FISHERMEN'S MARKETING ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON MERCHANT MARINE AND FISHERIES

OF THE

COMMITTEE ON COMMERCE UNITED STATES SENATE

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

S. 1054

A BILL TO MAKE CLEAR THAT FISHERMEN'S ORGANIZATIONS, REGARDLESS OF THEIR TECHNICAL LEGAL STATUS, HAVE A VOICE IN THE EX-VESSEL SALE OF FISH OR OTHER AQUATIC PRODUCTS ON WHICH THE LIVELIHOOD OF THEIR MEMBERS DEPEND

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FISHERMEN'S MARKETING ACT

THURSDAY, AUGUST 5, 1965

U.S. SENATE,
COMMERCE COMMITTEE,
SUBCOMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:25 a.m., the Honorable E. L. Bartlett, chairman of the subcommittee presiding.

Senator BARTLETT. The committee will be in order. The purpose of the hearing this morning is to consider S. 1054, which would make clear that fishermen's organizations regardless of their technical legal status, have a voice in the ex-vessel sale of fish or other aquatic products on which the livelihood of the members depends.

S. 1054 was introduced by Senator Magnuson and cosponsored by me. The legislation is similar to S. 1135 introduced in the first session of the 88th Congress. So far the committee has received agency reports from the Interior Department, the Justice Department, the Federal Trade Commission, the Agriculture Department, and the Comptroller General.

I should like at this point to place in the record the text of S. 1054, the agency reports, the law which is to be amended by this legislation, and certain background information on the legislation.

If there is no objection, these documents will be placed in the record.

(The documents mentioned follow:)

[S. 1054, 89th Cong., 1st sess.]

A BILL

To make clear that fishermen's organizations, regardless of their technical legal status, have a voice in the ex-vessel sale of fish or other aquatic products on which the livelihood of their members depends

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Public Law Numbered 464, Seventy-third Congress, entitled "An Act authorizing associations of producers of aquatic products" (48 Stat. 1213; 15 U.S.C. 521), is amended by adding at the end of section 1 the following new paragraph:

"Associations authorized by this section (nothwithstanding any State or local law) shall include, but not be limited to, unions or other organizations of active fishermen whose income is dependent on the ex-vessel price of fish or other aquatic products, although the membership of such an organization is composed of fishermen who are either masters or crewmembers of fishing vessels. Such an organization or organizations may bargain, severally or jointly with one or more buyers of the fish or other aquatic products produced by its members, or one or more associations of buyers, including area or industrywide associations, regarding the terms and conditions of ex-vessel sales of such fish or aquatic products, or take such other action with reference to such ex-vessel sales or factors affecting such ex-vessel sales, as an association may lawfully take, whether or not such fish or other aquatic products are sold through the organization and whether the organization acts as a selling agent or only as a bargaining agent: *Provided,*

Staff counsel assigned to this hearing: William C. Foster and Harry Huse.

That nothing in this Act or in any State or local law shall limit the rights of employee fishermen given by the Labor-Management Relations Act, 1947, the Clayton Act, the Norris-LaGuardia Act, and other Acts, including the rights of employee fishermen whose compensation is determined by the proceeds of the catch, to bargain collectively, or take other collective action regarding the ex-vessel price per pound or per piece of fish or other aquatic products to be used as a basis for computing their compensation: *And provided further*, That the making of any such agreement or agreements between such an organization or organizations and one or more buyers or one or more associations of buyers concerning the terms, conditions, and prices of the ex-vessel sales of such fish or other aquatic products shall not be held to be in violation of any of the antitrust or trade laws of the United States, and any such agreement or agreements shall be deemed to be lawful."

DEPARTMENT OF THE INTERIOR,
Washington, D.C., July 6, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: Your Committee has requested this Department's comments on S. 1054, a bill "To make clear that fishermen's organizations, regardless of their technical legal status, have a voice in the ex-vessel sale of fish or other aquatic products on which the livelihood of their members depends."

S. 1054 amends section 1 of the Fishery Cooperative Marketing Act of 1934 (15 U.S.C. sec. 521) by adding a new paragraph which authorizes unions or other organizations of active fishermen who are either masters or crewmembers of fishing vessels, and whose income is dependent on the ex-vessel price of fish or other aquatic products, to be included in the category of cooperative fishing associations covered by the Act. Such organizations would then be authorized to bargain, severally or jointly, with one or more purchasers of fish or other aquatic products or with one or more associations of buyers, including area or industry-wide associations, regarding the terms and conditions of ex-vessel sales of such fish or other aquatic products, or take such other action concerning such sales or factors affecting such sales, as an association may take lawfully, regardless of whether such organizations act as selling or bargaining agents.

The bill also provides that nothing in the Act, *supra*, or any other state or local law, shall limit the rights of employee fishermen under the Labor-Managment Relations Act of 1947, the Clayton Act, the Norris-LaGuardia Act, or other acts to bargain collectively, or take such collective action regarding the ex-vessel price of fish or other aquatic products to be used as a basis for computing their compensation. S. 1054 provides that any agreement between such organizations and buyers or association of buyers, concerning the terms, conditions, and prices of such sales of such fish or other aquatic products, shall not be a violation of any of the antitrust or trade laws of the United States, and that such agreements shall be deemed lawful.

Section 1 of the Fishery Cooperative Marketing Act, *supra*, provides

"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.

"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, * * *."

Under this Act groups of fishermen are permitted to establish cooperative associations in order to market their products in interstate and foreign commerce effectively. This Act, however, does not grant to the fishermen cooperatives a complete exemption from the antitrust laws.

S. 1054 is designed to give unions or other organizations of active fishermen, who are either employee or employer fishermen, a voice in the sales price of fish or other aquatic products. The distinction between labor unions, in the usual sense, and labor unions in the fisheries and their members who would be benefited by S. 1054, has to be kept in mind in order to appreciate the significance of this proposed legislation. Labor unions in the usual sense function by bargaining

collectively with the employers over wages and conditions of work. On the other hand, labor unions in the fisheries sometimes include employee fishermen, captains, mates, engineers, and in the past even vessel operators and vessel owners. This intermixed association stems from the community of interest created by the "lay" system whereby each individual on the fishing vessel is remunerated by a share of the proceeds from the catch after each voyage. Hence, it is to the mutual advantage of all who share in the proceeds that the catch sells for the highest price which is to improve the economic standards of our fishermen.

In the early period following the passage of the antitrust acts, the courts often adjudged cooperative marketing associations, per se, as illegal combinations restraining trade. The Capper-Volstead Act, passed in 1922, recognized agricultural cooperative associations engaged in interstate commerce. The Fishery Cooperative Marketing Act of 1934, *supra*, modeled after the Capper-Volstead Act, as we have indicated above, recognized fishery cooperative marketing associations engaged in interstate commerce. It provided the machinery, however, in section 2 of the Act (15 U.S.C. sec. 522) for policing these associations, organized under its provisions, and preventing them from monopolizing or restraining trade so that the price of any aquatic product is "unduly enhanced by reason thereof".

In some segments of our domestic fishing industry, labor unions representing employee fishermen bargain with cooperatives representing vessel owning employers for the minimum price on which the crew's share or wage would be based, and the cooperative bargains separately with a canner or buyer. Where the fishermen operate the boats as employees of the canners, the unions bargain directly with canners or processors. These are limited examples of many types of ex-vessel price bargaining which prevail in the industry.

Some uniform means for allowing fishermen employee unions to bargain collectively for fish prices which are a significant influence on their members' wages should be developed for certain segments of the fishing industry. An effective right to bargain would be helpful in encouraging more stable industry relations in these segments of the fishing industry.

he economy welfare of the commercial fisherman is dependent upon a wide variety of physical and other circumstances beyond his control. When his wages fluctuate substantially because the price of fish fluctuates, it is natural for him to seek some measure of wage stability. S. 1054 is designed to help provide this stability. We are not, however, able to make a definitive judgment as to whether S. 1054 will in fact provide such wage stability, or whether it will meet the economic needs of the industry as a whole, or whether the antitrust implications of labor unions bargaining for the price of fish outweighs the needs of these people. We agree, however, with the objective of this bill and we think that in determining whether this approach or some other legislative approach to the problem is a reasonable one the fishermen must be viewed, not in the technical and legal sense, but as wage earners who form an important segment of our economy.

There is at least one segment of the industry in which the enactment of S. 1054 would be useful. We cannot say, however, that it would be useful throughout the industry. In the salmon fishery in Alaska, many former union-member fishermen employed by salmon canneries have become vessel owners. Some of these have a very limited investment in vessels financed largely by salmon canning firms that previously employed them. This changed status makes them ineligible to use labor union procedures in bargaining with fish processors over prices for fish. This, in turn, has a bearing on the income of both vessel owner or operator and employee crew members because of the use of the "lay" system. Some of these fishing vessel owners are interested in the enactment of a statutory provision such as this, so that they may continue, together with union-member fishermen who are clearly in an employee-fishermen status, long-standing salmon price bargaining practices. Acting together, the bargaining power of the group would be stronger than when acting separately.

In relation to the scope of the bill, we think that the bill can be interpreted to permit an exemption from the antitrust laws of agreements between buyers and fishermen that cover more than just the price of fish. These might include the cost of ice, fuel, and similar items.

While we believe, as we have stated above, that in at least one segment of the industry, namely Alaska, some uniform means for allowing fishermen employee unions to bargain collectively with producers or buyers for fish prices is needed to encourage economic stability in the industry, we lack adequate information to justify an extension of an exemption from the antitrust laws to matters other than

the actual price of fish. If the Committee acts favorably on this legislation, we recommend that the scope of the bill be narrowed to apply only to the price of fish. We also think that consideration could be given to limiting the bargaining to individual buyers as the present law now provides.

The Bureau of the Budget has advised that there would be no objection to the presentation of this report to the Committee and that the Bureau is opposed to the enactment of S. 1054 for the reasons set forth in the reports of the Department of Justice and the Federal Trade Commission on the bill.

Sincerely yours,

STANLEY A. CAIN,
Assistant Secretary of the Interior.

FEDERAL TRADE COMMISSION,
Washington, D.C., June 16, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of February 11, 1965, for a report on S. 1054, 89th Congress, 1st Session, a bill "To make clear that fishermen's organizations, regardless of their technical legal status, have a voice in the ex-vessel sale of fish or other aquatic products on which the livelihood of their members depends."

The bill would authorize unions or other organizations of active fishermen, whose income is dependent on the exvessel price of fish or other aquatic products, although the membership of such an organization is composed of either masters of boats or crew members, to qualify as cooperative fishing associations under the Fishermen's Cooperative Marketing Act (15 U.S.C. 521–522), and bargain severally or jointly with one or more buyers of such products regarding the terms and conditions of ex-vessel sales of such products "or take such other action with reference to such ex-vessel sales or factors affecting such ex-vessel sales, as an association may lawfully take," regardless of whether such organization acts as a selling agent or only as a bargaining agent. In addition, the bill adds a proviso that nothing in the Fishermen's Cooperative Marketing Act, or in any state or local law, shall limit the rights of employee fishermen under the Labor Management Relations Act, the Clayton Act, the Norris-LaGuardia Act or other Acts to bargain collectively or take other collective action regarding the ex-vessel price per pound of fish "to be used as a basis for computing their compensation."

Another proviso of the bill is to the effect that any agreement between an association and one or more buyers regarding the terms of ex-vessel sales of fish shall not be held to violate any antitrust or trade laws of the United States.

The bill is thus apparently designed to permit employee fishermen to exercise a voice in the selling and in determining the sale prices of fish or other aquatic products. It would permit employee fishermen whose income is dependent on the ex-vessel price of fish (1) to join with a cooperative fishermen's organization under the Act; (2) to participate in bargaining with buyers on the selling price of fish they have produced; and (3) to take "such other action" regarding the sale of such fish as an association may lawfully take.

The Federal Trade Commission has had considerable experience in dealing with fishermen's organizations under the Fishermen's Cooperative Marketing Act. For example: *Alaska Salmon Industry, Inc.*, Docket 6141, 50 FTC 863 (1954); *Cordova District Fisheries Union*, Docket 6261, 52 FTC 66 (1955); *Cordova District Fisheries Union*, Docket 6369, 52 FTC 731 (1956); *United Fishermen of Alaska*, Docket 6388, 52 FTC 1240 (1956); *Pudget Sound Salmon Canners, Inc.*, Docket 6376, 52 FTC 1251 (1956); *California Fish Canners Ass'n*, Docket 6623, 54 FTC 120 (1957).

In those cases, the Commission was confronted with situations wherein various cooperative groups combined with other respondents, including employee groups (such as fishermen's unions) boatowners' associations, and canners, in price-fixing combinations in restraint of trade. Orders were issued requiring the parties to cease and desist from so combining or entering into any agreements between and among themselves or with others with the purpose or intent of fixing or maintaining prices at which fish or other aquatic products were to be purchased or sold and also from interfering with the fishing operations of others. Those orders, however, did assure *bona fide* fishermen's cooperative organizations that actions pursuant to and in accordance with the provisions of the Fishermen's Cooperative Marketing Act were excepted therefrom. In addition, those orders

specifically excepted activities by any of the respondents, including fishermen's cooperatives, in *individually* purchasing or selling or bargaining for the purchase or sale of any fish or aquatic product with any *single* buyer or seller.

The Fishermen's Cooperative Marketing Act is modeled after the Agricultural Cooperative Marketing Act (7 U.S.C. 291–292). These Acts permit groups of fishermen or farmers to form cooperative associations in order to market their products effectively. They are not permitted by those Acts, however, to engage in practices considered to be monopolistic or in restraint of trade.

The courts, in construing both these Acts, have uniformly held that they do not grant a complete exemption from the antitrust laws. *United States* v. *Borden Co.*, 308 U.S. 188 (1939); *Columbia River Packers Ass'n.* v. *Hinton*, 315 U.S. 143 (1942); *Hawaiian Tuna Packers, Ltd.* v. *International Longshoremen's and Warehousemen's Union*, 72 F. Supp. 562 (D.C. Haw. 1947); *Local 36 of International Fishermen & Allied Workers of America* v. *United States*, 177 F. 2d 320 (9th Cir. 1949), *cert. denied* 339 U.S. 947 (1950); and *Maryland & Virginia's Milk Producers Ass'n.* v. *United States*, 362 U.S. 458 (1960).

In attempting to improve the bargaining position of the fishermen employees, the subject bill would sanction types of activities or conduct by them, which now runs afoul of the antitrust laws. It has been held in several cases that the Fishermen's Cooperative Marketing Act does not authorize fishermen whose compensation is directly affected by the amount for which the catch is sold to combine with their employers, the boatowners, to fix the prices which dealers are required to pay for fish. *Local 36 of International Fishermen & Allied Workers of America* v. *United States*, 177 F. 2d 320, at 335. See also *Allen Bradley Co.* v. *Local Union No. 3*, 325 U.S. 797 (1945). In the *Local 36* case, p. 332 *supra*, the court states specifically:

"If then the boatowners were acting in voluntary conjunction with the fishermen employees of their boats in such a combination, their activities would certainly be illegal. United States v. Women's Sportswear Manufacturers Association, 336 U.S. 460, 69 S. Ct. 714."

It has consistently been the Commission's view that exemptions from the antitrust laws designed for the relief of a particular industry or group of persons should be viewed most critically and only adopted after a very convincing showing of necessity. On the basis of its experience to date with the fishing industry, the Commission is not aware of circumstances that would justify antitrust exemption as a solution for problems of the fishing industry.

The Commission is opposed to S. 1054.

By direction of the Commission, Commissioner MacIntyre not concurring. His views on this matter are stated in a letter to you, as Chairman of the Commerce Committee of the United States Senate dated July 2, 1963, regarding S. 1135 of the 88th Congress.

PAUL RAND DIXON, *Chairman.*

N.B.—Pursuant to regulations, this report was submitted to the Bureau of the Budget on April 2, 1965, and on June 16, 1965, the Bureau of the Budget advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

JOSEPH W. SHEA, *Secretary.*

DEPARTMENT OF JUSTICE,
Washington, D.C., June 17, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: This is in response to your request for the views of this Department on S. 1054 (89th Cong., 1st Sess.), a bill to amend the Fishery Cooperative Marketing Act (Public Law 464, 73rd Cong., 15 U.S.C., Secs. 521–522).

This Act now authorizes fishermen when catching, collecting or cultivating aquatic products to act together in associations in collectively marketing such products and to have marketing agencies in common. Such marketing agencies may bargain with and sell the catch to any one of the companies that operate plants or canneries which prepare fish or other aquatic products for market.

The practice in at least some segments of the fishing industry apparently is for fishermen, whether masters or crewmen, to be paid on the basis of the total

price paid upon the ex-vessel sale of the catch. These fishermen may use either company owned or independently owned boats.

In the past certain organizations have attempted to act as bargaining agents of the fishermen in negotiating the price to be received for the fish, on the theory that the money received by a fisherman for his share of the catch constituted wages. Unions are now prevented from doing so by virtue of court decisions and a decision of the National Labor Relations Board which ruled that such fishermen are independent contractors or entrepreneurs and not employees.

The proposed amendment would authorize the inclusion of a labor union as an association and, as an association the union would be able to act as a bargaining agent or as a selling agent in setting the price of the ex-vessel sale of fish or other aquatic products caught by members of the organization.

