

ORGANIZING AND OPERATING FISHERY COOPERATIVES IN THE UNITED STATES



**UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF COMMERCIAL FISHERIES
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by

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FOREWORD

The main purpose of this publication, Organizing and Operating Fishery Cooperatives, is to present the basic information needed to organize a fishery cooperative and begin operations. The new publication will appear as Circular 155 and will continue the general plan and aim of the earlier publications entitled Organizing and Incorporating Fishery Cooperative Marketing Associations.

The new Circular updates the basic information from two earlier publications on fishery cooperatives. The original material was rewritten for clarity and brevity. In addition, several new features have been included plus two new sections on important legal and tax matters.

The first publication on this subject, written by Leonard C. Salter, appeared in 1936. It was issued as U. S. Bureau of Fisheries, Fishery Circular No. 22. A revision of Fishery Circular No. 22 was prepared in 1948 by the late Richard A. Kahn, formerly Chief of the Branch of Economics, Division of Industrial Research, U.S. Fish and Wildlife Service.

Harriet A. Denton, Editorial Clerk, Branch of Economics, edited the material for this publication.

CONTENTS

	Page
Foreword.....	ii
Abstract	iv
Aims and principles of fishery cooperatives.....	1
Introduction.....	1
Fishery cooperatives in general.....	1
Types and functions of fishery cooperatives	3
Assistance available through State agencies and Government bureaus	4
How to organize a fishery cooperative.....	6
Preliminary planning	6
Selecting form and adopting plan	6
Organizing and incorporating.....	8
General operations and policies	10
Management	10
Policy and procedure	12
Fishery Cooperative Marketing Act of 1934.....	15
Statutory provisions.....	15
Application and interpretation.....	16
Abnormal activities	17
State statutes for fishery cooperatives	18
Legal aspects in general.....	18
Legal requirements of States authorizing fishery cooperatives	19
Fishery cooperatives and taxes.....	21
Tax treatment under Revenue Act of 1962.....	21
Minimizing tax liability	22
Fisherman's personal income tax.....	26
Legal instruments of incorporation.....	26
Articles of incorporation	27
Bylaws	28
Membership agreements or contract.....	31
Appendixes.....	33

ABSTRACT

This publication is a guide or handbook for organizing and operating cooperative organizations of fishermen under the provision of Public Law 464, 73d Congress, Authorizing Associations of Producers of Aquatic Products (48 Stat., sec 1213; 15 U.S.C. secs. 521-522).

The publication presents the aims and principles of fishery cooperatives and the procedure for organizing and operating these organizations. General information on cooperative operating methods and policies is included. The application and interpretation of the Fishery Cooperative Marketing Act are given. A resume of the legal requirements for cooperatives under the various State laws is included. The general legal aspects of fishery cooperatives' tax liabilities, information about legal instruments of incorporation, and other useful materials are also important parts of this publication.

ORGANIZING AND OPERATING FISHERY COOPERATIVES

by Leslie D. McMullin*

AIMS AND PRINCIPLES OF FISHERY COOPERATIVES

INTRODUCTION

Fishery cooperatives make important contributions to the economic welfare of each American community in which they are located. These organizations exist to meet the wide variety of economic and social needs of the fishing communities they serve. Cooperatives are the modern version of the old tradition of neighbors working together to help themselves and each other.

In the United States there are about a hundred fishery cooperatives. Of the 139,000 fishermen in the United States, about 11 thousand are members of fishery cooperatives. There are many fishing areas where new cooperatives can be developed to provide efficient marketing and purchasing services for member fishermen.

Fishery cooperatives must organize under the laws of their respective States and comply with the provisions of Public Law 464, Authorizing Associations of Producers--more commonly referred to as the Fishery Cooperative Marketing Act of 1934.¹ In a general but factual way, this publication will serve as a handbook to provide guidance for groups of fishermen and technical personnel who wish to form and operate such a cooperative. Upon request, the Bureau of Commercial Fisheries will provide assistance on specific questions or problems of any particular organization.

FISHERY COOPERATIVES IN GENERAL

Most fishery cooperatives in the United States perform both a marketing and a purchasing function. In marketing, the co-

operative may take a fisherman's catch and handle or process it for later sale, or it may act as a bargaining agent and arrange to sell and deliver the catch to another firm. Supplies and equipment required for fishing operations are stocked and sold to fishermen.

Bargaining cooperatives are usually found where a considerable part of the total catch of fish or shellfish is canned, for example, tuna, salmon, pilchards, and dungeness crabs. A special cooperative committee or group of committees is appointed to meet with individual processing firms and negotiate the terms and conditions of sale for the fish or shellfish delivered during the marketing season. After an agreement has been reached, the fishermen deliver their catches directly to the canners who accepted the negotiated terms and conditions. There are several ways of paying for each catch. Payments may be made directly to the fishermen at time of delivery, or they may be made through the cooperative. In either case, a service charge or fee to cover the operating expenses of the cooperative is deducted before the fishermen are paid. Such deductions are first authorized by the fishermen.

Many fishery cooperatives in the United States provide various services for member fishermen. They own facilities for unloading catches, cleaning and packing, filleting and quick freezing, and cold storage holding of fish. In addition they manufacture ice and packing boxes, keep records, supply market and price information, and transport products to market.

The need to reduce the production costs prompts fishermen to organize purchasing cooperatives. Money is saved by large quantity purchases made at a discount. Some cooperatives obtain discounts for individual members from dealers; others provide supplies in a separate department

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¹ 48 Stat. 1213; 15 U.S.C., secs., 521-522.

of the organization. By lowering production costs, fishermen place themselves in a more favorable competitive position in the market.

U.S. fishery cooperatives have been among the leaders in improving the quality of fresh fish delivered to the consumer. This has been accomplished by a willingness to accept new and improved methods for catching and preserving fish and shellfish. There has been expansion in such activities as processing, quick freezing, cold storage, canning, and retail marketing. Frequently cooperatives set their own inspection and grading standards, and thus have established a reputation for high-quality fishery products.

A cooperative is a group of individuals acting together for mutual benefit. Cooperation has been termed "intelligent self-interest," and members jointly perform services which they could not perform economically as individuals. The association is the machine necessary to accomplish the objectives of the group.

The ownership and control of a cooperative are vested in the producer members or holders of common stock. Some State laws limit the shares of common stock held of any member to a percentage of the total number issued. Customarily, each member has one vote regardless of the number of shares he owns in the cooperative. This is in contrast to the usual corporate business enterprise where ownership and management are controlled through stock ownership, and voting is based on the total shares held by each stockholder.

A cooperative is usually considered a nonprofit enterprise since the organization is not oriented towards profit, but rather towards production cost reduction. Because the patrons own and control the cooperative enterprise, they are interested in net returns to individual fishermen rather than profits for the organization. In a marketing cooperative, net returns include the sale price of the product less the cost of doing business and the amounts set aside for stock dividends (if any), reserves, and other funds. In a purchasing cooperative the patron pays the wholesale delivered cost of items plus a "cost of operating." The cost of operating should be sufficient to assure the establishment of reasonable reserves. Thus the net return in a purchas-

ing association would be whatever savings could be made from out of the estimated cost of doing business.

The cooperative enterprise utilizes labor, capital, and management; and the earnings are returned to members in proportion to their patronage. Cooperatives compete to some extent with other types of business in obtaining commodities from producers, in reselling products in markets, or in the reselling and distributing supplies and equipment, but such competition is incidental to the rendering of service to producers who own and control the cooperative.

In enterprises of a commercial nature, capital, labor, and management are combined primarily to produce returns to investors. The interests of the investors are of paramount concern. The quality of service rendered, or of the commodity produced, is incidental to rewarding capital in the form of dividends, and the quality is not determined by producers of the raw product. Management is usually in the hands of a few individuals who are selected by a board of directors elected by the stockholders. Stockholders are interested in the dividends, which are based on the margin between costs and receipts. Dividends are distributed on the basis of capital invested.

As a general rule, a cooperative association is organized to provide a service or to improve service, possibly at lower cost.

Conditions which prompt fishermen to organize a cooperative might be to satisfy one or more of the following needs:

1. Stabilizing income by freezing and storing fish and shellfish caught during a glut.
2. Initiating tighter quality control by using more efficient methods of icing or quick freezing, and by improving sanitary practices.
3. Pooling funds and services to obtain operating capital to preserve the independence of individual fishermen.
4. Reducing the high costs of necessary equipment such as trucks, gasoline pumps, marine gear, and supplies by combining purchasing power.

5. Transporting catch to distant markets.

6. Establishing a competitive market for the fishermen's products.

7. Providing a marketing service for processed or canned products or specialty packs, in order to utilize products that would otherwise be wasted.

8. Providing for special needs of fishermen, e.g., harbor and dock facilities, unloading and handling facilities, ice manufacturing plants, etc.

9. Providing some type of mutual protection fund to cover the loss of boats of fishermen who cannot afford to pay the usual insurance premium rates.

TYPES AND FUNCTIONS OF FISHERY COOPERATIVES

There are two types of cooperatives, centralized and federated. The type is determined by the nature and scope of the services offered, the commodity, the facilities for handling, and the extent of the territory to be served by the association.

Centralized Cooperative

In the centralized cooperative association the individual becomes a member by paying a fee or by purchasing stock in the association. A central office maintains direct contact with the members and serves as a common meeting ground. This type of cooperative may be organized without respect to districts, areas, communities, or counties.

Unless policy demands otherwise, officers and directors are chosen from any section or territory served by the association. In an annual meeting at the home office the members nominate and vote for the officials. Committee reports on association business are made at this meeting, and discussion is open to the members. The board of directors calls local meetings to discuss association affairs.

Federated Cooperative

In a federated type of association the individual producer is a member of a local cooperative. Such locals generally are

independently organized and later join the federation. The bylaws of the federation set forth the size and number of locals and the manner of their representation. The member conducts his affairs at meetings of the local, and its officers furnish liaison with the federation.

Each local elects delegates, proportionate to the number of members, as representatives at the annual meetings of the federated association. Members to serve on the federation's board of directors are nominated by the locals and voted upon at an annual meeting.

Today there are no federated fishery cooperative associations in the United States.

The formation of a cooperative association should be determined by existing conditions which confront the fishermen. Establishment may be for purposes in any way connected with producing or marketing fishery products and for the purchase of supplies.

Examples of functions which could be performed by a fishery cooperative are:

1. Transportation of fishery products to plants, canneries, and other markets.

2. Operation of a boat servicing station for the exclusive use of association members.

3. Operation of a shop for repairing machines, boats, and nets.

4. Rental of trucks and equipment for cleaning boats at minimum cost to members.

5. Election of a collective bargaining committee to negotiate terms and conditions with individual buyers for the sale of members' catches when the cooperative itself does not perform any marketing services.

6. Marketing the products of members.

7. Purchasing supplies and equipment for members.

8. Arranging for financing of fishing operations.

9. Maintaining a retail outlet.

10. Operating a freezer and cold storage warehouse.

11. Providing dock facilities.

12. Operating a processing plant.

13. Maintaining a laboratory for quality control.

14. Developing patents and trademarks.

The above-mentioned functions are not all-inclusive. There are many others that can be performed by fishery cooperatives.

The cooperative association should take special care not to violate provisions of the Sherman Anti-Trust Act. This Act prohibits monopolizing or restraining trade in interstate or foreign commerce. Monopolizing trade may be the establishment of a "closed shop" for purchase of fish, which, in the case of a cooperative, would be imposing on the purchaser a condition that he must purchase fish exclusively from the cooperative or from members of the association. The cooperative may establish a price at which it is willing to sell its products. It may also establish a price at which individual members may sell their products. A cooperative, however, cannot legally establish a price which purchasers must pay for fish bought from those who are not members of the association. In addition, cooperatives can determine their own selling prices but not the selling prices of the wholesalers or retailers to whom they sell. Cooperatives may sell their products or the products of their members by means of auction; but, if this procedure is adopted, the auction room must not be closed to certain dealers nor must it otherwise be intended to monopolize the sale of fish. These cases of activities prohibited to cooperatives are only samples of possible violations of the Sherman Anti-Trust Act. Many others are possible.² Cooperative associations that are formed mainly to establish prices are advised to seek legal counsel before they start operations.

The first duty of a group concerned with the fishermen's welfare should be to ascertain whether certain conditions actually exist, and whether it is possible and feasible to provide a satisfactory remedy. Fur-

² Refer to a section on the various legal aspects of fishery cooperatives, page 18, for a more complete discussion.

thermore, it should be determined if a cooperative association serves a definite need in the business or trade area wherein it plans to operate. A cooperative marketing association must be considered as a business organization, and preparation for its formation and operation should be made accordingly.

To determine if an association is needed, several questions must be answered.

1. What volume of products is available?

2. What functions or services are to be performed?

3. Is the association wanted by those in a position to patronize it?

4. How much capital is required to operate until an association can become established and make its own financial arrangements?

Several further questions arise:

1. What is the extent of such immediate financial requirements?

2. Could all or part of the finances required be obtained among the prospective members and patrons of the proposed association?

3. If not, at what cost could the necessary finances be secured from another source?

The decision to organize a fishery cooperative requires considerable time and effort. Sometimes potential members are requested to contribute their services to assist in organizing and soliciting membership. Organizing and incorporating a cooperative is laborious and costly, therefore, a preliminary survey should be made to determine if the cooperative is feasible. If a cooperative is desirable, it should be organized quickly while interest is high.

ASSISTANCE AVAILABLE THROUGH STATE AGENCIES AND GOVERNMENT BUREAUS

Some States, through State fishery agencies, universities, and colleges, offer assistance to groups of producers in organizing

and operating cooperative or nonprofit associations. The State legislature sometimes gives such agencies or institutions certain responsibilities in assisting the fishery industry. These institutions usually assist as part of their work of providing social and economic services. Such assistance should be used where possible by groups of fishermen contemplating the organizing of a cooperative marketing association.

As a result of its long experience with cooperatives, the Bureau of Commercial Fisheries is able to give technical advice and assistance to groups of fishermen who wish to organize a cooperative. Monetary assistance for the formation of a cooperative association, however, cannot be provided by the Government.

Upon the advice of the Bureau of Commercial Fisheries, well-to-do fishermen, in several instances, have advanced money to cooperatives in the interest of all local fishermen. The Bureau has helped obtain leases of lots for fish-houses, purchase surplus war material, hold elections of officers, write Bylaws and Articles of Incorporation, give technical advice, and establish accounts and books for the cooperatives.

Those interested in cooperatives should know that the Small Business Administration (SBA) makes loans, when adequately justified, to small private business enterprises, including cooperatives. Approximately one-half of all loans made by that agency have been in amounts of \$10,000 or less. The SBA does not make loans for the purposes of forming a fishermen's cooperative association. The SBA, however, will sometimes make loans to be used for the following purposes:

1. Payment of labor.
2. Purchase of material required in the business.
3. Replacement of obsolete or wornout machinery or purchase of additional machinery necessary for efficient operation.
4. Establishment of new business enterprises.
5. Expansion of established business enterprises.

6. Industrial construction.

7. Payment of indebtedness and taxes with a portion of the loan.

Information regarding loans may be obtained by addressing inquiries to the SBA regional offices located in the following cities:

Boston 10, Mass.	Cleveland 13, Ohio
New York 4, N.Y.	Chicago 3, Ill.
Philadelphia 7, Penn.	Minneapolis 2, Minn.
Richmond 20, Va.	Kansas City 6, Mo.
Atlanta 3, Ga.	Dallas 2, Tex.
Denver 2, Colo.	San Francisco 5, Calif.
Seattle 4, Wash.	
Detroit 26, Mich.	Los Angeles 13, Calif.

