

Comment 19: Whether the Department Erred By Including Intra-Company Sales in the Denominator Used in the Net Subsidy Calculation of the Wire Rod for LTAR Program

Comment 20: The Suitability of the Benchmark Used to Calculate Benefits Under the Policy Lending Program

Comment 21: Whether GOC Policy Lending Is Specific

Comment 22: Whether Chinese Banks are Government Authorities

Comment 23: Whether The Department Should Apply AFA Available to Unverifiable Information Provided by Xinhua

Comment 24: Whether the Department Should Investigate the PRC's Alleged Undervaluation of its Currency and Find that it Constitutes a

Countervailable Export Subsidy
Comment 25: Whether Provision of Land by Municipal and Provincial Governments to Respondents Was Countervailable

Comment 26: Whether the Provision of Electricity Is Not Countervailable Because the Program Provides General Infrastructure Which Does Not Constitute a Financial Contribution, Co 27, 45

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-945]

Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

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

DATES: *Effective Date:* May 21, 2010.

SUMMARY: On December 23, 2009, the Department of Commerce (the "Department") published its notice of preliminary determination of sales at less than fair value ("LTFV") in the antidumping investigation of prestressed concrete steel strand ("PC strand") from the People's Republic of China ("PRC").¹ The period of investigation ("POI") is October 1, 2008, through March 31, 2009. We invited interested parties to comment on our preliminary determination. Based on

¹ See *Prestressed Concrete Steel Wire Strand From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 74 FR 68232 (December 23, 2009) ("*Preliminary Determination*").

our analysis of the comments received, we have made changes to our margin calculations for the respondents. We determine that PC strand from the PRC is being, or is likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Final Determination Margins" section of this notice.

FOR FURTHER INFORMATION CONTACT:

Alan Ray or Alexis Polovina, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482-5403 or (202) 482-3927, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The Department published its *Preliminary Determination* on December 23, 2009. Between January 18, 2010, and January 27, 2010, the Department conducted verifications of Wuxi Jinyang Metal Products Co., Ltd. ("WJMP") and Xinhua Metal Products Co., Ltd. ("Xinhua Metal"). See the "Verification" section below for additional information.

Upon the March 2, 2010, release of the verification reports,² we invited parties to comment on the *Preliminary Determination*. On March 15, 2010, we received case briefs from Petitioners,³ Xinhua Metal, WJMP, and the separate-rate applicant Fasten Group Import & Export Co. Ltd. ("Fasten I&E"). On March 22, 2010, we received rebuttal briefs from Petitioners, Xinhua Metal, WJMP, and the Government of China ("GOC"). The Department held the public hearing on March 31, 2010.

Tolling of Administrative Deadlines

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll

² Memorandum to the File, from Alexis Polovina, Case Analyst, through Alex Villanueva, Program Manager, Verification of the Sales and Processing Response of Xinhua Metal Products Co., Ltd. in the Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand From the People's Republic of China ("PRC"), dated March 2, 2010 ("Xinhua Metal Verification Report"); Memorandum to the File, from Alan Ray, Case Analyst, through Alex Villanueva, Program Manager, Verification of the Sales and Processing Response of Wuxi Jinyang Metal Products Co., Ltd. in the Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand From the People's Republic of China ("PRC"), dated March 2, 2010 ("WJMP Verification Report").

³ American Spring Wire Corp., Insteel Wire Products Company, and Sumidin Wire Products Corp., (collectively, "Petitioners").

deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for this final determination is now May 14, 2010. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Investigation of Prestressed Concrete Steel Strand From the People's Republic of China: Issues and Decision Memorandum" ("Issues and Decision Memorandum"), dated concurrently with this notice and which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit ("CRU"), Room 1117, and is accessible on the World Wide Web at <http://trade.gov/ia/index.asp>. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of information on the record of this investigation, we have made changes to the margin calculations for the final determination. For the final determination, we have calculated surrogate financial ratios using the fiscal year 2008-2009 financial statements of Rajratan Global Wire Ltd. See Issues and Decision Memorandum at Comment 1. Additionally, unlike in the *Preliminary Determination*, where World Trade Atlas ("WTA") data was available for only the first five months of the POI, for the final determination, WTA data covering the full POI is available. Therefore, for surrogate values calculated for the final determination derived from WTA data, we have relied on WTA data covering the full POI. See Memorandum to the File, from Alan Ray, Case Analyst, through Alex Villanueva, Program Manager, Prestressed Concrete Steel Wire Strand from the People's Republic of China: Placing Additional Surrogate Value Data on the Record, dated January 11, 2010; Memorandum to the File from Alexis Polovina, Case Analyst, through Alex

Villanueva, Program Manager, AD/CVD Operations, Office 9: Prestressed Concrete Steel Wire Strand from the People's Republic of China: Surrogate Values for the Final Determination, dated May 14, 2010 ("Final Surrogate Value Memo").

In addition, we have made some company-specific changes since the *Preliminary Determination*. Specifically, for the final determination, we have applied partial facts available to Xinhua Metal's wire rod usage pursuant to section 776(a)(2)(D). See Issues and Decision Memorandum at Comment 2. Regarding WJMP, for the final determination, we have decided not to value movement expenses between the pickling plant and the main factory as a factor of production. Additionally, lime used by WJMP to neutralize water is being considered as part of factory overhead. We have revalued the surrogate values for steel belt and coal consumed by WJMP. See Issues and Decision Memorandum at Comment 3. Finally, we have applied partial FA to WJMP's drawbench consumption factor.

Scope of Investigation

The scope of this investigation consists of PC strand, produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pre-tensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand. PC strand is normally sold in the United States in sizes ranging from 0.25 inches to 0.70 inches in diameter. PC strand made from galvanized wire is only excluded from the scope if the zinc and/or zinc oxide coating meets or exceeds the 0.40 oz./ft standard set forth in ASTM-A-475. The PC strand subject to this investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Affiliation

In the *Preliminary Determination*, the Department determined that, based on the evidence on the record in this investigation including evidence presented in WJMP's questionnaire responses, WJMP is affiliated with Corus America, Inc. ("CAI"). CAI was involved in WJMP's sales process pursuant to sections 771(33)(E), (F) and (G) of the Act, based on ownership and

common control. See *Preliminary Determination*, 74 FR at 68234–35.

No other information has been placed on the record since the *Preliminary Determination* to contradict the above information upon which we based our finding that these companies are affiliated. Therefore, for the final determination, we continue to find that WJMP and CAI are affiliated.

Use of Facts Available

Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information," the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it

acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the administering authority finds that an interested party has not acted to the best of its ability to comply with a request for information, the administering authority may, in reaching its determination, use an inference that is adverse to that party. The adverse inference may be based upon: (1) The petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information placed on the record.

Xinhua Metal

Pursuant to sections 776(a)(2)(D) of the Act, we are applying partial facts otherwise available to Xinhua Metal because the Department finds that the information necessary to calculate an accurate and otherwise reliable margin is not available on the record with respect to a portion of Xinhua Metal's wire rod usage. On November 2, 2009, Xinhua Metal stated in their supplemental questionnaire response that that "Xinhua Metal does not weigh the wire rod after it has been de-scaled and cut. The best demonstration of yield loss is the FOP for wire rod."⁴ However, at verification and after an analysis of the actual data reported for wire rod usage and subtracting the by-products offsets from the wire rod usage rate, the wire rod usage rate was less than 1 kilogram for 1 kilogram of PC strand produced by Xinhua Metal. Although Xinhua Metal does collect many of its wire rod by-products, it is not possible to produce 1 kilogram of PC strand from less than 1 kilogram of wire rod input. Therefore, the information supplied by Xinhua Metal could not be verified, and we are applying FA, pursuant to 776(a)(2)(D) of the Act to Xinhua Metal's wire rod usage.

For the final determination, the Department will use a simple average of information from the petition and WJMP, to add a yield loss to Xinhua Metal's POI wire rod usage. See Issues and Decision Memorandum at Comment 2.