By authorizing a labor union to be included as an association of "active fishermen whose income is dependent on the ex-vessel price of fish or other aquatic products", the amendment would nullify the existing decisions on union representation of non-employees.

Section 6 of the Clayton Act provides "that the labor of a human being is not a commodity or article of commerce", and exempts from the antitrust laws the legitimate activities of labor unions, which otherwise would be in restraint of trade. Permitting a union directly to fix the sale price of a commodity may constitute a precedent for a far-reaching additional exemption for union activities.

The bill also authorizes the reciprocal right of the buyers (the companies that operate the canneries or prepare the catch for market) to act together in bargaining with associations of fishermen concerning the terms, conditions and prices to be paid for the catch.

This reciprocal right is covered in the second proviso of the proposed amendment which reads:

"And provided further, That the making of any such agreement or agreements between such an organization or organizations and one or more buyers or one or more associations of buyers concerning the terms, conditions, and prices of the ex-vessel sales of such fish or other aquatic products shall not be held to be in violation of any of the antitrust or trade laws of the United States, and any such agreement or agreements shall be deemed to be unlawful."

Agreements between buyers as to the price to be paid for fish or other aquatic products are per se violations of the Sherman Act, and are not authorized by the present Act which permits only fishermen to act collectively.

The scope of this bill is indicated by the definition of aquatic products which 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."

The Department of Justice objects to the enactment of this bill in that it would:

(a) be discriminatory in singling out one industry where buyers or associations of buyers can enter into agreements as to the price they will pay for a commodity and be exempt from application of the antitrust laws in so doing;

(b) establish the precedent that under special circumstances a union can be an association of independent entrepreneurs and act as a bargaining agent or selling agent in the sale of a commodity produced by its members.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., June 17, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request of February 10, 1965 for a report on S. 1054, a bill "To make clear that fishermen's organizations, regardless of their technical legal status have a voice in the ex-vessel sale of fish or other aquatic products on which the livelihood of their members depends."

The Department of Agriculture is taking no position on this bill since it would not affect the Department's responsibilities.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

ORVILLE L. FREEMAN,
Secretary.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., February 23, 1965.

B–105876.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: In reply to your request of February 10, 1965, for our comment on S. 1054, entitled "A bill to make clear that fishermen's organizations, regardless of their technical legal status, have a voice in the ex-vessel sale of fish or other aquatic products on which the livelihood of their members depends," you are advised we have no firsthand knowledge of the subject of the bill, and therefore offer no comment or recommendation concerning the proposed legislation.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

FISHERMEN'S COOPERATIVE MARKETING ACT

(48 Stat. 1213; 15 U.S.C. 521–522)

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 nonmembers 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.

History of the Legislation

As far as could be determined, the first reference to legislation permitting collective bargaining by fishermen was S. 2176 introduced by Senator Magnuson in the 1st session (1951) of the 87th Congress. It would have amended the Fishermen's Cooperative Marketing Act, June 25, 1934, chapter 742, 48 Stat. 1213, 15 U.S.C. 521–522, to make clear that fishermen's organizations, regardless of their technical legal status, have a voice in the ex-vessel sale of fish or other aquatic products on which the livelihood of their members depends. Reports were requested from General Accounting Office, Interior, and Justice. GAO had no comment to make, while Interior and Justice did not report. No hearings were held and no action was taken on S. 2176.

In the same session of the same Congress, H.R. 5667 was introduced by Representative Pelly, and it was identical with S. 2176. Reports were requested from Labor, Interior, and Justice. The Department of Labor's report was generally favorable, while no reports were received from Interior and Justice. No hearings were held and no action was taken on H.R. 5667.

From 1951 to 1957 the Congressional Record index contains no references to bills concerning collective bargaining rights for fishermen.

However, in 1952, 82d Congress, a letter from the Department of Labor dated January 5, 1952, to Representative Edward J. Hart, chairman of the House Committee on Merchant Marine and Fisheries, concerning H.R. 5667, generally favored the bill but stated that the Department of Labor did not desire to comment specifically on the provisions of H.R. 5667.

In 1958, 85th Congress, 2d session, S. 3530 was introduced by Senators Payne and Smith of Maine. It also would have limited the Fishermen's Cooperative Marketing Act and would have exempted fishermen from the provisions of antitrust acts in order to allow fishermen to engage in collective bargaining. This bill was referred to the Senate Interstate and Foreign Commerce Committee. Reports were requested from Interior, Justice, Federal Trade Commission, and the Comptroller General. Interior did not recommend enactment. Justice and Federal Trade Commission were opposed to the bill and the Comptroller General made no recommendation. Hearings were held on June 15 and 16, 1958, and were printed. The bill was not reported and no action was taken.

Similar bills were introduced in the House and no action was taken. H.R. 12329, introduced by Representative Coffin and referred to the House Judiciary Committee, would have amended section 6 of the Clayton Act to include within its terms organizations of persons engaged in the fishery industry. Reports were requested from Federal Trade Commission and Interior. No report was received from Interior. The Federal Trade Commission opposed H.R. 12329 in a letter to Representative Celler on August 15, 1958. No hearings were held and no action was taken on H.R. 12329.

In 1959, 86th Congress, 1st session, S. 23, introduced by Senator Smith of Maine, referred to the Committee on Interstate and Foreign Commerce, was identical to the bill she had introduced in the previous Congress. Hearings were held on April 3, 1959, and printed with the hearings on S. 502, "Salmon High Seas Conservation." No action was taken on S. 23.

H.R. 3348 was introduced by Representative Pelly and referred to the House Committee on Merchant Marine and Fisheries. It also would have amended the Fishermen's Cooperative Marketing Act to permit collective bargaining by fishermen. No action.

H.R. 2777, introduced by Representative McCormack and referred to the House Committee on Merchant Marine and Fisheries, was identical. It was considered in executive session but no action was taken.

In 1961, 87th Congress, S. 1265 was introduced by Senator Bartlett and referred to the Committee on Labor and Public Welfare, would have extended the coverage of the National Labor Relations Act so as to include members of the crews of certain fishing vessels. Reports were requested from the National Labor Relations Board, the Bureau of the Budget, and the Labor Department, but no reports were received. No further action was taken. Similar bills were introduced in the House by Congressmen Rivers and Pelly.

In 1962 (87th Cong., 2d sess., S. 3093) and 1963 (88th Cong., 1st sess., S. 1135) bills were introduced by Senator Magnuson and cosponsored by Senator Bartlett. These bills were referred to the Senate Commerce Committee. The purpose of these bills was to make clear that fishermen's organizations, regardless of their technical legal status, have a voice in the ex-vessel sale of fish or other aquatic products on which the livelihood of their members depends. In 1962, hearings on S. 3093 were held in Seattle, Ketchikan, Petersburg, Anchorage, Dillingham and Kodiak, Alaska. The hearings in 1963 on S. 1135 were held in San Pedro and San Diego, Calif., and in

Washington, D.C. Both Justice Department and Federal Trade Commission opposed the enactment of the legislation, with Interior deferring to these agencies. After the hearings, no further action was taken on S. 3093. S. 1135 was considered in executive session, but no further action was taken. Similar legislation was introduced in the House during the 87th and 88th Congresses.

Senator BARTLETT. The first witness this morning is Donald L. McKernan, Director of the Bureau of Commercial Fisheries, Department of the Interior, Washington, D.C.

STATEMENT OF DONALD L. McKERNAN, DIRECTOR, BUREAU OF COMMERCIAL FISHERIES, DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C., ACCOMPANIED BY WALTER STOLTING, ECONOMIST, BUREAU OF COMMERCIAL FISHERIES, DEPARTMENT OF THE INTERIOR

Mr. MCKERNAN. Good morning, Mr. Chairman, I brought with me Mr. Walter Stolting, an economist and specialist in this field with the Department.

I appreciate this opportunity to appear before your committee to make a statement regarding S. 1054, a bill to make clear that fishermen's organizations, regardless of their technical legal status, have a voice in the ex-vessel sale of fish or other aquatic products on which the livelihood of their members depends.

S. 1054 is designed to give unions or other organizations of active fishermen who are either employee or employer fishermen, a voice in the sales price of fish or other aquatic products.

Under the Fishery Cooperative Marketing Act of 1934 (15 U.S.C. 521), groups of fishermen are permitted to establish cooperative marketing associations in order to market their products in interstate and foreign commerce effectively.

There are presently some 100 fishery cooperatives in the United States with a combined membership of over 12,000 who produce one-fifth to one-fourth of the annual catch of fish and shellfish.

Fishery cooperative marketing associations are found in all important producing segments of our domestic fishing industry. They operate in our lobster, groundfish, scallop, shrimp, tuna, and salmon industries as well as in many other segments. They may be found in coastal areas from Maine to Alaska as well as in many inland areas.

The ownership of the vast majority of these fishery cooperative marketing associations is vested in fishing vessel owners. However, some of the cooperatives sell capital stock to crew members who are employees of the vessel owners.

The Department is well aware of the difficulties which commercial fishermen encounter in their profession. In addition to the risks which they take with respect to natural hazards such as weather, fluctuations in the availability of fish and shellfish, etc., this segment of our Nation bears the brunt of a large share of the adverse economic effects associated with poor marketing conditions of its products. Processors and dealers can often offset price difficulties they may have at either end of the distribution chain with corresponding price adjustments at the other end. However, fishermen, being primary producers are in a very different position. When their catch is landed and offered for sale, it is difficult for them to offset any adverse market conditions.

The Fishery Cooperative Marketing Act of 1934 does not grant to the fishermen's cooperatives a complete exemption from the antitrust laws. It, however, does permit fishermen to act together in associations for the purpose of collectively catching, producing, preparing for market, processing, handling, and marketing in commerce their fishery products. This includes the right to bargain with individual buyers for the terms and prices at which their fishery products may be sold. S. 1054 would give the fishermen unions this same right.

Price bargaining is conducted in many different ways from one segment to another of our domestic fishing industry. In some segments the process of negotiating price entails problems.

There is at least one area in which the enactment of S. 1054 would fill a need that has developed in the last few years. In the salmon fishery in Alaska, many former union member fishermen employed by salmon canneries have become vessel owners. Some of these have a very limited investment in vessels financed largely by salmon canning firms that previously employed them. This changed status makes them ineligible to use labor union procedures in bargaining with fish processors over prices for fish. This, in turn, has a bearing on the income of both vessel owner or operator and employee crew members because of the use of the "lay" system. Some of these fishing vessel owners are interested in the enactment of a statutory provision such as this, so that they may continue, together with union member fishermen who are clearly in an employee-fishermen status, long-standing salmon price bargaining practices. Acting together, the bargaining power of the group would be stronger than when acting separately.

Labor organizations representing employee fishermen have generally been limited to negotiating terms and conditions of employment with the fishing vessel owners, based on prices agreed to by the vessel owner and the canner, processor, or other buyer. Such a limitation may deny the employee fisherman the possibility to improve his earning capacity to the extent that direct participation in price negotiation might increase his wages.

Just as any other worker, the fisherman has a vital interest in advancing his income status. We can appreciate his desire to bargain collectively for better wages, especially in the Alaska salmon industry where the fishermen face a particular problem. However, we are not able to judge whether the solution proposed by S. 1054, if applied uniformly to all segments of the fishing industry of the United States, would be beneficial to the industry as a whole.

Mr. Chairman, we would like to make a point with respect to a matter of some importnace embodied in the present text of S. 1054. We think that the bill can be interpreted to permit an exemption from the antitrust laws of agreements between buyers and fishermen that cover more than just the price of fish. These might include the cost of ice, fuel, and similar items.

As the Department's report points out, we believe that in at least one segment of the industry, namely Alaska salmon, some uniform means for allowing fishermen employee unions to bargain collectively with producers or buyers for fish prices is needed to encourage economic stability in the industry. We, however, lack adequate information to justify an extension of an exemption from the antitrust laws to matters other than the actual price of fish. If the committee acts favorably on this legislation, we recommend that the scope of

the bill be narrowed to apply only to the price of fish. We also think that consideration could be given to limiting the bargaining to individual buyers as present law now provides.

Thank you, Mr. Chairman. I will be glad to answer any questions.

Senator BARTLETT. Senator Magnuson?

The CHAIRMAN. We have had so many hearings on this subject, but probably you can bring it up to date.

Mr. McKernan, how many fishermen, numberwise, or percentagewise, would you say own a limited or a portion of a vessel? That is, as compared to the number of fishermen fishing?

Mr. MCKERNAN. In Bristol Bay, this number has been changing rapidly, Senator, but I would say that probably about one-half to two-thirds of the fishermen fishing Bristol Bay have some ownership status now.

The CHAIRMAN. And that would be carried on down in many cases to some of the crewmembers; would that be true?

Mr. MCKERNAN. Yes.

The CHAIRMAN. So there is a very substantial portion—let's say Bristol Bay for instance—of the people who fish up there as against the processors and the operators, who own a certain portion or have a proprietary interest in the boat?

Mr. MCKERNAN. Yes.

The CHAIRMAN. What is the reason for that rapid changover in the last few years that they want to get into that, other than the normal and natural desire to own a boat? Does it give them a better financial position in selling the fish or in dealing with the canners or processors?

Mr. MCKERMAN. I am not certain of all of the factors involved, but the employee fishermen, of course, are at some disadvantage in being employees of buyers and processors, and I believe that they have felt that by being independent fishermen they could, for example, change their location in the bay. You will remember, Senator, that there are about four different major fishing areas—districts—of Bristol Bay. When they have some interest in the boat they can be more independent in choosing their area of fishing.

I suspect that they may have felt that even a change in statehood in Alaska gave the independent fishermen some possible advantage over the employee fishermen.

At any rate, this change has taken place quite rapidly in the last 6 or 7 years. It was even beginning before statehood.

The CHAIRMAN. Moving to partial ownership or partial interest in the vessel does not change the price of fish to that vessel, does it?

Mr. MCKERNAN. No, not really. In fact, of course this is what the unions——

The CHAIRMAN. I mean the price they get for the fish.

Mr. MCKERNAN. That is what the unions are essentially trying to do here, to put themselves in a better bargaining position. At the present time the processor bargains both with company fishermen in Seattle, and with independent fishermen cooperatives in Bristol Bay, if I can use that as an example, Senator, although the somewhat similar practices apply in other parts of Alaska and this whole problem has been somewhat aggravated when traps were prohibited in Alaska. Of course a great many more fishermen in other parts of Alaska became boatowners.

The CHAIRMAN. But the price is predetermined, isn't it?

Mr. MCKERNAN. The price is negotiated beforehand, yes.

The CHAIRMAN. But ownership gives them greater flexibility to move, to participate in other activities, whereas if you are just a fisherman employed on a boat, you are stuck there with what the owner of the boat wants to do as far as places are concerned or fishing is concerned?

Mr. MCKERNAN. Yes. And I believe that many of these owner-fishermen now, formerly were union members and they have felt that becoming owners has deprived them to some extent of the bargaining power that they had before under their union membership. So that the union has tended to become weaker, and these owner-fishermen have tended to, in a sense, lose their rights at the bargaining table, because the union can no longer represent them.

Now this is the problem that this bill, or at least some sponsors of this bill would like to correct.

The CHAIRMAN. In other words, when they move into a limited or an owner status, they lose some rights as fishermen, bargaining rights, and they haven't got quite the complete owner rights, but they are kind of in between; is that right?

Mr. MCKERNAN. That is correct.

The CHAIRMAN. They kind of applied for membership in the club and they haven't been taken yet.

Mr. MCKERNAN. Yes, I believe that is a good summation of the situation.

The CHAIRMAN. But they had to do that for their own protection in many instances, or they felt that they did?

Mr. MCKERNAN. I believe that was their point of view.

The CHAIRMAN. That is all. Thank you.

Senator BARTLETT. Mr. McKernan, you said some of the cooperatives sell capital stock to crewmembers?

Mr. MCKERNAN. Yes.

Senator BARTLETT. I wonder if any of that capital stock is ever sold to the public?

Mr. MCKERNAN. I am not aware that it is. Mr. Stolting?

Mr. STOLTING. Senator, it is not sold to the public. The Fishery Cooperative Marketing Act specifically states it applies only to producing fishermen.

Senator Bartlett. So if the public wanted to get in on the act, they would not be able to do it under the law.

Mr. STOLTING. No; the cooperatives, as a matter of policy, don't sell common stock to the public. There are some cooperatives, though, that do sell to the public preferred stock, or a type of security that doesn't permit participation in the policymaking decisions of the organization.

The CHAIRMAN. But they can transfer theirs, can't they?

Mr. STOLTING. Transfer stock?

The CHAIRMAN. Suppose they have an ownership. Can't they transfer it? Suppose a fisherman wanted to transfer it to his family, his wife, or something?

Mr. STOLTING. Yes. That is correct.

The CHAIRMAN. It would not be a public sale, but it could be a private transfer.

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Mr. STOLTING That can be done.

Senator BARTLETT. Pursuing that, let's say a crew member had $1,000 worth of stock, or at least he considered it to be worth $1,000. And the association said no, it is only worth $900. Could he go to his wife's cousin and sell it for $1,000?

Mr. STOLTING. Senator Bartlett, he could go to his wife's cousin and borrow the money, but he would have to take the stock out in his own name, as a producing fisherman.

Senator BARTLETT. I see. Mr. McKernan, for the benefit of the laymen who may not understand your use of the term, will you give an explanation for the record of what you mean by the "lay" system?