The Fish and Wildlife Act of 1956, as amended, established a revolving loan fund for which \$13 million was appropriated. The Secretary of the Interior is empowered to grant loans bearing an interest rate of not less than 3 percent per annum with a maturity date of not more than 10 years. These loans may be granted for the "financing and refinancing of operation, maintenance, replacement, repairs, and equipment of fishing vessels and gear." These loans are made by the Department of the Interior through the Bureau of Commercial Fisheries, Branch of Loans and Grants. Fishery marketing cooperatives now qualify for loans from the Fisheries Loan Fund as a result of these revised regulations and those issued on September 12, 1958, and April 30, 1961, by the Secretary of the Interior, in accordance with Section 4 of the Fish and Wildlife Act of 1956 (70 Stat. 1119, 1121; 16 U.S.C., sec. 742C).

To qualify for a loan, a fishery cooperative marketing association must have enforceable arrangements with its members giving it full control over the conditions of sale of all members' catches and empowering it to disburse the proceeds from all such sales. For all practical purposes the association will need signed marketing agreements (or the equivalent) covering all members' catches of fish and shellfish. A loan application will not be considered if the financial assistance is to be used for any phase of a shore operation. In addition, if credit is available from other sources, an application will not be considered. There are certain other conditions basically limiting consideration of applications. These are specifically defined in the regulations.

Money loaned from the fund to fishery cooperative marketing associations can be used only in the parts of their activities re-

lated to members' vessel operations. The law does not provide funds for use in activities generally considered as "marketing."

HOW TO ORGANIZE A FISHERY COOPERATIVE

PRELIMINARY PLANNING

Those interested in organizing a cooperative should arrange to hold meetings of producers before making the surveys suggested previously. Such meetings should be held in the territory to be served by the cooperative. The principles, purposes, and nature of the proposed cooperative should be thoroughly explained at the meetings and opportunity provided for discussion. Producers should be asked to express their ideas on the value of a cooperative in marketing their products or purchasing supplies. If the producers favor organizing, a survey committee should be formed to study the prospects and possibilities of establishing and operating a cooperative.

The committee representing the producers should meet, organize, elect a chairman and a secretary, and possibly appoint subcommittees. It is essential that a full and complete survey be made, and a record be kept of all meetings and actions of the committee and its subcommittees.

SELECTING FORM AND ADOPTING PLAN

Survey Committee

In order that appropriate instructions and adequate powers may be given the survey committee, a plan should be selected. Three possible procedures are suggested:

1. Producers may agree to join a cooperative which will be formed when the committee has obtained a certain number of producers willing to pledge, for at least the first year, delivery of a volume of products sufficient for economical operation.

2. The committee may report to the producers its findings and recommendations on the prospects and possibilities of forming a cooperative. The producers may take action accordingly.

3. The committee may be empowered to conduct a survey to determine whether a cooperative is advisable. Should a cooperative be warranted, committee members would act as incorporators and (as is customary) serve on the board of directors for the first year.

The third plan of procedure is usually most satisfactory if the committee members are the better producers and are real representatives of the areas to be served by the cooperative.

A survey committee usually considers all aspects of the problem in determining the need for a cooperative. Illustrative of questions that may be asked are the following:

1. How much money will each member have to furnish to start the cooperative?

2. Will volume of business be large enough to insure low per unit cost?

3. Are the services now being performed, and by whom?

4. Could some services be obtained outside of the cooperative at equally reasonable rates?

5. How could the cooperative reduce costs or improve services?

6. How much do prospective members know about cooperatives?

7. What responsibilities and risks will be required of members?

8. What benefits could members reasonably expect to receive?

9. How good are the cooperative's chances of success?

10. Is there available a well-qualified man to act as the manager of the cooperative?

If the committee decides that conditions are satisfactory for organizing a fishery cooperative, it will report favorably to the interested fishermen at a special meeting. The fishermen then vote to have the same committee draft formal plans. The survey committee continues as an organization committee.

Organization Committee

In making plans for the organization the committee considers such matters as:

1. What can the cooperative do for its members?
2. What services should be offered?
3. Where should co-op be located?
4. What plant and facilities are needed?
5. What method is to be used in paying for products when marketed?
6. How will prices be determined on marine gear and other supplies sold to members?

The committee will recommend that the cooperative organize either as a stock or nonstock corporation. It will recommend the procedure to be used in handling the many details concerned with obtaining stock subscriptions, or, if the prospective cooperative is a nonstock corporation, the kind of membership certificate to issue to members.

The committee is responsible for preparing documents of association. Usually a lawyer assists the committee to prepare necessary legal papers. Such papers generally consist of an organization agreement, used to obtain members and capital; articles of incorporation; and bylaws and other necessary papers, such as meeting notices, membership or stock certificates, and marketing agreements. Documents must be prepared to give the cooperative authority to pursue the objectives for which it is organized, and also future objectives believed to be necessary for its expansion and growth.

The organization committee also handles preliminary work concerned with finance. Plans for the initial financing are important in getting the cooperative off to a good start. With a good estimate of the expected volume of business and the estimated cost of acquiring the necessary land, building, and equipment, the organization committee can rather easily determine the amount of capital required.

Most U.S. fishery cooperatives use one of two basic approaches in raising initial

capital. They sell capital stock using common stock which is sometimes supplemented by the sale of preferred stock, or they assess membership fees. Occasionally a new cooperative may borrow some of its initial capital from a lending institution.

Later, when they are earning at a satisfactory rate, many fishery cooperatives finance their operations and expand through the distribution of patronage refunds in scrip instead of cash. Thus the current earnings are retained in the business and the scrip is redeemed at a later date when there are more funds than are needed for regular operations. Several cooperatives have been so successful that they can now give members moderate loans for various purposes.

State laws are used to legally establish fishery cooperatives as business enterprises in the United States. Fishery cooperatives may be incorporated or unincorporated. In practically all instances they are incorporated in order to limit the financial liability of individual members. The liability is limited to the amount of money the member invests in stock certificates or membership fees. State laws generally specify the minimum number of members required to incorporate and also specify many of the conditions under which fishery cooperatives must operate. The Federal Fishery Cooperative Marketing Act does not provide for the granting of Federal charters to cooperatives.

The five States--Washington, California, Hawaii, Louisiana, and Maine--have statutes designed specifically for the incorporation of fishery cooperatives.¹ In most other States, fish producers usually have to incorporate under the general statutes covering all business enterprises. In a few States, consumer cooperative statutes permit fishermen to incorporate.

The important thing is that the statutes permit a cooperative to pursue the purpose for which it was organized. State statutes need to give the producers of fishery products the opportunity to exercise their rights and privileges as member-owners, as well as provide for the protection of these rights, privileges, and interests. Most State statutes clearly define the specific rights, privileges, and benefits as well as the

¹ See appendix VIII, page 55.

limitations or restrictions of these groups. State statutes usually require that specified supporting legal documents, such as articles of incorporation, be filed with certain designated State officials.

After the articles of incorporation have been filed, a meeting is called to adopt the bylaws. Most State statutes provide that bylaws be adopted only by a majority vote of members.

Usually the bylaws of a fishery cooperative will include such items as requirements for membership, rights and responsibilities of members, methods of calling and conducting meetings, voting rights and quorum, duties and qualifications of directors and officers, and determination and distribution of earnings. In addition there are miscellaneous provisions such as requirements for bonding employees and officers, and dates of the associations' fiscal year.

ORGANIZING AND INCORPORATING

Question of Whether or Not to Incorporate

Fishery cooperatives can operate either as incorporated or unincorporated organizations. Several States have statutes which specifically permit the organization and operation of unincorporated cooperatives. These cooperatives usually are organized under the common laws of the State, with a constitution and bylaws setting forth powers, purposes, and limitations, in addition to appropriate rules for conducting business and administrative affairs. Groups of fishermen carrying out marketing and purchasing activities usually operate along the business lines of a large partnership, if unincorporated. In such cases, the constitution and bylaws are held, in most legal matters, to be a binding contract making all members equally liable to the limit fixed by common law for acts, losses, and debts incurred by the partnership.

To assist the organizers in reaching a decision whether to incorporate, a brief description of the various types of legal cooperatives is set forth below.

Unincorporated Associations

General partnership.--A partnership is defined as an association of two or more

persons who engage in a business for profit. This form of association is in substance an agency relationship. In conducting firm business each partner may bind his copartner to firm obligations. The partners are personally liable for firm debts, and such liability may be satisfied from personal assets. As a general rule, the partnership sues in the names of its partners. The partnership is not an entity, and thus each member bears its tax liability. Thirty-eight States govern this form of unincorporated association by adopting the provisions of the uniform partnership act.

Limited partnership.--This form of association is similar to the general partnership except that the liability of one or more of the partners is limited to his or their capital investment. Such limitation must be manifested through various publications provided by law, or personal liability will ensue. Most States recognize a statutory partnership.

Joint stock company.--The joint stock company is still another form of partnership. Shares are issued to member partners and are freely transferable. The choice of admitting partners is lacking. The liability of the shareholders is personal, but death will not terminate the association. The tax advantages which induced the formation of joint stock companies have since been repealed, and for all practical purposes the association is taxed as a corporation.

Business trust.--This form of enterprise is commonly known as the "Massachusetts Trust." Many States have statutes which prohibit a business trust, alleging it to be merely a means to evade corporate taxation. The trust consists of a trustee or trustees who hold legal title to all property and are personally liable for trust obligations. The members or beneficiaries are the equitable holders. In the States which allow the business trust, complete control must be vested in the trustee or else the organization will be declared a partnership and the members will incur personal liability.

Incorporated Associations

Most fishermen prefer the incorporated type of cooperative organization, since liability of individual members is limited to the shares of capital stock owned. In

addition, as an incorporated cooperative, it has existence as a legal entity. Fishery cooperative marketing associations may incorporate under many statutes, as most States provide the necessary legal structure either by special statutes, special chapters, or general statutes for incorporating. Nineteen States have fishery cooperatives, but only five have special laws for the incorporation of fishery cooperatives. Fishery cooperatives, however, may be organized under either the general statute codes or under special cooperatives chapters or sections of the corporate codes.

The Federal Government does not incorporate fishery cooperatives even though it does have power to govern their operations. Fishery cooperatives will benefit by making their existence known to the Federal Government through the Department of the Interior, Bureau of Commercial Fisheries, Branch of Economics. Such a notice will facilitate the cooperatives' enjoying the protective provisions of the Fishery Cooperative Marketing Act of 1934 in their interstate and foreign commerce activities. This is true although fishery cooperative associations cannot incorporate under Federal law, nor are they legally required to file notice of their formation either as an incorporated or unincorporated association. Fishery cooperatives are legally required to comply with the provisions of the Act. These provisions embrace the usual cooperative principles of one vote per member, 8 percent maximum dividend payment on capital stock, and the cooperative's business with nonmembers must not exceed in value the business conducted with members.

The basic objective and result of the Act has been to permit "persons engaged in the fishery industry, as fishermen, catching, collecting, or cultivating aquatic products on public and 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 association, in effect, may act with the same force and effect as though all the aquatic products involved were being handled by one fisherman.⁴

Prior to the enactment of the Fishery Cooperative Marketing Act and the Capper-Volstead Act⁵ there was some uncertainty whether the elimination of the competition among individual fishermen by their acting through a cooperative violated the antitrust statutes. These acts authorize and sanction the elimination of such competition by amending the antitrust statutes.⁶

Articles of Incorporation

After the committee members have signed the articles of incorporation they must file them with the appropriate State agency and apply to this agency for a charter of incorporation, paying the required fee.⁷

The number of the committee members signing the articles of incorporation cannot be less than the number of incorporators required by the statute. If the incorporators are to serve as directors the first year, a sufficient number of the committee considered necessary to represent the producers on the board of directors should sign the articles of incorporation, provided such number shall not be less than the number specified in the statute. Following the filing of the articles of incorporation, the board of directors named in the articles of incorporation should proceed to organize the board and complete the organization of the cooperative.

The first board of directors is usually composed of the organization committee members who have become incorporators. The statutory requirements for selecting officers of the association vary, but the procedure given here is common.

The board of directors is formed by electing officers from its members. The usual officers are the president or chairman of the board, one or more vice presidents, a secretary, and a treasurer. Quite often the two last-named offices are combined, and the elected officer is designated as the secretary-treasurer. If the membership of the board of directors is large, or should it be inconvenient for the members to meet as often as desirable, the board should elect an executive committee that can meet readily and act for the board.

⁵ 42 Stat. 388; 7 U.S.C. 291 and 292.

⁶ Raymond J. Mischler, *Legal phases of farmer cooperatives*, Farmer Cooperative Service, U.S. Department of Agriculture Bulletin 10, January 1958, 62d Congress, Rec. 2057, 2059 (1922).

⁷ See page 55, Appendix VIII.

⁴ 162 Minn. 471, 203 N. W. 420.

Adopting Bylaws and Obtaining Members

After it is organized, the board of directors should give notice of a general meeting or a series of meetings to producers who are prospective members. At these meetings a full and complete report should be given of the findings and actions taken by the organization committee, the incorporators, and the board of directors. The proposed bylaws should be read before the gathering, and an opportunity provided for prospective producer-members to discuss them. After the discussion of the bylaws, a vote should be taken on their adoption. When the bylaws have been approved and adopted, fishermen and other producers of fishery products should be given an opportunity to become members of the association. It should then be pointed out to the producers that membership in the association carries with it an obligation to deliver to the association all fishery

products produced by the member. These obligations are explained where a marketing agreement is entered into by each member and the association. When an agreement is not contemplated, a producer should be told that the board of directors and the bylaws, to which the member agrees, govern the delivery of products to the association, and a producer is governed thereby so long as he is a member of the association. In order to facilitate matters, membership application forms should be ready for distribution to producers who wish to sign up as members of the association during the meetings. A membership committee, appointed by the board of directors, should make plans to contact local producers who were unable to attend the organization meetings. The entire area to be served by the association should be canvassed in order to give each eligible producer an opportunity to become an association member.

GENERAL OPERATIONS AND POLICIES

Following incorporation of the cooperative, the board of directors must begin planning for actual operation. Finances are a primary consideration. The report of the organization committee should indicate possible sources of funds. Intended operations might not necessitate the immediate borrowing of substantial capital. The cooperative should begin on a modest scale. As stated previously, cooperatives usually develop more permanency when they "grow into business" rather than when they "go into business."

In fishery cooperatives the denominations of shares vary from \$1 to \$1,000 or more. The denomination of shares depends (a) on the immediate purposes of the cooperative, (b) on the number of members, (c) on the financial situation of the members, and (d) on the character of the bank affiliation.

The board should inventory the immediate work or service it is to perform in connection with its financial needs and plan accordingly. It should consider employing a manager. Should much time be needed for the selection of a qualified manager, one or more persons chosen from the board should make preliminary arrangements for the beginning of operations.

Consideration must be given to obtain a site and lease or construct necessary

buildings. When the building is ready, required equipment should be installed. Building location is important to the efficiency of future operation. The preparation of complete plans for the buildings are also essential to good management and efficient operation. Advice and counsel of experienced men or specialists should be obtained for the actual building construction and for selection and installation of machinery and equipment.

MANAGEMENT

Duties and Responsibilities of the Board of Directors

In practically all cooperatives, the business and general affairs of the association are vested completely in a board of directors by authority of the articles of incorporation and the bylaws.

Since the duties of the board of directors start almost at once, the selected organization committee usually acts as the first board. The names of directors must be submitted with articles of incorporation or other documents required by law. To elect officers from their own ranks, as specified in the bylaws, the directors usually meet immediately after the bylaws of the

cooperative have been adopted. All subsequent directors are elected by the members at annual meetings.

