

applies strict scrutiny to actions of the federal government that use race. Actions taken with respect to gender, however, are scrutinized by a lesser standard of review, and thus the same requirements we propose to ensure that race-conscious programs are narrowly tailored should not necessarily also apply to programs for women.

C. Compelling Interest for the Use of Race-Conscious Measures

A few comments questioned the federal government's ability to use race-conscious action in procurement. Those comments stated that there was an insufficient record of discrimination by the government in procurement to support race-conscious activity.

When the proposal was published in the **Federal Register**, it was accompanied by an appendix titled "The Compelling Interest for Affirmative Action in Federal Procurement: A Preliminary Survey." 61 FR 26050. That report documented the effects public and private discrimination has had on business formation and development, and the way discrimination has hindered the ability of minority-owned firms to compete for and win federal contracts. The report demonstrated that race-conscious means are still necessary to ensure that minority-owned firms have the ability to compete fairly for federal procurement dollars.

Subsequently, the Urban Institute published "Do Minority-Owned Businesses Get A Fair Share Of Government Contracts," its survey of the results of numerous state and local disparity studies. The Urban Institute found generally that "minority-owned businesses receive far fewer government contract dollars than would be expected based on their availability," and made extensive findings similar to those published in the **Federal Register**. The appendix to the procurement reform proposal, and the Urban Institute's study, demonstrated that a compelling interest warranting race-conscious efforts in federal procurement remains.

Mark L. Gross,

Deputy Chief, Appellate Section, Civil Rights Division.

[FR Doc. 97-12190 Filed 5-8-97; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Jeff Mulkey, et al., Civ No. 97-234 MA; Response of the United States to Public Comments Concerning the Proposed Consent Decree

Pursuant to Section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), the United States publishes below the written comments received on the proposed Consent Decree in *United States v. Jeff Mulkey, et al.*, Civil Action No. 97-234 (MA), United States District Court for Oregon, together with its response thereto.

Copies of the written comments and the response are available for inspection and copying in Room 3235 of the Antitrust Division, United States Department of Justice, Tenth Street and Constitution Avenue, N.W., Washington, D.C. 20530 (telephone 202/514/2481) and for inspection at the Office of the Clerk of the United States District Court for the District of Oregon, United States Courthouse, Madison & Broadway, Portland, Oregon.

Rebecca P. Dick,

Deputy Director of Operations.

In the United States District Court for the District of Oregon

State of Oregon, *ex rel.*, Attorney General Hardy Myers State of Washington, *ex rel.*, Attorney General Christine O. Gregorie, State of California, *ex rel.*, Attorney General Daniel Lungren, United States of America, Plaintiffs, v. Jeff Mulkey, Jerry Hampel, Todd Whaley, Brad Pettinger, Joseph Speir, Thomas Timmer, Richard Sheldon, Dennis Sturgell, Allan Gann and Russell Smotherman, Defendants. Civil Action No. CV 97 234-MA United States' Response to Public Comments Filed: May, 1997.

I. Background

On February 11, 1997 the United States jointly filed with the states or Oregon, California and Washington a complaint to prevent and restrain the defendants from violating Section One of the Sherman Act (15 U.S.C. § 1). At the same time, a Stipulation was filed in which the parties agreed that the Consent Decree, lodged with the Court in conjunction with the filing of the Stipulation, may be filed and entered by the Court at any time after the expiration of the sixty (60) day period for public comment provided by the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)-(h). The sixty day public comment period terminated on April 25, 1997.

