., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 582 Tuna Street, Terminal Island, California.

Breast-o'-Chicken Tuna, Inc., is the company formerly named and named in the complaint as respondent Sun Harbor Packing Company, and is a corporation organized under the laws of the State of California, as Southern California Fish Corporation, existing under such laws and acquiring the name Sun Harbor Packing Company in October, 1954; its principal office and place of business is located at 736 South Seaside Avenue, Terminal Island, California.

Respondent Van Camp Sea Food Company, Inc., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 772 Tuna Street, Terminal Island, California.

Westgate-California Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 28th and Harbor Drive, San Diego, California, and is the legal successor to respondent Westgate-California Tuna Packing Company, which was a corporation organized and existing under the laws of the State of California, with its principal office and place of business also located at 28th and Harbor Drive, San Diego, California.

(b) The respondent High Seas Tuna Packing Co., Inc., is no longer in existence; the respondents South Pacific Canning Co., Inc., and West Shore Company, and respondents Carleton E. Byrne, Esther J. Byrne, Robert C. Jackson, Edith Lloyd Smith, and Lloyd Melvin Smith, formerly doing business as South Pacific Canning Company, are no longer in business; Walter M. Longmoor, Jerrold E. Spangler and Thomas A. Thomas, doing business as Western Cannery Company, are not commercially engaged in the business of canning tuna, nor is the Quaker Oats Company. Respondent F. E. Booth Company, Inc., has taken no active part in the acts and practices alleged in the complaint, and respondent Columbia River Packers Association, Inc., took no part in the acts and practices alleged in the complaint.

PAR. 2. Respondent, American Tunaboat Association, is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at No. 1 Tuna Lane, in the City of San Diego, State of California.

Respondent, Fishermen's Association of San Pedro (the legal successor to Fishermen's Cooperative Association of San Pedro, which was named as a party respondent in the complaint, and under which name this said respondent is conducting business) is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at Berth 73, in the City of San Pedro, State of California.

Respondent, California Commercial Fishermen's Association, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 745 South Seaside Avenue, Terminal Island, State of California.

Respondent, Five Star Fish and Cold Storage, is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 2401 North Harbor Drive, City of San Diego, State of California.

Respondent, Salmon Trollers Marketing Association, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at Ft. Bragg, State of California.

Respondent, Federated Fishermen's Association, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 745 South Seaside, Terminal Island, State of California.

PAR. 3. (a) Respondent Cannery Workers & Fishermen's Union of San Diego is an unincorporated association, with its office and principal place of business located at 640 State Street, San Diego, California; the individual respondents named herein as officers and trustees hold their designated positions in said Union, and have their offices and principal places of business at the same location as the respondent Union.

(b) The respondents Gus Adams, Lester Balinger, Frank Currier, A. Landowsky, George Ledesma, Frank Silva and Jack Tarantino, are representative of the entire membership of the aforesaid respondent Union.

PAR. 4. (a) Respondent Local No. 33, Fishermen and Allied Workers Division, International Longshoremen and Warehousemen's Union, is an unincorporated association, with its office and principal place of business located at 339 7th Street, San Pedro, California; the individual respondents named herein as trustees, officers, directors or members of the Executive Board of said Union

hold their designated positions in said Union, and have their offices and principal places of business at the same location as the respondent Union.

(b) The respondents Paul Higashi, Milenko D. Kolumbic, Nick Lovrich and Steve Setka, are representative of the entire membership of the aforesaid respondent Union.

PAR. 5. (a) Respondent Seine and Line Fishermen's Union of San Pedro, is an unincorporated association, with its office and principal place of business being located at 261 7th Street, San Pedro, California; the individual respondents named herein as officers, trustees and members of the Executive Board hold their designated positions in the respondent Union, and have their offices and principal places of business at the same locations as the respondent Union.

(b) The respondents John Calise, Pat DiMassa, Nick Pecoraro and Kiyohi Shigekawa, are representative of the entire membership of the aforesaid respondent Union.