The board director continually studies all aspects of the cooperative for ways to increase operational efficiency. He analyzes and interprets financial statements. He keeps his own personal interests out of competition with the cooperative. He helps develop sound policies for management to follow and sees that the policies are carried out.

The board is responsible for hiring a manager, defining his duties, fixing his compensation, and, if necessary, dismissing him. Most fishery cooperatives seek persons experienced in business--preferably in managing cooperatives. Board of directors usually give the manager authority to hire and discharge other employees. Employees' duties and compensation usually require approval by the board. The manager, other officers, and employees having responsibility for the custody of funds or negotiable instruments are usually bonded. The cooperative pays the cost of bonding.

The board must adequately insure all cooperative property and property stored by the cooperative. Employee and public accident liability insurance is generally provided by the cooperative.

Audit

A competent public auditor or accountant, obtained by the board, should audit the books and accounts of the fishery cooperative at least once a year. The auditors prepare a report for presentation before the next annual meeting of the cooperative. The auditor's report should contain:

1. A balance sheet showing the assets and liabilities of the cooperative.
2. An operating statement showing the costs and receipts from sales, and gross profits or losses from each of the major products handled during the period.
3. An itemized statement of expenses for the audit period.
4. Distribution of any profits in the form of dividends and patronage refunds.

Contracts and Agreements

Fishermen usually enter into an agreement with the cooperative to market their catches through the cooperative, purchase gear and supplies from it, or both. The board of directors executes these agreements to the best interest of the members and the cooperative.

Committees

The board of directors may delegate its powers to committees of members. Through the finance committee, for example, the board selects the bank where the cooperative will deposit its funds and make loans for various business purposes. The manner of receiving, depositing, and disbursing the funds, the form of checks, and persons authorized to sign such checks are the responsibility of the finance committee. Changes in banks used, and in persons authorized to sign checks, must be approved by the board of directors.

Manager and His Duties

It is usually preferable to hire an experienced manager from outside the cooperative. Members who are successful fishermen are sometimes hired as managers, but these men often are not as effective in running the business as men trained in purchasing and marketing.

The manager of a fishery cooperative must be a man of many and varied talents. He must be able to get along with the board of directors, member-owners, customers, competitors, and officials of city, State, and Federal governments. He must be a supersalesman, an able administrator, a good supervisor, and an expert business forecaster. He must be a good judge of market conditions and know when to buy and sell.

The manager is placed in charge of business operations of the cooperative by the board of directors. He markets the catches, purchases supplies and equipment, and conducts the entire operation in such a way that members and patrons received just and fair treatment.

Funds that flow into and out of the cooperative in normal day-to-day business operations are controlled by the manager. He deposits the daily receipts, and authorizes

and may sign checks drawn on the cooperative's account to meet necessary expenditures. He is accountable to the board of directors for cooperative funds.

The manager must maintain records that reflect the exact condition or status of the cooperative's business at any given time. The manager usually hires a competent bookkeeper to keep these records. Records are kept for each member, and receipts are written for each transaction between the member and the cooperative.

The manager presents annual and periodic statements on the condition of the business for the information of the members, according to instructions set up by the board of directors. In addition, the manager preserves all books, documents, correspondence, and other records pertaining to the business of the cooperative.

The manager has full charge of personnel. He indoctrinates and trains employees and lays out their work.

The manager is usually paid a salary plus a bonus. The bonus may be cash or a percentage of the net margin. The salary is based on the wages or salaries of similar persons in the area. The manager's income should be sufficiently attractive to keep him at his job.

Keeping Records and Accounts

Accurate records of the cooperative's financial transactions are needed to provide each patron with an account of all his products delivered to the cooperative and sold. The records also reflect all changes in assets, liabilities, and net worth of the cooperative.

The system used for recording financial transactions may be simple or complex, as the size and nature of the cooperative's activities justify. The cooperative may keep only a journal record, with the balance of the accounting work performed by an accounting firm, or it may have a volume of business large enough to justify a full-time bookkeeper. In the latter case, the bookkeeper would keep all account records with a yearly audit performed by a private accounting firm.

Measuring the Success of the Cooperative

An annual audit and detailed analysis are necessary. Only through a detailed profit and loss analysis is it possible to discover weaknesses and initiate action to overcome them. A few small "leaks," if not discovered at an early stage, may soon reach proportions where all savings from efficient operation in some departments are drained off by inefficiency in others.

Comparisons are useful.-- To determine how successful an organization is, a balance sheet and a profit and loss statement are absolutely essential. Information found in the balance sheet and profit-and-loss statement can be used to measure business efficiency through a few simple calculations. It is advisable to use statements for a period of years to obtain calculations of the cost per dollar of sales, cost per unit of product manufactured, and changes in gross and net margins. Changes in financial setup and efficiency of operation can be detected in this way. Such measures of efficiency are valuable for comparing the cooperative with other similar organizations.

Best measures of success.-- The earnings shown at the end of the year are not a good measure of the efficiency of cooperatives. The best measures are:

1. Cost per unit of handling and processing.
2. Price received for products marketed.
3. Price returned to producers.

Changes in the volume of products handled are significant indicators of progress and usually affect the per unit cost of handling and the price returned to producers.

POLICY AND PROCEDURE

Methods of Payment for Catches

A marketing cooperative handling the catches of its members may use one or a combination of the following methods of payment:

1. Pool Payment Plan - All catches are pooled according to species and grade,

and returns are made to fishermen on the basis of average prices received for each pool.

2. Outright Purchase Plan - The fisherman is paid the current marketing price at time of delivery (a fee based on poundage is usually deducted to cover market costs).

3. Sold for Fisherman's Account - The cooperative sells the fisherman's catch and credits his account with the returns from the sale, less marketing costs.

4. Direct Buyer to Fisherman Payment Plan - Terms of sale are arranged by or are subject to final approval of the cooperative (such as through collective bargaining).

A sound policy, and one which is usually more satisfactory to the producer as well as safer to the cooperative and does not unnecessarily stir up competition, is to pay producers the current market price at the time of delivery (less a pound or unit service charge). If the product is finally sold for a greater price, any surplus is distributed at the end of the season when the final returns on the sale of the product and operating costs are known. Seasonal or commodity pools are advisable when there is seasonal production during the year and when several products are being handled. Should seasonal pools not be advisable, then final payments for various products may be made on a calendar basis, such as quarterly, semiannually, or yearly.

Operational fees should be established to cover total operating expenses and to provide for reserves and other funds of the cooperative. Such fees should be based on units of volume or weight or on a percentage of the price of the commodity. Charges should be sufficient to cover all costs of operation and to provide for reserves and other funds. In time, deductions or fees used in setting up reserve funds should accumulate sufficiently to cover contingencies or emergencies. If such fees, deductions, or charges have been adequately and wisely determined, and the expected volume maintained, there should be a net earning or saving at the end of the business year. In other words, these charges should have been sufficient to provide a margin of safety to cover all possible costs of operation.

Patronage Refund or Dividend Distribution

The disposition of net earnings or savings, if any, is made at the close of each business year. The amount for reserves, stipulated in the bylaws or determined by the board of directors, is deducted and set aside. If the cooperative is a stock corporation, dividends on preferred and common stock are declared next. The balance of net earnings or savings, if any, is then returned to the members and other producers who have patronized the cooperative during the last business year. Contrary to most corporations, earnings are not distributed through dividends to members (common stockholders) on the basis of capital stock invested but on patronage in the cooperative. This is known as a patronage refund or dividend, and is based on the amount of business each individual did with the cooperative during the preceding business year.

In recent years it has become increasingly desirable to distribute only part of the earnings in cash, for several reasons. In the first place, fish distribution has become a more complex business due to:

1. Use of machinery in scaling, filleting, and packaging.
2. Quality improvement by freezing.
3. The demand for quality fish by consumers.

Hand in hand with this change in the distribution pattern is a revolutionary change in fish prices and fishermen's revenues. Cooperatives, which before World War II only operated gasoline stations or small fish houses, have become wholesalers, operating freezers, laboratories, and fleets of trucks. In most cases it was impossible to distribute the earnings to the members and still retain enough capital for the enlargement of business.

The practice of retaining capital through the establishment of reserves from undivided earnings, however, in some cases, created difficulties with collectors of internal revenue.⁸ Some collectors subjected these reserves to corporate income taxation, and in one case the tax collector was upheld by the Treasury Department. In

⁸ See Fishery Cooperatives and Taxes.

another case, so far as information could be obtained, a U.S. District Court reversed the opinion of the tax collector and declared the undivided income of the cooperative nontaxable.

To avoid difficulties, some of the larger cooperatives declare patronage dividends and give their members certificates of indebtedness from the cooperative instead of paying their patronage dividends in cash. The effect is that the cooperative increases its indebtedness in the same proportion that it retains the cash or assets from earnings distributed to members in "scrip." Taxable net profits are thereby avoided. This procedure permits the cooperative to build up liquid assets. The procedure is unsatisfactory in that the individual members may be taxed on their certificates and forced to make payments to the collector of internal revenue, although no cash payments are received from the cooperative.⁹

In some States the statute governing cooperatives, mutual cooperatives, or general corporations may alter the procedure first discussed. A stipulated percentage of net earnings must be used for educational purposes among the members and patrons of the cooperative in some States. Bylaws or stock certificates stipulate the rate or maximum amount of interest that the cooperative may pay on preferred and common stock.

If cooperatives limit patronage refunds to 8 percent per year, as provided for in the Fishery Cooperative Marketing Act, and use the excess revenue as reserve under the certificate procedure, as described above, the tax burden for cooperatives probably will be negligible.

Membership Relations

Success or failure in the administration and operation of a cooperative hinge on three important items:

1. Efficient management with low overhead costs.
2. Sound sales policy.
3. An informed and sympathetic membership.

⁹Recently, there have been court decisions changing this situation. See section on income tax rulings on patronage refunds, page 24.

All three are important; without them success can only be temporary. The record shows a high rate of fatalities where management is not concerned with the attitude of members toward their cooperative. The board of directors and the manager are servants of the member-patrons; good management demands that they give at least a periodical account of their stewardship to the members. Confidential information should not usually go beyond the executive committee or board of directors, but it is not good management or desirable administrative policy to fail to keep the members informed. The management of a cooperative is under far greater obligation to the members than the management of a private corporation is to its holders of common stock. Holders of common stock in private corporations as a rule receive no services, but are investors and may assist in promoting and financing the corporation. In a cooperative, the members or holders of common stock are the cooperative. Upon them depends the volume of products, the lifeblood of the cooperative. The members are not necessarily concerned with finances.

Every cooperative should have an educational program among the members that is as definitely a part of its administration as the selling of products or the keeping of books and records. The management must "sell" the cooperative to its members at all times. A cooperative cannot depend entirely upon price advantages, if any, to keep its members aligned with it. Price advantages will vary from time to time and may be minimized to the point where they are not significant. On the other hand, there are benefits other than an immediate price advantage to be derived from membership in a cooperative enterprise.

An educational program also should be directed toward overcoming false and misleading statements about the activities of the cooperative.

The rights and privileges of members or common stockholders should be kept in mind by the management. The members are the cooperatives, and they should be considered and treated as the employer. All rights not otherwise restricted or delegated by law belong to the members, and in most States the power to amend the bylaws is vested only in the members. Through the bylaws even the policies of operation and management may ultimately be determined by the members.

FISHERY COOPERATIVE MARKETING ACT OF 1934

STATUTORY PROVISIONS

The original Fishery Cooperative Marketing Act provided that the Secretary of Commerce should administer its provisions. In 1939, by Reorganization Plan II ¹⁰, the Act was amended to transfer administration to the Secretary of the Interior.

The Fishery Cooperative Act of 1934 provides 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.

Any group of fish and shellfish producers, organized and operating in compliance with its provisions, is considered a fishery cooperative within the meaning of the Act. ¹¹

Origin

The Act is patterned after the Capper-Volstead Act, which was approved by Congress in 1922. It is designed to give fishermen the authority to organize cooperatives to market aquatic products harvested from their native habitat or from seed beds and reservoirs prepared by producers.

Under the Act, fishery cooperatives have increased in number until today there are about 100 cooperatives located along the coasts and inland waters of the United States.

Purpose

The Capper-Volstead Act and Fishery Cooperative Marketing Act were enacted to permit farmers or fishermen respectively to unite legally in marketing contract agreements to sell their products under mutually agreeable conditions. Without these two Acts, farmers' and fishermen's asso-

ciations could not have entered into marketing agreements specifying conditions of sale without violating existing antitrust laws. Fishermen are mostly independent vessel or boat owners who, without the Act, could not unite to negotiate terms and conditions of sale for their aquatic products.

Requirements

The Fishery Cooperative Marketing Act does not impose a specific form of operation on groups of fishermen organized under its provisions. Cooperatives may be incorporated or unincorporated. State laws, however, may, and usually do, prescribe specific forms of incorporation for these organizations.

The marketing services that a cooperative may perform for members are not limited by the Act. Restrictions on price determination functions, however, are imposed by law or by rules of ethics of good business practice. A cooperative limiting its activities to price determination functions, without acquiring title of the landed products, is restricted on how these should be performed. Actions that monopolize or restrain trade in interstate or foreign commerce by unduly enhancing aquatic commodity prices are prohibited by the Act.

The Cooperatives Section, Branch of Economics, Division of Industrial Research, Bureau of Commercial Fisheries, checks each cooperative for compliance with the provisions of the Fishery Cooperative Marketing Act. A Bureau representative usually visits cooperatives once a year to check compliance and obtain information on their management, production, and service activities.

Organizations doing business as cooperatives are required to comply with the Fishery Cooperative Marketing Act. Under the Act, cooperatives must conform with both of the following requirements. First, no member of the cooperative is allowed more than one vote, regardless of the number of shares of stock he holds or his membership capital; or the cooperative may not pay dividends in excess of 8 percent per year on stock or membership capital. Second, the cooperative may not deal in the products of nonmembers in an amount

¹⁰1939 Reorganization Plan II, Sec. 4(e) effective July 1, 1939, 4 F. R. 2731, 53 Stat. 1431.

¹¹ See appendix III, page 48.

greater in value than that handled for members. The first provision contains two requirements. Cooperatives may comply with either requirement but are not required to comply with both.

Control Over Undue Enhancement of Price

Section 2 of the Fishery Cooperative Marketing Act gives the Secretary of the Interior power to issue cease and desist orders against any cooperative believed to be engaging in activities that monopolize or restrain trade in interstate or foreign commerce to such an extent that prices for aquatic products are unduly increased.

If the Secretary of the Interior finds that a cooperative is acting to unduly increase prices, he will serve it with a complaint stating his charges. The complaint, or a statement attached, will contain a notice of hearing, specifying day and place, not less than 30 days after the cooperative receives the notice, where it can answer the complaint by furnishing proof as to why a cease and desist order should not be brought against it. The evidence or proof presented by the cooperative is taken under rules and regulations prescribed by the Secretary of the Interior.¹² The evidence is reduced to writing and made a part of the record. If it is determined by the evidence presented at the hearing that the cooperative's actions were so monopolizing and restraining trade that the price of any aquatic product was unduly enhanced, the Secretary then serves it with a cease and desist order. If, within 30 days, the cooperative has not stopped such activities, the Secretary will file in the appropriate district court a certified copy of the order and all the records of proceedings together with a petition asking that the order be enforced. Notice of the action taken is given to the Attorney General and to the cooperative. The district court has jurisdiction to enter any decree the court may deem equitable. The district court may make rules on pleadings and proceedings to be had in considering the order.