Under the Antitrust Procedures and Penalties Act notices were published in

the **Federal Register** and the Portland Oregonian directing anyone who wished to comment on the Consent Decree to send their comments to the United States Department of Justice Antitrust Division's San Francisco Office. The Antitrust Division has received comments from the following:

1. Peter G. Heckes—Oysterville, Washington.
2. T.J. Lindbloom—Roseburg, Oregon.
3. Lyle Hartzell—Westlake, Oregon.
4. Dorothy Nicholson—Florence, Oregon.
5. Rita J. Sellers—Reedsport, Oregon.
6. Katy Ellis—Roseburg, Oregon.
7. Debbie Coffman—Eugene, Oregon.
8. Travis Wolf—Florence, Oregon.
9. Bill Bradbury—Bandon, Oregon.
10. Jim Edson—South Beach, Oregon.
11. Nick Furman—Coos Bay, Oregon.

The United States Department of Justice's Antitrust Division has carefully reviewed the comments from the above individuals and has prepared this response to address issues raised in those comments.

II. Response to Public Comments

The Comments fall into two principal categories: (1) There was insufficient evidence to support the allegations in the Complaint; and (2) it was not fair for the plaintiffs to name only the defendants in this matter since there were hundreds of other fishermen who participated in the alleged tie-up and this type of conduct has long been commonplace in the industry. The comments criticize the actions and behavior of the plaintiffs in bringing this case. None of the comments discuss the terms or impacts of the decree and, thus, do not discuss whether entry of the Consent Decree is in the public interest. Collectively, they indicate that commercial crab fishermen have violated the antitrust laws for more than just the charged 1995-96 season. In short, they support, rather than attack, a finding that entry of the Consent Decree is in the public interest.

The comments reflect in part a misunderstanding of the antitrust laws and the limited exemptions granted fishermen from the antitrust laws by the Fishermen's Collective Marketing Act ("FCMA") (15 U.S.C. §§ 521-522). As pointed out in the Competitive Impact Statement filed in this matter, the FCMA provides protection from the antitrust laws only if fishermen jointly make marketing decisions as members of a fish marketing association formed pursuant to the terms of the FCMA. The FCMA does not protect fishermen who are not members of a fish marketing association and it does not protect fish marketing association members who

enter into marketing agreements with non-members.

The comments also demonstrate a lack of appreciation for the reasons we as a nation have adopted and enforce antitrust laws. When sellers work collectively, they can raise their prices to artificially high levels. Above-market prices inevitably reduce overall production, restricting the nation's output of goods and services; on a more personal level, they can directly harm individual consumers. These harms are sufficiently serious that price agreements among sellers are usually punished criminally. Our economic strength, which ultimately benefits us all, results in no small measure from our consistent refusal to tolerate price-fixing in any sector of the economy.

The Complaint alleges and the plaintiffs were prepared to prove at trial that the defendants entered into agreements to market crab and either were not members of a fish marketing association that had authority to market their crab or, if they were members of such an association, entered into agreements with non-members to market crab. In addition, they used threats, coercion and intimidation to enforce the agreements. Such agreements and conduct are not protected by the FCMA and are violations of Section One of the Sherman Act. As noted, the United States Department of Justice normally prosecutes conduct of this type criminally. The United States chose not to proceed criminally in this matter because some of the defendants mistakenly believed that their conduct was not a violation of the Sherman Act.

The United States joined this action in order to give notice that the defendants' alleged conduct is not permitted under federal law. The United States attempted to deter such conduct in the early 1980's when it filed civil actions and obtained entry of Consent Decrees against two northwest fish marketing associations in *United States v. All Coast Fisherman's Marketing Association, Inc.*, Civ. #82-233 (Oregon 1982) and *United States v. Del Norte Fishermen's Marketing Association, Inc.*, Civ. #82-3355 (N.D. Calif. 1984). Under the terms of those Consent Decrees the defendant associations held meetings in Crescent City, California and Charleston, Oregon, attended by their members and other interested fishermen, at which attorneys explained the applicability of federal antitrust laws to the marketing of seafood by commercial fishermen.

The United States hopes that by bringing this action against individual fishermen, it will succeed in

accomplishing what those actions sought to accomplish—detering illegal conduct in the future. The Consent Decree provides the defendants, as well as all the other fishermen that may have participated in illegal marketing agreements with them, with a guide as to what is not permissible under the Sherman Act. It is hoped that in the future any defendants and other fishermen who wish to jointly market their crab will take steps to determine how they can do so legally.