Mr. MCKERNAN. In most or many fisheries of the United States, the lay system means that the fishermen benefit from the catch, the fishermen and the captains and boatowners have a system of receiving a certain percentage from the catch. The boatowner may take 50 percent of the value of the catch, and the fishermen may divide the other 50 percent. I am using this as an example only, Mr. Chairman. But the lay system as it applies to fishermen means the participation by all members of the crew and the owners in the profits from the catch.

Senator BARTLETT. I am sure this is an important clarification for the record.

Do you know of any other group of people who are in the same situation as these fishermen?

Mr. MCKERNAN. I suppose some farmers may well participate in the profits of the harvest as fishermen do, but I don't think they are in exactly the same position. I believe the fishermen are in a very unusual and I might add somewhat precarious situation insofar as benefiting from the products of their labor is concerned.

Senator BARTLETT. They can't present any united front in seeking a price for the product they catch.

Mr. MCKERNAN. No; and under the present circumstances it seems to be difficult in some fisheries, and this is especially true in the case of the Alaska fishery, where the salmon all come in at once, the price must be predetermined beforehand, and the fishing occurs over a very short period of time. One can't really alter the thing, or negotiate or bargain during the course of the season, because if one does this, why, you miss the run. You can't go back out there and find the fish 2 weeks later, as you can in some other fisheries of the United States. If you aren't tooled up and aren't out fishing when the run comes through, you have missed it.

There are peculiar circumstances in the Northwest salmon fishery that do not exist anywhere else in the United States.

On the other hand, I hasten to add that I think some of these problems exist in some other segments of the industry, although it is not quite so clear in some of them.

Senator BARTLETT. Why aren't you so sure that if S. 1054 were applied to all segments of the fishing industry, that that industry would benefit?

Mr. MCKERNAN. Well, I am not sure that under some applications of S. 1054 there would not be interference with fish coming into the markets in cases in which it must be sold immediately. Some of the auction systems around United States now provide for this very prompt disposal of the fish at the marketplace. And this is one

question that comes to mind, that comes to my mind, that any attempt to provide for a fixed price might actually have an adverse effect on getting a good fresh product to the consumer promptly.

The other problem is the balance in some fisheries between vessels or people that have large investments in vessel owners, if this bill were to pass. That is, it might be—and here again I am not saying necessarily that it would, because I think it is a very complicated and difficult question to answer—but it does seem to me that the man who has a large investment in vessels might find himself in between a more powerful bargainer in the unions and the processor on the other hand. He might in a sense find himself in the middle of these two. And it is not clear to me that this piece of legislation and its application throughout the United States would allow for a reasonable distribution of power between the three elements involved, the unions on one hand, the boat owners on the other hand, and on the third hand, the buyers.

Senator BARTLETT. Why do you recommend, Mr. McKernan, or at least suggest that the committee consider the advisability of limiting bargaining to individual buyers, as stated in the concluding sentence of your statement?

Mr. MCKERNAN. I didn't quite catch the question, Mr. Chairman.

Senator BARTLETT. I refer to the final sentence in your statement. Why do you suggest the committee consider this limitation?

Mr. MCKERNAN. Here I was trying to perhaps look for some way to get around the antitrust implications that have been raised by Justice Department and others within the executive, Mr. Chairman. I am convinced in my own mind that generally speaking fishermen must have an effective bargaining position. And I am quite certain that in some places they don't have. Yet I must in all truthfulness say that I am not completely satisfied with all aspects of this bill and its implications on antitrust laws.

Therefore this is an attempt to provide one possible solution to the antitrust implications of the bill itself.

Senator BARTLETT. The record is very clear that up to this point I have not uttered the word "Alaska." You did several times, but since you did, I am going to ask you, with the chairman's permission, something about the Bristol Bay red salmon run this year.

How many fish came into the bay?

Mr. MCKERNAN. I believe that when the figures are all in, talking now about red salmon alone, because there are a few pink salmon mixed in with the catch, that there will be between 55 and 60 million fish that will have entered the bay, about 25 million of them to have been caught, and the remainder to have escaped.

Perhaps this will be the biggest run in the history of Bristol Bay, at least the biggest run that has been measured with any accuracy.

Senator BARTLETT. Bigger than 1938?

Mr. MCKERNAN. There is pretty good evidence that this is bigger than 1938.

Senator BARTLETT. What were the predictions on the part of the Americans?

Mr. MCKERNAN. There were a number of predictions. The prediction that was accepted, generally accepted, was for about 27 million fish, plus or minus about 9 million. So the predictions were low. There were some later predictions based upon high seas evidence earlier in the year, in fact in May, which raised this prediction and

gave indications of a run of perhaps as much as 40 million fish. But our prediction methods were not accurate enough to give us confidence that there would be a run of this size.

Senator BARTLETT. Do the Japanese make any independent predictions?

Mr. MCKERNAN. The Japanese used our data, and in a conference of scientists they came up with an estimate quite close to ours, about 28 million where ours was 27 million. But the prediction was very close to ours.

On the other hand, they were using our data. They had none of their own.

Senator BARTLETT. They don't have any data of their own, upon which to formulate predictions?

Mr. MCKERNAN. I think there is quite good data in the high seas catch records of those fishing boats that are fishing in the area of heavy intermingling, but this data has not been put in a form where it can be usefully analyzed and put into computers and estimates made from it.

We have started to do that this year, and this later estimate I mentioned, which did indicate a larger run than previously predicted, this came from using data from the high seas fishing boats of Japan. And I suspect, Mr. Chairman, if I can speculate a moment, that the reason it underestimated the very large run was the fact that the run was made up of small fish, fish that had spent only 2 years in the ocean, and perhaps a smaller percentage of these fish had migrated farther west of the provisional abstention line than usual, so that in estimating the size of the run from the catch records of the Japanese, you would tend to underestimate on that basis. I think there was some effort made to correct this, because we judged that a smaller proportion of the run would go west, but I suspect we undercorrected.

Senator BARTLETT. On the average, didn't it take 16 fish to make up a case, instead of the usual 12?

Mr. MCKERNAN. Yes, as I understand the fish were smaller and it took 16 point some fraction fish per case.

Senator BARTLETT. Mr. McKernan, was there sufficient escapement in each of the streams entering Bristol Bay?

Mr. MCKERNAN. I think the general answer to that is "Yes." I haven't seen the final figures and I don't have them, the data, clearly imprinted upon my mind. But I think most river systems achieved quite adequate escapement. And of course the Kvichak system, the big Iliamna Lake system, achieved a very heavy escapement. Of course there will be speculation, as in 1960, that there is too much escapement. But I am a little more conservative in that regard than some. From the escapement in 1960 that everybody judged as being too high, we got this record run. So I think that the optimum escapement is still unknown and I don't know that we can tell yet what the optimum escapement is into these great inland lake systems.

But at least there was a tremendously heavy escapement. I was in the bay area and saw this escapement in Iliamna Lake and it was really quite tremendous.

Senator BARTLETT. Was fishing good for each of the river systems?

Mr. MCKERNAN. No. The fishing was not so good. Some river systems, the fishing was only modest, and relatively poor. For example, in the Nushagak system, a very important system, because it

is adjacent to the town of Dillingham, the fishing was not particularly good.

Senator BARTLETT. What other systems weren't good?

Mr. MCKERNAN. I don't think the Togiak system was too good, which lies to the north and west of Nushagak. The Ugashik fishing was only moderate. The rivers that produced the major runs were the Egegik and the Naknek-Kvichak systems. The other districts were only average or below.

Senator BARTLETT. Do you have any explanation to account for this, for the heavy run in some places, and the modest or poor run in others?

Mr. MCKERNAN. No, I don't. There might have been selective fishing on the high seas, of course. One must remember that the fish, the size of the fish expected in some of these other river systems were normal. That is, larger. And there is no question about the fact that the high seas fishery is a selective fishery, it will select out the larger fish. If I could be permitted to speculate, I would say that the high seas fishery did catch a disproportionately high share of these river systems which had only moderate runs. They did this because the fish were larger, and the nets, the gil nets that the Japanese used in the high seas could be expected to be more efficient toward the larger fish and less efficient toward the smaller fish, which were in much greater abundance.

So I think that this might explain the fairly moderate runs in some of the other systems.

Here again I am speculating, Mr. Chairman, and I have no direct proof of this. But nevertheless this is what I would judge from what knowledge I have.

Senator BARTLETT. Did you say the bulk of these fish were 2-year fish?

Mr. MCKERNAN. They were two-ocean fish. That is, they had spent 2 years in the ocean. They spent 3 years in the lakes. You may remember the life history of Sockeye is that they spawn in tributaries to lakes and the young fish come down and spend a period of time in these lakes. Now the great abundance of the young in Lake Iliamma and Lake Clark, that is, the lakes of the Kvichak River system, apparently meant that these young fish were not ready to go to sea at their normal time, so they stayed in the lakes 1 year longer. They stayed 3 years in the lakes. That is the 1960 escapement of fish that produced this run. And these fish came down and stayed in the lakes 3 years, and migrated out in the spring, and then they spent two summers in the ocean, and returned this year.

Senator BARTLETT. Are we to infer from what you say that they lived a normal lifespan then, but spent 1 additional year in fresh water?

Mr. MCKERNAN. Yes.

Senator BARTLETT. Did you suggest, Mr. McKernan, that on account of this abbreviated stay in salt water many of these fish might never have gone west of 175° west longitude and placed themselves in a position where they could be caught by the Japanese?

Mr. MCKERNAN. Yes. Our scientific data indicates that when the fish spend a longer time in the ocean, they tend to migrate a greater and greater distance from the American shores.

Senator BARTLETT. Do you know, or have you heard authoritatively or otherwise, how many salmon originating in Bristol Bay, the Japanese are supposed to have taken this year on the high seas?

Mr. MCKERNAN. Well, here again we have certain data and made some assumptions and I can, on the basis of these assumptions, without the data available yet—the data being made available through regular channels of the North Pacific Commission by the Japanese—estimate on the basis of the distribution of the fleets as we were able to ascertain them, that the Japanese probably took close to 6 million fish of Bristol Bay origin.

Senator BARTLETT. From everything you have said here I gain the distinct impression that they, despite the huge run in Bristol Bay this year, the unparalleled run in all probability, you are not willing to admit that the Japanese high seas fishing does not have a detrimental effect upon the supply of red salmon?

Mr. MCKERNAN. No, I am not willing to admit that.

Senator BARTLETT. I have no other questions.

The CHAIRMAN. In your letter, Mr. McKernan, your Department letter to us on this bill dated July 6 of this year, which we have put in the record already, you mention a great deal about there ought to be more stability for wages in this particular field.

Of course the wages, when you speak of wages, you are talking about the price they get for the fish, isn't that right?

Mr. MCKERNAN. I am speaking about the price that is received from the fish and the proportion of that income that the fishermen themselves get.

The CHAIRMAN. Yes. That is, some things are deducted and things of that kind. But basically the price of fish determines what their income will be, their wages, isn't that right, basically?

Mr. MCKERNAN. Yes.

The CHAIRMAN. Now when you are seeking stability in this field, how much has the price of fish in this predetermined negotiation varied over the years? Start with this year. How much was it this year?

Mr. MCKERNAN. I believe, I think it was about $1.09. That is if my memory serves me correctly.

The CHAIRMAN. Now how far has it gone down over the 10-year period, or has it been higher than that? What has been the fluctuation?

Mr. MCKERNAN. There is considerable fluctuation, of course, and this fluctuation depends on the market conditions, and the estimate of the size of the run. And this probably varies from something like—here again just from memory—as low as perhaps 70 cents, and perhaps—I just can't give you an upper figure, Senator.

The CHAIRMAN. Would you get those and put them in the record?

Mr. MCKERNAN. Yes.

The CHAIRMAN. So we can point out that there is this fluctuation and we are seeking here to, if we can, work out something to have more stability, which in turn determines the wage stability.

Mr. McKernan.

(The information requested follows:)

Price of salmon to fishermen in western Alaska, by species 1956–64

[Price per fish]

Year	Chinook or King	Chum or Keta	Pink	Red or Sockeye	Silver or Coho
1956	$3.37	$0.44	$0.30	$0.82	$0.82
1957	3.39	.46	.29	.82	.82
1958	3.48	.47	.26	.86	.84
1959	3.44	.48	.30	.90	.79
1960	3.31	.48	.32	.95	.91
1961	3.44	.56	.30	1.00	.87
1962	3.41	.46	.33	1.04	.89
1963	3.52	.50	.30	1.08	.88
1964[1]	3.50	.58	.32	1.09	.90

[1] Preliminary.

The CHAIRMAN. Now you feel that there is some necessity that there be some change in the system of bargaining, whether it be by legislation or otherwise, along the lines that are generally proposed in the bill, as I understand the Department's position, generally speaking?

Mr. MCKERNAN. Yes.

The CHAIRMAN. You mention that you can't make a definite judgment as to whether S. 1054 will, in fact, provide this stability or whether it will meet the economic needs of the industry as a whole, or whether the antitrust implications of labor unions bargaining on the price of fish outweighs the needs of these people. However, you say:

Is that correct?

> We agree, however, with the objective of this bill, and we think that in determining whether this approach or some other legislative approach to the problem is a reasonable one, the fishermen must be viewed not in the technical and legal sense, but as wage earners who form an important segment of our economy.

Is that correct?

Mr. MCKERNAN. Yes.

The CHAIRMAN. All right. That is all.

Senator BARTLETT. Thank you, gentlemen.

The next witness is Mr. Vance, of Seattle.

STATEMENT OF J. DUANE VANCE, ESQ., SEATTLE, WASH., ON BEHALF OF THE SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, ACCOMPANIED BY EARL SHEPARD ON BEHALF OF THE SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA; ALFRED M. KLEIN, ESQ., ON BEHALF OF THE CANNERY WORKERS & FISHERMEN'S UNION OF SAN DIEGO, CALIF.; AND JAMES ACKERT, PRESIDENT, ATLANTIC FISHERMEN'S UNION OF NEW YORK, BOSTON, AND GLOUCESTER

Senator BARTLETT. It is good to see you again on this same bill, Mr. Vance. Do you have anyone you would like to have accompany you to the table?

Mr. VANCE. Yes, the Seafarer's Union has several witnesses here today: Mr. Alfred Klein, representing the Cannery Workers & Fishermen's Union of San Diego, Calif., and Seafarer's International Union; Mr. Earl Shepard, of the Seafarer's International Union; and Mr.

James Ackert, of the Atlantic Fishermen's Union of New York, all from the SIU, who are here and have statements today.

Mr. Chairman, I imagine the Senators are a little bit tired of seeing me and hearing me on this subject. I have appeared here before. I have submitted a written statement. I will follow it some, but I would like to digress a little, too, if I may.

The CHAIRMAN. We are never tired of hearing you if we can make some progress.

Mr. VANCE. That would be helpful; yes.

Senator, before I follow the formal statement, I would like to advert a moment to a question the Senator asked of Mr. McKernan. It had to do with the extent of the participation by fishermen in so-called ownership of boats.

One of the things that has happened that is particularly upsetting in this business is that this so-called proprietary interest is oftentimes nothing. It is nothing more than a lease for nothing, from the company, to a particular fisherman that it employs, and thus it makes him an independent fisherman.

I had a man in my office last week who has customarily gone out for a particular company for a number of years. He operates a tender. He skippers it up. Then he leases the boat from the company, becomes an independent fisherman, and fishes for that company as a so-called independent under the existing state of the law.

Then he brings the tender back down. On the way up he fractured a rib. Then he got nothing, because the company promptly leased the boat to another man.

So he is not like a man who owns a boat who would have gotten what we would call the boat's share, if he had actually been a proprietor. I am sure this is happening in many instances.

These men have no interest in the boats, actually, and if they can't operate it that year, it is a dead loss and somebody else benefits.

Another thing that has been particularly upsetting— and I haven't got the figures on this yet—but in this rapid increase of this leasing system, I think what we call the boat pull here, or the man who participates, who is outside of the union's protection, is becoming rapidly reduced.

I have heard statements several times this year that some of those men were paid as little as 10 cents a fish, and these, of course, a lot of them, are residents up there who need this income.

In an average year, if they got 5,000 or 6,000 or 7,000 fish, this would mean only an income of $500 or $600 to these men. The traditional practice under union bargaining was one-third, one-third, one-third—a third for the boatowners, one-third for the captain, and one-third for the crewmen. It appears these men are deprived.

Now, in some industries, in the tuna industry, for example, where you can go before the board and get certified to represent the crew of a vessel, you can bargain for that man. But how can the union bargain for this other man? Here is a so-called independent, who has a lease from the company, for which he pays nothing, he gets nothing, and he would be the employer, wouldn't he, of that particular crewmember that worked for him. He agrees to pay him 10 cents. By the time he gets to Alaska, he is not even the employer any more, because he los the boat. Another man has it. The union finds it impossible to represent——

The CHAIRMAN. How can he lose the boat if he signs an agreement? Or doesn't he have an agreement?

Mr. VANCE. I don't believe they have written agreements.

The CHAIRMAN. If they did make an agreement, he could not lose boat, could he?

Mr. VANCE. Not if they had a signed agreement; no. If we had some form of bargaining, where we could arrive at preseason written agreements on these matters, I thing we could——

The CHAIRMAN. Why wouldn't he have an agreement, if he is going to go up there and take that chance?

