

pipe, from Korea covering the period of review (POR) of August 1, 2003 through July 31, 2004 to reflect the *Final Remand Results*.

FOR FURTHER INFORMATION CONTACT:

Scott Lindsay, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0780.

SUPPLEMENTARY INFORMATION:

Background

This matter arose from a challenge to *Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of Antidumping Duty Administrative Review*, 71 FR 13091 (March 14, 2006) (*Final Results*), and accompanying *Issues and Decision Memorandum* covering the POR of August 1, 2003 through July 31, 2004. In the *Final Results*, the Department found that the use of third country sales to a non-market economy, the People's Republic of China (PRC) in this case, were inappropriate for determining normal value, because these sales were not representative. *Id.* As such, in calculating normal value for SeAH Steel Corp. Ltd. (SeAH), the Department used SeAH's third country sales to Canada, and in calculating normal value for Husteel Co. Ltd. (Husteel), the Department used constructed value. Therefore, SeAH was assigned a rate of 6.84 percent, and Husteel was assigned a rate of 12.30 percent. *Id.*

In *Husteel Co., Ltd. and SeAH Steel Corporation Ltd. v. United States*, Consol. Ct. No. 06-00075, Slip Op. 06-2 (May 15, 2007 CIT), the CIT remanded the Department's *Final Results* holding that Department did not adequately explain its basis for finding that the prices of HuSteel's and SeAH's (collectively plaintiffs) sales to the PRC were not representative pursuant to section 773(a)(1)(B)(ii)(I) of the Tariff Act of 1930, as amended (the Act). Specifically, the CIT found that the Department failed to explain: (1) why plaintiffs' sales should be treated as sales into a non-market economy (NME); and (2) why the Department treated plaintiffs' price data differently than it treats price data for sales from market economy suppliers to NME respondents in its NME dumping cases. On October 30, 2007, the Department issued its *Results of Redetermination on Remand Pursuant to Husteel Co., Ltd. and SeAH Steel Corporation Ltd. v. United States*, Consol. Ct. No. 06-00075, Slip Op. 06-2 (May 15, 2007 CIT), (*Remand Results I*). In *Remand Results*

I, the Department continued to find Plaintiffs' sales into the PRC were not representative of section 773(a)(1)(B)(ii)(I) of the Act and provided additional support for this determination.

In *Husteel Company, Ltd., and SeAH Corp., Ltd. v. United States*, Consol. Ct. No. 06-00075, Slip Op. 08-62 (CIT June 2, 2008) (*HuSteel vs United States II*), the CIT remanded the Department's *Remand Results I*, holding that the Department's finding, that sales into an NME are not representative, was not supported by substantial record evidence. The CIT directed the Department to either present persuasive record evidence that plaintiffs' sales into the PRC were not representative within the meaning of 19 U.S.C. § 1677b(a)(1)(B)(ii)(I), or find the sales into the PRC to be representative, and then recalculate and assign the plaintiffs new antidumping duty assessment rates. On August 29, 2008, the Department issued its final results of redetermination pursuant to *Husteel vs United States II*. See *Results of Redetermination on Remand Pursuant to Husteel Company, Ltd., and SeAH Corp., Ltd. v. United States* (August 29, 2008) (*Remand Results II*). The remand redetermination explained that, in accordance with the CIT's instructions, after finding sales to the PRC to be representative, the Department recalculated the assessment rate for SeAH and Husteel. Specifically, the Department determined SeAH's new weighted-average margin to be 0.59 percent, and Husteel's new weighted-average margin to be 0.62 percent.

However, in the *Remand Results II* for Husteel, the Department inadvertently treated certain Korean inventory carrying costs as if they were denominated in U.S. dollars when they, in fact, had been denominated in Korean won. Therefore, in *Husteel Company Ltd. and SeAH Corp. Ltd., v. United States*, Consol. Ct. No. 06-00075, Slip Op. 08-127 (CIT November 21, 2008), the CIT upheld the Department's *Remand Results II*, with the exception of the calculation of certain inventory carrying costs. The CIT ordered the Department to correct its calculation of Husteel's Korean inventory carrying costs. In accordance with the CIT's order, the Department corrected its calculation with regard to Husteel's Korean inventory carrying costs. See *Final Remand Results*. As a result, Husteel's new dumping margin is now *de minimis* (i.e., less than 0.50 percent) and SeAH's margin remains 0.59 percent.

