

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2002-2003 Administrative Review and Partial Rescission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of 2002-2003 administrative review and partial rescission of the review.

SUMMARY: We preliminarily determine that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were not made below normal value during the period June 1, 2002, through May 31, 2003. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3).

If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection to liquidate entries of tapered roller bearings from Shanghai United Bearing Co., Ltd. without regard to antidumping duties. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 5, 2004.

FOR FURTHER INFORMATION CONTACT: S. Anthony Grasso or Andrew Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3853 and (202) 482-1276, respectively.

Background

On June 15, 1987, the Department of Commerce ("the Department") published in the *Federal Register* (52 FR 22667) the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished ("TRBs"), from the People's Republic of China ("PRC"). The Department notified interested parties of the opportunity to request an administrative review of this order on June 2, 2003 (68 FR 32727). The period of review ("POR") is June 1, 2002, through May 31, 2003. On June 19, 2003, Shanghai United Bearing Co., Ltd. ("SUB") requested an administrative review. On June 20, 2003, Peer Bearing Company—Changshan ("CPZ") requested an administrative review. On June 30, 2003, Yantai Timken Co., Ltd. ("Yantai Timken") requested an administrative

review. In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on July 29, 2003 (68 FR 44524).

On August 6, 2003, we sent a questionnaire to the Secretary General of the Basic Machinery Division of the Chamber of Commerce for Import & Export of Machinery and Electronics Products and requested that the questionnaire be forwarded to all PRC companies identified in our initiation notice and to any subsidiary companies of the named companies that produce and/or export the subject merchandise. In this letter, we also requested information relevant to the issue of whether the companies named in the initiation notice are independent from government control. See the "Separate Rates Determination" section, below. On August 6, 2003, courtesy copies of the questionnaire were also sent to companies with legal representation.

On August 20, 2003, Yantai Timken requested that the Department rescind its administrative review. Pursuant to 19 CFR 351.213(d)(1), because Yantai Timken withdrew its request for review within 90 days of the date of publication of the notice of initiation of this review and no other party requested a review of this company, we are rescinding the administrative review of Yantai Timken.

We received responses to the questionnaire in August, September, and October 2003 from CPZ and SUB. We sent out supplemental questionnaires to CPZ and SUB in December 2003, and received responses to these supplemental questionnaires from both companies in December 2003.

On January 21, 2004, CPZ withdrew its request for an administrative review. Although CPZ's withdrawal was submitted to the Department after the 90 day deadline provided by 19 CFR 351.213(d)(1), this section of the Department's regulations permits the Department to extend the time limit for rescission of administrative review if "it is reasonable to do so." As no other party requested a review of CPZ, and the Department has not yet devoted extensive time and resources to this review, pursuant to 19 CFR 351.213(d)(1), we are rescinding the administrative review of CPZ. See Memorandum to Susan Kuhbach, "Partial Rescission of Review," dated January 29, 2004, which is on file in the Department's Central Records Unit ("CRU"), which is located in Room B-099 of the main Department building.

Scope of the Review

Merchandise covered by this review includes TRBs and parts thereof,

finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under *Harmonized Tariff Schedule of the United States* ("HTSUS") item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Separate Rates Determination

The Department has treated the PRC as a nonmarket economy ("NME") country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended ("the Act"), any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the TRB industry in the PRC is a market-oriented industry. Therefore, we are treating the PRC as an NME country within the meaning of section 773(c) of the Act.

We allow companies in NME countries to receive separate antidumping duty rates for purposes of assessment and cash deposits when those companies can demonstrate an absence of government control, both in law and in fact, with respect to export activities. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results of 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003). To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). As shown below, SUB meets both the *de jure* and *de facto* criteria and is entitled, therefore, to a separate rate.

Accordingly, we preliminarily determine to apply a rate separate from the PRC rate to SUB.

De Jure Analysis

The Department considers three factors that support, though do not require, a finding of *de jure* absence of governmental control. These factors include: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

During the POR, SUB was a foreign-joint venture formed under the laws of the PRC and controlled by a board of directors. SUB is a joint venture with majority interest held by a PRC company (that is not a state-owned enterprise) and minority interest held by a U.S. company.