Mr. VANCE. Well, men will make arrangements——

The CHAIRMAN. Make oral arrangements?

Mr. VANCE. Yes.

May it please the Senator, I appeared before this committee on October 15, 1962, at which time the committee had under consideration S. 3093, and my testimony was recorded in pages 52 to 72 of those hearings, and including a fairly comprehensive brief which I submitted on the legal points. Again on May 8, 1963, I appeared in support of S. 1135, and my testimony is recorded at pages 19 to 33.

By permission of the Senate, or the chairman, I was permitted to file a rebuttal to the statements of the Department of Justice and the Federal Trade Commission and those are recorded on pages 205 and 206 of the hearings on S. 1135.

Further, I appeared on the House side last June—June 17—in support of similar legislation, H.R. 3955.

The CHAIRMAN. Now, this is the first time the House has held hearings on this bill, isn't it?

Mr. VANCE. That is correct.

We have attempted to establish generally three conclusions in these hearings, and they are, one, that from time immemorial fisherman have fished on lay, and this has constituted their wages and therefore when they bargain for the price, they are bargaining for their wages.

We have attempted to establish by the legal briefs that the actual application of the antitrust laws to this field was a legal accident. I feel fairly confident if one were to review the legislative history of the antitrust laws passed in 1902——

The CHAIRMAN. When you are talking about No. 2 there, you are speaking of the original bill which we passed in 1934, wasn't it?

Mr. VANCE. No. I am speaking of——

The CHAIRMAN. You say it is a legal accident?

Mr. VANCE. In No. 2, Senator, I am speaking of the Hinton decision by the Supreme Court.

The CHAIRMAN. But I say the legislation was back in 1934.

Mr. VANCE. The first Fishermen's Marketing Act, yes.

The CHAIRMAN. Yes. And I think you make a good point there, because even though it was an accident, or not an accident at that time, conditions have so changed in this field that the application of the 1934 act, had they known what the conditions would be now, they would have probably done something about it.

Mr. VANCE. I have no doubt of that. In 1934 they had under consideration the Wagner Act, and they thought the Wagner Act was going to cover these people.

The third point I have tried to establish—and I think we have—is that all we are actually trying to do here is not presently illegal under the law. We do it in certain isolated instances by a tripartite arrangement, but this is practical in less than 10 percent of the actual fisheries, and thus there is an actual discrimination in the application of the law between certain fishermen and other fishermen, because some fishermen can operate in this way, and others cannot, because of their isolation and the marketing conditions.

The Department of Labor and the Bureau of Commercial Fisheries have both recognized and testified before this committee that there is a need for legislation along this line. We are faced with the opposition of the Department of Justice and Federal Trade Commission.

I would like to address myself to this if I might for a moment. In the first place, I think it should be pointed out that the antitrust laws of the United States were not original change of law by United States. The common law of England and the common law of United States prohibited agreements in the restraint of trade.

The passage of this law by Congress simply implemented the common law and made it, rather than just leaving it to be the common law of the States, made it the Federal law of the United States and imposed criminal sanctions and eventually set up the Federal Trade Commission to enforce it. But it is an old, old doctrine of law. And so far as I know, even though this price bargaining applied to fishermen throughout the United States, all of those years under the common law it was never declared illegal.

And we find numerous instances in our Washington State reports of where lawsuits have been brought back and forth over fishermen's price arrangements and lays, the issue never being raised that this was in any way in violation of the common law of the State of Washington as being restraint of trade.

Now, the opposition of the Department of Justice and the Federal Trade Commission appears to us to be somewhat unrealistic, stereotyped, and unthinking. It is particularly true of the Department of Justice. I would like to point out that I had a Congressman arrange an appointment for me to go down to the Department of Justice to discuss this subject, to see if there was some common ground that we could meet the Department on and alleviate their fears as to the broadness and intents of our act, and at the same time to fulfill this need which has been so greatly recognized.

And this appointment was arranged by mail. It was a longstanding thing, not a hurry-up job. When I got down there, I was assigned to talk to two attorneys, neither of whom had any familiarity with the fishing field or any of the Department's prosecutions in this field. They listened politely and bid me goodby.

They did admit we had a problem. I would like to point out that—and I have made reference in previous hearings to the so-called letter of immunity, granted in the Alaska salmon industry, by the Department of Justice in 1946. This just recently came into my hands.

What happened was that after the War Labor Board—its functions ceased in 1946, and bear in mind it is important that the War Labor Board, not the OPA, governed this matter during World War II.

At the end, when the War Labor Board's powers were ceased, the Alaska Salmon Industry, Inc., made an application to the Department

of Justice for immunity from criminal prosecution, should it continue to bargain with the unions over prices as it had in the past.

The letter of submittal, which recently came to me, is dated February 28, 1946, and was submitted on behalf of the Alaska Salmon Industry, Inc., by W. C. Arnold, well known to the Senators, and by another gentleman whose name has recently been somewhat prominent, Mr. Abe Fortas.

Arnold and Fortas submitted this to the Department of Justice, requesting immunity from criminal prosecution. And I think some—I would like to enter this. I have an extra copy. I would like to have it made a part of the record.

Senator BARTLETT. It will be made a part of the record.

(The letter follows:)

FEBRUARY 28, 1946.

Hon. WENDELL BERGE,
Assistant Attorney General,
Department of Justice, Washington, D.C.

DEAR MR. BERGE: Attached to this letter you will find a submission of facts concerning the relationship between the various labor unions engaged in the salmon fishing industry in the Alaska area and the Alaska Salmon Industry, Inc. whose members comprise about 95% of the employers. You will note from the material submitted that the Alaska area produces 90% of the national supply of canned salmon and about 60% of the world supply. The gross value of the pack at present season prices is $45,000,000. In the present world-wide shortage of food the importance of this supply far exceeds its money value.

As you will note from the attached submission of facts, for many years the association of employers has been bargaining collectively with a number of unions composed of various types of salmon fishermen. These unions do not fall in the conventional pattern of the employer-employee relationship because a substantial portion of their members get their remuneration by so-called "sales" of the fish caught to canneries instead of receiving salaries. Nevertheless, since 1903 these fishermen have considered themselves as entitled to all the rights and privileges of a labor union and have demanded that such "sales" of the fish caught be considered a part of the subject matter of collective bargaining in the industry.

A serious doubt on the right of these unions to bargain collectively with the canneries with respect to the so-called "price" of salmon paid to the fishermen has been created by the decision of the Supreme Court of the United States in the *Columbia River Packers Association* v. *Hinton*, 315 U.S. 143. That case involved a controversy between a fish packing corporation and a fishermen's union regarding the legality of union contracts which required that the contracting canners and packers obtain fish from union members only and that the union members deliver only to those which had contracts with the union. The Supreme Court held that the dispute was one "among business men over the terms of the sale of fish"; that the fishermen were not "employees of the petitioner or of any other employer"; that their desire was "to continue as independent business men free from such controls that an employer might exercise." For these reasons the Court held that no labor dispute was involved and that an injunction might be granted under the allegations of the bill.

After this decision of the Supreme Court criminal prosecutions were brought against parties to agreements of the type involved in that case. Fines were paid for violations of the antitrust laws by a number of Columbia River canners. The doubt raised by the decision, however, did not affect collective bargaining in the salmon fishing industry so long as the War Labor Board had jurisdiction over the dispute. For the past 4 years that Board has approved collective bargaining agreements fixing the so-called "price" paid the salmon fishermen. We suggest that the past approval of the War Labor Board is a persuasive argument that the proposed collective bargaining agreement involved here is within the orbit of a legitimate labor dispute. Nevertheless, the matter is not entirely free from doubt.

Today in the absence of the War Labor Board authority the question of the legality of collective bargaining invoking so-called "prices" paid to fishermen is again before the industry. The union is demanding that negotiations for collective bargaining which include the terms of these so-called "sales" be commenced immediately. If this collective bargaining is not successfully carried

on it is almost certain that the whole industry will be tied up by strikes and that all or a large portion of the year's supply of salmon from the Alaska regions will be gone. The world crisis in food has created an emergency which requires immediate action on the part of the Alaska Salmon Industry, Inc. It has no desire to enter into any collective bargaining contract the legality of which may be questioned. On the other hand, if it does not do so it may not only be faced with a great financial loss for this season, but it will also be unable to carry out its public duty to produce this necessary food product in a period of emergency. No comment is necessary on the present international need for food.

Time is of the essence. The fishing season lasts only about thirty days. It will commence in May. Men must be transported to the fishing grounds involving trips as much as 600 miles. The first boats to certain remote areas must go out early in March. We are sincere in saying that the present crisis in the salmon industry justifies and indeed requires that the Department of Justice, in line with its previous policy in similar cases, give written assurance to the Alaska Salmon Industry, Inc., that in the event it collectively bargains with the various unions as to the "*price*" its members will pay fishermen for salmon in the Alaska area during the next fishing season, there will be no criminal prosecution of the association or its members on that account.

We point out that the Alaska Salmon Industry, Inc., and its members are victims of organized economic pressure over which they have no control. It would be an economic absurdity to say that if the agreement made under such circumstances proved to be illegal (which we do not concede) the association or its members would be legally culpable in entering into it. This principle was announced in a recent case, *Ring* v. *Spina*, 148 F. (2d) 647, (C.C.A. 2nd, 1945).

In that case the Court went so far as to give a party to an agreement, held illegal under the antitrust laws, *affirmative* relief against the organization which had used economic pressure to compel the party to sign the agreement. This principle is of paramount importance here because unlike the case of *Ring* v. *Spina* a great public interest would be impaired by refusal to bargain.

We further request that with respect to possible future civil prosecutions if such be commenced on account of these agreements, the Alaska Salmon Industry, Inc., and its members should be treated by the Department of Justice as nominal parties. They should now be given the assurance that the unions will be made the principal defendants if such suits are brought. This request is not only based on the sound legal principle of *Ring* v. *Spina*. It is the only practical method of proceeding. A civil prosecution which did not make the unions the principal parties defendant, would be of no utility whatever.

We think it is relevant to point out also that after fines were paid by the Columbia River canners on pleas of *nolo contendere*, the District Court dismissed the indictment as to the union, concluding that "the practice of group bargaining, which has been so satisfactory on the Columbia River to fishermen as well as canners, is not subject to the criminal penalties of the Antitrust Act.", C.C.H. Trade Regulation Service, 1941–43, 52, 917, *U.S.* v. *Columbia River Fishermen's Protective Union*.

We suggest that the peculiar economic situation in the salmon fishing industry makes the principle laid down in *Columbia River Packers Association* v. *Hinton* inapplicable. We point out in passing that the so-called "price" paid to the fishermen while an element of cost of the product has the same kind of relationship to the price of the completed article as labor costs in other industries. The union in bargaining with the association of employers limits itself to the remunerations of its members and makes no attempt to fix the price of the finished product.

Respectfully submitted.

ARNOLD & FORTAS,
By W. C. ARNOLD,
Managing Director, Alaska Salmon Industry, Inc.

MARCH 1, 1946.

ARNOLD & FORTAS,
Attorneys at Law,
Bowen Building, Washington, D.C.

GENTLEMEN: I have your letter dated February 28, 1946, requesting our views on the legality under the Sherman Antitrust laws of proposed collective bargaining agreements between an organization of Alaska salmon canneries, known as Alaska Salmon Industry, Inc. and a number of unions of Alaska salmon fishermen.

As you know, the Department is not authorized to give private organizations advisory opinions on questions of law. It is within our discretion, however,

to determine what type of proceeding—civil, criminal, or both—should be brought under the Sherman Act in particular cases and circumstances. When a private organization fully discloses a program to the Department before it becomes operative, it is our policy to advise such organization concerning our position with respect to the institution of criminal proceedings if the program is put into operation. In such cases, we always reserve the right to institute civil proceedings in the event that the legality of the program should be determined. Furthermore, it should be understood that the Department's position that criminal proceedings will not be instituted, will become inoperative immediately upon discovery that the purpose or nature of the program has not been fully disclosed to the Department, (or any party to the program at any time operates outside the limitations of the progrm as disclosed to the Department.)

Subject to the policies and reservations stated above, we wish to advise you that the Department would not institute criminal proceedings simply because Alaska Salmon Industry, Inc., goes forward with the program submitted with your letter of February 28, 1946.

Pending further study of the status of salmon fishermen as members of a legitimate labor union, the Department can make no representation that it may not institute a civil proceeding. However, from the information which you have submitted it appears that in such a proceeding the Alaska Salmon Industry, Inc., and its members should not be the sole parties defendant but should be joined with the unions who are parties to the collective bargaining agreement.

The Department also reserves complete freedom to institute criminal proceedings relating to future conduct found not to be in the public interest and persisted in after notice by this Department to you to desist. This further limitation, or course, would not apply to the carrying out of annual contracts within the fair intendment of the proposal negotiated before the issuance of a notice to desist by the Department.

Sincerely yours,

WENDELL BERGE,
Assistant Attorney General.

Mr. VANCE. I would like to quote briefly from part of the submittal. It is quite lengthly. This is under the signature of Mr. Arnold and Mr. Fortas.

As you will note from the attached submission of facts, for many years the association of employers has been bargaining collectively with a number of unions composed of various types of salmon fishermen. These unions do not fall in the conventional pattern of the employer-employee relationship because a substantial portion of their members get their remuneration by so-called sales of the fish caught to canneries instead of receiving salaries. Nevertheless, since 1903, these fishermen have considered themselves as entitled to all the rights and privileges of a labor union and have demanded that such "sales" of the fish caught be considered a part of the subject matter of collective bargaining in the industry.

Now I omit.

Another paragraph of the letter to the Department of Justice says:

After this decision of the Supreme Court criminal prosecutions were brought against parties to agreements of the type involved in that case. Fines were paid for violations of the antitrust laws by a number of Columbia River canners. The doubts raised by the decision, however, did not affect collective bargaining in the salmon fishing industry so long as the War Labor Board had jurisdiction over the dispute. For the past 4 years that Board has approved collective bargaining agreements fixing the so-called price paid the salmon fishermen. We suggest that the past approval of the War Labor Board is a persuasive argument that the proposed collective bargaining agremeent involved here is within the orbit of a legitimate labor dispute. Nevertheless, the matter is not entirely free from doubt.

The last two paragraphs of the letter from Arnold & Fortas read as follows:

We think it is relevant to point out also that after fines were paid by the Columbia River canners on pleas of *nolo contendere*, the District Court dismissed the indictment as to the union, concluding that "the practice of group bargaining, which has been so satisfactory on the Columbia River to fishermen as well as canners, is not subject to the criminal penalties of the Antitrust Act," C.C.H.

Trade Regulation Service, 1941–43, 52, 917, *U.S.* v. *Columbia River Fishermen's Protective Union.*

We suggest that the peculiar economic situation in the salmon fishing industry makes the principle laid down in Columbia River Packers Association v. Hinton inapplicable. We point out in passing that the so-called "price" paid to the fishermen while an element of cost of the product has the same kind of relationship to the price of the completed article as labor costs in other industries. The union in bargaining with the association of employers limits itself to the remunerations of its members and makes no attempt to fix the price of the finished product.

Respectfully submitted.

ARNOLD & FORTAS.

The next day, after due consideration, the Department of Justice, under the signature of Mr. Wendell Berge, then head of the Antitrust Section, said in part as follows, and I quote the third paragraph of the letter:

Subject to the policies and reservations stated above, we wish to advise you that the Department would not institute criminal proceedings simply because Alaska Salmon Industry, Incorporated, goes forward with the program submitted with your letter of February 28, 1946.

I would like both of those letters in their entirety to be made a part of the record. In other words, in 1946, the Department of Justice said:

We approve what you are doing, and we will not prosecute you criminally if you continue to negotiate.

Senator BARTLETT. Mr. Vance, you said that answer came the day after the Fortas' letter was written?

Mr. VANCE. Yes, sir. The Arnold & Fortas letter is dated February 28, and the Department of Justice letter is dated March 1, 1946.

Senator BARTLETT. The fastest reply ever made by a department of the Federal Government in the history of the Republic.

Mr. VANCE. I might note also that the Department of Justice in its reply said this:

The Department also reserves complete freedom to institute criminal proceedings relating to future conduct found not to be in the public interest.

Now, we bargain collectively in this industry based upon this—I call it letter of immunity; they have another name for it at the Department—for 8 solid years and the Department of Justice never prosecuted, never issued a warning, which it reserved the right to do to cease and desist and apparently in those 8 years never found anthing not to be in the public interest.

And we weren't stopped by the Department of Justice. We were stopped by the Federal Trade Commission.

Now, the Department of Justice found it possible and feasible for this to be done by its unilateral consent in 1946, never took any action, never said it was contrary to the public interest, never took any action in the matter, and yet it tells the Senate and the House, the Congress of the United States, that it ought not to make an exception, which it itself felt unilaterally competent to make in 1946. And I don't feel that exceptions that the Department can make are beyond the power or the duty of the Congress, if it finds it to be in the public interest.

And this I cannot understand, in light of this transaction, which occurred in 1946, that the Department has a complete reluctance to negotiate with us, to deal with us, to find some way that we can fulfill this need for collective bargaining.