On January 29, 2009, consistent with the decision in *Timken Co. v. United*

States, 893 F.2d 337 (Fed. Cir. 1990), the Department notified the public that the CIT's decision was not in harmony with Department's final results. See *Oil Country Tubular Goods, Other Than Drill Pipe, From Korea: Notice of Court Decision Not in Harmony with Final Results of Administrative Review*, 74 FR 5147 (January 29, 2009). There was no appeal of the CIT's decision to the U.S. Court of Appeals for the Federal Circuit filed within the appeal period. Therefore, the CIT's decision is now final and conclusive.

Amended Final Results of the Review

As the litigation in this case has concluded, the Department is amending the *Final Results* to reflect the results of our remand redetermination. The revised dumping margin in the amended final results is as follows:

Exporter/Manufacturer	Weighted-Average Margin (Percent)
Husteel Company, Ltd .. SeAH Corp., Ltd.	<i>de minimis</i> 0.59

The Department will instruct U.S. Customs and Border Protection (CBP) to liquidate entries of OCTG from Korea during the review period at the assessment rate the Department calculated for the final results of review, as amended. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. We intend to issue assessment instructions to CBP 15 days after the date of publication of these amended final results of review.

This notice is published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 13, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XN80

Fisheries of the Exclusive Economic Zone off Alaska; Application for an Exempted Fishing Permit

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

ACTION: Notice; receipt of application for exempted fishing permit.

SUMMARY: This notice announces receipt of an exempted fishing permit (EFP) application from the Best Use Cooperative (BUC). If granted, this permit would allow three BUC vessels to remove halibut from a codend on the deck, and release those fish back to the water after determining the physical condition of the halibut with the International Pacific Halibut Commission method for predicting halibut mortality. The EFP would allow operators of BUC non-pelagic trawl vessels to study methods for reducing halibut mortality in trawl fisheries by evaluating various fishing and handling practices. This activity has the potential to promote the objectives of the Magnuson-Stevens Fishery Conservation and Management Act by assessing techniques for reducing halibut discard mortality in non-pelagic trawl fisheries. Comments will be accepted at the April 1 to April 7, 2009, North Pacific Fishery Management Council (Council) meeting in Anchorage, AK.

DATES: Interested persons may comment on the EFP application during the Council's April 1 to April 7, 2009, meeting in Anchorage, AK.

ADDRESSES: The Council meeting will be held at the Hilton Hotel, 500 West Third Avenue, Anchorage, AK.

Copies of the EFP application and the basis for a categorical exclusion under the National Environmental Policy Act are available by writing to the Alaska Region, NMFS, P. O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian. The application also is available from the Alaska Region, NMFS website at <http://alaskafisheries.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT: Jeff Hartman, 907-586-7442 or jeff.hartman@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the Bering Sea and Aleutian Islands Management Area (BSAI) under the Fishery Management Plan for Groundfish of the BSAI (FMP), which the Council prepared under the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679. The FMP and the implementing regulations at § 600.745(b) and § 679.6 allow the NMFS Regional Administrator to authorize, for limited experimental purposes, fishing that would otherwise be prohibited. Procedures for issuing

EFPs are contained in the implementing regulations.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention) and the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations pursuant to the Convention. The IPHC's regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary).

NMFS has received an application from the Best Use Cooperative (BUC) for an EFP that would allow them to evaluate methods to improve discard survival of incidentally caught halibut. This study could assist that sector in reducing halibut mortality in the non-pelagic trawl gear fishery.