ORDER

I. *It is ordered*, That the respondents California Marine Curing & Packing Co.; Franco-Italian Packing Co., Inc.; Pan-Pacific Fisheries, Inc.; South Coast Fisheries, Inc.; Star-Kist Foods, Inc.; Breast-o'-Chicken Tuna, Inc. (named in the complaint as respondent Sun Harbor Packing Company); Van Camp Sea Food Company, Inc.; and Westgate-California Corporation (the legal successor to the respondent named in the complaint as Westgate-California Tuna Packing Company), their respective successors and assigns, agents, representatives, employees, directly or through any corporate or other device, in connection with the purchase or sale or offering to purchase or to sell in commerce, as "commerce" is defined in the Federal Trade Commission Act, of canned tuna fish, raw tuna fish, or frozen tuna fish, in any form for canning, do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any planned common and concerted course of action, understanding or agreement between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or things:

1. To establish, fix, or maintain prices, terms or conditions of sale for the purchase or sale of raw or frozen tuna;
2. To refuse to sell canned tuna fish on a consignment basis, or to compel or to coerce any processor or canner not to sell canned tuna fish on a consignment basis;

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3. To negotiate jointly or collectively, by any means or method, in the purchase or sale of raw, canned or frozen tuna, in any form for canning;

Provided, That nothing in this order shall be interpreted to prevent any of said respondent Canners from individually negotiating and agreeing, in the purchase of raw or frozen tuna fish for canning by said Canner, as to the price, terms or conditions of sale with any fishing vessel or other individual seller of such fish or with any Cooperative Association of fishermen acting pursuant to the Fishermen's Cooperative Marketing Act (15 U.S.C. Pars. 521-522);

Provided, further, however, That if any respondent Canner enters into any contract or agreement with any Cooperative Association of Fishermen acting pursuant to the said Fishermen's Cooperative Marketing Act, for the purchase of raw or frozen tuna caught by any cooperative member vessel in which said Canner has an interest, said Canner shall not, during the term of said contract or agreement, exercise any control inconsistent with said contract or agreement, over the marketing, sale, delivery or disposition of such raw or frozen tuna fish.

Provided further, That nothing in this order shall be interpreted to prevent bona fide collective bargaining between any such respondent in its capacity as the owner or operator of any fishing vessel and any employee or employees thereon, or the Union to which they belong, with respect to their wages, hours or working conditions.

II. *It is further ordered*, That the respondent California Fish Cannery Association, Inc., its officers and directors, and respondents California Marine Curing & Packing Co.; Franco-Italian Packing Co., Inc.; Pan-Pacific Fisheries, Inc.; South Coast Fisheries, Inc.; Star-Kist Foods, Inc.; Breast-o'-Chicken Tuna, Inc.; Van Camp Sea Food Company, Inc.; and Westgate-California Corporation, their respective successors and assigns, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase or sale or offering to purchase or to sell in commerce, as "commerce" is defined in the Federal Trade Commission Act, of canned tuna fish, or frozen tuna fish, in any form, for canning, do forthwith cease and desist from entering into, or continuing, cooperating in or carrying out any planned common and concerted course of action, understanding or agreement between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts, or things:

1. To establish, fix or maintain prices, terms or conditions of sale for the purchase or sale of canned tuna or of imported tuna fish, in any form, for canning;

2. To collect or to compile, for the purpose or with the effect of fixing or maintaining prices, terms or conditions of sale of canned tuna fish, statistical compilations or reports, in any form, showing, for the processors or canners furnishing same, for any period of time, the number of cases of canned tuna packed, or the number sold, or the number purchased from others, or the number of cases on hand at the end of any particular period, or showing any other similar information;

3. To restrain or to suppress competition, by any means or method, from canned tuna fish, or frozen tuna fish, in any form, for canning, imported into the United States from any other country, which has for its purpose or effect the curtailing of the volume of such imports or the raising of the prices of such imports of canned tuna fish or frozen tuna fish, in any form, for canning;

Provided, That nothing in this order shall be interpreted:

(a) To prohibit the joint collection of factual information in any exporting country for the purpose of its presentation to any agency of the United States, or of any State or to Congress;

(b) To prohibit one or more of the aforesaid respondents from entering into or continuing a bona fide partnership, joint operation, or venture for the purchase in, or from, any exporting country of canned tuna fish, or frozen tuna fish, in any form, for canning; but this proviso shall not be construed as an approval or disapproval of the legality of any specific partnership, joint operation or venture, or as permitting the formation or continuation of such a partnership, joint operation or venture, where the purpose or the effect of same is to render ineffectual or unenforceable any of the inhibitions of this order;

(c) To prevent any respondent canner from directing the operations of any corporation which it utilizes in marketing its canned tuna fish and which is wholly or substantially owned by the same interests, where such marketing operations do not result in any restraint of trade.

It is further ordered. That the complaint be dismissed as to the respondents F. E. Booth Company, Inc.; High Seas Tuna Packing Co., Inc.; Quaker Oats Company; South Pacific Canning Co., Inc.; West Shore Company, Carleton E. Byrne, Esther J. Byrne, Robert C. Jackson, Edith Lloyd Smith and Lloyd Melvin Smith, doing business as South Pacific Canning Company; and Walter M. Longmoor, Jerrold E. Spangler and Thomas A. Thomas, doing business

as Western Cannery Company; and Columbia River Packers Association, Inc.

III. *It is further ordered*, That respondents American Tunaboat Association, a corporation organized and existing under the laws of the State of California; Fishermen's Association of San Pedro (the legal successor to Fishermen's Cooperative Association of San Pedro, which was named as party respondent in the complaint, and under which name this said respondent is conducting business), a corporation organized and existing under the laws of the State of California; California Commercial Fishermen's Association, Inc., a corporation organized and existing under the laws of the State of California; Five Star Fish and Cold Storage, a corporation organized and existing under the laws of the State of California; Salmon Trollers Marketing Association, Inc., a corporation organized and existing under the laws of the State of California; and Federated Fishermen's Association, Inc., a corporation organized and existing under the laws of the State of California; and each of said respondents, and their respective successors and assigns, and each and all of them, acting by or through any of their respective officers, directors, agents, employees or members, directly or through any corporate or other device, in connection with the sale or purchase or offering to sell or purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of raw tuna fish in any form for canning, do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any planned common and concerted course of action, understanding or agreement between any two or more of said respondents, or between any one or more of said respondents and any other respondent or respondents in the instant case, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or things:

1. To negotiate jointly or collectively, by any means or method, in the sale or purchase of raw tuna fish, or to establish, fix or maintain prices, terms or conditions of sale for the sale or purchase of said raw tuna fish, except in the manner and to the extent authorized by law, as hereinafter set forth in the first proviso hereto;
2. To threaten, coerce or compel, by any means or method, as a condition or requirement for the purchase or prospective purchase of said raw tuna fish, the prior simultaneous or subsequent purchase of any other type or species of raw fish;
3. To threaten, coerce or compel, by any means or method, as a condition or requirement for the purchase or prospective purchase of any other type or species of raw fish, the prior, simultaneous or subsequent purchase of raw tuna fish;

4. To participate in, oversee, or contribute to any assessment or levy, by whatever name called or by whatever means computed, for the purpose or with the effect of attempting to establish, fix or maintain, or establishing, fixing or maintaining prices for the purchase or sale of raw tuna fish, by the patrolling of waters or harbors leading into or forming part of any port or ports;

5. To curtail or attempt to curtail the importation of raw or frozen tuna from any foreign country into the United States by any means or method not permitted by law.

6. To create, form, maintain or operate or to attempt to create, form, maintain or operate any corporation, association, group or organization of those who own, control or operate fishing boats which are engaged wholly or partially in the catching of raw tuna, by whatever name called, without its having control over the marketing, sale, delivery and disposition of raw tuna fish caught by all of its members.