The facts presented by the Secretary of the Interior shall be prima facie evidence against the cooperative. Either party, how-

¹² Federal Register, vol. 27, no. 245, p. 12580-12581, Wednesday, December 19, 1962, 50 CFR, Part 290, Subchapter I-Fishery Marketing Cooperatives.

ever, is permitted to submit additional evidence. After the evidence has been entered, the court has power to issue a temporary writ of injunction forbidding the cooperative from engaging in any of the activities cited in the order or evidence. The court may later make the injunction permanent if the evidence warrants such action. The cooperatives and its officers will be notified if this is the case. Such permanent injunction will serve to restrain the cooperative from violating the order or any part of it.

APPLICATION AND INTERPRETATION

Section 1 of the Fishery Cooperative Marketing Act provides that certain members of the fishing industry "may act together in associations corporate or otherwise, with or without capital stock, in collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged." Noted that the conjunction "and" is used in listing the cooperative functions. Must a cooperative operating under this Act perform all the listed functions or will any single function suffice? It is generally contended that the latter interpretation is the true expression of the legislative intent. It is a basic principle of statutory interpretation that the words "and" and "or" may be used interchangeably where necessary to effect the true purpose of the legislation. The courts have reiterated this principle.¹³

There are approximately a hundred fishery cooperatives currently functioning in the United States. None perform all the functions set forth in the Act. Before organizing, many cooperatives receive technical advice from Government agencies. These agencies were aware that all functions, as set forth in the Act, were not to be performed by the cooperative, but the agencies approved of such associations.

Following the words "handling, and marketing" appear the words "in interstate

¹³ Northern Commercial Company v. U.S., 217 Fed. 33; People ex Rel. County Collector v. Trustee of North Western College 152 N.E. 555; Smiley v. Lenane 363 Ill. 66; Kennedy v. Haskell 67 Kan. 612; Proprietary Association v. Board of Pharmacy 27 N.J. Super. 204 and the authorities (see Statutory Constructions, by Crawford, sec. 188).

and foreign commerce." Certainly fishery cooperatives cannot be required to engage in both interstate and foreign commerce.

The Fishery Cooperative Marketing Act is not only similar to the Capper-Volstead Act, but its purpose is to give members of the fishing industry the same benefits the Capper-Volstead Act provided for producers of agricultural products. On the debate of the Fishery Cooperative Marketing Act in the House of Representatives, Mr. Bland said, "This bill provides for the same relief for the fishermen that has already been given to the farmers. There is no change in the law except it is made applicable to the fishermen."¹⁴

Examination of the Capper-Volstead Act also discloses in section 1, a similar list of functions ending with the conjunction. The section reads ". . . in collectively processing, preparing for market, handling, and marketing" After analyzing the purpose and history of this Act it is clear that the legislators intended the word and to be used as a conjunction.

During the debate of the bill in Congress, Mr. Norris stated, "This is a bill that attempts to relieve from the effect of the Sherman Anti-Trust law the farmers and other producers of agricultural products."¹⁵ After the passage of the Sherman Act¹⁶ it was doubted that the formation of agriculture cooperatives would be legal. To remedy this situation, section 6 of the Clayton Act was enacted.¹⁷ This section provided for the formation of farmer cooperatives that were to be: (1) "instituted for the purpose of mutual help," (2) without "capital stock," and (3) not "conducted for profit." Functions that must be performed are not listed in the section. Under this section cooperatives could not issue capital stock. The Capper-Volstead Act was enacted to make the status of cooperatives clearer and to allow them to issue stock. The enactment of the Act did not repeal section 6 of the Clayton Act. The purpose of the Capper-Volstead Act was merely to grant to cooperatives issuing capital stock the same right as those granted to nonstock cooperatives and to

further relieve the farmer from the effect of the Sherman Act. Therefore, it is unreasonable to contend that the use of the conjunction "and" in section 1 of the Act was intended in its literal sense. The results of such contention would be to place nonstock cooperatives in a favored class, and, instead of relieving the cooperatives from the effects of the Sherman Act, such contention would place an extreme burden on them by demanding that each association perform all the enumerated functions of the Act. Since the Fishery Cooperative Marketing Act is for all practical purposes identical to the Capper-Volstead Act, this same reasoning could hold true for this Act.

ABNORMAL ACTIVITIES

Cooperatives engaging in activities considered to be abnormal acts or transactions are subject to prosecution under the antitrust laws. Cooperatives engaging in activities held to be acts of unfair competition are subject to complaint action by the Federal Trade Commission.¹⁸ Cooperatives acting to unduly increase price, or in restraint of trade in interstate or foreign commerce, are subject to action by the administrators of the Fishery Cooperative Marketing Act and the Robinson-Patman Act.

State and Federal statutes covering persons or organizations engaged in business of a particular type are applicable to cooperatives engaged in such business, unless they are specifically exempt.¹⁹

Questions sometimes arise in connection with Federal and State motor carrier acts whether or not a particular association is functioning as a public or contract carrier. Usually the terms of the applicable statute, if carefully read, will give a clue to the answer. Many questions arise about using motor carriers to haul aquatic products or marine supplies for members. Usually these carriers are regulated, unless they are specifically exempt by direct reference in the text of the statute.²⁰

¹⁴ Congressional Record, 73d Congress, p. 9175, vol. 78, part 9.

¹⁵ Congressional Record, 67th Congress, p. 2257, vol. 62, part 3.

¹⁶ 26 Stat. 209.

¹⁷ 38 Stat. 730

¹⁸ 38 Stat. 717; 15 U.S.C.A., sec. 41.

¹⁹ 117 A.L.R. 347 (Example).

²⁰ See 98 A.L.R. 226; 103 A.L.R. 268; 109 A.L.R. 550; and 91 A.L.R. 422.

STATE STATUTES FOR FISHERY COOPERATIVES

LEGAL ASPECTS IN GENERAL

State laws are used to bring fishery cooperatives into legal existence as business enterprises and to specify the conditions under which cooperatives must operate. Other conditions are spelled out under State statutes. The Federal Fishery Cooperative Marketing Act does not provide for granting of Federal charters to cooperatives; State laws do.

California, Hawaii, Louisiana, Maine, and Washington have laws designed specifically for incorporation of fishery cooperatives. In most States, groups of fishermen are incorporated under the general statutes covering all business enterprises. In a few States fishermen may incorporate under consumer cooperative statutes. Although few States have special incorporation laws for aquatic producer cooperatives, all have statutes under which agricultural and commercial enterprises may incorporate.

State laws give the instructions for preparing and filing the required legal documents and making application for a certificate of incorporation. They also name the State official with whom the documents must be filed.

Most States recognize that articles of incorporation and bylaws are necessary legal instruments if the cooperative is to be properly organized, incorporated, and operated.²¹

The absence of State or Federal cooperative laws specifically authorizing fishermen's cooperatives should not stop fishermen from organizing and incorporating their cooperatives. There are hundreds of cooperatives in this country that are organized under general corporation statutes. Just because a fishery cooperative is organized and incorporated under the general corporation statutes of a State need not affect its cooperative character if it is properly organized and operated. Certain provisions usually are contained in cooperative laws, granting them certain rights or privileges not usually enjoyed by other corporations; however, this should not be a deterring

factor in the operations of cooperatives incorporated under general corporation laws.

Careful consideration should be given to the selection of the State statute under which a cooperative is to be incorporated. It is best to determine definitely that the statute under consideration will permit the cooperative or nonprofit cooperative to pursue the functions necessary, incidental, and related to the purpose for which it was organized, and that member producers may be able to exercise these rights and privileges under the protection of a cooperative. The provisions and requirements of the statute should be understood as to the general and specific rights, privileges, benefits, or restrictions granted to the cooperative formed. Competent counsel should be hired to decide on the statute under which to incorporate and to prepare the corporate papers in accordance with the provisions of the statute. Counsel will determine if the statutes suit the purposes and proposed functions of the cooperative.

By way of limitations, the Fishery Cooperative Marketing Act sets forth the following: (1) Cooperatives must be operated for the mutual benefit of their members; (2) voting must be limited to one vote per member irrespective of the number of shares or membership stock held in the cooperative, or dividends on stock or membership capital held in the cooperative shall not exceed 8 percent per annum; and in any case (3) the cooperative shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

The law does not provide for the granting of Federal charters to cooperatives. A group of fishermen organizing a fishery cooperative must incorporate under the State statutes where their principal place of business is located.

Some State statutes providing for corporations are general in that they do not specify the particular type of business that may be engaged in by a cooperative incorporated thereunder. On the other hand, there are special acts that specify and limit the type of business a cooperative incorporated thereunder may pursue. For example, practically every State has a statute authorizing

²¹ See section on Legal Instruments of Incorporation, page 26, for a more complete discussion of articles of incorporation, constitution, and bylaws used by cooperatives.

cooperatives of producers of agricultural products; however, in only four States does the language of the State statutes grant such authority specifically to producers of aquatic products. In some States there are "cooperative" or "mutual" laws of a general character which do not specify who may organize, or become members of, or the type of a cooperative organized thereunder.

LEGAL REQUIREMENTS OF STATES AUTHORIZING FISHERY COOPERATIVES

In the following paragraphs information is given for each of the States authorizing fishery cooperatives, indicating whether a special cooperative State law exists or whether cooperatives may organize under the general corporation law.

Alaska

Alaska Cooperative Corporation Act, ch. 107, Session Laws of Alaska, 1959, as amended by ch. 48 of SLA 1959 which repeals Stat. 33, ch. 5, secs. 1-30 inclusive of the Cooperative Marketing Act of 1935. This Act covers all forms of cooperatives except electric and telephone. Three or more persons, 19 years of age and over, may form a cooperative with or without capital stock under the Act. Provisions of the Act include the usual articles of incorporation and bylaws, but these do not have to be used exactly as they appear. Cooperatives can use any articles or bylaws that do not violate the law. Articles are filed with the Department of Revenue. Fees are determined according to authorized capital stock, e.g., fee of \$35 on \$100,000 authorized capital.

Arkansas

Statute 77-901-77-928 "Cooperative Marketing Act" (Acts 1921, no. 116, sec. 116, 2 p. 153. Pope's Dig. sec. 2287). Fish farmers may incorporate nonprofit cooperatives under this Act. Fish farmers produce fish and rice in ponds on a rotation basis. Five or more persons, a majority of whom are residents of the State and who are engaged in the production of fishery products, may form such an association. Articles of incorporation must be filed with the Secretary of State.

Florida

Fishery cooperatives may be organized under a special provision of the General Corporations Law pertaining to cooperatives (Florida Statutes Ann. sec. 611:38). For this purpose there shall not be less than 10 incorporators. A declaration to the effect that the association is a cooperative must be filed by the president and secretary of the organization and presented to the Secretary of State.

Hawaii

Fishery cooperative associations may be organized under the Fish Marketing Act, Act 252, Session Laws of Hawaii, 1959 amending Sections 119-2 and 117-20 of the Revised Laws of Hawaii, 1955, as amended. Five or more persons, a majority of whom are residents, engaged in the production of fishery products, may form a nonprofit cooperative association, with or without capital stock. The word "Cooperative" must be a part of the association's name. Articles of incorporation must be filed with the State. A report must be submitted to the State Treasurer and Board of Commissioners of Agriculture and Forestry. The co-op must pay an annual \$10.00 license fee. (Approved June 2, 1959.)

Louisiana

Fishery cooperative associations may be organized under a special law for that purpose (Louisiana Revised Statutes of 1950, title 12, sec. 351, et seq.). Ten or more persons, a majority of whom are residents of the State, engaged in catching, gathering, or the production of seafood products, may form a nonprofit cooperative association under the law. Articles of association must be filed in the mortgage office of the parish where the registered office of the association is located, and thereafter shall be filed and recorded in the office of the Secretary of State.

Maine

Fishery cooperatives may be organized under the Fish Marketing Act of 1959 (Revised Statutes of Maine, ch. 56-A) or the special corporation law (Revised Statutes of Maine, 1944, ch. 49, sec. 3, et seq.) and the general corporation law (Revised Statutes of Maine, 1944, ch. 49, sec. 8, et seq.). Under the former, the certificate of

incorporation is recorded in the Registry of Deeds in the county where the principal office is to be located and a copy of the certificate is filed with the Secretary of State. Under the latter, the certificate of incorporation is certified by the Attorney General and recorded in the county where the corporation is located. A copy is filed with the Secretary of State.

Maryland

Under Maryland law, a fishery may incorporate under the general corporation law and by a majority vote of members convert itself into a cooperative association under art. 23, sec. 430, of the Annotated Code of Maryland (art. 23, sec. 455). The declaration of such majority vote must be filed with the State Tax Commission. The original articles of incorporation, signed by three or more persons, are also filed with the State Tax Commission.

Massachusetts

Fishery cooperatives may be organized under the general corporation laws (G.L. of Mass. Ann. ch. 157:5). The certificate of an incorporated cooperative must be filed in the office of the Secretary of State.

Michigan

Fishery cooperative associations may be organized under a provision of the General Corporation Act applying to cooperative associations (Michigan Statutes Ann. vol. 15, sec. 21.99). One or more persons may incorporate the organization. Triplicate original copies of the articles of incorporation must be delivered to the Secretary of State.

Minnesota

Fishery cooperative associations may be organized in this State under the law pertaining to cooperative associations. (Minnesota Statutes Ann. vol. 20, sec. 308.01, et seq.). Five or more persons must sign and acknowledge written articles of incorporation. One copy must be filed with the Secretary of State. The other is filed with the Registrar of Deeds of the county in which the principal place of business is to be located.

Missouri

Fishery cooperatives may be organized under the Missouri Revised Statutes (1939, sec. 14406). The cooperative must be incorporated by 12 or more persons. The certificate of incorporation must be filed with the Recorder of Deeds, Office of the Secretary of State.

New Jersey

Fishery cooperatives may organize under title 4, ch. 13 of the Revised Statutes Cumulative Supplement (1954), (New Jersey Statutes Ann. 4:13-1, et seq.). Any three or more persons may form a cooperative agricultural association under this statute. The term "agricultural products" is defined in the statute as including "fresh and salt water food products," thus making it possible for fishery cooperatives to be organized under this law. The certificate of incorporation must be filed in the office of the county where the principal office of the association is established. Copies must also be filed in the office of the Secretary of State and with Secretary of Agriculture.

Ohio

Fishery cooperatives may be organized under the General Corporation Act of the State (Throckmorton's Ohio Code Ann., sec. 8623-1, et seq.). Any three or more persons may organize the corporation. Articles of incorporation must be filed in the office of the Secretary of State.

Oregon

Fishery cooperative associations may be organized under the cooperative associations law of the State (Oregon Revised Statutes, ch. 62, sec. 62-110, et seq.). Any five or more persons may form the association. Articles of association are drawn in triplicate. The original is filed with the Corporation Commissioner; one copy is filed with the clerk of the county where the principal place of business is located; and the third copy is kept by the association.

Rhode Island

Fishery cooperatives may be formed under the general corporation law (General Laws of Rhode Island, 1948, ch. 116). The charter must be filed with the Secretary of State.

Texas

Fishery cooperative associations may be organized under the general corporation law of this State (Vernon's Texas Civil Statutes, art. 1302, et seq.). Three or more persons may draw up the charter. The charter must comply with certain preliminary requirements and be filed with the Secretary of State.

Washington

Fishery cooperative associations may be organized under a special law for the

formation of cooperative associations (Revised Code of Washington, title 23, sec. 2356, et seq.). Five or more persons must associate and execute the articles of association. The articles must be filed with the Secretary of State.