Background

Regulations implemented by the IPHC allow Pacific halibut to be commercially harvested by the directed North Pacific longline fishery only. Halibut caught incidentally in other fisheries, such as non-pelagic trawl fisheries, must be sampled by observers, and returned to the ocean as soon as possible. Regulations implementing the FMP establish annual halibut bycatch mortality limits, also referred to as halibut prohibited species catch (PSC) limit, for the groundfish fisheries. Fisheries close when they reach their seasonal or annual halibut PSC limit even if the allowable catch of groundfish is not yet caught. In the case of the Bering Sea flatfish fishery, seasons have been closed before the fishery quotas have been reached to prevent the fishery from reaching the halibut PSC limit. Reducing halibut mortality and assuring that each halibut returned to the sea has the highest possible chance of survival are therefore high priorities for the IPHC's, the Council's, and NMFS's management goals for both halibut and groundfish.

Before halibut are returned to the sea, the catch of halibut as well as other groundfish must first be estimated by at-sea observers. A number of regulations assure that observer estimates of halibut and groundfish catch are credible, accurate, and without bias. For example, NMFS requires that all catch be made available for sampling by an observer; prohibits tampering with observer samples; prohibits removal of halibut from a cod end, bin, or conveyance system prior to being

observed and counted by an at-sea observer; and prohibits fish (including halibut) from remaining on deck unless an observer is present.

With the implementation of Amendment 80 to the FMP on September 14, 2007 (72 FR 52668), allocation of halibut PSC amounts was modified for vessels in the Amendment 80 sector, but halibut mortality continued to limit fishing in some fisheries. The Amendment 80 sector received an initial allocation of 2,525 metric tons (mt) of halibut PSC in 2008, but that allocation will decrease by 50 mt per year until it reaches 2,325 mt in 2012 and subsequent years. This amount is further allocated between the BUC and the Amendment 80 limited access fishery. In certain years, this amount of halibut PSC allocated to the Amendment 80 sector is less than the sector's historic catch; therefore, finding ways to continue to improve halibut survival is important for this sector.

The EFP applicant proposes to assess various fishing practices and their effect on halibut survival. It would allow researchers onboard the three catcher processor vessels to sort halibut removed from a codend on the deck of the vessel, and release those fish back to the water after determining the physical condition of the halibut using standard IPHC viability methods for predicting mortality of individual fish. Fishing under the EFP would occur in two phases during 2009. In May and June, Phase I fishing would allow sorting of halibut on deck to determine practices for reducing halibut mortality. Later in the year, Phase II would apply the halibut mortality saved in Phase I to allow additional EFP catch of groundfish and halibut within the BUC's allocation.

This proposed action would exempt the participating vessels from:

1. the prohibition to conduct any fishing when the fishery is closed due to reaching the limit for halibut Prohibited Species Catch (PSC) under § 679.7(a)(2);
2. the prohibition to bias the sampling procedure employed by an observer through sorting of catch before sampling, at § 679.7(g)(2);
3. the prohibition to exceed an amount of halibut cooperative quota (CQ) assigned to an Amendment 80 cooperative at § 679.7(o)(4)(v);
4. a requirement to weigh all catch by an Amendment 80 vessel on a NMFS-approved scale at § 679.27(j)(5)(ii);
5. the requirement for all catch to be made available for sampling at § 679.93(c)(1); and

6. the requirement for halibut to not be allowed on deck without an observer present at § 679.93(c)(5).

The exemptions to § 679.7(a)(2) and (o)(4) would be needed only if the BUC were to reach the 2009 Amendment 80 cooperative apportionment of halibut mortality (1,793 mt). In the event that BUC reaches this amount, the BUC's directed fishery for groundfish would close. If the amount of halibut mortality savings estimated under this EFP shows less mortality than the amount estimated using standard 2009 halibut discard mortality rates established for the Bering Sea trawl fisheries (February 17, 2009, 74 FR 7333), BUC may be allowed to continue fishing for groundfish species later in the year, with some limitations. The BUC would be required to submit a report to NMFS and the IPHC of the estimated halibut mortality saved during the Phase I agency review and determination of halibut savings. After review and approval by NMFS, the BUC may be allowed to do subsequent EFP fishing at the end of the year as Phase II fishing under the EFP. The BUC would be limited to no more than the BUC's Amendment 80 groundfish allocation. The additional amount of halibut caught would not exceed the amount of the halibut mortality savings under the EFP, or BUC's 2009 allocation of halibut PSC.