We are willing to meet with the Department. We are willing—we don't want the broad governments and things they see in there and if they want to have some limiting language in this act that we can live with. We are certainly willing to sit down with them. But we have not been able to sit down with them and negotiate this matter out.

I think that is all.

The CHAIRMAN. I was just reading here the Federal Trade Commission report and this is the kind of thing that is pretty hard to follow, the reasoning here.

They say that if you do what the bill provides, it is presently against the present law.

Mr. VANCE. That is exactly what their report says.

The CHAIRMAN. We all know that. That is why we are here.

Mr. VANCE. We knew that when we started.

The CHAIRMAN. Otherwise we wouldn't be here. Then they go on to say that it has been consistent with the Commission's views that exemption from the antitrust laws, designed for the relief of a particular industry or group, should be viewed most critically. We don't disagree with that. This was only adopted after a very convincing showing of necessity.

They should have stopped there. Then they say that the Department is opposed to the bill. I don't know who wrote this letter. I am sure Mr. Dixon didn't. I can't believe he did. That is what we have the bill in for, because it would be against the law. They don't say we should not do this. They don't go into the reasons for it, or whether there should be exemption.

I think if we can't get more out of the Federal Trade Commission than this, we will have to haul them in here and see if they think in equity and in justice this should be done, not that it is against the present law. We know that.

Mr. VANCE. Yes. And the Department of Labor in its testimony has pointed out to this committee the need, the Bureau of Commercial Fisheries has recognized the need, and Commissioner McIntyre pointed out in his dissent that the Federal Trade Commission had not even brought up the question of need. Yet in their report they say, "Well, it should not be done unless there is a showing of necessity." The showing is already here. As far as these limitations on what they want to bargain about, these are not insoluble problems. This legislation can be so drafted as to eliminate these things.

The CHAIRMAN. The Department of Justice is more specific in their letter here, where they say they are against the passage, because it would be discriminatory in singling out one industry where buyers, or an association of buyers, can enter into agreements as to the price they will pay for a commodity and be exempt from the application of antitrust laws and might establish a precedent where under special circumstances a union can be an association of independent entrepreneurs and act as a bargaining agent or selling agent in the sale of a commodity produced by its members.

We don't disagree with that. But we are trying to point out that this is a peculiar type of operation and it stands apart by itself.

Now, there is the problem always around here, you get a bill like this, and you open up Pandora's box and somebody says, "if you can do it for fish, why can't you do it for us?"

And that is true. So we have to have a good case that this is something that stands apart. It is a peculiar type of business to begin with, and the operation has grown up where it is more complicated, and isn't quite the same type of operation that you have in other commodities.

Mr. VANCE. That is true.

The CHAIRMAN. But the Federal Trade Commission letter, that is about the worst I have ever seen.

Mr. VANCE. In the discussion I had with the Department of Justice, one of the attorneys suggested: "Why don't you go to a standard wage system?"

I said to him, "Well, Counsel, as I understand it, the purpose of the law is to regulate man's affairs. It is not the purpose of man's affairs to fit itself into this."

Now, fishermen have been fishing on lay since the time of Christ and we are not going to be able to go back and take an industry into which this is so integrally interwoven and convert it over now, 2,000 years later, into a wage system. This would be impossible.

The CHAIRMAN. May I ask one question? I preface this by saying that, of course, we have to deal with these Departments, and they are an integral part of what we have to do to do something to correct this, and we would like to be able to work something out where they can see the problem and be helpful.

We don't need the Federal Trade Commission to tell us what is against the law. We have our own attorneys up here to tell us that. But you said you have tried to meet with the Department and you did meet with them on June 16 of this year?

Mr. VANCE. That is correct.

The CHAIRMAN. I am talking about the Department of Justice now.

Mr. VANCE. That is correct.

The CHAIRMAN. Have you met with the Federal Trade Commission at all?

Mr. VANCE. No. I talked with Mr. Cohn, who I know very well. He came out and prosecuted us. I talked with him in the committee room, and he suggested that such a conference would be of no value.

The CHAIRMAN. He suggested what?

Mr. VANCE. That such a conference would be of no value.

The CHAIRMAN. No value? Was he speaking for the Commission?

Mr. VANCE. He didn't purport to speak for the Commission, but he indicated that their position was immovable.

The CHAIRMAN. I have a meeting in here and I am sorry I can't stay to hear you, Mr. Kibre. We are glad to see you back.

Mr. KIBRE. I am certainly glad to be back. I am still a little weak and not fully up to par yet. I am going to turn my testimony over to our counsel, in fact.

Senator BARTLETT. I have a question I want to ask of Mr. Vance. Do you desire to have the written statement you prepared but which you didn't read placed in the record?

Mr. VANCE. Yes, I would.

Senator BARTLETT. That will be done.

(The statement follows:)

STATEMENT IN SUPPORT OF S. 1054 BY J. DUANE VANCE

We once again welcome the opportunity to appear before this Committee in support of legislation having as its object restoring of some vestige of collective bargaining rights to fishermen, in this specific case, in support of S. 1054.

The writer appeared before this Committee at Seattle, Washington, on October 15, 1962, in support of S. 3093, a similar bill having a similar purpose. In addition to testifying verbally, a rather comprehensive brief on the legal aspect, including the legal history of this matter, was submitted and was incorporated as a part of the report of the hearing.

Again on May 8, 1963, the writer appeared before this Committee at Washington, D.C., and submitted additional written comments and gave oral testimony, both the written and oral testimony having been incorporated in the reports on that hearing. Additionally thereto, permission was granted us to file a written report in rebuttal to the statements of the Department of Justice and the Federal Trade Commission, which statement was incorporated in the report of the hearings on S. 1135.

Further, the writer appeared before the House Committee in support of similar legislation, H.R. 3955, on June 17, 1965.

We have submitted, both orally and in writing, arguments in great detail in support of the following conclusions:

1. From time immemorial, fishermen's compensation has been determined by the method of share or "lay", which share or "lay" was considered by the law their wages; and thus, in bargaining for the price, they were bargaining for their wages.

2. The application of the anti-trust laws to this situation was a "legal accident" which put the fishermen in a legal mess, and unjustifiably and inequitably discriminated against them in depriving them of the legal protections accorded other workmen by federal law.

3. The price bargaining which we seek to legalize by the present legislation is not now illegal if accomplished indirectly through a tripartite arrangement, which is actually being done in a small part of the entire fishing industry but which is impractical in most situations, thus creating discrimination in the legal rights of fishermen, depending upon the circumstances of the fishery in which they may be engaged.

The Department of Labor and the Bureau of Commercial Fisheries have both recognized and stated officially that they agree with the proponents of this legislation as to the great need for remedial legislation in this area. Experience in the past two years has apparently increased the strength of this conviction, because the Director of the Bureau of Commercial Fisheries, Mr. Donald McKernan, expressed his conviction on this very strongly in the hearings before the House Committee on June 17 of this year.

More and more management representatives have expressed privately their conviction that such legislation would be helpful, not only to the fishermen themselves, but to the industry in bringing stability and intelligent planning into what is now almost unbearable chaos, at least in the seasonal fisheries field.

The Department of Justice and the Federal Trade Commission have expressed their opposition to such legislation. It was anticipated that these government agencies would oppose this legislation and such anticipation was expressed by the writer in the written statement submitted to this Committee on May 8, 1963, and was incorporated in the hearings on S. 1135 which were held in Washington on that day. The opposition of these departments was to be expected since an agency could hardly be expected to approve legislation which would curtail its operation or nullify the effect of some of its prior proceedings.

It is respectfully suggested that the opposition of the Federal Trade Commission and the Department of Justice to this legislation is not based upon impartial, objective thinking.

There have been two impartial, objective studies, both by university professors and both published in the Industrial and Labor Relations View, one in 1950 and the other in 1955, both of which have been referred to in the record of hearings on S. 3093 and S. 1135. Both of these impartial authors agreed upon the need of some such legislation, as do the Department of Labor and the Bureau of Fisheries.

The opposition of the Department of Justice seems particularly anomalous. In 1946, at the request of the Alaska Salmon Industry, Inc., the Anti-Trust Division of the Department of Justice issued what we call a "letter of immunity" in which the department stated that it would not prosecute the Alaska Salmon Industry, Inc., for bargaining with fishermen over fish prices if it continued to do so, as it had in the past, but reserved the right to bring a civil action should it

find that such activity resulted in economically undesirable effects. Pursuant thereto, Alaska Salmon Industry continued to negotiate collectively with the fishermen's union until 1954, when it was stopped, not by the Department of Justice, but by the Federal Trade Commission. Since the Department of Justice never brought any action, it presumably never found any indication that such bargaining had any harmful effects. It is difficult for the writer to understand how the Department of Justice can take the position that it unilaterally, with full knowledge of all of the circumstances surrounding this bargaining, could without any statutory authority, in effect issue a license or permit for such bargaining to continue, but that it is wrong for the Congress of the United States to pass a law doing the very thing it had presumed to do without benefit of law.

We have tried to meet with the Department of Justice to discuss the problems that we have and to see if there was some common ground or some acceptable compromise legislation which would give to the fishermen some benefits of collective bargaining which they need so badly, and still secure protection from the evil ghosts which the Department of Justice sees in this legislation. We were granted an audience at the Department of Justice on June 16, 1965. The attorneys participating for the Department of Justice frankly admitted that they were not familiar with the fishing and canning industries and had no practical knowledge of its workings or economics. After considerable discussion, the attorneys for the department conceded that we had a problem but refused to participate in any discussion involving specific amendatory legislation which would relieve the situation and still satisfy their objections. No mention was made by the representatives of the Department of Justice that there was, that very day, being prepared a letter for transmittal to the chairman of this Committee in opposition to this legislation. This letter was dated June 17, 1965.

The Federal Trade Commission's opposition is not unanimous. Even the majority report indicates that legislative amendment would be justified "after a very convincing showing of necessity." As to showing of necessity, both of the professors, whose reports have been mentioned above, indicated a very great necessity. In addition, we would quote from the statement of the Assistant Secretary of Labor and the solicitor of the Department of Labor given before this Commi'tee in June of 1963. We quote:

"* * * We do believe that a sufficiently real collective bargaining problem does exist in the industry—stemming from the method by which the wages of fishermen are set—to justify a serious effort to find a solution."

And further:

"Whatever equities may prevail, in the final analysis, this (the present situation) is not a healthy situation consistent with sound labor-management relations."

And further:

"In this context, a meaningful right to bargain collectively for better wages should extend to fishermen, just as it does to workers in other industries."

And further:

"The fisherman, through his representative, ought to be able to bargain more effectively than he now can."

Mr. McKernan of the Bureau of Commercial Fisheries was equally positive in his testimony as to need before the House Committee in June of this year. Reports of those hearings have not yet been published, so a direct quote cannot here be made.

The Federal Trade Commission and the Department of Justice, particularly the former, object on the ground that this legislation would permit the captains who might also be the boat owners, to bargain alongwith their crew members. They do not indicate how this would be harmful, except to say that it would be unlawful under Judge McLaughlin's decision. Yet every fishermen's cooperative in Alaska operates under these conditions with the apparent approval, or at least without objection, of the Federal Trade Commission.

Likewise, the Federal Trade Commission and the Department of Justice object because this legislation would permit two or more packers who are operating in a particular area to bargain together with the union. In 1963 (and probably since), at least four Japanese companies combined and bargained collectively with the fishermen. When complaint was made of this situation to the Federal Trade Commission because of the discrimination in the application of the existing law between the Japanese buyers and the American buyers, the only suggestion made by the Federal Trade Commission was that perhaps application should be made to modify their order against the American buyers in this regard. This would be an inadequate remedy, if indeed the Commission would entertain any

such application. The law itself should be changed so that its application is uniform and this should not rest upon agency discretion.

We have sought without success to try to meet with these two objecting agencies and work out our problems. Their attitude is one of uncompromising, unremitting opposition to any change.

In the absence of any helpful discussions or suggestions from these two departments, and in view of the urgency of the matter, we respectfully request this Committee to favorably report this legislation.

Senator BARTLETT. Now I should advise that we have a situation here in relation to time. The committee won't be able to run beyond 12:15. We will not be able to continue the hearing this afternoon.

Tomorrow we have a whole raft of merchant marine and fisheries bills to take up. So we are going to have to try to do our best to conclude this morning.

Mr. Kibre?

Mr. KIBRE. I will turn our testimony over to Ben Margolis, who is attorney for local 33, as well as representing the international.

Ben has had a long, extensive experience with this subject. I think he can give you some enlightening testimony.

STATEMENT OF JEFF KIBRE, WASHINGTON REPRESENTATIVE, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, WASHINGTON, D.C.; PRESENTED BY BEN MARGOLIS, ATTORNEY FOR LOCAL UNION NO. 33, AND REPRESENTATIVE FOR ILWU

Mr. KIBRE. I would like to say for the record that I know the boatowners' associations complained if the legislation went through that somehow or other the union would dominate the scene. They would be in danger of being overridden or undermined.

I would say this from personal experience, from all of the negotiations I was involved in in the midthirties and forties, I would defy any old member of a boating association to come forward and bring any evidence before this committee that during that period, when these three-way contracts were being negotiated, that the union ever in any way undermined or attempted to knock out of business any boating association. It just is not true.

An ounce of history is worth 10 pounds of speculation, which is all they have put into the record; nothing but speculation.

The history is when those negotiations took place, the boatowners' organizations on the west coast were at the peak of their strength. This is what history demonstrates.

I am sorry. Mr. Margolis, I know, can do a much more effective job than I can.

Senator BARTLETT. No one can.

Mr. MARGOLIS. Senator, if I may say so, that is actually one of the most important statements of fact which can be confirmed that has been presented at these hearings.

May I say, first of all, that the ILWU presented testimony at the hearings held in San Pedro on May 25, 1963.[1] I do not want to take the time of the committee to repeat the things that were said there, and I therefore request that the committee consider as testimony

[1] See printed hearing entitled "Fishermen's Marketing Act," S. 1135, Senate Commerce Committee, 88th Cong., 1st sess., ser. 30, pp. 50–113.

given in support of this legislation, which is identical with the previous legislation, the statement of John Royall, secretary-treasurer of the ILWU, which begins at page 50 of the transcript of the hearings on Senate bill 1135, held in San Pedro, May 25, 1963; the testimony of Phillip Eden, an economist, beginning on page 68 of the same transcript; my own testimony beginning on page 94 of that transcript, and the supplementary statement which the committee was kind enough to permit the ILWU to submit, beginning on page 111.

Senator BARTLETT. That will be done.

Mr. MARGOLIS. We would also like to call the committee's attention to certain technical amendments which were submitted to the hearing, and which are found on page 109 of the same transcript. I think further discussion of them is not necessary at this time.

Senator BARTLETT. All right.

Mr. MARGOLIS. I would like to limit my discussion to some of the problems that have been raised by the Government, particularly by the Department of Justice. I want to say that we are in complete accord with what Mr. Vance has said on this subject and would like to add a thing or too.

I find it very hard to believe that the able people in the Department of Justice really spent very much time on this question, or gave it any real consideration. I base this upon the fact, in part, that the argument that is made is so ill-considered that I don't think it could have been made and presented except after just a very hasty look at the situation.

They say that this would set a dangerous precedent because all prices affect all wages. And I think that it cannot be denied that there is some relationship always between prices and wages.

But it certainly is not a 1-to-1 relationship. Certainly commonly there is no situation in which an increase in prices automatically, immediately, and as a matter of course means an increase in wages or vice versa.

As a matter of fact, we will find very common in the economic situation where wages will go up and prices go down. And it has happened the other way, too. Now, here is a situation in which prices and wages are directly and immediately tied together, where prices directly determine wages. And it is that kind of a situation that we are talking about, and if there is a precedent to be set, it is only with respect to that kind of a situation that so far as I know is unique. And no example has been given of this kind of a situation existing elsewhere. Actually if you look at it closely, the situation is something like this: When prices are set, wages are set, simultaneously, at one and the same time.

Ordinarily when the price of a commodity is set, wages are not set thereby; they are set independently.

But here when prices are determined, wages are determined. As a matter of fact, when a canner pays a boatowner the price of the fish, a certain percentage of that price goes to the fisherman, and the boatowner is really nothing more than a conduit. He sometimes is not even a conduit. We have a practice, for example, where the canners will often pay directly out of the price the fisherman's wages.

This is never elsewhere done with buyers. It could not be done by buyers elsewhere. But here, because wages are so much a part of price, we are in a position where the canners actually directly pay the wages out of the price.

In the instances where they don't pay the wages directly out of the price, and it goes to the boatowner, the boatowner is merely acting as a go-between. He is merely taking a part of the price to which the fisherman is entitled, and which constitutes the fisherman's wages, and taking it from the canner and giving it to the fisherman. That is all he is doing.

Suppose that we had a situation in which there was an agreement that as part of the price of the fish, the wages of the fisherman would be paid by the canner. Would not the fisherman then have a right to bargain with the canners, to determine what his wages would be?

But that is exactly what the situation is. The situation is exactly as though the agreement were that as part of the price the canner will pay the fisherman's wages. This is the only industry in the United States in which a worker cannot bargain concerning the amount of wages; the only one.

And if we are going to talk about precedents, here is the evil precedent, a precedent which permits workers to be paid wages concerning which they have no right to bargain.