III. Conclusion

The conduct alleged in the Complaint violates the Sherman Act. The Consent Decree was proposed and agreed to in order to deter such conduct in the future and ensure compliance with the law. It helps to ensure price competition among commercial crab fishermen. None of the comments have addressed the terms of the Consent Decree or demonstrated that its entry is not in the public interest. Thus, entry of the Consent Decree is in the public interest.

Dated: May 9, 1997.

Respectfully Submitted,
Christopher S. Crook,
Richard B. Cohen,
*Attorneys, Antitrust Division, U.S.
Department of Justice.*
March 16, 1997.

Mr. Christopher Crook, Acting Chief, U.S.
Department of Justice Anti-Trust
Division, Box 36046, 450 Golden Gate
Ave., San Francisco, CA 94102.

Dear Mr. Cook: As one who's involvement in Oregon's crab industry dates back to 1975 when I first set foot on a crab boat as a college student working to cover tuition costs, I find both the official "spin" and accompanying media coverage of the anti-trust investigation and pending cases quite disturbing. If a person were to take all that has been written and reported on the subject at face value, it would lead them to believe that those targeted individuals are the commercial fishing industry's equivalent of "mafioso's" and close relatives of the Gotti family.

To imply that twelve individuals "illegally conspired", "coerced", "intimidated" and "threatened", using "strong-armed tactics" and "violence" to "fix prices" and hold the entire West Coast crab industry hostage, is grossly unfair and fails to take into consideration that the historical nature of the fishery and dynamics involved. To conclude that these twelve individuals alone had enough influence to keep upwards of 1000 fishermen and their vessels tied to the dock in fear of reprisal is simply ludicrous.

In short, the "tie-up" at the start of the 1995/96 crab season (legal or otherwise from an anti-trust standpoint) was a direct result of excessive frozen inventories and prevailing market conditions, and not the conspiratorial actions of anyone, fisherman or otherwise. Right or wrong, the process of

crabbers collectively establishing an "asking price" prior to setting their gear, with buyers responding accordingly, has been going on for decades and actually helps to bring a certain amount of stability and order to a situation that can by nature, be intensely chaotic. Once fishing has commenced, stock abundance and consumer demand ultimately determine whether the starting price will hold, increase, or even drop as it has in some years.

Crabbers coast wide have always held these pre-season meetings publicly and in broad daylight, with no attempt to "plot secretly" as Webster's definition of conspiracy and the accusations associated with this case would suggest. On the contrary, all one has to do is go back and read the early December issues of any of the coastal newspapers during times of "soft" markets, to find reported accounts of meetings, conference calls, price impasses, and yes, even strikes. One can only wonder why, after all these years, is this process suddenly deemed worthy of the scrutiny and attention it has recently received, to the detriment of the entire industry.

In conclusion, let me say that violent acts associated with any activity should be vigorously investigated and prosecuted accordingly. It's unfortunate that in this case, it is the anti-trust laws that are being vigorously applied to a situation that resulted from an entire industry's lack of a clear understanding of those laws as they related to their collective activity.

Sincerely,
Nick Furman,
P.O. Box 403, Coos Bay, OR 97420.

Note: Newspaper and magazine article notices have not been reprinted here, however they may be inspected in Room 3229, Department of Justice, Washington, DC and at the Office of the Clerk of the United States District Court for the District of Oregon.

March 21, 1997.

Jim Edson, P.O. Box 518, South Beach, OR 97366.

Christopher S. Crook, U.S. Department of Justice, 450 Golden Gate Ave, Box 36046, San Francisco, CA 94102.