Provided, however, That nothing herein shall prevent any association of bona fide tuna fishermen acting pursuant to and in accordance with the provisions of the Fishermen's Cooperative Marketing Act (15 U.S.C.A. Pars. 521-522) from performing any of the acts and practices permitted by said Act.

Provided further, The fact that any of the aforesaid corporations may have negotiations with any prospective purchaser for the purchase and sale of future catches of tuna by any of its members, for the purpose or with the effect of entering into, or which actually results in, or does not result in, a contract or agreement for the purchase and sale of any type or species of fish other than raw tuna, in addition to the purchase and sale of said raw tuna, shall not, in itself, be interpreted or construed as violation of the aforesaid subsections 2 or 3.

Provided further, That nothing herein contained shall prevent the proper enforcement by any of the aforesaid corporations of any existing contract or contracts which it has, or may have, with its own members or any purchasers of raw tuna fish caught by its members.

It is further ordered, That the charges of the complaint be, and they hereby are, dismissed as to the respondent individuals joined as parties hereto in Paragraphs 3, 4, 5, 6, 8 and 9 of the complaint in their individual capacities and in their capacities as officers, directors and representatives of all the members of respondents American Tunaboat Association, Fishermen's Association of San Pedro, California Commercial Fishermen's Association, Inc., Five Star Fish and Cold Storage, Salmon Trollers Marketing Association, Inc., and Federated Fishermen's Association, Inc.

IV. *It is further ordered*, That respondents Cannery Workers & Fishermen's Union of San Diego (incorrectly referred to in the complaint as Cannery Workers & Fishermen's Union of the Pacific); its officers, trustees and members; Gus Adams, Lester Balinger, Frank Currier, A. Landowsky, George Ledesma, Frank Silva and Jack Tarantino, individually, as officers, trustees and as representative of the entire membership of Cannery Workers & Fishermen's Union of San Diego; and each of said respondents, together with all of the members of the respondent Union, and the successors, assigns, agents, representatives and employees of said respondent Union, directly or through any corporate or other device, in connection with the purchase or sale in commerce, as "commerce" is defined in the Federal Trade Commission Act, of raw tuna fish do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any planned common and concerted course of action, understanding or agreement between any two or more of said respondents, or between any one or more of said respondents and any other respondent or respondents in the instant case, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or things:

1. To establish, fix or maintain prices, for the sale or purchase of said raw tuna fish;
2. To threaten, coerce or compel, by any means or method, as a condition or requirement for the purchase or prospective purchase of said raw tuna fish, the prior, simultaneous or subsequent purchase of any other type or species of raw fish;
3. To threaten, coerce or compel, by any means or method, as a condition or requirement for the purchase or prospective purchase of any other type or species of raw fish, the prior, simultaneous or subsequent purchase of raw tuna fish;
4. To negotiate jointly or collectively, by any means or method, for the sale or purchase of said raw tuna fish;
5. Participating in, overseeing, or contributing to any assessment or levy, by whatever name called or by whatever means computed, for the purpose or with the effect of attempting to establish, fix or maintain, or establishing, fixing or maintaining prices for the purchase or sale of raw tuna fish, by the patrolling of waters or harbors leading into or forming part of any port or ports;
6. To threaten, coerce or compel, by any means or method, purchasers or prospective purchasers of any raw tuna fish, to pay, adhere to, or comply with, any particular or specific prices for the purchase or sale of same;

Provided, however, Nothing herein contained shall be construed or interpreted as preventing or prohibiting any respondent, individually, from purchasing or selling or bargaining for the purchase or sale of any such raw tuna fish with any single buyer or seller;

Provided further, That nothing herein contained shall prevent genuine collective bargaining between respondent Union and any employer or employers with respect to rates of pay or wages, hours and working conditions of any employee members of said Union, or activities in relation thereto, or shall prevent or prohibit said Union from performing any of the acts or practices permitted by the provisions of the Labor-Management Relations Act, 1947 (Act of June 23, 1947, Public Law 101, 80th Congress) or any other lawfully authorized Union activities;