Wisconsin

Fishery cooperative associations may be organized under the cooperative associations law of the State (Wisconsin Statutes 1955, ch. 185). Five or more adults, one of whom must be a president, sign the articles of association, which are filed with the Secretary of State.

FISHERY COOPERATIVES AND TAXES

All fishery cooperatives performing marketing and purchasing services for member fishermen are required to pay Federal income tax at the corporate rate on any net margin of operating receipts over expenses retained and used for any purpose other than authorized reserves. The net margin which cooperatives are not under obligation to distribute currently to patrons on a patronage basis, either in cash or non-cash form, is retained. Cooperatives pay all of the other taxes paid by organizations engaged in like business activities. Cooperatives pay both Federal and State corporation taxes on the same basis and at the rate, under the same conditions as other corporations.

TAX TREATMENT²² UNDER REVENUE ACT OF 1962

The Revenue Act of 1962, approved October 16, 1962, contains two sections, 17 and 19, that deal specifically with the tax treatment of farmer cooperatives and their patrons including important tax reporting requirements. Although not specifically mentioned in these sections of the new Act, fishery cooperatives must meet the same requirements established for farmer cooperatives.

The new Act specifically extolls the one tax principle on income generated through

fishery cooperatives. A tax must be paid on the income resulting from the cooperative's business activities, either by the cooperative or the patron. In the case of the cooperative, gross income may be reduced for Federal income tax purposes to the extent "patronage dividends" (refunds) are paid in cash, in property, or in allocations of which at least 20 percent is paid in cash: PROVIDED, the patron has the option to redeem the remainder of the cash allocation in cash during a 90-day period after issuance and receives written notice of this option at the time he is notified of the allocation; or the patron consents in any one of three ways to treat this income as being received by him. The patron can give consent by a signed written statement to the cooperative before the end of the year in which the patronage occurs. Such written consent will not only apply to the current year but all subsequent years until revoked. Consent is automatic when a patron is joining or continuing as a member of a cooperative having bylaws requiring members to give consent. Such consent is not revokable as long as the patron is a member of the cooperative. If for some reason neither of these methods of giving consent can be used, then consent is ruled as being given when the patron endorses and cashes a check or other legal instrument redeemable in money, representing at least 20 percent of the total patronage. There must be clearly imprinted upon it that endorsing and cashing such instrument gives consent. These allocations are designated as "qualified" dividends not taxable to the cooperative but the patron receiving them must declare them as individual income for tax

²² Raymond J. Mischler and David Volkin, How the Revenue Act of 1962 Affects Farmer Cooperatives, U.S. Department of Agriculture, Farmer Cooperative Service, General Report 105, October 1962, 53 pp.

purposes when received, if the amounts arise from business activity of the patron.

Cooperatives that wish to use the bylaw method of consent should check their present bylaw provision, in the cases where one is already being used, to see that it meets the requirements of the new Act. Other cooperatives would have to amend their bylaws to include a new bylaw provision like the example given below:

Each person who hereafter applies for and is accepted to membership in this cooperative on the effective date of this bylaw who continues as a member after such date shall, by such act alone, consent that the amounts of any distribution with respect to his patronage occurring after October 16, 1962, which are made in written notices of allocation (as defined in 26 U.S.C. 1388) and which are received by him from the cooperative, will be taken into account by him at their stated dollar amounts in the manner provided in 26 U.S.C. 1385 (a) in the taxable year in which such written notices of allocation are received by him. Cooperatives using the "bylaw consent" are required to amend their bylaws to comply with the new act which became effective October 16, 1962. The new law requires that each member receive either in person or be sent a copy of the new or amended bylaw by regular mail to his last known address before the beginning of the cooperative's first fiscal or calendar year following the effective date of the Act. ²³

MINIMIZING TAX LIABILITY

Most fishery cooperatives perform marketing and purchasing functions, and almost always maintain two separate departments for accounting purposes. The marketing function is designed to market the aquatic products of the members at the best price possible. The purchasing function is designed to acquire marine gear and supplies for members at the lowest possible costs. Both functions, if successful and when the results are realized by members, will increase the taxable income of the members--marketing by securing high return from products, and purchasing by reducing operating costs.

²³ The material presented here on the new Revenue Act should not be considered as an interpretation of its provisions. For authoritative interpretations of the Act consult the Director of Internal Revenue for district where income tax return is filed.

For purpose of Federal corporate income taxation, all cooperatives are still classified as either "exempt" or "nonexempt." The exempt cooperative has its existence in sections 521 and 522 of the old Internal Revenue Code. The sections were not changed by the Revenue Act of 1962. However, deductions of these cooperatives are now limited to allocations made within $8\frac{1}{2}$ months after the year in which the earnings were derived. Under these sections, certain tax benefits are gained by those cooperatives which are classified as "farmers", fruit growers, or like associations." However, in 1955 a ruling was issued limiting "like associations" to those specifically engaged in farming and stock raising. Other types of agricultural cooperatives and fishery cooperatives were specifically excluded. ²⁴ Court decisions have further buttressed this interpretation.

The nonexempt association is one which does not enjoy the special tax benefits set forth in sections 521 and 522 of the Revenue Act of 1951. It is taxed as an ordinary corporation. Most of the tax benefits granted to the exempt cooperatives can be enjoyed, however, if the association abides by certain provisions which are spelled out in the Revenue Act of 1962.

In organizing a nonexempt cooperative, care should be taken as referred to above to insert, either in the articles of incorporation or the bylaws, a clause which explicitly and unambiguously vests in each member a right to a part or all of the net earnings or savings. The mere statement to the effect that the cooperative is organized as a nonprofit institution is not sufficient to meet this requirement. Providing members of the association with a vested right in a part or all of the net earnings or savings, releases the cooperative from declaring these as taxable income for which it is legally liable. Such net earnings or savings become taxable income of the patrons as recipients. The cooperative is taxable on that portion of net earnings or savings retained by it for specific purposes such as special reserves, or dividends on stock, and its members may be taxed on the balance of net earnings or savings distributed from the cooperative as patronage refunds specifically declared by it. All fishery cooperatives are allowed $8\frac{1}{2}$ months after the close of their fiscal

²⁴ Rev. Rul, 55-611 IRB 1955-41, 10.

year beginning after December 31, 1962, in which to make their patronage allocation.

If an association has the discretion to pay its shareholders a dividend which in effect amounts to 8 percent of its earnings, after it transfers 2 percent of its current earnings to surplus, and is obligated by a specific bylaw provision according to the Revenue Act of 1962 to distribute the remaining net earnings or savings to its members, the cooperative could bear tax liability on a total of only 10 percent of its earnings or savings. The cooperative must pay at least 20 percent of the allocations from earnings or savings in cash as previously described. In practice when an association or its officers have such discretion, the best practice would be to actually declare up to the full amounts available for such purpose. The balance of funds may be declared as a patronage refund on which the cooperative would not be required to pay any Federal corporate income tax, if the patronage refund is paid in the manner specified by law. All fishery cooperatives must file returns with the Internal Revenue Service reporting payments of interest, dividends, and "patronage dividends" of \$10 or more a year to any one person. In addition, a statement of these payments must be sent to the recipient of the interest, dividend, or patronage dividend indicating the annual amount so reported. The return and statement must each show the amount of the payment and the name and address of the recipient. Civil penalties of \$10 a statement, not exceeding \$25,000 in total for all statements, can be levied against the cooperative if these requirements are not met.

Patronage Refunds or Dividends

The method of distribution of net earnings or savings in the example given is called a "patronage refund or dividend." As stated, if the cooperative members have a vested right to such refunds or dividends, then the cooperative is immune from tax liability. One limitation to this rule is found. When refunds or dividends are distributed only to members or if members receive greater refunds or dividends than nonmembers on identical transactions, there is an unequal distribution among members and nonmembers. When this occurs, only such portion of the refund or dividend representing net earnings or savings from the business of the patron to whom the

refund or dividend is paid may be excluded from gross income. Any net earnings or savings diverted from nonmembers in favor of members are considered taxable income to both the association and the recipients.

Revolving Fund Plan

Many cooperatives are capitalized under what is known as the "revolving fund plan." Briefly, this plan is one in which, after sufficient capital has been accumulated, current investments are used to retire the oldest outstanding investments of patrons. The advantages of the plan are several. First, it offers greater protection and equity to initial investors who are chiefly responsible for building up the association's capital structure; second, the patron's financial interest is maintained in proportion to the use made of the association; and third, the entrance of new members is made easier and more attractive.

Capital, under the plan, is generally accumulated either by deferring payment of patronage refunds or by deducting an agreed percentage or per unit fee from the proceeds of products sold. Under the first method, which is more often used by purchasing cooperatives, patronage refunds or dividends are distributed in the form of scrip or certificates having neither a maturity date nor an interest rate, since the inclusion of either tends to defeat the purpose of the plan. The association should be free to redeem the certificates when it is financially able to do so without taking the risk of litigation for nonpayment at a fixed time. Interest payments merely delay the process of the plan and involve extra administrative costs. The revolving fund plan of financing saves money on interest and administrative expenses.

The second method, the deducting of an agreed percentage or per unit fee from the proceeds of product sold, is especially applicable to the marketing cooperative. The "retains" accumulated by this method are distributed in the earliest year feasible from future retains. Such retains are also evidenced by the issuance of scrip or certificates.

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Member or Patron Tax Liability

One difficulty as to members' or patrons' personal tax liabilities arises when

distribution of patronage refunds or dividends is in the form of paper obligations, such as revolving fund certificates, certificates of indebtedness, letters of advice, scrip, or other such forms that may be without a fair market value. The Revenue Act of 1962 now clearly specifies how such paper patronage refunds or dividends are taxable, either when received pursuant to a pre-existing obligation to make them or otherwise when realized upon. The basis of the value of documents is disclosed under the first taxable category upon subsequent collection or disposition and is limited to the amount reported as income when they were received. Negotiable instruments are income when received under either category. When a patron receives a paper patronage refund or dividend and declares its face value as income, but on redemption receives less, he may declare a loss under applicable provisions of the Internal Revenue Code. Conversely, if a member reports less than the full amount of the refund or dividend, his basis is limited to the amount reported as income in the years of its receipt. Upon redemption, sale, or other disposition of these paper refunds or dividends, the excess will be declared as income in that year.

The U.S. Tax Court has refused to treat paper patronage refunds or dividends as income to the patron at the time of receipt. This is contrary to the position held by the Commissioner. Under the rulings of the court, which have been upheld on appeal, refunds or dividends without a fair market value are immune from taxation until redeemed or sold. The Commissioner and the Tax Court agree that if patronage refunds or dividends are paid in the form of merchandise, the fair market value of this merchandise at the time of its receipt is to be included in **gross income**.

Refunds or dividends, whether patronage or ordinary, are **usually taxable for personal income tax purposes when received by the patron**. Receipt, for tax purposes, does not require an actual reduction to possession. Refunds or dividends credited to the account of a member without any restrictions or limitations constitute income received for tax purposes. This income is taxable for the years in which credited, notwithstanding the fact that the funds have not been received.

Taxation of Reserves

Taxation of various reserves is a final problem confronting the nonexempt cooperative. Deduction for such reserves is usually limited to depreciation, bad debt accounts, or a reserve which is in effect a proper estimate of an accruable liability or expense. Accordingly, such reserves as anticipated special repairs or future contingencies are not usually deemed deductible from taxable earnings.

Income Tax Rulings on Patronage Refunds

Either an exempt or a nonexempt cooperative may retain a portion of patronage margins on an unallocated basis in the cooperative for capital purposes if it pays taxes on the sum retained,²⁵ and if the members so elect. On the other hand, the patron may agree in advance to let the amount of the refund be reinvested with the cooperative for capital purposes, in capital or debt form. Such patronage refunds, if allocated equally to patron members and nonmembers, may be excluded from gross income of the cooperative.

The court has ruled that any cooperative may exclude from its gross income for tax purposes any amount it is under prior obligation to distribute to patrons on a patronage basis, for such monies never become its property. This has been firmly established by the U.S. Tax Court in *United Cooperatives, Inc., versus Commissioner* case and others.²⁶ In the *United Cooperatives, Inc.* case the court held that under bylaws which required the cooperative to refund to its patrons all its receipts in excess of expenses and dividends on its capital stocks (limited to 8 percent) the amount of the refunds should - like other rebates - be excluded from the cooperatives' gross income. The refunds were not subject to tax, except to the extent of an amount equal to 8 percent of the capital stock. The amount which was subject to discretionary payment of dividends on stock, not required to be returned to patrons as a refund, was held to be taxable income to the cooperative. This decision may have to be reconsidered in light of the new Revenue Act.

²⁵ U.S. Treas. Reg. 118, 39,101(12) - 1 to 39,101(12) - 4 1953; I.R.C. 1954 by T. D. (6091) 1954-3 Cum. Bull. 47.

²⁶ 4 T.C. 93, 108 (1944), acq. 1945 Cum. Bull. 6. *Farmers Coop. Co. v. Birmingham*, 86 F. Supp. 201 (N.D. Iowa 1949).

In March 1953, the Commissioner of Internal Revenue had this to say about excluding patronage refunds from co-op gross income:²⁷

A cooperative association which is subject to Federal income tax is not exempt from the compliance requirements applicable to ordinary corporations nor exempt from the payment of Federal income or excess profits taxes. However, a cooperative association may exclude from gross income all true patronage refunds on the theory that such amounts represent either an additional consideration due the patron for goods sold through the corporation or a reduction in the purchase price of supplies or equipment purchased by the patron. Such refunds are excludable from the gross income of the corporation when they are made in accordance with a prior agreement between the corporation and its patrons, such agreement preferably being set forth in the corporate charter and bylaws. There is, however, an important limitation on the amounts that may be so excluded. If members only are paid refunds, or if members receive greater refunds than nonmembers on identical transactions, only such part of the refund as represents profits from the business of the patron to whom the refund is paid may be excluded from gross income. Profits diverted from nonmembers and paid as refunds to members are not excludable but are treated as income to the association and as ordinary dividends to the members (Fruit Growers Supply Co., Com. 56 F. (2d) 90 (CCA) 9th, 1932). It is immaterial whether refunds are distributed in the form of cash, stock, or certificates of indebtedness, or in some other manner that discloses to each patron the amount of such refund.

Section 2(2), Article VIII of your Bylaws provides that at the end of each year, or oftener at the discretion of the Board of Directors, after setting aside the amounts for reserves or other funds, and after the payment of dividends, if any, on preferred or common stock, the balance of the net earnings or savings of the association for that year shall be distributed to members on a patronage basis in proportion to the amount of business each contributed to the association during the year. Such patronage refunds may be credited to producers on the books of the association, to apply on the purchase of stock in the association by producers, or to be used by the association as short time working capital and in evidence of which the association may issue certificates of interest within the sole discretion of the Board of Directors.

It is the opinion of this office that the Bylaws clearly set forth a definite pre-existing obligation to make distributions to members on a patronage basis to nonmember patrons. Accordingly, that portion of amounts distributed to members which represents profit from the business of the member to whom the distribution is made may be excluded from gross income, in computing net income of the corporation, for Federal income and excess profits tax purposes. However, any earnings accruing from business with nonmembers may not be excluded from gross income even though distributed to the nonmembers, and there may not be excluded any part of a distribution to a member which is in excess of the profit derived from the business of that member. It should also be understood that any earnings accruing from business with members and not distributed on a patronage basis, in the form of cash, merchandise, capital stock, revolving fund certificates, similar documents, or in some other manner whereby there is disclosed the dollar amount apportioned on the books of the association to the accounts of the members, are also to be included in taxable income.