SUB submitted documents on the record that it claims demonstrates the absence of *de jure* governmental control, including "Foreign Trade Law of the People's Republic of China" ("Foreign Trade Law"), "Company Law of the PRC" ("Company Law"), and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations" ("Administrative Regulations"). See SUB's August 26, 2003, submission at Exhibit 2. In prior TRB cases, the Department has analyzed similar PRC laws and regulations, and found that they establish an absence of *de jure* control. See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results of New Shipper Review*, 66 FR 59569 (November 29, 2001).

The Foreign Trade Law grants autonomy to foreign trade operators in management decisions and establishes accountability for their own profits and losses. In prior cases, the Department has analyzed the Foreign Trade Law and found that it establishes an absence of *de jure* control. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995); *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). We have no new information in this proceeding that would cause us to reconsider this determination.

The Company Law is designed to meet the PRC's needs of establishing a modern enterprise system, and to maintain social and economic order. The Department has noted that the Company Law supports an absence of *de jure* control because of its emphasis on the responsibility of each company for its own profits and losses, thereby decentralizing control of companies. See *Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Preliminary Results of 2001-2002 Administrative Review and New Shipper Review*, and *Partial Rescission of Administrative Review* 68 FR 40244, 40245 (July 7, 2003) ("*Apple Juice Preliminary Results*").

As noted in *Apple Juice Preliminary Results*, the Administrative Regulations also safeguard social and economic order and established an administrative system for the registration of corporations. The Department has reviewed the Administrative Regulations and concluded that they show an absence of *de jure* control by requiring companies to bear civil liabilities independently, thereby decentralizing control of companies. See *Apple Juice Preliminary Results*, 68 FR at 40245.

Moreover, according to SUB, TRB exports are not affected by quota allocations or export license requirements. The Department has examined the record in this case and does not find any evidence that TRB exports are affected by quota allocations or export license requirements. By contrast, the evidence on the record demonstrates that the producer/exporter has the autonomy to set the price at whatever level it wishes through independent price negotiations with its foreign customers and without government interference. The business license issued to SUB authorizes the company to manufacture and sell bearings as outlined in the business scope section of the license.

Accordingly, we preliminarily determine that there is an absence of *de jure* government control over export pricing and marketing decisions of the respondent.

De Facto Analysis

The Department uses four factors to determine *de facto* absence of government control over export activities: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of

losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. See *Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589.

SUB asserted that it establishes its own export prices. The board of directors of SUB controls the company and chooses the general manager. Other high-level officials are selected within the company. SUB's sources of funds are its own revenues or bank loans. SUB retains sole control over, and access to, its bank accounts, which are held in SUB's own name. Furthermore, there are no restrictions on the use of the respondent's revenues or profits, including export earnings. SUB's general manager has the right to negotiate and enter into contracts, and may delegate this authority to other employees within the company. There is no evidence that this authority is subject to any level of governmental approval. See SUB's August 26, 2003 submission, at pages A-2 through A-11.

Based on the record evidence in this case, the Department notes that SUB: (1) Establishes its own export prices; (2) negotiates contracts without guidance from any governmental entities or organizations; (3) makes its own personnel decisions; (4) retains the proceeds from export sales and uses profits according to its business needs without any restrictions; and (5) does not coordinate or consult with other exporters regarding pricing decisions.

The information on the record supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of SUB. Consequently, we preliminarily determine that SUB has met the criteria for the application of separate rates.

Export Price

For all sales made by SUB to the United States, we used export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the CEP methodology was not indicated by other circumstances.

We calculated EP based on the CIF price to unaffiliated purchasers. From these prices we deducted amounts for foreign inland freight, foreign brokerage and handling, international freight, and marine insurance. We valued the deductions for foreign inland freight and foreign brokerage and handling using surrogate data, which were based on Indian freight costs. (We selected

India as the surrogate country for the reasons explained in the “Normal Value” section of this notice, below.) As the marine insurance and ocean freight were provided by PRC-owned companies, we valued the deductions using surrogate value data (amounts charged by market-economy providers).