Provided further, The fact that the respondent Union, acting on behalf of its members, may have negotiations with any employer or employers of said members for compensation relating to future catches of tuna by any of said members, for the purpose or with the effect of entering into, or which actually results in, or does not result in a working agreement relating to the compensation for the catching of any type or species of fish other than raw tuna, in addition to the compensation for catching said raw tuna, shall not, in itself, be interpreted or construed as a violation of the aforesaid subsections 2 or 3;

Provided further, That nothing herein contained shall be construed as preventing the enforcement, against the other parties thereto, by patrol or other means, by the respondent Union of any contract or contracts which it now has, or may have, at the time of the aforesaid enforcement, with its own members, pertaining to their relationship as members of said Union, or with any employer or employers of said members pertaining to rates of pay or wages, hours or working conditions of such members as employees;

Provided further, That nothing herein contained shall prevent bona fide fishermen members of respondent Union, or the Union itself while acting on behalf of its members, where the specific raw tuna fish has already been caught by said members and cannot otherwise be sold or disposed of in accordance with the existing contract between the employer of said members and the purchaser or purchasers named in said contract, from negotiating in good faith for the sale or to sell such specific fish, for the benefit of the members who caught same;

Provided further, That nothing herein contained shall be construed as preventing the respondent Union from taking proper ac-

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tion on behalf of its members who participated in a particular catch of raw tuna fish, or the members themselves, to protect the interest of such members against a purchaser of said fish who refuses or fails to comply with, or abide by, the terms, conditions or provisions of an existing contract covering said catch, to enforce said contract.

V. *It is further ordered*, That respondents Local No. 33, Fishermen and Allied Workers Division, International Longshoremen & Warehousemen's Union, its officers, trustees, members of the Executive Board and members; Paul Higashi, Milenko D. Kolumbic, Nick Lovrich and Steve Setka, individually, as trustees, officers, directors or members of the Executive Board, and as representative of the entire membership of Local No. 33, Fishermen and Allied Workers Division, International Longshoremen & Warehousemen's Union; and each of said respondents together with all of the members of the respondent Union, and the successors, assigns, agents, representatives and employees of said respondent Union, directly or through any corporate or other device, in connection with the purchase or sale in commerce, as "commerce" is defined in the Federal Trade Commission Act, of raw tuna fish do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any planned common and concerted course of action, understanding or agreement between any two or more of said respondents, or between any one or more of said respondents and any other respondent or respondents in the instant case, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or things:

1. To establish, fix, or maintain prices, for the sale or purchase of said raw tuna fish;
2. To threaten, coerce or compel, by any means or method, as a condition or requirement for the purchase or prospective purchase of said raw tuna fish, the prior, simultaneous or subsequent purchase of any other type or species of raw fish;
3. To threaten, coerce or compel, by any means or method, as a condition or requirement for the purchase or prospective purchase of any other type or species of raw fish, the prior, simultaneous or subsequent purchase of raw tuna fish;
4. To negotiate jointly or collectively, by any means or method, for the sale or purchase of said raw tuna fish;
5. Participating in, overseeing, or contributing to any assessment or levy, by whatever name called or by whatever means computed, for the purpose or with the effect of attempting to establish, fix or maintain, or establishing, fixing or maintaining prices for the pur-

chase or sale of raw tuna fish, by the patrolling of waters or harbors leading into or forming part of any port or ports;

6. To threaten, coerce or compel, by any means or method, purchasers or prospective purchasers of any raw tuna fish, to pay, adhere to, or comply with, any particular or specific prices for the purchase or sale of same.