Dear Mr. Cook: I am outraged at what is happening to the crabbing industry. Thanks to the Justice Departments, we crab fishermen will no longer be able to negotiate a fair price for crab. The charges that were brought against the infamous 12 fisherman were very unnecessary and the fact that they were threatened and intimidated into paying for something they did not do is criminal. The Oregon Dept. of Justice has handled this investigation in a very despicable manner and we want these charges dropped against all these men.

The Attorney Generals Office recently investigated the crab industry on charges of price fixing and coercion. Apparently, they found that 12 out of over 400 crab fishermen were involved.

Actually, all 400+ fishermen were equally guilty of all trying to negotiate a fair price.

Now, the AG's Office is allowing the 12 villains to pick up the tab for their botched inquiry.

Since the A.G. doesn't have a clue to who the bad guys are, it might be wise to diagnose the problem. Maybe there are no bad guys, just problems.

Fortunately for all of us, 2 of the villains, Scott and Charlie have enough wherewithal and fortitude to challenge these bogus charges.

There is something very wrong in a system that would punish qualities such as honesty, integrity, and hard work. All qualities I have personally observed in Charlie Schuttpelz and Scott Hartzell.

Jim Edson,

*Commercial Fisherman, South Beach, OR,
541-867-3107.*

Bill Bradbury, P.O. Box 1499, Bandon,
Oregon 97411, 541-347-9377.

Mr. Christopher S. Crook, Acting Chief, U.S.
Department of Justice Anti-trust
Division, Box 36046, 450 Golden Gate
Ave, San Francisco, CA 94102.

Re: Consent Decree regarding Commercial
Crab Fleet

Dear Mr. Crook: From 1980 until 1995, I represented the South Coast of Oregon in the Oregon Legislature, serving as a State Representative and State Senator. During my tenure I became quite familiar with the operations and challenges of the commercial fishing industry of Oregon.

When I learned that 12 crab fishermen had been selected to bear responsibility for the delay in the 1995-96 crab season, I was outraged.

My outrage stems from the following. First, the practice of delaying the season until a price is established between the fishermen and the processors has been going on for over 30 years. Second, during the delay, the processors were either not buying crab or they offered a price below the fishermen's cost. The facts of this case could easily be interpreted as a "lock out" by the processors, not a "tie up" by the fishermen. Third, over 95% of the vessels on the coast did not go fishing; to select out 12 people for doing what 300 other fishermen also did seems grossly unfair.

The state may characterize the ones selected as the leaders, however, more prominent leaders, especially in Newport where a coast wide meeting was organized and held, were not named in this case. The only common characteristic of the fishermen selected is that they catch a lot of crab.

I request that you question closely the advisability of entry of a consent decree that is unfairly selective of the defendants, is widely perceived as unfair and that ignores the liability of the processors in creating the situation in which the fishermen found themselves.

My best,

Bill Bradbury.
March 19, 1997.

Christopher S. Crook, Acting Chief, U.S.
Department of Justice Antitrust Div., San
Francisco, Ca 94102.

Dear Sir: In regard to the ten crab fishermen who have been charged by the Oregon Attorney General's Office with price fixing and who have agreed to pay a \$9,100 fine and sign a consent decree. As you may

know, Oregon's anti-trust laws are more stringent than Washington, California and the Federal Government's. There is a bill before the senate sponsored by Rep. Terry Thompson, Newport (HB 2659) that would exempt Fishermen's marketing and trade association's from Oregon's anti-trust laws. This would put Oregon in line with Washington, California and the Federal Government. If this passes and the Oregon Attorney General has stated he will not oppose it, than the charges brought against the crab fishermen would not be illegal and all charges should be dropped.

I am sending a copy of notes from the chairman of the Oregon Crab Commodity Commission about his meetings and discussions in 1994 with the Oregon Assistant Attorney General Andrew Aubertine. It looks as if he was just waiting for an opportunity to bring charges against the top producers in the industry. Most if not all of the crabbers charged are members of marketing associations. Please give this your serious consideration.