²⁷ Letter addressed to Point Judith Fisherman's Cooperative Association, Inc., Point Judith, R. I. (March 1953).

The above excerpts, before the new Act was passed, were generally considered as the views of the Internal Revenue Service (IRS) concerning the proper handling of a cooperative's gross income for Federal income tax purposes. These excerpts clearly indicated the portion of a coop's gross income that was subject to Federal income tax under most conditions. However, these views should be reevaluated in light of the new Act.

The amount of patronage refunds is determined by the accumulation of funds from "underpayment" in the case of a marketing cooperative and "overpayment" in the case of a purchasing cooperative (operating costs and expenses are deducted). Unless an association has a new margin available for distribution from its operations in one of these areas of business activity, there is no basis for declaring a patronage refund or dividend. Should a board of directors authorize the payment of refunds of any character when the facts do not justify such action, it does so at its own peril as has been attested to by a number of rulings handed down by the courts.

At common law, the declaration of dividends, whether patronage or otherwise, is a matter for the board of directors to decide and not the stockholders. The line of reasoning is that only the management (board of directors) is in possession of the necessary facts to make a decision on matters affecting disposition of any net margin the co-op may have at the close of the business year. The cooperative should maintain a sound financial structure at all times. Providing funds for proper and adequate reserve and surplus accounts is important to the continued growth and development of any cooperative.

Theoretically, the law supports the view that, under the usual contractual obligation of a properly organized association, patronage refunds or dividends on net earnings or savings must be paid when they accrue. These refunds or dividends become the property of the patron and are subject to personal income tax. Patronage refunds or dividends normally represent either an additional sum due the patron for products sold by the cooperative or a further saving on the purchase of fishing supplies or gear bought by the patron through the association. Noncash patronage refunds or dividends under contractual arrangements are

really not that. Actually they are patronage refunds due but reinvested in or loaned to the cooperative through an advance agreement with the patron. Noncash patronage refunds or dividends are distributed in proportion to the volume of business the patron has done with the cooperative by making a book entry under the name of each patron in the accounting records of the cooperative. Thus the reinvested or loaned amount is equal to the noncash patronage refunds and is used by the cooperative for capital purposes.

Unfortunately, however, such procedure is sometimes more theoretical than real, because some cooperative association bylaws do not set forth in clear concise language the patronage contractual arrangements. This may result in unfavorable court decisions or decisions which appear contrary to cooperative principles. The courts are guided by the facts as presented, and when the bylaws are not clear in the provisions concerning the patronage contract, then there is no other choice. It is important to have clear, legally sound bylaw-provisions covering patronage refunds if a cooperative is to enjoy the full benefits of these funds for capital purposes.

FISHERMAN'S PERSONAL INCOME TAX

A fisherman receiving from a cooperative a patronage refund or dividend, regardless of its form, is required to declare it at face value in reporting taxable income for the year in which allocation is made where business income is affected, which is usually the case.²⁸ In February 1959, the Internal Revenue Service gave notice that these regulations would be amended to conform to the "principle" declared in the Long Poultry Farms and B. A. Carpenter cases,

LEGAL INSTRUMENTS OF INCORPORATION

After determining the State statute under which an association is to be incorporated, the group forming the association must prepare the articles of incorporation and file an application for a charter. The articles of incorporation are the legal paper or instrument that is signed by those forming the corporation. They contain certain requirements of the law and other pro-

visions within the law agreed to by the incorporators. It might be said that the various articles are the markers by which the course of the corporation ship is

1957 and 1955, respectively. In the 1955 case,²⁹ the Fifth Circuit Court of Appeals ruled that the patronage refunds are reportable by a cash-basis taxpayer when made, but only at their fair market value if in a noncash form. If, as in the cited case, the fair market value is found to be zero, the taxpayer has received no income. The court ruled, in the Long Poultry Farms case, that a patronage refund credit allocated to the account of a member who kept his own books and recorded his income on an accrual basis was not an item of income properly accruable to the member in the year in which the allocation was made. In so holding the court distinguished the case on the facts from the Tax Court's earlier rulings in Harbor Plywood Corp., 14 T. C. 158 (1950), Aff'd. 187 F. 2d 734 (9th Cir. 1951) and George Bradshaw, 14 T.C. 162 (1950) acq. 1950-1 Cum. Bull. 1. The court also rejected in strong language the "receipt and reinvestment" theory as applied to book credits of the type here involved. Besides the rulings cited, which have been accepted by the Government, the Ninth Circuit Court of Appeals has ruled that the patronage refunds are reportable by a cash-basis taxpayer, only when redeemed in cash.³⁰ This is true, irrespective of the source of the capital distribution, that is, whether it is an allocation of patronage refund or capital retained from sales proceeds of the product. These rulings have created a confused situation, and Congressional legislation may be necessary before the situation is corrected. In 1951 Congress made it clear that its intention was to collect a single tax on all income developed by farmers (fishermen) through their cooperatives during the tax year in which the income was created.³¹ The Revenue Act of 1962 clearly extolls this principle as a requirement under its provisions.

²⁸ 26 C.F.R. 1.61-5, as promulgated by T.D. 6272, 22 Fed. Reg. 9419, 9421 (1957) See also Rev. 54-10, 1957-1 Cum. Bull. 24.

²⁹ Carpenter v. Commissioner, 219 F. 2d 635 (5th Cir. 1955) affirming 20 T.C. 603 (1953), Acq. R.B. 1958-11, Long Poultry Farms, Inc. v. Commissioner 249 F. 2d F26 (4th Cir. 1957) Reversing 27 T.C. 985 (1957).

³⁰ Caswell's Estate v. Commissioner, 211 F. 2d 693 (9th Cir. 1954), reversing 17 T.C. 1190 (1952); Moe v. Earle.

³¹ S. Rep. No. 781, 82d Congress, 1st Session 21 (1951).

chartered, for they contain the limitations and privileges authorized by the statute under which the corporation is formed.

Experience has taught that articles of incorporation and bylaws should be reasonably broad. Provision should be made for the cooperative association to cooperate with associations of a similar nature in this country or in other countries. Provisions for eventual branches or subsidiary organizations are also desirable.

In every cooperative, the articles of incorporation should limit the dividends to 8 percent per year on paid-in capital stock. It has become more and more customary to include in the articles of incorporation the following general clause:

The cooperative association shall have the powers, privileges, and rights conferred on ordinary corporations and cooperative associations by the laws of the State and all powers and rights incidental or conducive to carrying out the purposes for which this association is formed.

Experience shows that it is practical to establish detailed methods of compensating members who have withdrawn or been expelled from the association. Usually the bylaws state that the book value of the shares of stock should be evaluated by the board of directors and that a sum equal to the value of the shares held should be paid to the withdrawing members. This method has two difficulties. First, it seems unjust and unfair to give each member an equal part in the assets of the cooperative regardless of the length of his membership. It would be better to divide the members into classes, according to years of membership, and determine the value of shares for each class. Second, difficulty arises from the fact that in highly capitalized cooperatives the major portions of the assets are tied up in buildings and machinery or other fixed assets. Repaying withdrawing members the value of the shares in cash is then a real financial drain on the cooperative association. The bylaws should, therefore, contain a clause that the board of directors is empowered to determine installment payments for compensating withdrawing members. Examples of typical articles of incorporation and bylaws in Appendix I.

ARTICLES OF INCORPORATION

Main Features

Statutes vary as to the contents of the articles of incorporation, but the following main features are generally required.

Citation of statute.--The statute under which the association is to be incorporated is cited.

Name of the corporation.--The corporation must have a short name and one that is not a duplication or imitation of that already adopted by another corporation engaged in the same or similar activities. It is suggested that the word "cooperative" be used as part of the name.

Location of principal office.--The location of the principal office does not necessarily mean the place where the majority of the business of the corporation shall be conducted. It does establish the legal residence of the association.

Purpose for which the corporation is formed.--The purposes should be stated clearly and should include all things that are in keeping with and related to the principal objectives of the corporation. The association does not have to perform all objectives included, but has the privilege of performing such objectives if it desires. Otherwise, amendments to the charter would be necessary.

Powers and limitations.--The powers and limitations of the association should be stated in the articles of incorporation.

The powers which most associations include in their articles of incorporation are:

1. To borrow money and give liens.
2. To act as agent or representative for patrons.
3. To buy, lease, hold, and exercise all privileges of ownership.
4. To draw, make, accept, indorse, guarantee, execute, and issue negotiable and transferable instruments of indebtedness.
5. To acquire, own, and develop patents, trademarks, and copy.

6. To cooperate with other associations in forming approved central, regional, or national cooperative agencies.

7. To utilize all rights, powers, and privileges conferred by State or Federal statutes.

The limitations or restrictions placed on all associations usually are those specified by law, but these should be listed in the articles as a safeguard and written confirmation. The limitations are:

1. Membership is limited to persons engaged in the fishing industry as fishermen who catch, collect, or cultivate aquatic products, or plant aquatic products on public or private beds.

2. Products of nonmembers shall not be marketed in an amount which shall exceed the value of the products handled for members.

3. Marine gear and supplies for nonmembers shall not be purchased in an amount which shall exceed the value of the purchases for members.

4. Voting of members is restricted to one vote per member.

5. Maximum dividend rates usually are specified on capital stock.

Activities of a cooperative should not be limited to any one particular State or to the United States. International trade developments are growing. A cooperative should set up long-range (over 25 years) as well as short-range objectives. Short-range plans or goals are definite handicaps to the economic growth and development of a cooperative.

Capital stock.--The total amount, in dollars, of the authorized capital stock, the classes of stock, the number of shares in each class, how and by whom the same shall be acquired, held, and transferred, and the par value of the shares, if it is to be a stock corporation. If not a stock association, specifications for membership should be set forth.

Reserve funds.--The manner in which reserves and other funds of the association may be provided, utilized, disposed of, and abolished.

Directors.--The number of directors the association shall have and the names of those comprising the original board of directors who shall serve the first year or until their successors are elected and qualified.

Duration.--Some States require that the length of time for which the corporation shall have legal existence shall be stated in the articles of incorporation.

Other.--Requirements vary from State to State. Every provision in the articles of incorporation must be authorized by law, and the inclusion of a provision that is not authorized is generally void, at least as to third parties.

Procedure in Filing

States vary as to the procedures and requirements for filing the articles of incorporation. As a general rule, however, the articles of incorporation are filed at the Office of the Secretary of State. In some States the statute requires that a certified copy of the articles of incorporation obtained from the Office of the Secretary of State be recorded at the courthouse in the county in which the corporation is to have its main office or its legal address. Upon meeting other requirements specified in the statute in connection with the acquiring of the charter, the corporation can then be said to have legal existence.

BYLAWS

Authorization

After securing the corporation charter, the incorporators should consider the adoption of bylaws for the corporation. The authority to adopt bylaws is usually specifically granted by the State statute under which the organization may be incorporated. The power to adopt bylaws exists at common law, however, and such power is vested in the stockholders or members unless the statute specifies some other group. An association should adopt bylaws even in the absence of statutory requirements to do so.

Main Features

The bylaws are rules and regulations governing the operations and affairs of the association. Bylaws usually set forth the

relations between the corporation and its members or holders of common stock. Limitations or requirements, if any, are usually specified in the statute under which the association is incorporated, and such should be complied with in adopting bylaws. Typical examples are given in appendix. The following are the main features generally provided in bylaws.

The name of the corporation.-- The name of a corporation comes from its articles of incorporation. Bylaws are usually headed:

Bylaws of the -----Cooperative which is hereinafter referred to as the association.

The objectives and purposes.-- The objectives and purposes of a corporation are set forth in the articles of incorporation. The bylaws need only state that "the objectives and purposes for which this association is formed are those set forth in its articles of incorporation."

Membership and membership relations.-- Bylaws should contain a definite statement of what constitutes membership, who is eligible for membership, and what conditions and requirements must be met by members or applicants. Membership here refers to both the holders of membership in nonstock associations and the common-stock holders in association with stock.

Meetings of members.-- The date, time, and place of annual meetings are given, and the purposes or reasons for which special meetings may be called are stated in this section of the bylaws. Other bylaw provisions usually included in this section are: A statement of the procedures for sending out notices of meetings and for voting, a definition of a quorum, and a definition of the proper order of business in conducting these meetings.

Selection of directors and officers.-- The number of directors needed for successful operation of the cooperative and the qualifications of the directors should be detailed in the bylaws.

To assure equal representation on the board for all members of the cooperative, bylaws should have hard and fast rules and regulations as to how directors will be elected and the areas each will represent.

Rules for the board to follow in electing officers from its own membership should

be written into the bylaws. Other rules and regulations included in this article of the bylaws usually concern: (1) Filling vacancies on the board; (2) frequency of regular board meetings; (3) proper notification of board meetings; (4) rate of compensation, if any, to directors for attending meetings; and (5) number of board members required to be present to constitute a quorum.

Duties of directors and officers.-- The duties and responsibilities of the board of directors must be written into the bylaws carefully and in detail. Such a practice largely eliminates questions about the board's authority to manage the business affairs of the cooperative in the best interest of the members and the association. When the board's duties are fully understood by each member of the association and each member of the board, a close mutual working relationship is achieved.

The board of directors is given the power through the provisions of the bylaws to handle all receipts and disbursements of the association.

The bylaws prescribe the duties of the officers of the association. The powers and duties of the executive and other committees should be clearly set forth in the bylaws.

The general duties, accountability, and control of employees are the responsibility areas described under the article of the bylaws dealing with the manager.

Capital stock certificates.-- The bylaws should specify the language that shall be printed on the face of the certificates of common and preferred stock, if the association is a stock corporation, or on membership certificates, if the association is formed without stock.

Reserve fund certificates.-- The bylaws should consider the possibility of establishing a reserve fund to give the cooperative a broader basis for future activities. It is advisable to retain the reserve fund as loans made by members to the cooperative association and to issue certificates of the value of each member's contribution.

Fiscal year and meetings.-- Under this subject there should be stated the fiscal year of the corporation and the time, place, and manner of calling and conducting regular

meetings of the members. Provisions should be made for special meetings of the members, and the time and manner of giving such notices. There should be included the rights and privileges of members; the manner of voting, whether in person or by proxy; and the number of members constituting a quorum at any meeting. Even though not required by State statutes, in most nonprofit corporations it is common practice to limit voting in the corporation to one member, one vote, irrespective of the number of shares of stock or the amount of membership capital one may hold in the corporation.

Directors and officers.--There should be provided hereunder the directors, officers, their qualifications, and their number. In addition, powers, duties, and functions of officers and directors and their compensation, if any, should be stated. The management of the business and affairs of the association is usually vested in the board of directors. The board of directors is given power and authority to delegate any of its duties or functions to other parties which are not otherwise prohibited by the articles of incorporation or the statute under which the corporation was formed. Generally, the board of directors selects and employs a manager who conducts the business affairs of the corporation, and to whom the board may issue from time to time instructions as to his duties, functions, and responsibilities. The board of directors is responsible for conditions existing in the corporation and has general stewardship of all the association's affairs.

Expenses and payments.--A provision for handling products of the organization and its patrons should be included in the bylaws. This provision should include charges, fees, and deductions for the handling and sale of the products. The bylaws should set forth also the deductions or additions for reserves or other purposes, usually based on a per unit of value or volume. This provision is usually made when the association has no marketing agreement with its members. In the absence of marketing agreements and provisions expressed in the bylaws with respect to such charges, deductions, and fees, the power is vested in the board of directors. From time to time the board may set up schedules of such payments, deductions, and fees. The board of directors delegates the authority for the execution

of such plans to the manager or other appropriate officers of the organization. The payment of fees, charges, and deductions should also be provided, for the association is a cooperative purchasing supplies and equipment for its members and patrons.