This EFP would apply for the period of time required to complete the experiment in Phase I and potentially in subsequent fishing in Phase II, during 2009, in areas of the BSAI open to directed fishing by the BUC. The EFP activities would be of limited scope and duration and would not be expected to change the nature or duration of the groundfish fishery, fishing practices or gear used, or the amount or species of fish caught by the BUC.

The activities that would be conducted under this EFP are not expected to have a significant impact on the human environment as detailed in the categorical exclusion issued for this action (see **ADDRESSES**).

In accordance with § 679.6, NMFS has determined that the proposal warrants further consideration and has forwarded the application to the Council to initiate consultation. The Council will consider the EFP application during its April 2009 meeting, which will be held at the Hilton Hotel in Anchorage, Alaska. The applicant has been invited to appear in support of the application.

Public Comments

Interested persons may comment on the application at the April 2009 Council meeting during public testimony. Information regarding the

meeting is available at the Council's website at <http://alaskafisheries.noaa.gov/npfmc/council.htm>. Copies of the application and categorical exclusion are available for review from NMFS (see **ADDRESSES**).

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

Dated: March 17, 2009.

Emily H. Menashes,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XO19

Permits; Foreign Fishing

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

ACTION: Notice of receipt of foreign fishing application; request for comments.

SUMMARY: NMFS publishes for public review and comment information regarding a permit application for transshipment of Atlantic herring by Canadian vessels, submitted under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by April 6, 2009.

ADDRESSES: Send comments or requests for a copy of the application to Mi Ae Kim, Trade and Marine Stewardship Division, Office of International Affairs, NMFS, 1315 East-West Highway, Silver Spring, MD. Comments on this notice may also be submitted by e-mail to nmfs.foreignfishing@noaa.gov. Include in the subject line the following document identifier: RIN 0648-XO19.

FOR FURTHER INFORMATION CONTACT: Mi Ae Kim, Office of International Affairs, (301) 713-9090.

SUPPLEMENTARY INFORMATION:

Background

Section 204(d) of the Magnuson-Stevens Act (16 U.S.C. 1824(d)) authorizes the Secretary of Commerce (Secretary) to issue a transshipment permit authorizing a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the United States Exclusive Economic Zone (EEZ) or, with the concurrence of a state, within the

boundaries of that state to a point outside the United States. In addition, Public Law 104-297, section 105(e) directs the Secretary to issue section 204(d) permits for up to 14 Canadian transport vessels to receive Atlantic herring harvested by United States fishermen and to be used in sardine processing. Transshipment must occur from within the boundaries of the State of Maine or within the portion of the EEZ east of the line 69 degrees 30 minutes west and within 12 nautical miles from the seaward boundary of that State.

Section 204(d)(3)(D) of the Magnuson-Stevens Act provides that an application may not be approved until the Secretary determines that "no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated ... an interest in performing the transportation at fair and reasonable rates." NMFS is publishing this notice as part of its effort to make such a determination with respect to the application described below.

Section 204(d)(3)(B) of the Magnuson-Stevens Act provides that an application may not be approved until the Secretary determines that "the applicant will comply with the requirements described in section 201(c)(2) with respect to activities authorized by any permit issued pursuant to the application." Section 201(c)(2) identifies multiple requirements related to monitoring, compliance, and enforcement, such as allowing authorized officers to board and inspect vessels, installation and use of position-fixing and identification equipment, and stationing of observers.

Summary of Application

NMFS received an application requesting authorization for 10 Canadian transport vessels to receive transfers of herring from United States purse seine vessels, stop seines, and weirs for the purpose of transporting the herring to Canada for processing. The transshipment operations will occur within the boundaries of the State of Maine or within the portion of the EEZ east of the line 69 degrees 30 minutes west and within 12 nautical miles from the seaward boundary of that State.

Interested U.S. vessel owners and operators may obtain a copy of the complete application from NMFS (see **ADDRESSES**).