Provided, however, Nothing herein contained shall be construed or interpreted as preventing or prohibiting any respondent, individually, from purchasing or selling or bargaining for the purchase or sale of any such raw tuna fish with any single buyer or seller;

Provided further, That nothing herein contained shall prevent genuine collective bargaining between respondent Union and any employer or employers with respect to rates of pay or wages, hours and working conditions of any employee members of said Union, or activities in relation thereto, or shall prevent or prohibit said Union from performing any of the acts or practices permitted by the provisions of the Labor-Management Relations Act, 1947 (Act of June 23, 1947, Public Law 101, 80th Congress) or any other lawfully authorized Union activities;

Provided further, The fact that the respondent Union, acting on behalf of its members, may have negotiations with any employer or employers of said members for compensation relating to future catches of tuna by any of said members, for the purpose or with the effect of entering into, or which actually results in, or does not result in a working agreement relating to the compensation for the catching of any type or species of fish other than raw tuna, in addition to the compensation for catching said raw tuna, shall not, in itself, be interpreted or construed as a violation of the aforesaid subsections 2 or 3;

Provided further, That nothing herein contained shall be construed as preventing the enforcement, against the other parties thereto, by patrol or other means, by the respondent Union of any contract or contracts which it now has, or may have, at the time of the aforesaid enforcement, with its own members, pertaining to their relationship as members of said Union, or with any employer or employers of said members pertaining to rates of pay or wages, hours or working conditions of such members as employees;

Provided further, That nothing herein contained shall prevent bona fide fishermen members of respondent Union, or the Union itself while acting on behalf of its members, where the specific raw tuna fish has already been caught by said members and cannot otherwise be sold or disposed of in accordance with the existing contract be-

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tween the employer of said members and the purchaser or purchasers named in said contract, from negotiating in good faith for the sale or to sell such specific fish for the benefit of the members who caught same;

Provided further, That nothing herein contained shall be construed as preventing the respondent Union from taking proper action on behalf of its members who participated in a particular catch of raw tuna fish, or the members themselves, to protect the interest of such members against a purchaser of said fish who refuses or fails to comply with, or abide by, the terms, conditions or provisions of an existing contract covering said catch, to enforce said contract.

VI. *It is further ordered*, That respondents, Seine and Line Fishermen's Union of San Pedro, its officers, trustees, members of the Executive Board and members; and John Calise, Pat DiMassa, Nick Pecoraro and Kiyohi Shigekawa, individually, as officers, trustees or members of the Executive Board, and as representative of the entire membership of Seine and Line Fishermen's Union; and each of said respondents together with all of the members of the respondent Union, and the successors, assigns, agents, representatives and employees of said respondent Union, directly or through any corporate or other device, in connection with the purchase or sale in commerce, as "commerce" is defined in the Federal Trade Commission Act, of raw tuna fish do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any planned common and concerted course of action, understanding or agreement between any two or more of said respondents, or between any one or more of said respondents and any other respondent or respondents in the instant case, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or things:

1. To establish, fix or maintain prices, for the sale or purchase of said raw tuna fish;
2. To threaten, coerce or compel, by any means or method, as a condition or requirement for the purchase or prospective purchase of said raw tuna fish, the prior, simultaneous or subsequent purchase of any other type or species of raw fish;
3. To threaten, coerce or compel, by any means or method, as a condition or requirement for the purchase or prospective purchase of any other type or species of raw fish, the prior, simultaneous or subsequent purchase of raw tuna fish;
4. To negotiate jointly or collectively, by any means or method, for the sale or purchase of said raw tuna fish;

5. Participating in, overseeing, or contributing to any assessment or levy, by whatever name called or by whatever means computed, for the purpose or with the effect of attempting to establish, fix or maintain, or establishing, fixing or maintaining prices for the purchase or sale of raw tuna fish, by the patrolling of waters or harbors leading into or forming part of any port or ports;

6. To threaten, coerce or compel, by any means or method, purchasers or prospective purchasers of any raw tuna fish, to pay, adhere to, or comply with, any particular or specific prices for the purchase or sale of same.