Members' equity in the association.--Provisions should be made in the bylaws for reserves and other funds for any of the purposes of the association; the manner in which the net assets including the reserve funds of the association may be credited to the members, and provisions for distribution of the net assets in the event of liquidation or dissolution of the association.

Accounting and audits.--Bylaws should set forth a requirement for a recognized standard system of accounts and auditing which will show at all times each member's interest in the association during the current year's business and the amounts credited to him on reserves or in special accounts.

Patronage savings or earnings.--The manner and order in which the savings or earnings of the association shall be distributed should be stated. The statement should include: (1) Dividends on common and preferred stock, if the cooperative is a stock association; (2) the amount set aside for reserves; and (3) patronage refunds or dividends to members and other patrons who have done business through the association. Such patronage refunds or dividends to members and patrons are based on the amount of business, usually in dollars, that each member contributes to the total volume of business of the association.

Bylaws should set forth the manner of handling patronage refunds or dividend capital. After liquidating the current indebtedness; setting aside preferred and common-stock dividends, if any; and allotting the amounts necessary for reserves, the association or cooperative declares patronage refunds or dividends out of net earnings or savings. Patronage refunds or dividends are distributed on the basis of patronage in the organization by members and patrons. Patronage refunds or dividends of non-members may be credited to them on the books to apply on the purchase of membership stock in the corporation.

Value of each share.--The bylaws should provide that the board of director determine the value of each share of stock at the end of each year and that withdrawing members are bound to accept the values determined in compensation.

The bylaws should also provide for the manner in which the withdrawing member should be compensated. That means it should provide for eventual installment payments so that the association may not be affected too heavily if one member with many shares, or many members, with a few shares each, should withdraw at the same time.

Federation.-- Within the powers and limitations of the State statute under which the association is incorporated and of the articles of incorporation of the associations, the bylaws should make provisions to allow the association to affiliate with other corporations engaged in similar or related business. Such affiliation may be effected by the purchase of stock or membership in the other corporation.

Amendments.-- The bylaws should specify the manner, time, and place in which the bylaws of the association may be amended. The power to amend bylaws is usually stipulated in the statute authorizing the corporation, but, the manner, time, and place of amendment are usually left to the discretion of the association, as set forth in the bylaws.

MEMBERSHIP AGREEMENTS OR CONTRACTS

Some associations have membership agreements or contracts with their producing members or patrons governing the delivery of products to the association. Agreements or contracts are in keeping with the powers and purposes of the corporation. They are usually continuous from year to year unless either party cares to withdraw, in which case notice is given to the other party, within a specified time, of the date provided for such withdrawal.



APPENDIX 1 - SAMPLE: ARTICLES OF INCORPORATION

ARTICLES OF INCORPORATION

OF

(Name of Fishery Cooperative)

This is to certify that we, the undersigned, all of whom are residents of the State of _____ engaged in the production of aquatic products, hereby voluntarily associate ourselves for the purpose of forming a cooperative, nonprofit association with capital stock, to be operated on a mutual basis under the provisions of chapter _____, public laws of _____, entitled _____, and amendments thereto, and for that purpose adopt these articles of incorporation.

Article I.--Name-Location

The name of this association is _____ .
The principal place of business of this association shall be in _____
_____ in the county of _____, State of _____ .

Article II.--Purposes

The objects and purposes for which this association is formed and the nature of its business and operations are:

Section 1. To associate its members and producer-patrons for the purpose of engaging in any activity involving or relating to collecting, catching, taking, planting, producing, buying, receiving, grading, processing, packing, storing, financing, preparing for market, handling, marketing, selling, and/or distributing aquatic products, or conducive to buying, selling, or otherwise handling fishery and marine supplies and equipment; and for the conduct of any activity deemed by the association to be necessary, convenient, proper, or expedient for the accomplishment of such purposes on a cooperative basis for the mutual benefit of the members of this association provided that the association shall not deal in the aquatic products or fishery and marine supplies and equipment for nonmembers in an amount greater in value than that handled by it for members. The term aquatic products as used herein includes all commercial products of aquatic life in both fresh and salt water.

Section 2. To act as a collecting and marketing agency of aquatic products and of any of the products manufactured therefrom; to carry on any and all activities necessary, convenient, expedient, or proper for the accomplishment of same; to unify and systematize the business of producing aquatic products; to improve the quality, facilitate the distribution, and stabilize the prices of fishery products; and to act as a purchasing agent for its members and producer-patrons of nets, twine, rope, leads, motors, boats, paints, grease, gasoline, oil, and other marine supplies and/or equipment used in or incident to producing, collecting, propagating, catching, or taking aquatic products.

Section 3. To promote, encourage, foster, and facilitate the economics, orderly and efficient production, distribution, and sale of aquatic products.

Section 4. To buy, lease, acquire, hold, and control as owner or otherwise, and to pledge, mortgage, and dispose of any interest in any real or personal property as may be necessary, convenient, or proper in the conduct of the business of the association or incidental thereto; to erect, construct, or acquire any interest in and operate any plants, buildings, facilities, or machinery necessary, proper, or incident to the carrying on of its business; and to sell or dispose of any or all of its property and assets.

Section 5. To borrow money without limitation as to amount of corporate indebtedness or liability, and to give a lien on any of its property as security therefor; to finance and aid in the financing of catching, collecting, taking, producing, and marketing of the aquatic products of its members and producer patrons, and to make advance payments and advances to them therefor; and to draw, make, accept, endorse, guarantee, execute, and issue promissory notes, bonds, mortgages, bills of exchange, drafts, warrants, certificates, and all kinds of negotiable or transferable instruments and obligations for any purpose that is deemed necessary or proper to further the objects for which this association is formed.

Section 6. To form, organize, own, or control such subsidiary corporations and branches as many be deemed by this association to be necessary and expedient to carry out the purposes of this association, and to buy, hold, own, vote, control, and exercise all the privileges of ownership in the stock and bonds of other corporations or associations engaged in any related activity, and to pledge, mortgage, and dispose of the same; and by membership, stock ownership, joint or common ownership, or control of any instrumentality or personnel, by contract or otherwise, to control and manage or participate in the control and management of such corporations or associations and their activities and affairs; and to buy, acquire, hold, control as owner, pledge, sell, and otherwise deal in and dispose of its own capital stock, but such stock held by the association shall not be entitled to vote or to receive dividends.

Section 7. To cooperate with other similar associations in creating central, regional, national, or international cooperative agencies, for any of the purposes for which this association is formed, and/or to become a member or stockholder of such agencies now or hereafter formed.

Section 8. To conduct among producers of aquatic products educational work concerning cooperation; the adjustment of producing, catching, and taking of aquatic products to prospective demand for aquatic products; and for all other purposes pertaining to cooperation.

Section 9. To establish, invest, use, transfer, distribute, or abolish reserves and other funds for any and all of its purposes.

Section 10. To do everything necessary, suitable, or proper for the accomplishment of any one or all of the purposes, or the attainment of any one or more of the objects herein enumerated which may be conducive to, or deemed expedient for, the interest or benefit of the association, and to contract accordingly.

Section 11. To have and exercise all the powers, privileges, and rights conferred, authorized, or allowed to corporations by the laws of the United States and of this State and all powers and rights incidental to carrying out the purposes for which this association is formed, except such as are inconsistent with the act under which it is incorporated.

The foregoing shall be construed both as objects and powers and the enumeration thereof shall not be held to limit or restrict in any manner the general powers conferred on this association by the laws of the State of _____, all of which are hereby expressly claimed.

Article III.--Capital Stock

Section 1. The authorized capital stock of this association shall consist of \$ _____, divided into _____ shares of preferred stock of the par value of \$ _____ per share, and _____ shares of common stock of the par value of \$ _____ per share.

Section 2. The preferred stock of this association may be held by any person, firm, or corporation, and shall be freely transferable. Holders of preferred stock shall not be entitled to vote. Non-cumulative dividends of 6 percent per annum may be paid thereon when, if, and as declared by the board of directors. Upon any dissolution or distribution of the assets of this association, the holders of the preferred stock shall be entitled to receive up to the par value of their stock plus all declared unpaid dividends thereon before any distribution is made on the common stock.

Preferred stock shall be redeemable and retirable at such times and upon such conditions as shall be determined by the board of directors and set forth in the certificates of preferred stock.

Section 3.(a). The acquiring of membership in this association shall be by means of acquiring the ownership of common stock herein which may be purchased, owned, or held only by means of acquiring the ownership of common stock herein which may be purchased, owned, or held only by persons, firms, or corporations who are producers of aquatic products, and to cooperative associations as defined by an act of Congress, approved June 25, 1934, entitled "An act authorizing associations of producers of aquatic products." After ceasing to be an aquatic producer or cooperative association, no assignment or transfer of common stock in the association is permissible to any person not entitled under the foregoing to hold the same, any rights or privileges on account of such stock, or in the management or control of the association. The findings of the board of directors as to original or continued eligibility under the above provisions shall be final and conclusive. The board of directors shall have discretion to permit or deny the acquiring of common stock by persons entitled under the foregoing. The common stock of this association may be transferred only with the consent of the board of directors of the association and only then to producers of aquatic products.

(b) Each holder of common stock, or member, shall be entitled to one vote only, regardless of the number of shares held, and no stockholder shall own more than _____ percent of the number of shares of the issued common stock. Noncumulative dividends in the nature of interest not to exceed 8 percent per annum may be paid on stock, when, if, and as declared out of any net earnings and savings of the association after the payment of dividends on preferred stock. Upon any dissolution or distribution, after the redemption of preferred stock, the common stock shall be entitled to a distribution of all remaining assets, except as hereinafter provided.

(c) The holding of common stock or retention of membership in this association shall be subject to termination or cancellation as provided in the bylaws, and the association shall have the right to purchase any of its common stock at its par on book value from the owner thereof who is not engaged in the production of aquatic products, or from any member whose stock is for sale.

Article IV.--Reserves and Funds

Before the paying of any dividends, as aforesaid, reasonable reserves, as determined by the board of directors, may be set aside. Amounts carried to reserves from business done in any year shall be allocated on the books of the association on a patronage basis for that year, or, in lieu thereof, the books and records of the association shall afford a means for doing so at any time so that in the event of dissolution, or earlier, if deemed advisable, in the sole discretion of

the board of directors, such reserves, or any part thereof, may be returned to the members of the association.

Certificates of participation in the reserve funds shall be issued by the board of directors. Such certificates shall bear no higher interest than the highest dividend permissible under these articles of incorporation or the bylaws of the association.

After setting aside amounts for reserves and after the payment of dividends, if any, as aforesaid, the balance of the net earnings or savings of the association shall be distributed to members and/or producer patrons on a patronage basis in proportion to the amount of business each contributed to the association. Such patronage refunds may be credited to producers on the books of the association to apply on the purchase of stock in the association, or to be used as working capital by the association and in evidence of which the association may issue certificates of indebtedness.

Article V.--Directors

Section 1. The business and affairs of this association shall be managed by a board of _____ directors, the nomination and election of which shall be provided in the bylaws. The incorporators shall be the directors for the first year, or term, and shall serve until their successors are elected and qualified. The bylaws may provide for a public director and/or public liaison committee.

Section 2. The bylaws of this association may provide that the area in which members of the association reside be divided into districts for the purpose of nominating directors, administering the affairs of the association, or for other purposes.

Article VI.--Miscellaneous

Section 1. This corporation shall exist for _____ (_____) years.

Section 2. No members of this association shall be personally liable for any debt or financial obligation of this association.

The names and places of residence of the incorporating directors who shall serve the first term or until their successors are elected and qualified, and the number of shares of common stock subscribed by each are as follows:

Name

Address

Number of shares

(All names to appear in this form)

In testimony whereof, we have hereunto set our hands and affixed our seals this _____ day of _____, 19__.

(All signatures of incorporators to appear on this form)

Witness:

_____ The State of _____, county of _____.

The execution of the foregoing articles of incorporation was this day duly acknowledged before me by _____, _____ of the incorporators therein named, for the purposes therein expressed.

Witness my hand and official seal, this the _____ day of _____, A.D. 19__.

_____, Notary Public

APPENDIX 2 - SAMPLE: BYLAWS

BYLAWS

of

(Name of Fishery Cooperative)

Article I.--Purposes

Section 1. The purposes for which this association is formed are as set forth in its articles of incorporation.

Article II.--Membership

Section 1. Membership in this association shall be obtained by acquiring one or more of the shares of common stock of this association. The common stock of this association shall be acquired or held only by producers of aquatic products, or cooperative associations as defined by an act of Congress approved June 25, 1934, and entitled "An act authorizing associations of producers of aquatic products." No common shareholder, after ceasing to comply with the foregoing shall be entitled to hold common stock or have any vote or voice in the management and affairs of this association, and no purported assignment or transfer of voting stock in this association shall pass to any person or association not entitled under the foregoing to hold the same, any rights or privileges on account of such stock. The findings of the board of directors as to original or continued eligibility under the above provisions shall be final and conclusive. The board of directors shall have discretion to permit or deny the acquiring or holding of common stock by persons or associations eligible under the foregoing. Common stock of this association may be transferred only with the consent of the board of directors and only then to producers of aquatic products.

Section 2. For good and sufficient cause, as determined by the board of directors acting by majority vote, the association may elect to cancel and terminate the membership and all rights, privileges, and interests of any common shareholder upon tender to it or its legal representatives of the fair book value of the shares held by such member, as determined by the board of directors, together with any dividends, or other sums due and unpaid, less any indebtedness due the association from such shareholder. Wilfully failing to comply with the bylaws and regulations of the association, or willfully continuing in a breach of marketing or purchasing agreement with the association,

Article V.--Board of Directors

Section 1. The business and affairs of this association shall be managed, conducted, and controlled by a board of _____ (__) directors who are members of this association and who shall be nominated and elected at the annual meeting of the membership. Of the first elected board of directors _____ members shall be for 1 year; _____ members for 2 years; and _____ members for 3 years, and thereafter each director shall be elected for a period of 3 years except such as shall be chosen to fill vacancies.

Section 2. The incorporators of this association shall constitute the first board of directors and shall hold office until the first annual meeting of members or until their successors are elected and qualified. Directors thereafter shall be elected annually.

Section 3. Upon majority vote of the board of directors prior to the annual meeting, public educational institutions, or State departments from whom the association is receiving cooperation and assistance may be requested in writing to name one or more persons to represent such institutions or departments as public directors on the board of directors of the association, or to compose an advisory committee for the association. The names of such representatives shall be certified in writing to the secretary of the association by such institution or department prior to the annual meeting.

Section 4. At any time, by majority vote of the board of directors, the board may propose an amendment to these bylaws whereby the area in which the members of this association reside may be divided into districts for the purpose of nominating directors to represent the respective districts on the board of directors. The proposed amendment, which shall include the number of districts and appropriate identification of each, the number of directors to be nominated by each district, the time and manner of conducting meetings of members in each district for such nominations, shall be submitted to the membership with the notice for the next ensuing annual meeting following such vote by the board of directors. Procedure thereafter, and at the ensuing annual meeting, relative to the proposed amendment shall be as hereinafter provided for the amendment of these bylaws.

Section 5. The annual meeting of the board of directors shall be held previous to the annual membership meeting. Each board of directors shall meet within 10 days after the annual meeting of the members, for the purpose of electing officers for the ensuing year and transacting any other business that shall be proper at such meeting. The board of directors shall meet regularly on the second Tuesday in April, July, and October of each year at the office of the association. Special meetings of the board of directors shall be held whenever called by the president or upon written request of three members of the board of directors, addressed to the secretary, and the president shall call such meeting to be held within 15 days from the date of receipt of such request by the secretary.