Sincerely,

Travis Wolf,

88359 Hwy 101 N, Florence, Or 97439.

Nick Furman's Notes Regarding Meetings with Aubertine

Summary of Initial Contact/meeting With A. Aubertine—AG's Office Oct.-Nov. 1994

10/12/94—Received call from Port Orford-area crabber with question—Can/how can fishermen legally negotiate/establish ex-vessel price with processors in a timely and orderly fashion prior to the start of the season? Responded that I would check with an attorney available to ODCC through AG's office, and get back with an answer.

10/13—Was discussing an assessment-related collections issue with Dan Rosenhouse (AG's office) on behalf of the ODCC, and posed the fisherman's question to him. Dan said he wasn't comfortable providing an answer on that type of issue, but he would contact a colleague in Salem who might be better versed with that aspect of the law.

10/17—Received a call from Andy Aubertine from the AG's office. Stated that he wanted to set up meeting in Salem to discuss issue further. Asked about the ODCC's role in preseason price process. Explained role as a Commodity Commission, stating that we produced an informational market summary and disseminated to the industry. No additional role in process.

10/25—Aubertine called again, saying that "Dept. of Justice was on-board, and that they had a 'game plan'." Wanted to meet on 11/3 in Salem with his superiors.

10/26—Aubertine called to confirm meeting and informed me to bring ODCC documents (i.e. minutes, market reports).

10/31—Aubertine called again and scheduled the meeting for the 2nd.

11/2—Salem: Met with Aubertine and subordinate at 3 pm. in his office. Immediately made to feel uncomfortable by his demeanor and authoritative style. Was obviously on a "fishing expedition" and had no interest in responding to my initial question. Asked a lot of questions about the

industry in an attempt to play "catch-up". Was curious about the role of Eureka FMA and had never heard about All Coast FMA. Summarized law by saying that only legal way to establish price was "one on one" between fisherman and processor. Didn't know the process of establishing a legal entity such as an association, and wasn't in a position to offer free legal advice. Couldn't help industry with problem and suggested that fishermen hire a lawyer to answer question in more detail. Stated that Ag's role was that of enforcement. Indicated that he would summarize our conversation in writing, for a fee, if he received a written request. Time is billed at \$78/hr and \$28/hr for an attorney and assistant, accordingly.

Summary: Decided that any further contact with this individual would be pointless and a waste of the Commission's money. Had no authority to go any further with this issue.

March 12, 1997.

Debbie Coffman, 35807 Willama Vista,
Eugene, OR 97455, (541) 746-4760.

Christopher Crook, U.S. Department of
Justice, Box 36046, San Francisco, CA
94102.

Dear Mr. Crook: I am writing to you in regard to the unconstitutional treatment that has been imposed on 12 coastal fishermen. I have read numerous articles and letters that have been directed toward the Attorney General's Office. I am sickened at how corrupt our government has become and even more disheartened that Hardy Meyers has not stood up and supported the fishermen that have been threatened, coerced, and intimidated by the Justice Department.

Andrew Aubertine has violated these fishermen's rights. Farmers and fishermen are among the hardest working people in the business community. Their products are so perishable, marketing them has to be done in advance, not when they have a boat load of crab, and a unpredictable market. Their largest threat is "Mother Nature". Storms and unpredictable weather were their worst nightmare until the Attorney Generals Office decided to take down the crab industry.

How is it that they have selected these "12" fishermen? Who are the fishermen that originally called in this complaint? Are they honorable men worthy of trust? Has their background been investigated? Out of hundreds and hundreds of fishermen, what criteria did they use to select the 12 fishermen that have been targeted? Ability to pay is what I have heard. The men that have paid the settlement of \$9,100. Paid because they were afraid that litigation would cost them their livelihood and devastate their families. They only settled because they were threaten to do so by the A.G.'s Office. They were not guilty of anything. They were not even charged. They were railroaded, pure and simple.