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value (“NV”) for NME countries using a factors-of-production (“FOP”) methodology if: (1) The subject merchandise is exported from an NME country, and (2) the Department finds that the available information does not permit the calculation of NV under section 773(a) of the Act. We have no basis to determine that the available information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors data in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Under the FOP methodology, we are required to value, to the extent possible, the NME producer’s inputs in a market-economy country that is at a comparable level of economic development and that is a significant producer of comparable merchandise. We chose India as the primary surrogate country on the basis of the criteria set out in 19 CFR 351.408(b). See the October 16, 2003, Memorandum to File: “Requests for Surrogate Values,” which includes the September 2, 2003, Memorandum to John Brinkmann from Ron Lorentzen: “Antidumping Administrative Review on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: Request for a List of Surrogate Countries” and the March 1, 2004, Memorandum to John Brinkmann: “Selection of a Surrogate Country and Steel Value Sources” (“*Steel Values Memorandum*”) for a further discussion of our surrogate selection. (Both memoranda are on file in the CRU.) However, where we were unable to find suitable Indian data to value factors of production, we have valued these inputs using public information on the record for Indonesia, one of the comparable economies identified by the Office of Policy. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: Amended*

Final Results of 2001–2002 Administrative Review, 68 FR 75489 (December 31, 2003) (collectively, “*TRBs XV*”).

We used publicly available information from India and Indonesia to value the various factors. Pursuant to the Department’s FOP methodology, we valued the respondent’s reported factors of production by multiplying them by the values described below. For a complete description of the factor values used, see the Memorandum to John Brinkmann: “Factors of Production Values Used for the Preliminary Results,” dated March 1, 2004, which is on file in the Department’s CRU.

1. *Steel and Scrap*. For hot-rolled alloy steel bars used in the production of cups and cones, we used an adjusted weighted-average of Japanese export values to Indonesia from the Japanese Harmonized Schedule (“HS”) category 7228.30.900 obtained from official Japan Ministry of Finance statistics. We adjusted this data to include costs incurred for ocean freight and marine insurance. This is the same valuation methodology used in *TRBs XV* and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: Final Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part*, 67 FR 68990 (November 14, 2002) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: Amended Final Results of 2000–2001 Administrative Review*, 67 FR 72147 (December 4, 2002) (collectively, “*TRBs XIV*”). For cold-rolled steel rods used in the production of rollers, we used Indonesian import data under tariff subheading 7228.50.0000 obtained from the World Trade Atlas (Statistics Indonesia). For cold-rolled steel sheet used in the production of cages, we used Indian import data under Indian tariff subheading 7209.1600 obtained from the *Monthly Statistics of the Foreign Trade of India, Vol. II—Imports* and the World Trade Atlas. For further discussion of selection of steel value sources, see *Steel Values Memorandum*.

As in previous administrative reviews (see e.g., *TRBs XIV*), in this proceeding, we eliminated from our calculation steel imports from NME countries and imports from market economy countries that were made in small quantities. For steel used in the production of cups, cones, and rollers, we also excluded as necessary imports from countries that do not produce bearing-quality steel (see, e.g., *TRBs XIII*). We made adjustments to the import values to include freight costs using the shorter of

the reported distances from either the closest PRC port to the PRC respondent or the domestic supplier to the PRC respondent. See *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People’s Republic of China*, 62 FR 51410 (October 1, 1997); *Sigma Corporation v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997); *Sigma Corporation v. United States*, 86 F. Supp. 2d 1344, 1348 (CIT 2000).

We valued steel scrap recovered from the production of cups, cones, and rollers using Indian import statistics from Indian HAS category 7204.2909 (“Others”), which was renumbered 7204.2990 as of April 2003. We relied on both HS numbers in our calculation. Scrap recovered from the production of cages was valued using import data from Indian HS category 7204.4100. This Indian trade data was obtained from the World Trade Atlas. For further discussion of our calculations of these values, see *Steel Values Memorandum*.

2. *Labor*. Section 19 CFR 351.408(c)(3) of the Department’s regulations requires the use of a regression-based wage rate. We have used the regression-based wage rate available on Import Administration’s internet Web site at <http://www.ia.ita.doc.gov/wages>.

3. *Overhead, SG&A Expenses, and Profit*. For factory overhead, selling, general, administrative expenses, and profit, we used information contemporaneous to the POR (e.g., fiscal year 2002–2003) obtained from the annual reports of three Indian bearing producers. We calculated factory overhead and selling, general, and administrative expenses as percentages of direct inputs and applied these ratios to the PRC respondent’s direct input costs. These expenses were calculated exclusive of labor and electricity, but included employer provident funds and welfare expenses not reflected in the Department’s regressed wage rate. This is consistent with the methodology we utilized in *TRBs XV* and *TRBs XIV*. For profit, we totaled the reported profit before taxes for two of the three Indian bearing producers and divided the resulting total by the total calculated cost of production (“COP”) of goods sold. Consistent with *TRBs XV*, we excluded from our profit calculation the Indian company that reported a loss. This percentage was applied to the respondent’s total COP to derive a company-specific profit value.

