

## **OUTLINE FOR PROPOSED CATFISH FARMERS' MARKETING ASSOCIATION**

The following is an outline for a proposal to form a live catfish marketing association pursuant to the Capper-Volstead Act, specifically pursuant to 7 U.S.C. §291, which allows growers to act together in associations to collectively market their products.

The purpose behind the formation of the proposed farmers' organization is both simple and straightforward, and involves nothing less than the survival of the United States domestic catfish industry. Events occurring over the past several years – and escalating over recent months – demonstrate that the United States catfish processing/marketing industry has persisted in pricing and marketing processed catfish products at price levels that make it unlikely, if not impossible, that the processors can pay pond bank prices to growers for live catfish sufficient to allow the growers to produce the fish.

Through the proposed new growers' association, catfish farmers will utilize the anti-trust exemptions provided for agricultural cooperatives pursuant to the Capper-Volstead Act and/or the Clayton Act to bolster their market strength so as to prevent processor pricing strategies which threaten to drive the growers out of the industry.

**Structure:** The growers propose to form a legal entity – most likely an entity organized under Miss. Code Ann. §79-17-7, *et seq.* – to promote and accomplish their legitimate objectives.

Pursuant to this end, the new entity will operate for the mutual benefit of all of its members, and no member of the new entity will be allowed more than one vote in conducting the business of the entity.

The entity shall be governed by a Board of Directors; this Board shall be made up of individuals who are knowledgeable about all aspects of the domestic catfish industry. The duties of the Board of Directors shall be those normally specified for Boards of Directors of corporate entities, but shall also specifically include the duties and powers to establish both a fair live catfish price (pond bank price) and to establish a minimum market price for finished products below which the processors that purchase members' live catfish may not sell their finished products.

I. Formation of Unincorporated Association (A.A.L.)

- Articles of Association and Incorporation
  - Name/duration of existence
  - Becomes valid corporation (with or without stock)
  - No personal liability for organizers, their associates or successors, directors, officers of members
  - Bylaws provide for method of voting (which may include mailing), how membership may be acquired or lost, and for membership fees and dues
  - Membership not transferable
  - Each member shall have only one vote
  - Powers of the Association provided by statute

II. Establishment of Minimum Live Fish Price

- Board of Association to establish minimum price
- Price to be based on established production cost data
- Price formulated by computing cost of production plus reasonable return on investment
- Cost of production to include all variable costs and all fixed costs

- Volatile variable costs (e.g., feed costs) to be reconsidered on a regular basis, and live price adjusted as necessary when significant fluctuations occur
- All members legally obligated to sell only to processors which agree, in writing, to pay no less than the-current established minimum live price to members
- Association and members contractually agree to abide by minimum live price as determined by Board of Directors
- Association retains the legal right to enforce members' obligation to comply with minimum live price sales

### III. Establishment of Minimum Price for Processors' Sales of Processed Catfish Products

- Association is permitted by law to mandate that its members' customers (processors) comply with a minimum price at which the processed product may be sold.
- Board will consider all relevant factors in determining this minimum sale price.
- Board may consider information provided by processors, but is not bound to accept or utilize any such information that it finds unreliable or unpersuasive.
- This minimum sale price shall be adjusted by the Board in conjunction with adjustments made in the minimum live fish price.
- The minimum sale price by processors shall reflect, as nearly as possible, only the sale price required to support the then-mandated live fish price.
- The Association shall, on behalf of its members, enter into binding contracts with all processors who purchase members' live fish. This contract will provide the establishment of the sales prices for categories of finished products, and shall give to the Association the right to enforce the maintenance by processors of these minimum sales prices.
- All sales by processors of distressed product or production overruns must be made to one, separate entity, which entity shall market and sell these products in such a manner as not to disrupt the market which, in turn, would erode the price that members are able to receive for live fish.
- Compliance with the minimum sales prices, as well as the minimum live fish price, will be monitored by independent third parties, who shall report their findings to the Association, as well as to all processors.