I have lived in a coastal community for years, so I can speak from experience when I say that fishermen are the most honest hardworking people in America. Every time that they head out to sea, they risk their lives. I believe if this injustice is not stopped, the State of Oregon will be subject to a huge class action lawsuit from the whole fishing fleet for damages to the whole crabbing industry.

These fishermen's civil rights have been violated and as a concerned citizen I ask you to please look into this investigation. I believe the Justice Department is guilty of numerous violations, threats, coercion, intimidation, and the most terrifying is *extortion!*

Sincerely,
Debbie Coffman.

March 13, 1997.

Christopher S. Crook, U.S. Department of Justice, Box 36046, San Francisco, CA 94102.

re: crab fisherman

Dear Mr. Crook: The Attorney General didn't know which end the crab snaps until he attacked innocent Crab fishermen. Now he can expect to get pinched himself for his unprofessional conduct, threats, coercion, intimidation, and extortion. Their office doesn't have a clue to how the industry operates and can't grasp the fact that supply and demand controls the market, NOT THE ATTORNEY GENERAL! He is leaving a trail of more innocent victims up and down the coast suffering from harassment and threats in order for the department to settle their trumped up cases. Our tax dollars in action being wasted.

In 1994 Aubertine was asked by the Crab Commission, "How can fishermen legally negotiate a price for crab?" Aubertine stated, "I am in the enforcement division." Instead of working with the crab commission and the fishermen, Aubertine decided to take down the whole crabbing industry. He claims the fishermen he has charged with price fixing, had hurt the economy and damaged the consumer in Oregon, Washington, and California, quite a feat for 12 independent crab fishermen out of 1,367 from all three states. The time in question, 1995/96 season, crab was plentiful and very reasonable to the consumer, there were millions of pounds of crab in cold storage.

How can the Attorney General decide when and at what risk these fishermen should take, endangering their lives to harvest crab. It is their right to tie up their boats when ever, and for what ever reason they choose. If they choose not to join associations, like the A.G.'s office is coercing them to do, it is there right. Never should association's have more rights than an individual.

It is time for the Attorney General Office to admit the witch hunt is over and get back to work.

I would like to see all these charges dropped against these fishermen as the Justice Department has violated these fishermen's civil rights as well as denying them due process of the law and used extortion, threats, and intimidation to coerce them to settle when they claim innocence.

Sincerely,
Katy Ellis

P.O. Box 87, Roseburg, OR 97470.

Christopher Crook, Acting Chief, San Francisco Office, Anti-trust Division, Department of Justice, San Francisco, CA 94102.

Dear Sir: I am writing to you concerning the alleged price fixing by The West Coast

Commercial Crab Fishermen. My interest has risen daily from reading the many public editorials and watchdogs newspaper accounts. Somehow I don't think the Oregon Attorney General's Office is doing justice, the more information I receive.

First of all I would like to know how the Fishermen were price fixing crab at \$1.25#, when their fellow West Coast Crabbers were getting the same price or more during the time frame in question. Please check these facts for yourself, Central California Dec. 1995 crab price was \$1.50#, Puget Sound Washington Dec. 1995 price was \$1.25, British Columbia late fall 1995 price was \$1.40 U.S. and Washington tribal price Dec. 1995 was \$1.25#.

The only thing I could find illegal so far from the alleged boycott, was the apparent sabotage of a delivery truck in Brookings, Or. If this incident really happened then someone should have been criminally charged. As far as I know no one has been.

Now the Oregon Department of Justice is saying this investigation has cost hundreds of thousands of dollars. I ask myself is this taxpayers money well spent. After just reading that Lawrence Singleton struck again and O.J. Simpson purchased a mansion in Florida perhaps there is more injustice than justice in our legal system.

The message that I am getting from the newspaper articles is that perhaps Oregon Assistant Attorney General Andrew Aubertine would have fit better in another era. Seem's to me that I have read about his type before, during the Roman's persecution of the Christians and the 17th century witch hunts.