I think if the Department of Justice would take the time and think this through, that it would find that the example that it gave as a precedent just has no relevance here, whereas the situation here is the unique situation which ought to be corrected, so there will not be a precedent for other workers being deprived of the right to bargain for their wages.

Now, I might say a word or two on stability and tell the committee that the testimony concerning economic conditions which was given on behalf of the ILWU, which I previously referred to, if brought up to date, would give very much the same picture up to date as existed at that time.

And I would like, if I may, with your permission, Senator Bartlett, to tell you about a current situation that exists in San Pedro and San Diego, which is pretty much a repetition of what goes on every year. Every year, about this time of the year, blue fin and albacore come in. They are in only for a short, relatively short period of time. They are the kind of fish that can be caught in relatively local waters. You don't have to travel far to get them. And the smaller boats can go out to get them. And this is the time when they have an opportunity to make the few dollars that they make during the year. They are in very bad shape economically.

And this is the time of year when the canners put on the squeeze, in order to reduce fishermen's wages by reducing prices. What do they do?

No. 1, they increase their imports at this time of the year.

No. 2, as the boats come in with tuna, they don't unload them. They make them wait. There are boats that have been tied up for a month sitting there acting as a sitting storehouse for the canners, maintaining and preserving the fish that the canners are ultimately going to get.

What is the position of the fishermen? They are in effect locked out by the canners. They are even worse than locked out. Ordinarily a locked out man can go and work elsewhere, but he has to stay on board that boat to preserve that fish which the canner is going to get ultimately and the canner is making him do that work, in order to force the price and wages down.

Is there any economic justification for this? There can't conceivably be and I will tell you why. There is less fish being delivered this year than there has been at any time at least back to 1960, less fish and considerably less fishermen than last year. There is more fish being sold, more canned fish being sold than in any year since 1960.

Isn't this the kind of market in which you would expect the price of fish to go up and not down? Yet what they are doing is by this artificial utilization of existing circumstances, placing the fisherman in a position where his wages are going to be driven down. And what can the fisherman do about it? He can't even talk to the canner about the fact that he is locked. He can't even talk to the canner about the fact that his wages are being arbitrarily cut in this manner?

No other worker, no other worker in the whole country is placed in this kind of a position. There has been introduced an auction system. And theoretically the companies are competing with each other in the buying of fish in this auction.

All you have to do is look at the figures and how the companies are bidding to see that the competition is fictional. There is some fluctuation in price, but as soon as one company goes one way, the others go the same way, either up or down.

Over long periods of time, they will come in with identical bids. And ordinarily only one company will bid. You have to take that bid or else.

So what is the situation as far as the fisherman is concerned? He is the only worker that I know of who doesn't know what his wages are until after he has completed his work. It is illegal in most instances.

Even the unorganized worker has to be told what his wages will be in advance of his doing the work. The fisherman is the only one who goes out and works and does not know what his wage will be until after he has completed his work.

Is there any other situation such as this in the United States? I don't see what the Department is worried about, as far as precedent is concerned, because this situation is so unique and so unfair, and so arbitrary.

What about concentration of economic power, too much economic power to the unions? At the present time the canners are absolute in their economic. They set prices, they determine prices, and they determine them uniformly. If you look at the facts, this is true.

Of course, if you want to shut your eyes to the facts and say theoretically they are competing, and theoretically prices are being adjusted by a process of competition, and ignore the fact that this just is not so and has not been so for years, then maybe there would be some justification for worrying about the economic effects of such a bill.

But this just is not so. And the record will demonstrate it. As a matter of fact, Senator Bartlett, as I recall it, you asked at the last hearings a representative of the Department of Justice whether they had studied the figures on this subject. And my recollection is—I may be mistaken, but my recollection is they said no, they had no knowledge about this matter. Am I correct in that?

Senator BARTLETT. That is my recollection, also.

Mr. MARGOLIS. So they are just acting upon the basis of no consideration of the facts, and no evaluation of, or the slightest understanding of this special situation here. And they won't sit down and

talk with us about it. They won't even consider it. They shut their minds before they know the facts. And this we think is unfair. It is improper. It is not the way any Government agency ought to act in this kind of a situation or any other.

Now, I would like to comment very briefly—I know there is a time problem and I will cut it short—upon one thing Mr. McKernan said this morning. I had a little difficulty understanding this.

He said that he was worried about the economic power, a maladjustment of economic power between the boatowners' associations or the boatowners and the fishermen's union. The fishermen's union might dominate.

Well, I think Mr. Kibre gave the definitive answer to that, that history demonstrates, not over one season, but over years, from 1934 to 1946. The period of 12 years demonstrates that the boatowners never were so powerful and never had it so good, and their associations grew and prospered.

That is the practical answer.

But there is another answer to this. All that the unions are asking for is the right to participate in the bargaining process. How could they ask for anything less? What less power could they be given and still be given some voice in determining their own wages?

No suggestion has been made as to what could be done, except to leave the situation as it is, in which the lack of balance, if there is any, is complete, because the fishermen have no voice, they don't participate at all. They can go to jail, theoretically at least, if they talk about price with the canners.

So today there is a tremendous lack of balance, and we are proposing what we think is even not adequate, but just the very minimum possible adjustment of that balance. Now take for example the instability that is being created in the fishing industry today, in southern California, by these boats being tied up.

Is this in anybody's interest here in the United States? Anybody's interest? It isn't even ultimately in the interest of the canners, because the canners need fish, they need a supply of fish from this country. And they are going to destroy the fleet if they continue with this.

It is in nobody's interest, but it is being done. How can this be corrected?

Well, we see the boatowners are sitting there with their associations, they call in the unions and say, "What shall we do?" And they are absolutely helpless to do anything about it, and it is illegal for the unions to do anything about it.

But the unions, the men, are on the beach, the men are working for nothing during this period of time, and they can do nothing whatsoever about it, and there is no fishing going on either, while foreign fish is being brought in.

Now, I might make one suggestion, if the Department of Justice is worried about this as a precedent, I would see no objection to having specific language in the bill which would say that this bill applies only where there is an immediate, direct relationship between prices and wages, or where prices actually determine the amount of wages. Then it seems to me that any argument about precedent goes out the window, because there are no other situations at least that I know of, no other comparable situations in this country.

If there were other comparable situations in this country, then the people ought to have a right to bargain concerning their wages, which is all that is being asked for here.

Let me say this: There are a number of other things I thought I might say, but because of the time limit, and because I think others want to be heard, I will cut it short at this point.

Senator BARTLETT. We don't want to cut you too short, if you have anything else to bring out.

Mr. MARGOLIS. I think the important things have been said and if we may reserve the right, perhaps, to send in a letter later on, we would ask that.

Senator BARTLETT. The record will be kept open for 2 weeks so that anyone who cares to may submit independent or supplementary statements.

Are all of the tuna boats independently owned?

Mr. MARGOLIS. Well, canneries own some boats. Some boats are owned by the canneries. And certainly the canneries have interests in other boats. And they have control over a great many of the boats, through one device or another. They have mortgage guarantee devices. There was testimony about that at the last hearings. You see the average fisherman who goes out to borrow, say $250,000 for a boat, just does not have the credit.

Mr. Klein just reminded me that West Gate, which is the only cannery in San Diego, owns the entire fleet.

But in addition to that, vessels are assigned to canners. Vessels fished for particular canners, and the other canners won't buy fish from them. If a vessel is assigned to Star-Kist, only Star-Kist gets that vessel's fish. So they do have actual control in many ways over the boats. This is Mr. Al Klein, Senator Bartlett, who Mr. Vance referred to, a colleague of mine from California, who represents the San Diego Fishermen & Cannery Workers Union and who knows a great deal about this, and he may want to add something, with your permission.

Senator BARTLETT. Before we turn to Mr. Klein, I merely want to say my recollection is that this was one of the principal contentions during the California hearings, that the boatowners really in many cases did not represent themselves. They spoke actually for the canneries.

Mr. MARGOLIS. We believe that is absolutely true, because of the economic dependencies, in many ways, of the boatowners upon the canners.

Again we are talking about practical things. In some respects the ownership and control is direct, in other respects it is indirect, but nonetheless effective.

Senator BARTLETT. Mr. Klein?

Mr. KLEIN. There are family ties, too, Senator, whereby certain members of the boatowners will be members of the family of the cannery owners, and I don't think it should be minimized, the fact as Mr. Margolis said, that these boats, which have an investment of a quarter of a million dollars and up, normally will have chattel mortgages and therefore they are beholden to the cannery in everything they do.

Mr. MARGOLIS. Or guaranteed by the cannery, and they could not get the loans without the canneries' guarantee.

One of the things that the banks, one of the reasons why the boats are tied to a particular cannery is that the banks will not lend money unless the cannery will guarantee that they will take the fish from this boat, and the boat must then agree to deliver its fish to this cannery, as part of this arrangement relating to the mortgage.

So the financial arrangement is directly tied in with the sale of fish.

Senator BARTLETT. Mr. Foster?

Mr. FOSTER. No questions, Senator.

Senator BARTLETT. Mr. Klein, do you have anything further?

Mr. KLEIN. I have a statement which I prepared for here, but in the essence of time, I presume it should probably just be submitted.

Senator BARTLETT. Come on up and bring your statement and brief it for us.

Off the record.

(Discussion off the record.)

Senator BARTLETT. Mr. Klein, we will put your statement in the record.

Mr. KLEIN. My address, for the purpose of the record, is 315 West 9th Street, Los Angeles, Calif. And I represent the Cannery Workers & Fisherman's Union of San Diego, Calif., affiliated with the Seafarers' International Union of North America and I am speaking for the international, as well as a sister local in San Pedro.

In San Diego we have about 1,750 members who are out on these tuna clippers, or pursuing boats and probably a few hundred in San Pedro. I think it might point it to read a provision of our collective bargaining agreement to show you what our problem is, and why we have to come here for help in negotiating and being able to sit down on wages. This is from our particular collective bargaining agreement.

> The owner is the sole and exclusive judge of where and what price and under what terms and conditions fish caught shall be sold. It is further understood that the relationship between the owner and the crew is strictly that of employer and employee, and that neither the crew nor the union have any right of control over the operation of the vessel or the ceiling price of the fish.

Whereas we have pointed out the boatowner is beholden to the canner, either because of a family tie or because of a mortgage on the boat or because of a guarantee, or in the case of one canner which controls its entire fishing fleet through a related corporation, or where other canners have interests in or parts of boats, it is obvious to us, as it should be in the record, that the control of what price is paid is completely in the hands of the cannery and the boatowner many times becomes a pawn, and the union member or the employee on the boat even more of a pawn.

In an auction system, where the boat is put up for auction, as Mr. Margolis pointed out, normally one of the three canners, who are the prime sources of purchase at the auction, will decide among themselves which boat will bid, I mean which cannery will bid on which boat.

And when the boat is put up for auction, you get one bid. Then it is up to the boatowner whether he will accept it. But this is not competition.

And the crewmember sits idly by, having been out to sea, and he is waiting to find out what he is going to get. Being unable to sit down with the canner or the producer, the union member, as I say, has been out to sea, he sat in port, he can't do anything else, he has to man the

motors, he has to man the watches, he has to protect the fish, which is frozen in the hold, from spoilage and from the elements.

And he is sitting there, completely helpless in knowing what he is going to get, and in the meantime the cannery is free to bring in Japanese frozen fish as it wants, and as Mr. Margolis pointed out, at this time of the year it will buy the other fish, and therefore under these circumstances we find that the auction price goes down, we find that the cannery is out to break the price and periodically we in the union movement are faced with crisis after crisis, and there are only three of them that need to get together, to get together and decide they are going to punish some segment of the union or something of that sort and try to break the price of fish.

Fish today is selling for what it did many years ago, with the attendant increase in the cost of living, and our people are not getting any more money, for various factors. One of them is we can't do anything about what we are going to get where we fish on a share basis.

There are other ways that the canners have tried to get together that we know of. For example, and I don't want to name names, but we know that there have been what I would call under-the-table arrangements, whereby the canner, being on good terms with a boat-owner, will make some deal whereby maybe the price of fish is lowered, or some arrangement is made to have the fish seem to be spoiled, or maybe undersized, so it doesn't go through the scales, and then the boatowner gets an under-the-table advantage, which does not show in the price of the boatload of fish, so the crewmembers, who are unacquainted with that under-the-table arrangement, again suffer.

This is very possible, it has happened, and it wouldn't happen in any other industry where the prices are fixed and the wages are determined that the crew will receive.

So as not to repeat anything in my statement, I think that those extemporaneous remarks should suffice. My statement does cover most of the items in more detail, Senator.

(The statement follows:)

STATEMENT OF ALFRED M. KLEIN

Hon. Warren G. Magnuson, Chairman, and members of the Committee on Commerce, United States Senate, My name is Alfred M. Klein. I am the attorney for, and herein representing, the Cannery Workers & Fishermen's Union of San Diego, California, affiliated with the Seafarers' International Union of North America, AFL–CIO, as well as speaking on behalf of said International, in urging your overwhelming support and high priority approval of S. 1054. This San Diego local union represents approximately 1,750 fishermen and engineers who are employed in or about the Southern California area and who, for many years, have been engaged in fishing for tuna and tuna-like fish, mostly in the eastern Pacific.

The members of this local, as well as hundreds of others belonging to an affiliated local in San Pedro, California, man tuna clippers and purse seine boats operating from the ports of San Diego and San Pedro, California, on a share basis. The tuna canneries in Southern California and elsewhere are the sole purchasers of the domestic tuna catch. These crew members have almost an equal interest with the boat owner in the sale of their catches, as the sole compensation for their fishing and sailing services is to share in the net receipts from the sale of their catch. The boat owner receives slightly more than 50% of such net receipts, and the crew divides the balance on a percentage basis. The price and volume of fish sold by the domestic boat owner thereby bear a direct ratio to the amount of pay the tuna fisherman receives. Our crews receive no guarantee. I can assure you there have been several loss trips in the past, when no net profits or monies have been realized at the end thereof.

It is our considered judgment that this large segment of our important and valuable food producing industry should have the unqualified right to participate in negotiations for the sales price of their catch of fish, whether with their employer boat owners or with cannery and processing interests to whom their loads of fish are sold and delivered. This is particularly evident when, by fishing on a share or percentage basis, the income and wages of these diligent workingmen is governed and directly affected by the sales price of their catch.

We know of no harmful effect when, before the opposition of the Federal Trade Commission to this practice, the fishermen were permitted to sit at the bargaining table while the sales price of the product of their fishing services, and in which they had a proportionate interest, were discussed and negotiated. Therefore, as to these fishermen, their income is, and has been, as directly related to the price paid by the cannery for their loads of fish, as the income of the boat owner, with whom they are joint venturers in some respects. With that same financial interest as the boat owner, fair play indicates that the same should be adequately protected, and the fishermen, either individually or through their organizations, entitled to a voice in the sales price of their catch. This occurred many years ago, without harmful effect, and we submit that there is no valid or substantial reason why it should not again be permitted.

There is a definite, pressing need for S. 1054, so that the fishermen may become active participants in the setting of the base for their wages, when the same are on a share or percentage part of their catches, rather than be represented at the bargaining table by the proverbial silent, unfilled chair. While they possess many of the features of joint venturers with the boat owner, the National Labor Relations Board uniformly rules these fishermen to be employees of the vessel. As to all other industries, under the Labor Management Relations Act, as amended, the employees bargain regarding the amount of their wages and fringe benefits. Yet these fishermen seamen are now prevented from any negotiations on the precise amount of their wage income, when, as with the Southern California Tuna Fleet, they fish on a share basis. We only ask for equality and not special interests—the equality of being permitted to negotiate and bargain fully on those subject matters of wages, hours, health and welfare and/or pension plans, and conditions of employment permitted under the Taft-Hartley Act as to all other employees.

Many times the boat owner will have a community of interest with the canner, either because of overriding ownership, family ties or the like. There are numerous instances where a canner will control a fleet of fishing vessels, and we know of one cannery which, through an allied and related corporation, controls fifteen fishing boats. It is not uncommon in this industry for a cannery to loan a boat owner money for the construction, purchase or improvement of his tuna vessel, receiving a chattel mortgage thereon as security for the loan. Under these and similar instances, it is obvious the canner has both an economic and a bargaining hold on the boat owner, which can be unfairly exerted at the bargaining table in negotiations between the two for the sale price of the boat's catch. It does not take much imagination to envision an arrangement whereby such sales price is lowered, in return for which the boat owner receives some under-the-table or other economic benefit, in which the crew members do not share. Under these circumstances, the crew member is the innocent victim of an arrangement in which he has no choice or participation, resulting in an unfair reduction of income and a total lack of protection of his rights.

These working fishermen take the risks of finding and catching their food product, making fishing trips as long as 60 to 90 days under hazardous conditions and confined quarters, miles from their homes and families. Yet, they are at the mercy of the prices and terms under which their catches are sold to the cannery or buyer, since they are not now permitted to participate, let alone vote, in such negotiations between the boat owner and the canner or packer—an inequitable and totally unfair condition which S. 1054 seeks to remedy. As a result of various proceedings and rulings of the federal agencies, such as the Trade Commission, the bargaining position of our tuna fishermen over their income and the sales price of their loads of fish is obscure and in a legal mess—an undesirable condition which S. 1054 also seeks to remedy.

