



## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

**[Application No. 18-00002]**

### **Export Trade Certificate of Review**

**ACTION:** Notice of Issuance of an Export Trade Certificate of Review to Alaska Groundfish Commission (“AGC”), Application Number 18-00002.

**SUMMARY:** The Secretary of Commerce, through the Office of Trade and Economic Analysis (“OTEA”), issued an Export Trade Certificate of Review to AGC on February 15, 2019.

**FOR FURTHER INFORMATION CONTACT:** Joseph Flynn, Director, OTEA, International Trade Administration, by telephone at (202) 482-5131 (this is not a toll-free number) or email at [etca@trade.gov](mailto:etca@trade.gov).

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) (“the Act”) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR Part 325 (2018). OTEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the Federal Register. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

### **Description of Certified Conduct**

A summary of AGC’s Export Trade Certificate of Review follows.

## **Certificate Holder**

- AGC

## **Members**

- Ocean Peace, Inc., Seattle, WA; M/V Savage, Inc., Seattle, WA; AK Victory, Inc., Seattle, WA; The Fishing Company of Alaska, Inc., Seattle, WA; Alaska Warrior, Inc., Seattle, WA; O'Hara Corporation, Rockland, ME; O'Hara DISC, Inc., Rockland, ME

## **Export Product**

- AGC and its Members plan to export the following six products, which are frozen-at-sea (i.e., the export product is frozen on the catcher-processor trawl vessel while at-sea), and in headed and gutted (i.e., head and viscera are removed) and round (i.e., whole) forms: Atka mackerel, Pacific Ocean perch, yellowfin sole, Pacific cod, flathead sole, and rock sole ("Export Product," or collectively, the "Export Products").

## **Export Conduct**

To engage in Export Trade in the Export Markets, AGC and its Members may undertake the following activities:

1. Each Member will from time to time independently determine in its sole discretion (i) the quantity of Export Product that it makes available for sale in Export Markets, and (ii) whether any portion of such quantity will be sold independently by it, be sold in cooperation with some or all of the other Members, or be made available to AGC for sale in Export Markets. AGC may not require any Member to export any minimum quantity of Export Product.
2. AGC and/or its Members may enter into agreements to act in certain countries or markets as the Members' exclusive or non-exclusive export intermediary for the quantity of Export Product dedicated by each Member for sale by AGC or any Member in that country or market. In any such agreement (i) AGC or the Member acting as the exclusive export intermediary may agree not to represent any other supplier of Export Product with respect to one or more Export Market, and (ii) Members may agree that they will export the quantity of Export Product dedicated for sale in such Export Markets only through AGC or the Member acting as

exclusive export intermediary, and that they will not export Export Product otherwise, either directly or through any other export intermediary.

3. AGC and/or one or more of its Members may engage in joint bidding or selling arrangements for Export Markets and allocate sales resulting from such arrangements among the Members
4. The Members may refuse to deal with export intermediaries other than AGC and its Members.
5. AGC may, for itself and on behalf of its Members, by agreement with its or its Members' distributors or agents, or on the basis of its own determination:
  - a. establish the prices at which Export Product will be sold in Export Markets;
  - b. establish standard terms of sale of Export Product;
  - c. establish standard quality grades for Export Product;
  - d. establish target prices for sales of Export Product by its Members in Export Markets, with each Member remaining free to deviate from such target prices in its sole discretion;
  - e. subject to the limitations set forth in paragraph 1, above, establish the quantity of Export Product to be sold in Export Markets
  - f. allocate among the Members Export Markets or customers in the Export Markets;
  - g. refuse to quote prices for, or to market or sell, Export Product in Export Markets; and
  - h. engage in joint promotional activities aimed at developing existing or new Export Markets, such as advertising and trade shows.
6. AGC may, for itself and on behalf of its Members, contact non-member suppliers of Export Product to elicit information relating to price, volume delivery schedules, terms of sale, and other matters relating to such suppliers' sales or prospective sales in Export Markets.
7. Subject to the limitations set forth in paragraph 1, above, AGC and its Members may agree on the quantities of Export Product and the prices at which AGC and its Members may sell Export Product in and for Export Markets, and may also

agree on territorial and customer allocations in Export Markets among the Members.

8. AGC and its Members may enter into exclusive and non-exclusive agreements appointing third parties as export intermediaries for the sale of Export Product in Export Markets. Such agreements may contain the price, quantity, territorial, and customer provisions for Export Markets contained in paragraph 5, above.
9. AGC and its Members may solicit individual non-Member suppliers of Export Product to sell such Export Product to AGC or Members for sale in Export Markets.
10. AGC and its Members may prescribe conditions for withdrawal of Members from and admission of Members to AGC.
11. AGC may, for itself or on behalf of its Members, establish and implement a quality assurance program for Export Product, including without limitation establishing, staffing, and operating a laboratory to conduct quality testing, promulgating quality standards or grades, inspecting Export Product samples and publishing guidelines for and reports of the results of laboratory testing.
12. AGC may conduct meetings of its Members to engage in the activities described in paragraphs 1 through 11 above.
13. AGC may compile for, collect from, and disseminate to its Members, and the Members may discuss among themselves, either in meetings conducted by AGC or independently via telephone and other available and appropriate modes of communication, the following types of information with respect to the export of Export Product to Export Markets only:
  - a. Sales and marketing efforts, and activities and opportunities for sales of Export Product, including but not limited to selling strategies and pricing, projected demand for Export Product, standard or customary terms of sale in Export Markets, prices and availability of Export Product from competitors, and specifications for Export Product by customers in Export Markets;

- b. Price, quality, quantity, source, and delivery dates of Export Product available from the Members for export including but not limited to export inventory levels and geographic availability;
- c. Terms and conditions of contracts for sales to be considered and/or bid on by AGC and its Members;
- d. Joint bidding or selling arrangements and allocation of sales resulting from such arrangements among the Members, including each Member's share of the previous calendar year's total foreign sales;
- e. Expenses specific to exporting to and within Export Markets, including without limitation transportation, trans- or intermodal shipments, cold storage, insurance, inland freight to port, port storage, commissions, transactional costs, documentation, financing, customs duties, and taxes;
- f. U.S. and foreign legislation regulations and policies affecting export sales; and
- g. AGC's and/or its Members' export operations, including without limitation, sales and distribution networks established by AGC or its Members in Export Markets, and prior export sales by Members (including export price information).

The effective date of the Certificate is October 22, 2018, the date on which AGC's application was deemed submitted.

Dated: February 21, 2019.

**Joseph Flynn,**

*Director,*

*Office of Trade and Economic Analysis,*

*International Trade Administration,*

*U.S. Department of Commerce.*

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