WJMP

Pursuant to section 776(a) of the Act, we are applying partial facts otherwise available to WJMP because the Department finds that the information necessary to calculate an accurate and

⁴ See Xinhua Metal's 1st Supplemental D Questionnaire response at 5, dated November 2, 2009.

otherwise reliable margin is not available on the record with respect to WJMP's consumption of drawbench factor of production ("FOP"). At verification, the Department found that WJMP was consuming drawbench as a factor to produce PC strand.⁵ Because WJMP could have reported drawbench, as it was used in the same production process step as the drawing lubricants, a factor that was reported by WJMP, and WJMP could have easily identified it by reviewing the raw materials account, we determine that WJMP did not act to the best of its ability and that we will apply an adverse inference, pursuant to section 776(b) of the Act. As an adverse inference, the Department will use the highest monthly consumption factor for drawing lubricants as the consumption factor for drawbench and value drawbench using the surrogate value for drawing lubricants.⁶ The Department is using drawing lubricants as a surrogate factor and value for drawbench because it is used in the same stage of the production process, which represents the best information available on the record.

Verification

As provided in section 782(i) of the Act, we conducted verification of the information submitted by WJMP and Xinhua Metal for use in our final determination. See Xinhua Metal Verification Report; WJMP Verification Report. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by Respondents.

Surrogate Country

In the *Preliminary Determination*, we stated that we selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to 773(c)(4) of the Act; and (3) we have reliable data from India that we can use to value the factors of production. See *Preliminary Determination*, 74 FR at 68234. For the final determination, we received no comments and made no changes to our findings with respect to the selection of a surrogate country.

⁵ See WJMP Verification Report at 2, dated March 3, 2010.

⁶ See Memorandum to the File from Alan Ray, Case Analyst, through Alex Villanueva, Program Manager, Analysis of the Final Determination of the Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand ("PC strand"): Wuxi Jinyang Metal Products Co., Ltd. ("WJMP"), dated May 14, 2010.

Separate Rates

In proceedings involving non-market-economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. See *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 *Notice of 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"), and 19 CFR 351.107(d). In the *Preliminary Determination*, we found that Xinhua Metal, WJMP, and the separate-rate applicant, Fasten I&E, demonstrated their eligibility for, and were hence assigned, separate-rate status. No party has commented on the eligibility of these companies for separate rate status. See *Preliminary Determination*, 74 FR at 68235–36. For the final determination, we continue to find that the evidence placed on the record of this investigation by these companies demonstrates both a *de jure* and *de facto* absence of government control with respect to their exports of the merchandise under investigation. Thus, we continue to find that they are eligible for separate-rate status.

As indicated in the *Preliminary Determination*, Liaonin TongDa Building Material Industry Co., Ltd. ("Tongda") did not respond to the supplemental questionnaire, Silvery Dragon PC Steel Products Group Co., Ltd. ("Silvery Dragon Steel") stated that it would not participate as a mandatory respondent, and Tianjin Shengte filed a deficient Section A questionnaire and failed to respond to the Department's request for more information. See *Preliminary Determination*, 74 FR at 68240. We preliminarily found that Tongda, Silvery Dragon Steel, and Tianjin Shengte were not eligible for separate rates. For this final determination, we continue to find that Tongda, Silvery Dragon Steel, and Tianjin Shengte are not eligible for separate rates.

The PRC-Wide Rate

In the *Preliminary Determination* we treated PRC exporters/producers that did not respond to the Department's

request for information as part of the PRC-wide entity because they did not demonstrate that they operate free of government control. See *Preliminary Determination*, 74 FR at 68236–37. No additional information has been placed on the record with respect to these entities after the *Preliminary Determination*. The PRC-wide entity has not provided the Department with the requested information; therefore, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find that the use of FA is appropriate to determine the PRC-wide rate. Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316, vol. 1, at 870 (1994) ("SAA"). We find that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity. Because we begin with the presumption that all companies within a NME country are subject to government control and because only the companies listed under the "Final Determination Margins" section below have overcome that presumption, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. See, e.g., *Synthetic Indigo From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706, 25707 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from Xinhua Metal, WJMP, and Fasten I&E, which are listed in the "Final Determination Margins" section below.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as FA, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any