In closing I would like to ask that the U.S. Department of Justice immediately dismiss this case, and then see that Andrew Aubertine is reprimanded for his vindictive investigation of independent fishermen.

The current price paid to the fishermen for dungeness crab is \$2.50 a pound. I don't think it takes a rocket scientist to figure out that supply and demand control the market.

Sincerely,

Dorothy Nicholson,

1525 West 20th, Florence, OR 97439, Ph. 541-997-3149.

March 6, 1997.

Christopher Crook, Acting Chief, San Francisco Office, Anti-trust Division, Department of Justice, San Francisco, CA 94102.

Dear Sir: The charges of price fixing by the commercial Crabbers seems to me to be an uncalled for attack on a few hard working fishermen.

There are 1363 fisherman in Ore., Cal., and Washington. Why have only 12 of these men been singled out and accused? Could 12 men have possibly stopped all of these fisherman from taking their boats out during the 1995-96 crabbing season? I think not.

Ten of these men have agreed to pay the fines imposed on them in order to avoid further harassment by the Attorney Generals office. Scott Hartzell and Charley Schuttpelz have refused to pay off and admit guilt for something they are not guilty of.

Almost every year in my memory, the fishermen and the processors have haggled

over what a fair price for crabs should be. After a few days a price is set by the processors and the Crabbers go out to risk life and limb to bring in the crabs, and hopefully made a decent living at it.

Why should these fisherman have to pay fines to pay the expenses incurred in a lawsuit that never should have been started?

Perhaps the people in the Attorney Generals office that stared this investigation should have to dig into their own pocket and pay for their own mistakes. Unfortunately, it will be paid for by we, the taxpayers.

Sincerely,

Rita J. Sellars,

908 Fir Ave., Reedsport, Ore. 97467.

March 1, 1997.

Christopher Crook, Acting Chief Anti-trust Div., U.S. Depart. Of Justice, San Francisco, California.

Dear Sir: The Oregon Department of Justice led by Assistant Attorney General Andrew Aubertine has conducted a witch hunt investigation of crabbers. Apparently once he started he felt he could not stop until he made some pay for his investigation. He has coerced and intimidated the fisherman he has interviewed. The statements that have come out of the Oregon Attorney Generals office by spokeswoman Jan Margosian have always said more fishermen may be charged. With this hanging over their heads and leading questions some fishermen have been coerced into saying what Mr. Aubertine and his other investigators wanted to hear. The Oregon Department of Justice has made a mountain out of a molehill. This whole miscarriage of justice by an over-zealous assistant attorney general should be dropped. The ten fishermen who have signed the consent decree and paid the fines, did so not because they had done anything wrong but because of the huge attorney fee's they would be faced with.

Sincerely,

Lyle Hartzell

05821 Canary Rd, Westlake, Or 97493.

February 19, 1997.

Box 27, Oysterville, WA, 98641.

Cristopher S. Crook, Acting Chief, San Francisco Office, U.S. Dept. of Justice, Antitrust Div., Box 36046, Golden Gate Ave., San Francisco, Calif., 94202.

Dear Mr. Crook: It has been very disturbing to follow the escapades of Assistant Attorney General Aubertine in his attempts to terrorize the west coast crab fleet by trying to hang price fixing charges on key members of the industry. If you were to examine the men he singled out, you would find that they are mainly guilty of being able to pay these outrageous fines—with income other than that of crab fishing, which has been dismal this season.

It is obvious the A.G.'s office did not want these cases to go to trial. Could it be lack of evidence? Immediately after these fines were levied it was made abundantly clear that to fight these charges could be very, very expensive. If found guilty, not only would the fishermen have to pay the fines, their lawyers, but also the expenses of the A.G.'s office. This could easily amount to over ten

times the cost of the fine. Even with a better than a 50% chance of winning the case, the odds were so stacked against the fishermen most of them simply signed off. With such a skewed system of justice who could predict what might happen.