This bill does not change the basic relationship of the fisherman to his employer, the boat owner, nor his services on board and catching his load of fish—rather, it gives to this large and food producing segment of our working force the same bargaining rights as are enjoyed by all the other segments of our labor. It does not restrict or permit restricting of the means, methods and sources under which

such fish is sold—there is nothing in this proposed law which requires any canner or fish processor to do anything. Under this legislation, it would still be illegal for a union, in restraint of trade, to demand of the canner or buyer that he purchase no fish except from members of a particular association or union. The legislation does not permit a disfavored packer or buyer to be frozen out—the packer or buyer is entirely free to select his source of fish.

By creating confidence in the fisherman and permitting him to participate in negotiations concerning the basis for his wage income, we believe the law will restore greater stability to the fishing industry and make for greater confidence. Fishermen, who have been the backbone of our seafood industry, only seek security and stability through agreement and a right to a voice through their own representative, rather than through their boat owner employers, in obtaining the income for their livelihood. By such collective action, the fishermen are given the necessary opportunity of greater participation in their future and a more active participation in meeting the grave problems and serious foreign competition confronting the entire fishing and canning industries of our country. The tuna cannery worker now has those rights—why not the fisherman? Does he not have an equal interest in his income and the problems of this industry vital to the economy of our United States? The answers to these questions are obvious and help pinpoint why we seek full collective bargaining for our fishermen and a stability of their income which affects every business activity common to the community and extends into almost every economic walk of life.

Accordingly, we urge legislation restoring full bargaining rights to these fishermen and your unqualified and priority support for this legislation.

Senator BARTLETT. Do you have any idea what it costs to lay up per day, a typical tuna boat, when it is waiting to sell the fish?

Mr. KLEIN. You mean what it will cost the boat or the crew for every day it is tied up, sir?

Senator BARTLETT. The boat.

Mr. KLEIN. This is hard to say, because you are talking about, No. 1, an investment in a boat. But the operating expenses of that boat are borne by the crew, as well as the boatowner. Don't forget this.

But to understand this situation, you will first get a gross price for the sale of the load of fish. Then deducted from that gross price will be what we call items of trip expenses. In our particular contract, those items of expense are fuel, licenses, upkeep costs, radar, health and welfare insurance, and the like.

And then you get a net figure from the proceeds of the sale of the fish, which is divided among the boatowner and the crew. So actually—and I think this is a good point, which you are bringing out—while that boat is tied up, the crew is really losing money, because they are participating in the upkeep of that boat, and they are paying exclusively the cost of their food while on board standing watches.

Senator BARTLETT. They stay right with the boat?

Mr. KLEIN. They stay in reduced numbers; that is correct. The engines must be run 24 hours a day, because the fish are in the hold refrigerated and therefore they have to watch the refrigeration. The boat is tied up at the dock. They have to prevent pilferage, and so they have to stand watches on the boat while it is tied up at the dock, waiting to be unloaded, although as I say they are in reduced numbers, and they are not free to do anything until the fish are completely unloaded. So theoretically and practically if it takes a month for that boat, from the time it arrives back in either San Pedro or San Diego, for the fish to be unloaded at the cannery, those crewmembers are at the beck and call of the boat owner 24 hours of each day.

Senator BARTLETT. Thank you, Mr. Klein.

The next witness is Edward Dunkelberger.

Mr. DELUCIEN. I would like to request permission to insert Mr. Dunkelberger's statement for the record. I am Ronald DeLucien, National Canners Association. Mr. Dunkelberger was unavoidably detained and scheduled to be here, and I would like to request permission to insert his statement for the record.

Senator BARTLETT. Permission granted.

That will be included in the record.

STATEMENT OF EDWARD DUNKELBERGER ON BEHALF OF THE NATIONAL CANNERS ASSOCIATION; PRESENTED BY MR. DE LUCIEN

(The prepared statement follows:)

STATEMENT OF EDWARD DUNKELBERGER

My name is Edward Dunkelberger. I am counsel for and appearing on behalf of the National Canners Association, a nonprofit trade association of almost 600 members who have canning operations in 43 states and the territories. Members of the Association pack approximately 85% of the entire national production of canned fruits, vegetables, specialties, meat and fish.

S. 1054 provides that fishermen's organizations, which may include unions of active fishermen whose income is dependent on the ex-vessel price of fish, may bargain with one or more buyers, or one or more associations of buyers, including area or industry-wide associations, regarding the terms and conditions of ex-vessel sales of such fish. The making of any such agreement "shall not be held to be in violation of any of the antitrust or trade laws of the United States, and any such agreement or agreements shall be deemed to be lawful."

The effect of this Bill, which would be enacted as an amendment to the Fishermen's Cooperative Marketing Act, would be to extend drastically and unnecessarily the antitrust immunity afforded by that Act, and to render the antitrust laws virtually inapplicable to negotiations and agreements between fishermen's organizations and buyers of raw fish. Such antitrust immunity flies directly in the face of this country's antitrust policy that has played such a vital part in the development and growth of our economy under a free enterprise, competitive system. The Bill would grant this favorable treatment to one segment of the economy, at the expense of the public and a substantial proportion of those engaged in catching, processing, and distributing fish and other aquatic products.

At the present time the Fisheries Cooperative Marketing Act (48 Stat. 1213, 15 U.S.C. § 521) provides fishermen the right to form and become members of marketing associations. The courts have interpreted this Act to provide the same limited antitrust immunity that is provided for farmers by the Capper-Volstead Act (42 Stat. 388, 7 U.S.C. § 291). *Columbia River Packers Association* v. *Hinton*, 131 F. 2d 88 (9th Cir. 1942); *Manaka* v. *Monterey Sardine Industries, Inc.*, 41 F. Supp. 531 (N.D. Calif. 1941).

The extent and limits of this antitrust immunity were set forth in a 1961 decision of the Supreme Court interpreting the Capper-Volstead Act (and by analogy the Fisheries Cooperative Marketing Act). (*Maryland and Virginia Milk Producers Association, Inc.*, v. *United States*, 362 U.S. 458 (1960)). The Court made it clear that the general philosophy of the Capper-Volstead Act "was simply that individual farmers should be given, through agricultural cooperatives acting as entities, the same unified competitive advantage—and responsibility—available to businessmen acting through corporations as entities.

The opinion went on to say that the Act does "not suggest a congressional desire to vest cooperatives with unrestricted power to restrain trade or to achieve monopoly by preying on independent producers, processors or dealers intent on carrying on their own businesses in their own legitimate way." The Court concluded that the Capper-Volstead Act "did not leave cooperatives free to engage in practices against other persons in order to monopolize trade or restrain and suppress competition with the cooperative."

S. 1054 would in effect reverse this Supreme Court decision insofar as it applies to fishery cooperative associations by granting to such associations and their

members virtually a complete exemption from the antitrust laws in their dealings with buyers. Absent the restrictions on anticompetitive action imposed by the Sherman, Clayton, Robinson-Patman and Federal Trade Commission Acts, fishery organizations would be free "to restrrain trade or to achieve monopoly by preying on independent producers, processors or dealers."

Beyond the general authority of the Department of Justice and the Federal Trade Commission, the Fishermen's Cooperative Marketing Act authorizes the Secretary of the Interior to order cooperatives to cease and desist from practices which monopolize or restrain trade in fishery products to the extent that prices are unduly enhanced by such practices. To our knowledge, the Department of the Interior has never issued an order under this authority. However, we understand that the Department of the Interior has carried out investigations under the Act and have notified the cooperatives involved of improper practices.

In at least three fundamental respects S. 1054 will change existing law and measurably broaden the antitrust exemption afforded by the Fishermen's Cooperative Marketing Act. The Bill would (1) authorize masters and their employee crew members to act together to force the buyers of fish to pay prices fixed by the combination, (2) authorize fishermen's organizations to restrain trade in the sale of raw fish to buyers, and to discriminate in the prices at which the raw fish are sold, and (3) extend this immunity not only to fishermen's organizations, but also to those companies that buy fish from them. With regard to this last point, however, the only Government witness at the House hearings not opposing the bill in its entirety—Mr. Donald L. McKernan, Director, Bureau of Commercial Fisheries, U.S. Department of the Interior—stated that "consideration should be given to limiting the bargaining to individual buyers as the present law now provides." It thus appears that no Federal Agency favors the extension of antitrust immunity to buyer groups and that if the bill is to receive further consideration, this provision will be eliminated.

Mr. McKernan's formal statement and testimony before the Subcommittee of course fell short of an outright endorsement of the remaining provisions of the bill. He stated that a problem exists for the Alaska fishermen, but he repeatedly emphasized that the Department was not able to judge whether the bill would be beneficial to the industry as a whole.

COLLECTIVE ACTION BY CREW MEMBERS AND MASTERS

The stated purpose of the Bill is to enable crew members of fishing vessels to belong to unions that qualify as fishermen's collective marketing associations, and to give these crew members a voice in the prices of the ex-vessel sales of such fish. Under this provision the employees of the fishing boats and the masters of these boats could collectively through a union or a marketing association seek to fix the prices at which buyers may purchase such fish.

In *Local 36 of International Fishermen and Allied Workers of America* v. *United States*, 177 F. 2d 320 (9th Cir. 1949), the court held that it was a violation of the Sherman Act for boat owners to act in conjunction with the fishermen employees of the boats to fix the prices which processors and other purchasers must pay for the raw product. The court made it clear that neither the Fishermen's Cooperative Marketing Act nor any other Federal law provides an antitrust exemption for such activity. See also *Allen Bradley Co.* v. *Local Union No. 3*, 325 U.S. 797 (1945).

S. 1054 would thus reverse for this special group the established doctrine that employees and their employers may not conspire to fix the prices at which the employers will sell their products to their customers. Such a departure from national policy—to provide a discriminatory exemption for one segment of the economy—can be justified only on the basis of a compelling demonstration of need. The hearing record on this Bill makes it clear beyond question that no such need has been shown in this instance. The recent testimony of union representatives, however, did point out that this Bill would bring about the take-over of the existing bargaining duties for fishermen of present marketing cooperative associations by union organizations.

EXPANSION OF THE FISHERMEN'S ANTITRUST EXEMPTION

Under the second proviso of S. 1054, any agreement between a fishermen's organization and one or more buyers concerning the terms, conditions, and prices of the ex-vessel sales of such fish shall not be held to be in violation of any of the antitrust or trade laws of the United States, and any such agreement shall be deemed to be lawful. The effect of this provision would be to reverse those

cases in the Federal courts and the Federal Trade Commission in which the anti-competitive practices of fishermen's marketing organizations have been found to exceed the bounds of the antitrust exemption afforded by the Fishermen's Co-operative Marketing Act.

A number of these cases involved situations in which the fishermen's organization had sought, through agreements with buyers, to exclude from the market all persons not buying and selling in accordance with the prices and items fixed by the organization. *Gulf Coast Shrimpers and Oystermans Association* v. *United States*, 236 F. 2d 658 (5th Cir. 1956); *Local 36 of International Fishermen & Allied Workers of America* v. *United States*, 177 F. 2d 320 (9th Cir. 1949); *Manaka* v. *Monterey Sardine Industries, Inc.*, 41 F. Supp. 531 (D.C. Cal. 1941); and *Washington Crab Association*, Dkt. No. 7859, July 10, 1964.

The courts and the Commission have repeatedly held in these cases that a fishermen's organization may not require in their contracts with processors that the processors purchase only from members, or from fishermen who sell at the prices established by the organization. But under S. 1054 any contract between a fishermen's organization and buyers would be beyond the scrutiny of the anti-trust laws, and could not be held to be in violation of those laws. The fishermen's association could thus effectively monopolize the market by forcing buyers to deal only on its terms and with its members. The independent fisherman, who did not choose to join the association, would be foreclosed from the market for his fish.

It is of particular interest that within the last month the Supreme Court held in *United Mine Workers of America* v. *Pennington* 33 U.S.L. Week 4520 (U.S. June 7, 1965), that the antitrust exemption afforded unions by the Clayton Act and the Norris-La Guardia Act does not extend to agreements between unions and one set of employers to impose a certain wage scale on other bargaining units. S. 1054 would thus not only constitute a significant extension of the antitrust immunity afforded by the Fishermen's Cooperative Marketing Act, but it would also provide an exemption for crew members and their employers that is available to no other unions in this country. We see no basis in equity or logic for this unprecedented extension of antitrust immunity to one favored group in our economy.

Indeed, the immunity granted by S. 1054 to contracts between fishermen's organizations and buyers is so broad, it is impossible to determine its full effect. For example, such an agreement could provide for discriminatory prices, but with the adoption of this Bill, the Federal Trade Commission or injured parties would be totally powerless to take action against the Association or the buyers for violation of the Robinson-Patman Act. How much further this immunity would be interpreted to extend, we cannot predict at this time.

CONCLUSION

For the reasons we have outlined above, we believe S. 1054 would be contrary to the interests of independent fishermen, processors, other buyers of raw fish, as well as the consuming public. The proponents of this Bill have not shown that conditions exist that would justify this extraordinary departure from traditional principles of competition in a free enterprise economy.

We respectfully request that the Subcommittee not recommend the enactment of this Bill.

Mr. DELUCIEN. I would also like to request a statement from the National Shrimp Congress in opposition to the bill be inserted also.

Senator BARTLETT. That will be done.

(The statement follows:)

RESOLUTION OF NATIONAL SHRIMP CONGRESS, INC., KEY WEST, FLA.

WHEREAS, there has been introduced in the 89th Congress a bill, H.R. 3955, which would make fishermen's organizations, regardless of their legal status, have a voice in the ex-vessel sale of fish or other aquatic products, and

WHEREAS, this bill has been referred to the Committee on Merchant Marine and Fisheries in the House of Representatives for its consideration, and

WHEREAS, the extremely broad provisions of H.R. 3955 would permit and encourage the proliferation of pseudo organizations with no real interest in the future and preservation of the domestic shrimp fishery, to the harm and detriment of this fishery, and

WHEREAS, the National Shrimp Congress, representing the great majority of the domestic shrimp fishery, is opposed to such a measure and wishes to go on record opposing the same,

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors of the National Shrimp Congress, Inc., assembled in regular meeting at Miami, Florida, voices hereby its opposition to H.R. 3955 as a measure calculated to be harmful to the shrimp fisheries of the United States, and to engender and breed confusion in the broad structure of its operations, which are widespread and which are unsuitable for the application of the procedures contemplated by H.R. 3955.

AND BE IT FURTHER RESOLVED that the Executive Director is directed to provide copies of this Resolution to the Chairman and the Chief Clerk of the Committee on Merchant Marine and Fisheries and to the members thereof, and to take such appropriate further action as may appear desirable or necessary to oppose this measure.

DONE AND ORDERED at Miami, Florida, this 20th day of June, 1965.

CHARLES LUDWIG, *Chairman.*
WILLIAM R. NEBLETT, *Executive Director.*

I certify the foregoing to be a true copy of original resolution.

WILLIAM R. NEBLETT, *Executive Director.*

Senator BARTLETT. Is there anyone else?

Mr. VANCE. In the interest of time, Mr. Shepard asks that the statement which he previously furnished be entered as a part of the record.

Senator BARTLETT. That will be done.

Mr. VANCE. And also Mr. James Ackert of the Atlantic Fisherman's Union, has submitted a statement, and in the interest of time he asks that it be put in the record.

Senator BARTLETT. Thank you very much. That is an essential and integral part of the record right now.

(The statements follow:)

STATEMENT OF THE SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, AFL–CIO

Mr. Chairman and Members of the Committee:

My name is Earl Shepard. I am appearing here today in the stead of Paul Hall, President of the Seafarers International Union of North America. Mr. Hall could not be here today as he is in Copenhagen, Denmark, at an International Labor Conference.

Under its charter from the American Federation of Labor and Congress of Industrial Organizations, the Seafarers International Union is charged with the responsibility of representing fishermen, cannery workers and allied seafood workers.

The following organizations are affiliates of the Seafarers International Union of North America, who are vitally interested in this legislation.

1. Alaska Fishermen's Union
2. Atlantic Fishermen's Union
3. Bering Sea Fishermen's Union
4. Cannery Workers and Fishermen's Union of San Diego
5. New Bedfore Fishermen's Union
6. Seine and Line Fishermen's Union of Monterey County
7. Seine and Line Fishermen's Union of San Pedro

The S.I.U. urges your support of S. 1054, a bill which would enable American fishermen to earn a just return for their labors by permitting them to negotiate a fair price for their catch. As matters now stand, the fishermen have no right to determine what is fair compensation for their efforts as they are prohibited by law from bargaining collectively with fish buyers at the dock. This is not the American way. We can all agree that the life of a fisherman is arduous, difficult, dangerous and confining at best. There is no good reason, in our opinion, for them being deprived of the right to bargain for a fair price for their catch upon their return to port. In effect, under present conditions they sell their labor at auction which at best is unsatisfactory. They are not attempting to establish prices at the market place because they request that they have a voice in negotiating

a realistic price for their labors. Indeed they have no control on prices once the fish are sold to the wholesaler and landed. All other sectors of the fishing industry ashore have a right to bargain for their wages but not the men who go to sea. We consider this manifestly unfair to the fishermen upon whose productivity and efforts the entire industry is dependent.

Approximately 100,000 fishermen are affected by this legislation and we would hope that this Committee will recognize the inherent right of these men to be permitted to determine a proper and adequate return for their labors by amendments to existing laws.