previous review under section 751 concerning the subject merchandise.”⁷ The SAA provides that to “corroborate” means simply that the Department will satisfy itself that the secondary information to be used has probative value.⁸ The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁹ To corroborate

secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.¹⁰ As total adverse facts available (“AFA”) the Department preliminarily selected the rate of 193.55 percent from the Petition. In the *Preliminary Determination*, we preliminarily found that the rate of 193.55 percent is corroborated within the meaning of section 776(c) of the Act. See *Preliminary Determination*, 74 FR at 68237. Because no parties commented

on the selection of the PRC-wide rate, we continue to find that the margin of 193.55 percent has probative value. Accordingly, we find that the rate of 193.55 percent is corroborated within the meaning of section 776(c) of the Act.

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the following entities for the POI:

Exporter	Producer	Weighted-average margin
WJMP	WJMP	42.97
Xinhua Metal	Xinhua Metal	175.94
Fasten I&E	Jiangyin Fasten Steel Products Co., Ltd., Jiangyin Walsin Steel Cable Co., Ltd.	175.94
PRC-wide Entity*	Jiangyin Hongyu Metal Products Co., Ltd.	193.55

*This rate also applies to Tianjin Shengte, Silvery Dragon Steel, and Tongda.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (“CBP”) to continue to suspend liquidation of all entries of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after December 23, 2009, the date of publication of the *Preliminary Determination*. CBP shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. These instructions suspending liquidation will remain in effect until further notice.

Additionally, the Department determined in its final determination for the companion countervailing duty (“CVD”) investigation that Xinhua Metal’s merchandise benefited from export subsidies. Therefore, we will instruct CBP to require a cash deposit or posting of a bond equal to the weighted-average amount by which normal value exceeds U.S. price for Xinhua Metal, as indicated above, minus the amount

determined to constitute an export subsidy. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from India*, 69 FR 67306, 67307 (November 17, 2004).

With respect to WJMP, the voluntary respondent in this proceeding, the Department did not individually examine its exports of merchandise under investigation in the final determination for the companion CVD investigation. As a result, WJMP is captured under the “All Others” rate, which is an average of the companies examined in final determination for the companion CVD investigation. Therefore, we will instruct CBP to require a cash deposit or posting of a bond equal to the weighted-average amount by which normal value exceeds U.S. price for WJMP, indicated above, minus the amount determined to constitute an export subsidy in the “All Others” rate.

With respect to Fasten Group I&E, the separate rate company, we note that the rate applied in this proceeding as a separate rate is derived from the calculated rate received by Xinhua Metal. Therefore, because Xinhua Metal received export subsidies in final determination for the companion countervailing duty investigation, we will instruct CBP to require a cash deposit or posting of a bond equal to the

weighted-average amount by which normal value exceeds U.S. price for Xinhua Metal, as indicated above, minus the amount determined to constitute an export subsidy.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (“ITC”) of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative

⁷ SAA at 870.

⁸ *Id.*

⁹ *Id.*

¹⁰ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside*

Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and*

Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 14, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

Comment 1: Surrogate Values

- A. Financial Ratios
- B. Wire Rod
- C. By-product Offset for Scrap Tie Wire

Comment 2: Xinhua Metal

- A. Adverse Facts Available ("AFA")
- B. Foreign Brokerage and Handling
- C. PRC Domestic Insurance

Comment 3: WJMP

- A. AFA
- B. Treatment of Certain Factors as Factory Overhead
- C. Valuation of Coal
- D. Valuation of Seals—Steel Belts

Comment 4: Fasten Group I&E's Separate Rate

Comment 5: Surrogate-Value Based Methodology

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XW26

Fisheries of the Northeast Region; Pacific Region

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

ACTION: Notification of determination of overfishing or an overfished condition.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has determined that in the Northeast Region, Gulf of Maine/Georges Bank pollock, Gulf of Maine/Georges Bank windowpane and Northwestern Atlantic Coast witch flounder are subject to overfishing and

are in an overfished condition. Also, in the Northeast Region, Southern New England/Mid-Atlantic windowpane is subject to overfishing and Georges Bank winter flounder is in an overfished condition. In addition, in the Pacific Region, the fall Chinook salmon stock in the Sacramento River has been determined to be in an overfished condition.