Section 6. Ten days' notice by mail or 5 days' notice by wire of each regular or special meeting shall be given to each director, provided that no defect or failure of notice of regular meetings shall affect the validity of any proceedings taken thereat.

Section 7. A majority of the directors shall constitute a quorum for the transaction of business at any meeting.

Section 8. The directors shall receive no compensation for their services other than reimbursement for the actual expenses incurred by them in attending meetings or on other official and authorized business of the board of directors, and a per diem of \$_____ for each day traveling to, from, and while in attendance at such meetings, provided that this shall not exceed 3 days for any one meeting. No director shall be a salaried employee of the association.

Section 9. Any director may be removed from office for cause by vote of not less than two-thirds of the members present at any annual meeting or at any special meeting called for that purpose, at which a quorum of members must be present. Such director shall be informed in writing of the charges preferred against him at least 10 days before such meeting and at such meeting shall have an opportunity to present witnesses and be heard in person or by counsel in regard thereto.

Article VI.--Duties of Directors

Section 1. *Management of business.*--The board of directors shall have general supervision and control of the business and the affairs of the association and shall make all rules and regulations not inconsistent with law or with these bylaws for the management of the business and the guidance of the officers, employees, and agents of the association. The board shall have installed an accounting system which shall be adequate to the requirements of the business and to the interest of the members therein, and it shall be the duty of the board to require proper records to be kept of all business transactions.

Section 2. *Employment of manager.*--The board of directors shall have power to employ or to authorize the employment of a manager and such other employees as may be deemed necessary, and to fix their compensation. The manager shall have charge of the business of the association under the direction of the board of directors. The manager must sign an appropriate pledge.

Section 3. *Bonds and insurance.*--The board of directors shall require the manager and all other officers, agents, and employees charged by the association with responsibility for the custody of any of its funds, or property, or the funds or property of others entrusted to it, to give adequate bonds. Such bonds shall be secured from a responsible bonding company and approved by the board of directors, and the cost thereof shall be paid by the association.

and/or evidence of indebtedness of the association shall be signed in its behalf by such officer or officers or such other person or persons as the board of directors may from time to time authorize to do so.

Article X.--Operation and Management

Section 1. The board of directors or the executive committee shall fix in advance for each season and fiscal year reasonable and uniform rates of charges, deductions, and withholdings to be made from proceeds of sales and purchases made through the association, on account of any of its services or activities in relation to members or patrons or their products, and, for the purpose of making the same, may classify the products handled, the services rendered, or the districts served, in any manner that is reasonable, equitable, and conducive to the best interests of the members and the association. In computing freight and other charges, costs, and expenses for any or all products or other goods handled, the directors may allow differentials based upon actual differences entering into the cost of handling such products or supplies.

Section 2. This association shall function on a cooperative basis for the mutual benefit of its members.

(1) At the close of any business year, and before the payment of dividends on preferred or common stock, the board of directors may set aside from any net earnings or savings, or other funds received by the association for its use, reasonable reserves and other funds, as may be determined by the board, for any of the purposes of the association, except as otherwise provided by law and these bylaws. Any reserves or other funds set aside from business done in any year shall be apportioned in the books of the association on a patronage basis and so credited to the various members of the association in proportion to the amount of business done with each member during the year, or in lieu thereof, the books and records of the association shall afford a means for doing so at any time. Any reserves or other funds, or any part thereof, whether upon dissolution, liquidation, or otherwise, in the sole discretion of the board of directors, shall be distributed to the members of the association in accordance with such apportionment subject to provisions in law or these bylaws. Such interests of the members of the association in funds or reserves held by it may be evidenced by certificates of interest to be issued by the association.

(2) At the end of each year, after setting aside the amounts for reserves or other funds, and after the payment of dividends, if any, on preferred or common stock, the balance of the net earnings or savings of the association for that year shall be distributed to members and/or producer-patrons on a patronage basis in proportion to the amount of business each contributed to the association during the year. Such patronage refunds may be credited to producers on the books of the association, to apply on the purchase of stock in the association by

producers, or to be used by the association as short-time working capital and in evidence of which the association may issue certificates of interest, within the discretion of the board of directors and the limitation of the articles of incorporation.

Section 3. Should a member withdraw or be expelled for reasons as described in Article II, the board of directors may determine the value of his share(s) or, in the case of nonstock association, his interest in the net worth of the association. The determination is binding on the member. The board of directors may on the last day of each calendar or fiscal year, whichever is deemed more appropriate, determine the value of each share, or in the case of a nonstock association, the value of each member's interest in the net worth of the association. This determination is binding for all members of the association during the following year.

The board of directors may prescribe rules concerning how withdrawing or expelled members are to be compensated, whether within the period of 1 month in full, or in installment payments extending not longer than 2 years.

Article XI.--Miscellaneous

Section 1. No members of this association shall be personally liable for any indebtedness or financial obligation of this association.

Section 2. It shall be a policy of this association to cooperate with, aid, and assist other fishermen's cooperatives, as defined by an act of Congress approved June 25, 1934, entitled "An act authorizing associations of producers of aquatic products," insofar as may be practical, feasible, and to the best interests and welfare of this association and its members.

APPENDIX 3

FISHERY COOPERATIVE MARKETING ACT

(48 Stat. 1213. 15 U.S.C.A., secs. 521 and 522)
Public Law--No. 1214, 464--73d Congress
(H. R. 9233)

AN ACT

Authorizing associations of producers of aquatic products.

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

The term "aquatic products" included 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.

Section 2. That if the Secretary of Commerce [Interior]¹ shall have reason to believe that any such association monopolizes or

¹ See appendix 4, p. 50, 53 Stat. (Part 2), Secs. 1431, 1433, Reorganization Plan No. II of May 9, 1939, transferred functions and responsibilities of Act from the Secretary of the U.S. Department of Commerce to the Secretary of the U.S. Department of the Interior.

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 [Interior] may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of Commerce [Interior] 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 [Interior] 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 [Interior] 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.

APPENDIX 4

REORGANIZATION PLAN NO. II OF MAY 9, 1939

(53 Stat. (Part 2), secs. 1431, 1433)

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 9, 1939, pursuant to the provisions of the Reorganization Act of 1939, approved April 3, 1939.

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(e) Bureau of Fisheries.--The Bureau of Fisheries in the Department of Commerce and its functions are hereby transferred to the Department of the Interior and shall be administered in that Department under the direction and supervision of the Secretary of the Interior. The functions of the Secretary of Commerce relating to the protection of fur seals and other fur-bearing animals, to the supervision of the Pribilof Islands and the care of the natives thereof, and to the Whaling Treaty Act, are hereby transferred to, and shall be exercised by, the Secretary of the Interior.

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APPENDIX 5

(Public Law 478 - 79th Congress)

(Chapter 529 - 2d Session)

(H. R. 6335)

Excerpt

AN ACT

Making appropriations for the Department of the Interior for the fiscal year ending June 30, 1947, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of the Interior for the fiscal year ending June 30, 1947, namely:

Commercial fisheries: For collection and compilation of fishery statistics and related information; conducting investigations and studies of methods and means of capture, preservation, utilization, and distribution of fish and aquatic plants and products thereof, including investigation, study and research with respect to the utilization of packed sardines and the development of methods and procedure which should be employed in improving the quality and appearance of packed sardines; maintenance, repair, alteration, improvement, equipment, and operation of laboratories and vessels; and enforcing the applicable provisions of the act authorizing associations of producers of aquatic products (15 U.S.C. 521); including contract stenographic reporting services, \$360,000.

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Similar appropriations have been given to the Department of the Interior year after year since 1939, indicating the will of Congress and of the President to have the act authorizing associations of producers of aquatic products administered by the Department of the Interior.

APPENDIX 6 - SAMPLE: MEMBER'S PLEDGE

MEMBER'S PLEDGE

Member's Pledge: I pledge to do my part and assume responsibility in the cooperative association that has been established to serve my community.

I WILL:

Be loyal, and consider myself a part of, and not apart from, my cooperative.

Recognize the financial needs of the association and willingly furnish my share of the required capital, as determined in the articles of incorporation and in the bylaws.

Support my cooperative with my patronage, and encourage others to use it.

Help establish policies for the association which will allow all younger members, who are capable and progressive, to give close attention to the affairs of the association.

Urge the board of directors to adopt policies and procedures which will improve the efficiency of the association and services rendered to patrons.

Read the articles of incorporation and bylaws and comply with their provisions, and the policies adopted by the board of directors.

Seek full information about the association and its status so that I can confer with the board of directors, and adopt up-to-date and effective measures to improve the association.

APPENDIX 7 - SAMPLE: MANAGER'S PLEDGE

MANAGER'S PLEDGE

Manager's Pledge: I pledge to serve to the fullest extent of my ability the cooperative association that has placed me in a position of trust and responsibility.

I WILL:

Above all things be honest and diligent.

Accept and carry out the policies laid down by the board of directors.

Do everything possible to inform members and patrons of established operating policies and the reasons therefor.

Be alert to reactions of members and patrons and keep the board of directors informed, as an aid in improving the policies of the association.

Use my initiative in directing the operating phases of the business and inform and advise the directors about the needs of the association.

Study the business and the problems of the association and continuously strive for up-to-date and effective methods and procedures that make for increased efficiency.

Give a complete and accurate accounting of the operating affairs and financial condition of the association to directors, members, and patrons.

Treat all patrons, members, and directors alike and not grant any special privileges and favors.

Be courteous and tactful with patrons, members, directors, employees, and others dealing with the association.

Be fair with all employees and favor none.

Provide opportunity for utilizing the initiative of employees to the fullest extent, as a means of continued progress and development in the association.

Outline carefully and specifically the authorities, duties, and responsibilities of employees to avoid friction and poor morale with the association.

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Member's Pledge: I pledge to do my part and assume responsibility in the cooperative association that has been established to serve my community.

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Support my cooperative with my patronage, and encourage others to use it.

Help establish policies for the association which will be fair to all and vote for and urge the election of directors, including younger members, who are capable, aggressive, and willing to give close attention to the affairs of the association.

Urge the board of directors to adopt policies and procedures which will improve the efficiency of the association and the services rendered to patrons.

Read the articles of incorporation and bylaws and sincerely try to comply with their provisions, and with the policies adopted by the board of directors.

Seek full information about the association and study the problems so that I can confer, advise, and vote intelligently, and help adopt up-to-date and effective methods and procedures.

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Treat all patrons, members, and directors alike and not grant any special privileges and favors.

Be courteous and tactful with patrons, members, directors, employees, and others dealing with the association.

Be fair with all employees and favor none.

Provide opportunity for utilizing the initiative of employees to the fullest extent, as a means of continued progress and development in the association.

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Treat all patrons, members, and directors alike and not grant any special privileges and favors.

Be courteous and tactful with patrons, members, directors, employees, and others dealing with the association.

Be fair with all employees and favor none.

Provide opportunity for utilizing the initiative of employees to the fullest extent, as a means of continued progress and development in the association.

Outline carefully and specifically the authorities, duties, and responsibilities of employees to avoid friction and poor morale with the association.

Develop understudies who can assume my responsibilities in case I am absent or sever my connections with the association.

Gain support for the association on the basis of its merits and of a job well done.

Assume responsibility in community affairs, in the interest of good citizenship and as a means of acquainting my community with the program and the value of the association.

Curb emotion and apply reason and common sense to all problems.

I WILL NOT:

Consider myself indispensable.

Discharge my duties with arrogance or a sense of vested interest.

Unfairly criticize competition and competing products.

Employ my own close relatives, nor members of the board of directors or their close relatives.

Carry grudges against employees, directors, members, and patrons.

(This manager's pledge was formulated and is currently used by the Agricultural Extension Service, University of Minnesota.)

APPENDIX 8

REQUIREMENTS FOR INCORPORATION UNDER STATUTES OF VARIOUS STATES WHERE FISHERY COOPERATIVE ASSOCIATIONS ARE LOCATED

State	Statute	Description or short title	Where to file Certificate of Incorporation	Number of producers required to incorporate
Alaska	Chapter 107 SLA-1959 (4-23-59) as amended by sec. 1. Ch. 48, SLA-1959 (3-28-60) (Repeals Sec. 33-51 through 33-5-30 and 36-6-1 through 36-3-8 ACLA 1949)	Alaska Cooperative Corporation Act	Department of Revenue	3 or more
Arkansas	Stat. 77-901-77-928. (Acts of 1921, no. 116, sec. 116, 2 p. 153) Pope's Dig. § 2287	"Cooperative Marketing Act"	Commissioner Mines, Manufacturing and Agriculture	5 or more
California	CC13200, Part Chs. 1-7, (added by Stats. 1953, ch. 207 § 1)	Fish Marketing	Secretary of State	5 or more
Florida	F.S.A. Sec. 611-38	Special Provision of General Corporation Laws	Secretary of State	Not less than 10
Hawaii	Act 252, S.L. 1959 secs. 1-41	Fish marketing Act	Secretary of State	5 or more
Louisiana	Rev. stat. 1950; title 12, sec. 351, et seq.	Seafood products (special stat.) shrimp, clams, fish, crabs, lobsters, and all other seafood and byproducts	1st, Parish Mortgage Office where located; 2d and subsequent, Secretary of State	10 or more

Appendix 8.--Requirements for incorporation--Continued

State	Statute	Description or short title	Where to file Certificate of Incorporation	Number of producers required to incorporate
Maine	R.S.C. 56a as amended 1959	Fish Marketing Act	Registry of Deeds of county where located, also Secretary of State	5 or more
Maryland	Md. A.C. 1939 Art. 23 sec. 430, et seq. vol. p. 989	General Laws - Cooperative Associations	State Tax Commissioner	Not less than 5 (two residents)
Massachusetts	Annotated Laws of Mass. V. ch. 157	Cooperative Corporation of General Laws	Secretary of State	
Michigan	Mich. Stat. Ann., vol. 15, sec. 21.99 450.101 Compl. Law, Mich. 1948	General Corporation Act	Secretary of State	1 or more
Minnesota	Minn. Stat. Ann. Vo. 20, secs. 308.01, et seq.	Cooperative Association	Register of Deeds	5 or more
Missouri	R.S. (Mo.) 1939 § 14406	General Corporation Statutes	Register of Deeds, Secretary of State	3 or more
New Jersey	Rev. Stat., Cum. Supplmt. (1954) N.J. S.A. 4:13, et seq.	Agricultural Cooperatives - Agricultural products definition includes fresh- and salt-water food products	County Registry where located and Secretary of State, Secretary of Agriculture	3 or more
Ohio	Ohio Code Sec. 8623-1, et seq.	General Corporation Act	Secretary of State	3 or more

Appendix 8.--Requirements for incorporation--Continued

State	Statute	Description or short title	Where to file Certificate of Incorporation	Number of producers required to incorporate
Oregon	Rev. Stat. ch. 20, secs 62-110, et seq.	Cooperative Associations Law of Oregon	Corporation Commissioner, County Clerk of domicile Association	5 or more
Rhode Island	R.I.G.L. 1948 c 16	General Corporation Laws	Secretary of State	
Texas	Tex. Civil Stat. 1302, et seq.	General Corporations, Laws of Texas	Secretary of State	3 or more
Washington	Rev. code of Wash., title 23, sec. 23.56, et seq.	Special law for Cooperative Associations	Secretary of State	5 or more
Wisconsin	Wis. Stat. 1955, c 185	Cooperative Associations Law	Secretary of State	5 or more

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