We have other witnesses here who can better discuss these matters in detail. My purpose in being here in Mr. Hall's stead is to advise the Committee of the great importance the Seafarers International Union attaches to this legislation.

STATEMENT OF JAMES D. ACKERT, PRESIDENT, ATLANTIC FISHERMEN'S UNION

My name is James Ackert. I am President of the Atlantic Fishermen's Union of New York, Boston and Gloucester.

In speaking in support of Senate Bill No. 1054, I will confine my remarks to the New England area. The other affiliates of our International will testify for their own areas, although we all realize that this is a national problem for all fisheries.

The United States Tariff Commission recommended assistance to the New England groundfish industry in the years 1952 and 1956, because of the harm of foreign imports. Imports of fish are still increasing and no help has been forthcoming. The President removed fresh and frozen groundfish fillets from G.A.T.T. negotiations on a recommendation of the United States Tariff Commission.

All other workers engaged directly or indirectly in the processing or handling of fish are allowed to bargain for a just return for their labors, therefore, it must appear that fishermen should be given the right to bargain for a price for their fish as this is what determines their wages.

Where we have a commodity that is perishable, the fish must be sold on arrival in Port. The price is set by the processors, the fishermen and boat owners have no control over the price. Under Senate Bill 1054 (fishermen, boat owners and processors) could all work together to stabilize our industry.

A marketing association was tried in the Port of Gloucester, however, the processors soon stopped this operation by refusing to handle boats that belonged to the Association.

Where our men work on a minimum of 84 hours a week, when engaged in fishing they should be allowed the right to bargain for a just return for their labors.

Although the price of the commodities used by our men has risen, the ex-vessel price of fish at Boston has not risen.

The below listed figures are production and ex-vessel price averages from 1958–1964.

Year	Production	Average price
1958	123, 764, 000	$10, 36
1959	113, 257, 000	9. 97
1960	110, 384, 000	8. 41
1961	117, 029, 000	8. 09
1962	115, 481, 000	8. 98
1963	105, 111, 000	10. 05
1964	105, 550, 000	9. 60

It is interesting to note that since the last figures submitted to this Committee, on landings and prices in the Port of Boston, that the overall price for fish in the year 1964 is down again. Where the landings are the same for the years 1963 and 1964 the price of fish should be the same or up a little.

In the Port of Boston the fleet has gone from 69 trawlers in 1956 to 50 in 1964. In 1956 there was a fleet of over 117 trawlers out of the Port of Gloucester. With the depletion of our fleet there has been less work for wharf workers and also other allied workers engaged in repairing and maintaining our fleet. It must be remembered that there must be 2½ men ashore to maintain 1 man at sea.

The industry has put conservation practices into effect to protect the future yield of our fisheries, however, if we are not given the right to bargain for a price for our fish, it appears that we are protecting the future fisheries for other nations.

If we allow an important segment of the industries who feed our nation to go down the drain we will be remiss in our duties to future generations of our great nation.

With the right to bargain for a price for our fish our fleet will rebuild and give employment to thousands of fishermen.

We strongly recommend to this Subcommittee a favorable report on Senate Bill No. 1054 and final passage by the United States Senate.

Senator BARTLETT. We will also include as part of the record a statement from the Alaska Fishermen's Union.

(The statement follows:)

STATEMENT SUBMITTED BY THE ALASKA FISHERMEN'S UNION

RE S. 1054, A BILL TO MAKE CLEAR THAT FISHERMEN'S ORGANIZATIONS, REGARDLESS OF THEIR TECHNICAL LEGAL STATUS, HAVE A VOICE IN THE EX-VESSEL SALE OF FISH OR OTHER AQUATIC PRODUCTS ON WHICH THE LIVELIHOOD OF THEIR MEMBERS DEPENDS

The Alaska Fishermen's Union is interested in this legislation because we feel a federal law is needed to safeguard the interests of American fishermen. A number of hearings have been held on this issue; the last one was on June 17, 1965, on HR 3955, before the Subcommittee of the House Merchant Marine and Fisheries Committee. At that hearing several questions were raised concerning the scope of the bill and to what extent the fishermen would be able to control prices, not only at dockside, but in the market place as well. We have never interpreted the bill to mean anything other than a right to negotiate for fish prices at dockside.

Because of questions raised in the House hearing, Attorney Duane Vance and other attorneys will attend the August 5 meeting scheduled before the Senate Merchant Marine and Fisheries Subcommittee to answer any legal or technical questions which may arise. We deem it important and helpful that the Committee on Commerce is holding this final hearing in order to clear up legal questions which the Committee might want to ask. We hope the subject will be fully defined and understandable to everyone at the conclusion of this testimony.

In relation to the market price, fish is in the same category as other foods—it has to be competitive—and the price on the finished product depends, in the final analysis, upon demand and supply. No fishermen's organization has any desire to exercise control over prices on the finished product.

There can be no dispute as to the need for this proposed legislation to restore bargaining rights to fishermen's unions. Under present law, the independent fisherman have some sort of bargaining system but it is so fraught with restrictions and dangers of overstepping the law, that there can be no effective bargaining on the part of either the fishermen or the operators.

We have seen numerous small strikes for fish prices which could have been avoided if a proper system of collective bargaining had been allowed in the fishing industry. Japanese operators entered into a collective agreement for fish prices with American fishermen at Cordova, Alaska, last year. This privilege was denied American operators, thus working a hardship on the American fishing industry which was forced to abide by existing laws.

While we do not want to repeat our earlier testimony on this matter, nevertheless, the conditions that existed then still exist, and have not improved as time goes by. With due respect to the Federal Trade Commission and Justice Department reports, we believe those reports have endeavored to show a danger as to violation of antitrust laws which does not exist. What does exist is a condition which makes it extremely difficult in many instances for the operators and the fishermen to get together and collectively bargain and complete a contract in time so both sides can have an orderly operation.

We appreciate the efforts of this Committee and the interest shown us in all previous meetings in relation to bargaining procedures and the welfare of the fishermen. The need for this legislation is uniform on both coasts of the United States. We believe that far from inducing violations which would be harmful to the consumer, this legislation will stabilize the fishing industry and improve the lot of this group of workers who should have the same rights as other workers to bargain collectively for their fish prices or wages. The present condition of the fishing industry in the United States is not good. This is due to several factors, one of which is governmental policy, which has never taken into considera-

tion the plight of American fishermen and has consistently supported a program which has made it possible for foreign fishing interests to place their catches on American markets in an ever-increasing volume. At the present time, almost 60% of all fish consumed in the United States originates from foreign sources, and we believe we have reached a stage where American industry must be given some consideration. We believe that in the present instance, Congress has an opportunity to correct one inequity by adopting this legislation which will provide the American fisherman an additional instrument in his bargaining efforts.

We solicit your most earnest attention to this problem and ask for favorable consideration.

Senator BARTLETT. The committee will be in recess.

(Whereupon, at 12:10 p.m., the committee was adjourned.)

(Subsequently the following information was received and made a part of the hearing record:)

TERMINAL ISLAND, CALIF.,
August 2, 1965.

Senator WARREN G. MAGNUSON,
Senate Committee on Commerce,
Washington, D.C.:

We understand Fisheries Subcommittee of Senate Commerce Committee has announced public hearings on August 5 concerning S. 1054, a bill to make clear that fishermans organizations regardless of technical legal status have a voice in the ex-vessel sale of fish and other aquatic products. This association representing processors of 85 pct U.S. tuna production and substantial percentage U.S. mackerel and other fishery products. Productions strongly opposed to this legislation on numerous grounds. We support position to be taken by National Canners Association in opposition this legislation by a witness representing that association at August 5 hearing. We request permission file additional statements during next ten days to illustrate practical effects this legislation on southern California fish processing industries. Please insert this telegram in record at appropriate place and advise whether we have permission file additional statements and time limitations. Thanks in advance your cooperation.

CHARLES R. CARRY,
Executive Director, Tuna Research Foundation, Inc.

STATEMENT BY AUGUST FELANDO, GENERAL MANAGER, AMERICAN TUNABOAT ASSOCIATION

My name is August Felando, I am appearing before this Subcommittee on behalf of the American Tunaboat Association. I am the General Manager of this non-profit cooperative association incorporated under the laws of California, with its principal office of business in San Diego, California.

The A.T.A. has been in existence for over 40 years. Its membership is comprised exclusively of tuna fishing vessel owners. The vessels I represent caught and unloaded over 60 percent of all the tropical tunas landed in the United States by vessels operating from the United States. Our members also unload catches of tuna in the Commonwealth of Puerto Rico. The frozen tuna carrying capacity of the American Tuna Fleet is about 39,000 tons, of this total, about *21,000* tons is represented by vessels owned by members of the A.T.A.

We oppose the passage of S. 1054.

Support for passage of S. 1054 cannot be founded on the ground that fishermen in the Tuna Industry have been denied the right of collective bargaining or the protection of the labor laws of the United States. This is just not true for the men who are employed aboard our member vessels. The experience of the Tuna Fleet in Southern California makes such a contention ridiculous. Except for two vessels owned by one member, each tuna fishing vessel in our Association constitutes a separate bargaining unit as that phrase has been defined by the Labor-Management Relations Act of 1947. The managing owner of each vessel in our Association has signed a Collective Bargaining Agreement with one of the following Unions: (1) Cannery Workers and Fishermen's Union of San Diego, affiliated with the Seafarer's International Union of North America, AFL–CIO; (2) Seine and Line Fishermen's Union of San Pedro, affiliated with the Seafarer's International Union of North America, AFL–CIO; (3) Fishermen's and Allied Work-

ers Union, Local 33, International Longshoremen's and Warehousemen's Union of North America, AFL–CIO.

All of the Collective Bargaining Agreements contain paragraphs establishing a union-shop clause. I will be more than happy to provide this Committee with copies of such Agreements if they desire.

With respect to other laws. The record of increases in the cost of insurance premiums and deductibles and the number of lawsuits for personal injury founded upon the Jones Act and the General Maritime Law is ample proof that the employee-fishermen aboard tuna vessels are getting relief from the Jones Act.

In California, employee-fishermen aboard our vessels are eligible for unemployment insurance, disability insurance coverage, and receive protection from the California Labor Commissioner.

In the Tuna Industry, the Unions representing fishermen aboard the Tuna Vessels do have a considerable influence if not a voice in the final say as to the price paid for tuna ex-vessel sale. An examination of the Collective Bargaining Agreements now in force will support this view. There are various factors that influence the determination of the crew members share, such factors are subject to negotiations between the Unions and the Managing Owner of the vessel. Thus, even without the right to negotiate fish prices, the Union can influence the income of their members. Such a power in the Union causes the vessel owner to obtain the best possible price for his fish.

Under S. 1054, a Union "may bargain, severally or jointly with one or more buyers of the fish * * * or one or more associations of buyers including area or industrywide association * * *."

This is objectionable to the American Tunaboat Association, because we see the possibility that the union will ignore the views of Associations that represent only employers. We see the possibility that as a condition to the successful negotiation of a working agreement between the managing owner of a vessel and a union, a provisal that the managing owner designate the union as his bargaining agent in working out the terms and conditions of the ex-vessel sales of tuna. We know this is to be possible for two reasons:

(1) At the present time, there exist fishing contracts between managing owners of tuna vessels and canners that provide that if the vessel owner signs a marketing agreement with an association, such act shall constitute a breach of the contract.

(2) The statement of J. Duane Vance, on behalf of the Seafarer's International Union, offered in a hearing on S. 1135, a bill identical to S. 1054, held in Washington, D.C. on May 3, 1963, as follows:

"The Seafarer's Union believes that time will prove that it would be better to have only one bargaining agent selected by the majority, as that principle has been established by traditional collective bargaining. We have, however, withdrawn from urging that position and endorse this bill in its present form in deference to the wishes of the existing organizations in the field. The fishermen will tend to join and belong to that organization which is most responsive to their desires and which is most effective in representing them and in general renders the better service. Therefore, under this Act, any organization that falls by the wayside will do so only by reason of its own failure to properly represent its members."

Thus, managing owners have been forced to leave the A.T.A. in the past for financial reasons. Such a reason would be involved in a situation where a Collective Bargaining Agreement would be negotiated. And, in fact, the Seafarers, have announced their intent to compete with existing organizations, and with the attitude: May the best man win. We know, that since our Association is purely voluntary in nature, we cannot do battle with international unions. They are too strong financially, and by virtue of the union security clauses in the Working Agreements, they can have the managing owner of the fishing vessel assist in the maintenance of their membership. Remember, every U.S. tuna vessel operating from San Diego is under contract with a union.

Should negotiations with a buyer involve the unions and an association composed solely of employers, the fact that the unions would represent a broader group than the association would tend to weaken the latter's ability to represent his views and interest.

The buyer will tend to negotiate with that organization which represents the greater number. Under S. 1054, the unions will have the opportunity to represent employers, but employer organizations have little if any chance to represent employees. In these respects, S. 1054 is objectionable. S. 1054 is discriminatory in that it grants unions the opportunity to increase their membership to the detriment of existing employer associations. The original intent and philosophy

behind the Fishery Marketing Act was to allow producers of fishery products the same competitive advantage as businessmen who act through corporations as entities. This intent and philosophy will be frustrated by the passage of S. 1054. Thus, under S. 1054, Unions will become more powerful, the Employer-vessel owners weaker. A situation certainly not intended by the Fishery Marketing Act.

The vessel owners have the investment, and this is not inconsiderable for the members of our Association. The replacement value of the member vessels of A.T.A. is about $34 million. And, this is a conservative estimate. The right to determine the terms and conditions of ex-vessel sales of the fish caught by vessels is, in our opinion, strictly a management decision. S. 1054 opens the door towards an unequal conflict, which would result in having unions undertaking this decision. We fail to see how unions can serve two masters. No one ever has, and we believe it unrealistic to propose that the unions can do the job.

To also suggest that it would be possible for both the unions and employer associations to bargain effectively with the buyers is, in our opinion, also unrealistic. Based upon our understanding of the unemployment insurance law of the State of California we see this possibility: Should the Employer's Association and canners agree on a price, but the unions disagree, such a failure to agree would not constitute a trade dispute as such a term is defined in the State law. The crewmembers could collect unemployment insurance while waiting for the canners and boatowners to meet their position. This situation would be intolerable to our vessel owners. The cost of an idle vessel is too great. Thus, unless our views are entirely incorrect, the vessel owners, as against the employee-fishermen and the canners would carry too much of the costs and other burdens during the negotiations. The crewmembers get paid unemployment insurance, and the canners keep packing imported tuna or make plans to increase their capacities in areas other than the U.S. We believe that the unions can refuse to agree and sell fish to the buyers under the language of S. 1054 because it "may bargain * * * or take such other action with reference to such ex-vessel sales or factors affecting such ex-vessel sales, as an association may lawfully take".

In our opinion, Public Law 464, 77th Congress, should be amended so as to give additional strength to existing producer cooperatives. Why weaken these existing cooperatives by allowing unions to compete with them. We suggest that before this Subcommittee undertakes the job of giving unions the additional power to act also as associations, that it make inquiry of how to strengthen the existing fishery cooperatives. On May 8, 1963, Mr. Vance, in the talk previously noted, declared before the Senate Subcommittee on Merchant Marine and Fisheries that he felt that unions could do a better job than the marketing associations because of (1) the experience and age of the unions, (2) the ability of the unions to use the power of the parent union, such as the Seafarer's International Union, and (3) the entrance of unions will cause a consolidation or mergers of many associations into one or a few strong associations, and (4) the union does possess in a general way more muscle than an association can possibly have.

This constant stress on the effectiveness on the power of unions, and the desirability of unions to take over a management decision is completely objectionable to my members. To grant the union the power to determine terms and conditions of ex-vessel sales of tuna, would cause people to avoid investing in U.S. flag fishing vessels. Except for the risks involved, what does a vessel owner have? Who will risk his capital to invest in a ship that produces fish for someone else to sell? Who will loan money for such a venture?

We are not claiming that the A.T.A. or its members have done the best job possible in selling fish. We have made serious mistakes in the past, and we will make mistakes in the future. But, such a history is no reason for passage of a bill that will allow an entity such as a union, which represents employees, to compete against associations that represent employers on a basis that will cause such associations to disappear or merge with unions. We think, with adequate amendments, the existing employer associations can do a much more effective job. We would like this Subcommittee to look into this area before making its recommendations on S. 1054.

CONCLUSION

I wish to again point out to this Subcommittee that we in the A.T.A. are of the opinion that the crewmember through his union has a substantial influence in determining the terms and conditions of the ex-vessel sale of tuna. To give the unions the opportunity to be the exclusive or conclusive voice in such a deter-

mination would be an extremely harmful condition in our business. In that H.R. 3955 allows the unions to have such an opportunity, we must oppose S. 1054 as it is presently written. In that S. 1054 provides no protection or additional powers to existing employer associations so as to balance the known strength and intent to compete attributed to the unions, also requires us to oppose such bill. In that S. 1054 would tend to reduce the strength of our Association, in that it allows another organization to be involved in a management decision that is exclusive to our members, we must oppose such bill. In that there exist some uncertainties in language in S. 1054 regarding the power of the unions to act towards the buyers, we must oppose the bill.

Finally, we hope this Subcommittee will undertake action to investigate the need to strengthen employer or producer fishery cooperatives.

Respectfully submitted.

AUGUST FELANDO.

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