

section 766.18(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me; *It is Therefore Ordered:*

*First*, that, for a period of five years from the date of this Order (hereinafter the "Denial Period"), Metal & Mineral Trade Sarl., Rue Pierre D'Aspelt, 1142 Luxembourg, Luxembourg, shall be denied its U.S. export privileges as described herein. MMT, and all of its successors, assigns, officers, representatives, agents, and employees, may not participate, directly or indirectly, in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Apply for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

*Second*, that, during the Denial Period, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a person subject to this Order any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a person subject to this Order of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a person subject to this order acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a person subject to this Order of any item subject to the Regulations that has been exported from the United States;

D. Obtain from a person subject to this Order in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by a person subject to this Order, or service any item, of whatever origin, that is owned, possessed or controlled by a person subject to this Order if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Third*, that after notice and opportunity for comment as provided in section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this order.

*Fourth*, that this order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

*Fifth*, that, as authorized by section 766.18(c) of the Regulations, the final three years of the Denial Period set forth above shall be suspended for five years from the date of entry of this Order, and shall thereafter be waived, provided that, during the period of suspension, MMT has not committed a violation of the Act or any regulation, license, or order, including this Order, issued thereunder.

*Sixth*, that a civil penalty of \$35,000 is assessed against MMT which shall be paid to the U.S. Department of Commerce within thirty days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

*Seventh*, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701-3720E (1983 and Supp. 2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, MMT will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

*Eighth*, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to MMT.

*Ninth*, that the charging letter, the Settlement Agreement, and this Order shall be made available to the public.

*Tenth*, that a copy of this Order shall be delivered to the Honorable Edwin M. Bladen, Administrative Law Judge, United States Coast Guard, 915 Second Avenue, Room 3448, Jackson Federal Building, Seattle, Washington 98174; and to the United States Coast Guard ALJ Docketing Center, 40 Gay Street, Baltimore, Maryland 21202-4022, providing notification that case number 02-BIS-10 naming MMT as a respondent is withdrawn from adjudication, as provided by § 766.18(b) of the Regulations.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 17th day of November, 2003.

**Julie L. Myers,**

*Assistant Secretary of Commerce for Export Enforcement.*

[FR Doc. 03-29783 Filed 11-28-03; 8:45 am]

**BILLING CODE 3510-DT-M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Export Trade Certificate of Review

**ACTION:** Notice of application.

**SUMMARY:** The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, U.S. Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or e-mail at [oetca@ita.doc.gov](mailto:oetca@ita.doc.gov).

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) 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. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

#### Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 03-00008." A summary of the application follows.

#### Summary of Application

*Applicant:* California Pistachio Export Council, LLC ("CPEC"), 5497 E. Olive Avenue, Fresno, California 93727.

*Contact:* Carter Brown, Esquire, Consultant to the applicant, Telephone: (202) 543-4455.

*Application No.:* 03-00008.

*Date Deemed Submitted:* November 19, 2003. Expedited Review of the application has been requested.

*Members (in addition to applicant):* A&P Growers Cooperative, Inc., Tulare, CA; Gold Coast Pistachios, Inc., Fresno, CA; Keenan Farms, Inc., Avenal, CA; Monarch Nut Company, Delano, CA; Nichols Pistachio, Hanford, CA; Primex Farms, LLC, Wasco, CA; and Setton Pistachio of Terra Bella, Inc., Terra Bella, CA.

CPEC seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operation:

#### Export Trade

1. *Products:* California in-shell and shelled pistachios, raw and roasted. Included within this definition are organically produced pistachios and flavored pistachios.

2. *Export Trade Facilitation Services (as they Relate to the Export of Products):* All export trade-related facilitation services, including but not limited to: development of trade strategy; sales, marketing, and distribution; foreign market development; promotion; and all aspects of foreign sales transactions, including export brokerage, freight forwarding, transportation, insurance, billing, collection, trade documentation, and foreign exchange; customs, duties, and taxes; and inspection and quality control.

#### Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

#### Export Trade Activities and Methods of Operation

1. CPEC, on its own behalf or on behalf of all or less than all of its Members, through CPEC or through Export Intermediaries (to the extent provided in section 1.g) may:

a. *Export Sales Price.* Establish sales price, minimum sales price, target sales price and/or minimum target sales price, and other terms of sale;

b. *Marketing and Distribution.* Conduct marketing and distribution of Products;

c. *Promotion.* Conduct joint promotion of Products;

d. *Quantities.* Agree on quantities of Products to be sold, provided each Member shall be required to dedicate only such quantity or quantities as each such Member shall independently determine;

e. *Market and Customer Allocation.* Allocate geographic areas or countries in the Export Markets and/or customers in the Export Markets among Members;

f. *Refusals to Deal.* Refuse to quote prices for Products, or to market or sell Products, to or for any customers in the Export Markets, or any countries or geographical areas in the Export Markets;

g. *Exclusive and Nonexclusive Export Intermediaries.* Enter into exclusive and

nonexclusive agreements appointing one or more Export Intermediaries (as defined under "Definitions" paragraph 1) for the sale of Products with price, quantity, territorial and/or customer restrictions as provided in sections 1.a through 1.f, inclusive, above;

h. *Non-Member Activities.* Purchase Products from non-Members to fulfill specific sales obligations, provided that CPEC and/or its Members shall make such purchases only on a transaction-by-transaction basis and when the Members are unable to supply, in a timely manner, the requisite Products at a price competitive under the circumstances. In no event shall a non-Member be included in any deliberations concerning any Export Trade Activities; and

i. *Transportation Activities.* Negotiate favorable transportation rates (volume discounts) and consolidate shipments.