NMFS notifies the appropriate fishery management council (Council) whenever it determines that; overfishing is occurring, a stock is in an overfished condition, or a stock is approaching an overfished condition. If a Council has been notified that a stock is in an overfished condition the Council must, within 2 years, prepare and implement an FMP amendment or proposed regulations to rebuild the affected stock.

FOR FURTHER INFORMATION CONTACT: Mark Nelson, (301) 713-2341.

SUPPLEMENTARY INFORMATION: Pursuant to sections 304(e)(2) and (e)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1854(e)(2) and (e)(7), and implementing regulations at 50 CFR 600.310(e)(2), NMFS, on behalf of the Secretary, notifies Councils whenever it determines; a stock or stock complex is approaching an overfished condition, a stock or stock complex is overfished, or existing action taken to prevent previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress. NMFS also notifies Councils when it determines a stock or stock complex is subject to overfishing.

For a fishery determined to be overfished or approaching an overfished condition, NMFS also requests that the appropriate Council, or the Secretary, for fisheries under section 302(a)(3) of the Magnuson-Stevens Act, take action to end or prevent overfishing in the fishery and to implement conservation and management measures to rebuild overfished stocks. Councils (or the Secretary) receiving notification that a fishery is overfished must, within 2 years of notification, implement a rebuilding plan, through an FMP Amendment or proposed regulations, which ends overfishing immediately and provides for rebuilding the fishery in accordance with 16 U.S.C. 1854(e)(3)-(4) as implemented by 50 CFR 600.310(j)(2)(ii). Councils receiving a notice that a fishery is approaching an overfished condition must prepare and implement, within two years, an FMP amendment or proposed regulations to prevent overfishing from occurring.

When developing rebuilding plans Councils (or the Secretary), in addition to rebuilding the fishery within the shortest time possible in accordance with 16 U.S.C. 1854(e)(4) and 50 CFR 600.310(j)(2)(ii), must ensure that such actions address the requirements to amend the FMP for each affected stock or stock complex to establish a mechanism for specifying and actually specify Annual Catch Limits (ACLs) and Accountability Measures (AMs) to prevent overfishing in accordance with 16 U.S.C. 1853(a)(15) and 50 CFR 600.310(j)(2)(i).

On August 4, 2008, NMFS published the Report of the 3rd Groundfish Assessment Review Meeting (GARM III) which showed that Gulf of Maine/Georges Bank pollock, Gulf of Maine/Georges Bank windowpane and Northwestern Atlantic Coast witch flounder are subject to overfishing and are in an overfished condition. In addition, GARM III showed that Southern New England/Mid-Atlantic windowpane is subject to overfishing and Georges Bank winter flounder is in an overfished condition. The New England Fishery Management Council (NEFMC) was notified on September 2, 2008, of the results of the GARM III. However, official status changes could not be made at the time because GARM III also recommended changes in the status determination criteria (SDC) contained in the Multispecies FMP, which required an FMP amendment before the status determinations could be changed. These changes occurred in January 2010.

On March 2, 2010, NMFS informed the Pacific Fisheries Management Council that the Sacramento River Fall Chinook salmon stock failed to meet the escapement goal for the third consecutive year, which has triggered an overfished status determination.

As noted above, within 2 years of notification of an overfished determination, the respective Council (or the Secretary) must adopt and implement a rebuilding plan, through an FMP Amendment or proposed implementing regulations, which ends overfishing immediately and provides for rebuilding of the stock. In addition, for the fisheries experiencing overfishing, the responsible Councils must propose, and NMFS must adopt, effective ACLs and AMs to end overfishing.

Dated: May 14, 2010.

Emily H. Menashes,

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

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