Provided, however, Nothing herein contained shall be construed or interpreted as preventing or prohibiting any respondent, individually, from purchasing or selling or bargaining for the purchase or sale of any such raw tuna fish with any single buyer or seller;

Provided further, That nothing herein contained shall prevent genuine collective bargaining between respondent Union and any employer or employers with respect to rates of pay or wages, hours and working conditions of any employee members of said Union, or activities in relation thereto, or shall prevent or prohibit said Union from performing any of the acts or practices permitted by the provisions of the Labor-Management Relations Act, 1947 (Act of June 23, 1947, Public Law 101, 80th Congress) or any other lawfully authorized Union activities;

Provided further, The fact that the respondent Union, acting on behalf of its members, may have negotiations with any employer or employers of said members for compensation relating to future catches of tuna by any of said members, for the purpose or with the effect of entering into, or which actually results in, or does not result in a working agreement relating to the compensation for the catching of any type or species of fish other than raw tuna, in addition to the compensation for catching said raw tuna, shall not, in itself, be interpreted or construed as a violation of the aforesaid subsections 2 or 3;

Provided further, That nothing herein contained shall be construed as preventing the enforcement, against the other parties thereto, by patrol or other means, by the respondent Union of any contract or contracts which it now has, or may have, at the time of the aforesaid enforcement, with its own members, pertaining to their relationship as members of said Union, or with any employer or employers of said members pertaining to rates of pay or wages, hours or working conditions of such members as employees;

Provided further, That nothing herein contained shall prevent bona fide fishermen members of respondent Union, or the Union itself while acting on behalf of its members, where the specific raw

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tuna fish has already been caught by said members and cannot otherwise be sold or disposed of in accordance with the existing contract between the employer of said members and the purchaser or purchasers named in said contract, from negotiating in good faith for the sale or to sell such specific fish for the benefit of the members who caught same;

Provided further, That nothing herein contained shall be construed as preventing the respondent Union from taking proper action on behalf of its members who participated in a particular catch of raw tuna fish, or the members themselves, to protect the interest of such members against a purchaser of said fish who refuses or fails to comply with, or abide by, the terms, conditions or provisions of an existing contract covering said catch, to enforce said contract.

It is further ordered, That the respondents named in this order, except those as to whom the complaint has been hereby dismissed, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

OPINION OF THE COMMISSION

By the Commission:

The complaint in this proceeding charges, among other things, an unlawful combination, conspiracy and planned common course of action by the respondents to hinder and suppress competition in the purchase and sale of raw tuna and tuna-like fish caught in the waters of the Pacific Ocean. Joined as parties respondent were various firms and corporations engaging as canners of fish, certain cooperative associations composed of boat owners, together with their officers, directors and memberships, and three unions and their officers and memberships of fishermen and cannery workers. Five agreements were entered into by counsel supporting the complaint and various of the respondents or their counsel, each of which agreements contained a consent order in disposition of all the issues of this proceeding with respect to the respondents to whom such agreements related. A sixth agreement identical with that executed by other co-respondent cooperative associations subsequently was entered into by another of the respondents. Pursuant to the provisions of § 3.25 of the Commission's Rules of Practice, the five agreements were submitted to the hearing examiner for his consideration. The agreements were rejected by the hearing examiner as inappropriate and counsel supporting the complaint, and counsel for the respondents to which the agreements relate have filed joint appeal from that ruling as permitted under § 3.25 of the aforesaid rules.

Each of the agreements contained a consent cease and desist order prohibiting various of the signatories' use of the acts and practices charged as unlawful in the complaint. The hearing examiner's conclusion that the agreements were inadequate was not based, however, on the scope of the injunctive provisions contained in the orders; it primarily was based, instead, on his concern with respect to various additionally included provisos or exemptions. The latter, in his view, either served to detract from the clarity of the prescriptions in instances or were deemed an unnecessary reservation of rights nowise affected by the orders.

Provisos similar to one of those included in certain of the instant orders have been incorporated in judgments rendered by district courts, and another of such provisions has been adopted in an order previously issued by the Commission. Implicit in various of the provisos was recognition of the fact that the Fishermen's Cooperative Marketing Act and the Labor-Management Relations Act, 1947, sanction joint and collective activity in certain categories. We think that the provisos served to place the orders' injunctive provisions in proper perspective and do not detract from the clarity and effectiveness of the respective orders. The six agreements, accordingly, are accepted and ordered filed.