2. CPEC and its Members may exchange and discuss the following information:

a. Information about sales and marketing efforts for the Export Markets, activities and opportunities for sales of Products in the Export Markets, selling strategies for the Export Markets, sales for the Export Markets, contract and spot pricing in the Export Markets, projected demands in the Export Markets for Products, customary terms of sale in the Export Markets, prices and availability of Products from competitors for sale in the Export Markets, and specifications for Products by customers in the Export Markets; b. Information about the price, quality, quantity, source, and delivery dates of Products available from the Members to export;

c. Information about terms and conditions of contracts for sale in the Export Markets to be considered and/or bid on by CPEC and its Members;

d. Information about joint bidding or selling arrangements for the Export Markets and allocations of sales resulting from such arrangements among the Members;

e. Information about expenses specific to exporting to and within the Export Markets, including without limitation, transportation, trans-or intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

f. Information about U.S. and foreign legislation and regulations, including federal marketing order programs, affecting sales for the Export Markets;

g. Information about CPEC or its Members' export operations, including without limitation, sales and distribution networks established by

CPEC or its Members in the Export Markets, and prior export sales by Members (including export price information); and

h. Information about export customer credit terms and credit history.

3. CPEC and its Members may prescribe the following conditions for admission of Members to CPEC and termination of membership in CPEC:

a. Membership shall be limited to Handlers as defined under "Definitions" paragraph 3.

b. Membership shall terminate on the occurrence of one or more of the following events:

i. Withdrawal or resignation of a Member;

ii. Expulsion approved by a majority of all Members;

iii. Death or permanent disability of a Member who is an individual, or the dissolution of a Member other than an individual; and

iv. The bankruptcy of a Member as provided in CPEC's Operating Agreement.

c. Members may be added to the Certificate, if the action is

i. Approved by a majority of the members, and

ii. Approved by the Secretary of Commerce, with the concurrence of the Attorney General, pursuant to an appropriately filed application to amend the Certificate; and

iii. Any new member must pay a pro-rata share of the start-up costs for the CPEC. This payment will be equally divided amongst the members who paid the initial start-up costs.

4. CPEC and its Members may meet to engage in the activities described in paragraphs 1 through 3 above.

#### Definitions

1. "Export Intermediary" means a person (including a Member) who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing, or arranging for the provision of Export Trade Facilitation Services.

2. "Handle" means engage in: (a) receiving pistachios; (b) hulling and drying pistachios; and/or (c) further preparing pistachios by sorting, sizing, shelling, roasting, cleaning, salting, and/or packaging for marketing in or transporting to any and all markets in the course of interstate or foreign commerce; provided, however, that transportation within the Production Area between Handlers and from the orchard to the processing facility is not handling.

3. "Handler" means a person who handles Pistachios grown in California.

4. "Member" means a person who has membership in the CPEC Export Trade Certificate of Review, and who has been certified as a "Member" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1) (2003).

5. "Product" means in-shell or shelled pistachios, roasted or raw produced in the Production Area.

6. "Production Area" means the State of California.

Dated: November 24, 2003.

**Jeffrey C. Anspacher,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 03-29779 Filed 11-28-03; 8:45 am]

**BILLING CODE 3510-DR-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 112503A]

#### Endangered Species; File No. 1451

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of application.

**SUMMARY:** Notice is hereby given that NMFS, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, Maryland, 20910, has applied in due form for a permit to take threatened and endangered sea turtles for purposes of scientific research.

**DATES:** Written or telefaxed comments must be received on or before December 31, 2003.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702-2432; phone (727)570-5301; fax (727)570-5320.

**FOR FURTHER INFORMATION CONTACT:** Carrie Hubbard or Sarah Wilkin, (301)713-2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226).

The applicant proposes to initiate a sea turtle observer program for the shark bottom longline fishery in the western North Atlantic and Gulf of Mexico. The incidental capture of sea turtles by the fishery is covered by the Biological Opinion for the Highly Migratory Species Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks. If issued, this permit would authorize only the sampling of the sea turtles incidentally caught in the fishery, as recommended in the Biological Opinion. Unless they are too large to be safely boated, captured turtles would be brought on board and identified, measured, weighed, PIT tagged, and have a biopsy sample taken for genetic research. Turtles would be dehooked and/or disentangled and subsequently released. The purpose of the observer program is to monitor the impact of bottom longlining on protected species and to obtain information on sea turtle populations. All observers would be trained in the sampling techniques and provided the proper equipment before sailing on a fishing vessel. In accordance with the fishery's Biological Opinion, the applicant requests authority to sample 12 loggerhead (*Caretta caretta*), 2 leatherback (*Dermochelys coriacea*) 2 Kemp's ridley (*Lepidochelys kempii*), 2 green (*Chelonia mydas*), and 2 hawksbill (*Eretmochelys imbricata*) turtles annually. The permit would be valid for a period of five years.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: November 25, 2003.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03-29829 Filed 11-28-03; 8:45 am]

**BILLING CODE 3510-22-S**