4. *Packing*. We calculated surrogate values for the packing materials reported by SUB (e.g., wooden pallet, plastic bag, steel strip) using import statistics reported in *Monthly Statistics of the Foreign Trade of India, Vol. II—*

Imports by Commodity. We multiplied these surrogate values by the reported usage factor to calculate SUB's packing costs.

5. *Electricity.* We calculated the surrogate value for electricity based on an Indian electricity rate published in the *Monthly Energy Review* by the Energy Information Agency. Because this information is not contemporaneous with the POR, we adjusted the data to the POR using Indian wholesale price indices ("WPI") published by the International Monetary Fund.

6. *Diesel Oil.* We calculated the surrogate value for diesel oil based on the Indian high sulphur fuel oil for industry price published in *Energy Prices & Taxes* by the International Energy Agency. Because this information is not contemporaneous with the POR, we adjusted the data to the POR using the Indian WPI.

7. *Foreign Inland Freight.* To value truck freight rates, we used an average of trucking rates quoted in *Indian Chemical Weekly*. This data was contemporaneous to the POR.

8. *Brokerage and Handling.* To value brokerage and handling, we used the public version of a U.S. sales listing reported in the questionnaire response submitted by Meltroll Engineering for *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000). Because this information is not contemporaneous with the POR, we adjusted the data to the POR by using the Indian WPI.

9. *Marine Insurance.* Consistent with *Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results and Partial Rescission of the 2001-2002 Administrative Review, and Final Results of the New Shipper Review*, 68 FR 71062 (December 22, 2003), we calculated a value for marine insurance based on the CIF value of shipped TRBs based on a rate obtained by the Department through queries made directly to an international marine insurance provider. We adjusted this marine insurance rate to the POR using the U.S. purchase price indices as published by the International Monetary Fund.

Preliminary Results of the Review

We preliminarily determine that the following dumping margin exists for the period June 1, 2002, through May 31, 2003:

Exporter/manufacturer	Weighted-average margin percentage
Shanghai United Bearing Co., Ltd.	0.00

Public Comment

Interested parties may request a hearing within 30 days of the date of publication of this notice. See 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs (see below). Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs. Parties who submit briefs in these proceedings should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f)(3).

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. We calculated an importer (or customer)-specific *ad valorem* rate by aggregating the dumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to that importer (or customer). In accordance with the requirement set forth in 19 CFR 351.106(c)(2), where an importer (or customer)-specific *ad valorem* rate is less than *de minimis*, we will direct CBP to liquidate without regard to antidumping duties. Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, and the entered value is not available, we will direct CBP to apply the resulting per-unit dollar assessment rate against each unit of merchandise in each of the importer's/customer's entries under the order during the review period. We will

calculate the per unit assessment rate by dividing the total dumping margin (calculated as the difference between NV and EP) for the importer/customer by the total number of units sold to that importer/customer.

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For the PRC company named above, the cash deposit rate will be the rate for this firm established in the final results of this review, except if the exporter has a *de minimis* rate, *i.e.*, less than 0.50 percent, then no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 60.95 percent (the highest margin from the seventh administrative review of TRBs (1993-1994) pursuant the final results of redetermination on remand from the Court of International Trade, see *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review*, signed on February 27, 2004); and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 1, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04-5008 Filed 3-4-04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021704B]

Groundfish Fisheries of the Bering Sea and Aleutian Islands (BSAI) Area and the Gulf of Alaska, King and Tanner Crab Fisheries in the BSAI, Scallop and Salmon Fisheries Off the Coast of Alaska

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

ACTION: Notice of public meetings for the Draft Environmental Impact Statement (DEIS) for Essential Fish Habitat (EFH) Identification and Conservation in Alaska.