Our decision in this matter should not be construed, however, as general approval and approbation for the inclusion of provisos in consent orders to cease and desist. The production and initial marketing of the particular marine products to which this proceeding relates normally necessitate cooperative and joint endeavors in varying degrees between and among different industry member groups having wage and other financial interests therein. As previously noted, joint activities in categories there designated are expressly sanctioned by special statutes. Hence, the agreements' recognition of that circumstance and other relevant commercial relationships and conditions existing in the industry was appropriate here.

INITIAL DECISION DISMISSING THE COMPLAINT
AS TO CERTAIN RESPONDENTS

This proceeding is before the hearing examiner upon motion of counsel supporting the complaint to dismiss the Fishermen's Cooperative Association (of Seattle), its officers, directors and members.

On July 24, 1957, the Commission accepted agreements for consent order and issued its Order to Cease and Desist as to all of the 138 respondents named in the complaint except the above-named respondents.

It was represented by the attorney in support of the complaint in his motion to dismiss that the Order to Cease and Desist entered

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by the Commission will effectively prevent the continuation or repetition of the acts and practices alleged in the complaint as being violative of Section 5 of the Federal Trade Commission Act, even though the above-named respondents are not parties to such order; and that it would not be in the public interest to expend the time and money which would be necessary to try the entire case for the purpose of securing an order to cease and desist against this single group of respondents. In view of the above,

It is therefore ordered, That the complaint herein be dismissed without prejudice as to respondents Fishermen's Cooperative Association (of Seattle), its officers, directors and members; and Reidar Hammer, Dan Hjort, Bert G. Johnston, Adam Kanzler, Kristian Kyvik, Harry J. McCool, Henry Parpart and Neil Rasmussen, individually, as officers, directors and as representative of the entire membership of Fishermen's Cooperative Association (of Seattle).

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner as to respondents Fishermen's Cooperative Association (of Seattle), its officers, directors and members; and Reidar Hammer, Dan Hjort, Bert G. Johnston, Adam Kanzler, Kristian Kyvik, Harry J. McCool, Henry Parpart and Neil Rasmussen, individually, as officers, directors and as representative of the entire membership of Fishermen's Cooperative Association (of Seattle) shall on February 14, 1958, become the decision of the Commission.

Decision

IN THE MATTER OF
SYDNEÉ, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 6681. Complaint, Nov. 27, 1956—Decision, July 27, 1957*

Consent order requiring a corporate seller in Chicago to cease representing falsely by statements and depictions in advertising and on labels and packaging, that its domestic perfumes and colognes were made in France, and that excessive fictitious prices were its customary retail prices; and by simulation of the script, packaging, shape of bottle, and trade name of certain nationally advertised and accepted products, that its perfumes and colognes were such preferred products;

Similar order entered by default against four individuals with places of business at Miami and Miami Beach, Fla., cooperating with the aforesaid concern.

INITIAL DECISION AS TO RESPONDENT SYDNEÉ, INC., AND AS TO
SIDNEY BELMONT AND MILDRED BELMONT

Mr. Everett F. Haycraft, hearing examiner.

Mr. William A. Somers for the Commission.

Mr. Samuel Morgan, of Chicago, Ill., for respondents, Sydneé, Inc., Sidney Belmont and Mildred Belmont.

The Federal Trade Commission, on November 27, 1956, issued its complaint against the respondents named in the caption hereof, charging them with the dissemination in commerce of advertisements containing false and misleading representations with respect to their perfumes and colognes, and charging that the use of such advertisements constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The Commission in its complaint alleged that respondents had been for some time last past engaged in the business of selling various perfumes and colognes which are cosmetics as defined in the Federal Trade Commission Act and that said respondents had caused such products to be shipped in interstate commerce to purchasers thereof located in various states of the United States. It was further alleged that in the course and conduct of their business respondents have disseminated advertisements concerning their said products by the United States mails and by various means in commerce such as newspapers, periodicals, and circulars wherein respondents made statements which were misleading in material respects and constituted false advertisements as that term is defined in the Federal