Although I haven't crabbed for several years, I have been involved in the commercial fishing industry all my life. To ask a fisherman not to talk about the price they expect to receive for their catch is like asking freshmen highschool girls not to talk about boys. Fishermen talking about price is a normal, natural American thing to do.

Violence, intimidation and destruction of property to achieve price goals is a different matter. Seems to me if any of this could be proven real criminal charges should be filed—not phoney fines with no realistic way of challenging them.

I contend that Mr. Aubertine, being fairly young, politically ambitious and not too bright, spent a lot of state money on his price fixing investigation in hopes of furthering his political career. When the investigation came up short of hard evidence he took the easy way out. He tried to recoup the money he had wasted by singling out members of the industry by their ability to pay rather than other reasons. He did it in such a way they had no chance to defend themselves.

The solution is simple. If Mr. Aubertine has real evidence of price fixing he should come forward with this evidence and file charges. If he doesn't have this evidence he should accept the responsibility of wasting the state's money and face the consequences. This would include public apology to the men he wronged and immediate disbarment proceedings.

Sincerely,
Peter G. Heckes,
Heckes Oyster Co.

Oregon Crabbers Fight To Stay Afloat

The two Oregon Crab Fishermen that have been charged with price fixing must be mighty powerful forces to have done what they are accused of. I have read the articles and editorials that have been published, and have spoken with each of these fishermen.

It would appear from everything I have heard and seen that the Department of Justice has used threats, coercion, and intimidation to get these hard working, self employed fishermen to sign statements saying that they are guilty when in fact they are not. Most of these individuals simply could not afford to fight the Attorney General on matters they didn't understand. Faced with fines of over \$100,000.00 and loss of their commercial fishing license (their very livelihood) they simply caved in to the pressure, payed the \$9,000.00 "settlement" and went back to work.

It sure is odd that the Department of Justice alleges that meetings were held to organize and enforce the conspiracy to fix prices at \$1.25 per pound when in fact they went fishing for \$1.15 per pound, (which all the major fish plants were offering). If this is price fixing then it sure went the wrong way! It would seem that the rule of supply and demand set the prices. I should remind everyone that since the dawn of time

fishermen have had to negotiate the best price they can for their product.

The State Attorney General Office said the lawsuit was filed after several months of negotiations failed to produce a settlement. What it should have said is they failed to produce a settlement after the threats, intimidation and coercion didn't work. The Assistant Attorney General, Andrew E. Aubertine, told these fishermen that they would pay for this investigation, and the ones who pay last will pay the most! I for one was unaware that this was the way our elected officials conducted investigations. Now, you tell me, who is guilty of coercion, threats, extortion, and intimidation. Is it the hard working fishermen, or the overzealous A.G.?

T.J. Lindbloom,

Roseburg, Oregon, 541-673-6047.

[FR Doc. 97-11939 Filed 5-8-97; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 6, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104-13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ({202} 219-5096 ext. 143). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call {202} 219-4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395-7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Airline Vacancy Listing.

OMB Number: 1214-0004 (extension).

Frequency: Semi-Annually.

Affected Public: Business or other for-profit.

Number of Respondents: 223.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 310.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Airline Deregulation Act requires the Secretary of Labor to establish a program to implement the first-right-of-hire provision of the legislation (29 CFR part 22.0) to ensure that furloughed, protected employees may exercise their Statutory rights. This Act provides a mechanism for the monitoring hiring activity in the airline industry. Section 43(d)(2) of the regulations provides that covered air carriers shall report their permanent job vacancies as they occur, to a central job center, for the preparation of a comprehensive list of jobs in the industry that is distributed to all State Employment Agencies.

Agency: Employment Standards Administration.

Title: Notice of Final Payment or Suspension of Compensation Benefits.

OMB Number: 1215-0024 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Responses: 28,000.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 7,000.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): \$7,000.

Description: This report is used by insurance carriers and self-insured employers to report the payment of benefits under the Longshore and Harbor Workers' Compensation Act.