SUMMARY: NMFS and the North Pacific Fishery Management Council (Council) have completed a DEIS for EFH in Alaska. The DEIS evaluates alternatives and environmental consequences for the following three actions: describing and identifying EFH for fisheries managed by the Council; adopting an approach for the Council to identify Habitat Areas of Particular Concern (HAPCs) within EFH; and minimizing to the extent practicable the adverse effects of Council-managed fishing on EFH. NMFS and the Council will hold three public meetings during the DEIS' comment period.

DATES: Public meetings will be held in March and April 2004. See

SUPPLEMENTARY INFORMATION under the heading "Meeting Dates, Times, and Locations" for specific dates and times of the public meetings.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** under the heading "Meeting Dates, Times, and Locations" for specific locations of the public meetings.

FOR FURTHER INFORMATION CONTACT: Mary B. Goode, (907) 586-7636.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Fishery Conservation and Management Act

(Magnuson-Stevens Act) requires NMFS and the Council to describe and identify EFH in fishery management plans (FMPs), minimize to the extent practicable the adverse effects of fishing on EFH, and identify other actions to encourage the conservation and enhancement of EFH. Federal agencies that authorize, fund, or undertake actions that may adversely affect EFH must consult with NMFS, and NMFS must provide conservation recommendations to Federal and state agencies regarding actions that would adversely affect EFH. The Council also has authority to comment on Federal or state agency actions that would adversely affect the habitat, including EFH, of managed species.

The Council amended its FMPs for the groundfish, crab, scallop, and salmon fisheries in 1998 to address the EFH requirements. The Secretary of Commerce, acting through NMFS, approved the Council's EFH FMP amendments in January 1999 (64 FR 20216; April 26, 1999). In the spring of 1999, a coalition of seven environmental groups and two fishermen's associations filed suit in the United States District Court for the District of Columbia to challenge NMFS' approval of EFH FMP amendments prepared by the Gulf of Mexico, Caribbean, New England, North Pacific, and Pacific Fishery Management Councils. The focus of the litigation was whether NMFS and the Council had adequately evaluated the effects of fishing on EFH and taken appropriate measures to mitigate adverse effects. In September 2000, the court upheld NMFS' approval of the EFH amendments under the Magnuson-Stevens Act, but ruled that the environmental assessment (EA) prepared for the amendments violated the National Environmental Policy Act (NEPA). The court ordered NMFS to complete new and thorough NEPA analyses for each EFH amendment in question. The DEIS for EFH Identification and Conservation in Alaska is the curative NEPA analysis for the North Pacific Council's FMPs. A notice of availability for the DEIS was published in the **Federal Register** on January 16, 2004 (69 FR 2593) and is available on the internet at www.fakr.noaa.gov/habitat/seis/efheis.htm. NMFS is accepting public comments through April 15, 2004.

Most of the controversy surrounding the necessary level of protection needed for EFH concerns the effects of fishing activities on sea floor habitats. Substantial differences of opinion exist as to the extent and significance of habitat alteration caused by bottom trawling and other fishing activities.

The DEIS reexamines the effects of fishing on EFH, presents a wider range of alternatives, and provides a more thorough analysis of potential impacts than the EA approved in 1999. Because the court did not limit its criticism of the 1999 analysis solely to the section that considered the effects of fishing on EFH, the DEIS also reexamines options for identifying EFH and HAPCs.

The actions the Council and NMFS take in association with the DEIS may result in new FMP amendments to modify the existing EFH and/or HAPC designations and/or to implement additional measures to reduce the effects of fishing on EFH.

Meeting Dates, Times, and Locations

NMFS and the Council will hold public meetings as follows:

1. Friday, March 19, 2004, 9 a.m. - 12 p.m. Alaska local time (ALT) - NMFS Alaska Fisheries Science Center, Jim Traynor Conference Room, Building 4, 7600 Sand Point Way NE, Seattle, WA.
2. Wednesday, March 31, 2004, 6 p.m. - 9 p.m. ALT - Anchorage Hilton, Katmai/Dillingham Room, 500 West Third Avenue, Anchorage, AK.
3. Thursday, April 8, 2004, 1 p.m. - 4 p.m. ALT - NMFS Alaska Regional Office, 709 West 9th Street, Room 445, Juneau, AK.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for special accommodations should be directed to Mary B. Goode (see **FOR FURTHER INFORMATION CONTACT**) at least five working days before the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 1, 2004.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022404A]

Marine Mammals; File No. 1050-1727-00

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Pribilof Project Office, NOAA, National