

March 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011-8213 Filed 4-5-11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-894]

Certain Tissue Paper Products From the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department is conducting an administrative review of the antidumping duty (AD) order on certain tissue paper products (tissue paper) from the People's Republic of China (PRC) for the period of review (POR) of March 1, 2009, to February 28, 2010, with respect to Max Fortune (Vietnam) Paper Products Company Limited (MFVN). MFVN claimed in this administrative review that it made no sales/shipments during the POR of tissue paper products produced from Chinese-origin jumbo rolls/sheets. Contrary to MFVN's claim and based on our verification findings, we preliminarily determine, as adverse facts available (AFA), that during the POR MFVN made sales/shipments to the United States of tissue paper products produced using Chinese-origin jumbo rolls/sheets. Further, based on AFA, we find that no substantial transformation is occurring as a result of further processing in Vietnam, and thus the country of origin for AD purposes of the tissue paper products produced by MFVN from Chinese-origin jumbo rolls/sheets is China.

If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to collect cash deposits on all future entries of tissue paper produced and/or exported by MFVN.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* April 6, 2011.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1766 or (202) 482-3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 2005, the Department published in the **Federal Register** the antidumping duty order on certain tissue paper products from the PRC. See *Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products From the People's Republic of China*, 70 FR 16223 (March 30, 2005) (*Tissue Paper Order*). On March 1, 2010, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain tissue paper products from the PRC. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 75 FR 9162 (March 1, 2010).

In response, the petitioner¹ timely requested an administrative review of the antidumping duty order on certain tissue paper products from the PRC with respect to entries of the subject merchandise during the POR from MFVN. Therefore, on April 21, 2010, the Department initiated an administrative review of MFVN.² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 75 FR 22107 (April 27, 2010). MFVN is a company located in Vietnam which exports tissue paper to the U.S. market through its parent company based in Hong Kong—Max Fortune Industrial Limited (Max Fortune HK). MFVN is also a respondent in an on-going anti-circumvention inquiry involving the subject merchandise from the PRC.³

¹ The petitioner is Seaman Paper Company of Massachusetts, Inc.

² Also on this date, the Department initiated a review of Max Fortune Industrial Limited, Max Fortune (FZ) Paper Products Co., Ltd. (formerly known as Max Fortune (FETDE) Paper Products Co., Ltd.), Max Fortune HK, and Fujian Provincial Shaowu City Huaguang Special Craft Co., Ltd. based on the petitioner's timely request for review of these companies, but subsequently rescinded the review with respect to these companies pursuant to the petitioner's timely withdrawal of its request for review. See *Certain Tissue Paper Products From the People's Republic of China: Notice of Partial Rescission and Extension of Time Limit for Preliminary Results of 2009-2010 Administrative Review*, 75 FR 73040 (November 29, 2010) (*PRC Tissue Paper from China Partial Rescission Notice*).

³ On March 29, 2010, the Department initiated an anti-circumvention inquiry on certain imports of tissue paper from Vietnam produced and/or exported by MFVN. See *Certain Tissue Paper Products From the People's Republic of China: Initiation of Anti-circumvention Inquiry*, 75 FR 17127 (April 5, 2010).

In its June 28, 2010, response to the Department's April 23, 2010, questionnaire in the anti-circumvention inquiry (June 28 Response), MFVN claimed that it had not exported tissue paper to the United States produced from jumbo rolls or cut sheets imported from the PRC since January 2008. MFVN also filed this questionnaire response on the record of this administrative review. Similarly, in its August 17, 2010, response to the Department's May 7, 2010, questionnaire in this review, MFVN claimed that it did not export subject merchandise from the PRC or Vietnam during the POR.

The Department postponed the preliminary results in this review until March 31, 2011, in order to have sufficient time to conduct verification of MFVN's "no-shipment" claim. See *PRC*.

Tissue Paper Partial Rescission Notice.

Pursuant to 19 CFR 351.221(b)(3) and 351.225(f)(iii)(2), the Department conducted a verification of the "no-shipment" claim MFVN made in this administrative review and in the anti-circumvention inquiry, and met with Vietnamese Customs on this matter in December 2010. Both the verification report and meeting memorandum are on the record of this segment,⁴ and are available in the Central Records Unit (CRU) of the Department's main building.

Period of Review

The period of review (POR) is March 1, 2009, through February 28, 2010.

Scope of the Order

The tissue paper products covered by this order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dyed, colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate

⁴ See Memorandum to The File entitled "Verification of the Questionnaire Response of Max Fortune (VN) Paper Products Co., Ltd. (MFVN) and Its Affiliates in the Anti-circumvention Inquiry and 2009-2010 Administrative Review of Certain Tissue Paper Products from the People's Republic of China (PRC)," dated March 31, 2011 (MFVN Verification Report); and Memorandum to The File entitled "Meeting with Vietnamese Customs," dated March 31, 2011.

consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may be under one or more of several different subheadings, including: 4802.30, 4802.54, 4802.61, 4802.62, 4802.69, 4804.31.1000, 4804.31.2000, 4804.31.4020, 4804.31.4040, 4804.31.6000, 4804.39, 4805.91.1090, 4805.91.5000, 4805.91.7000, 4806.40, 4808.30, 4808.90, 4811.90, 4823.90, 4802.50.00, 4802.90.00, 4805.91.90, 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.⁵

Excluded from the scope of this order are the following tissue paper products: (1) Tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

Separate Rates

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (NME) country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). None of the parties to this proceeding have contested such treatment.

In proceedings involving 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 unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991). MFVN is a company located in Vietnam and is a wholly-owned subsidiary of Max Fortune HK. Max Fortune HK is a wholly foreign-owned company registered and located in Hong Kong. *See MFVN Verification Report at pages 1 and 7, and Verification Exhibit 1A.* Consequently, no additional separate-rate analysis is necessary for MFVN. *See Notice of Final Determination of Sales at Less than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026 (April 30, 1996). Accordingly, we are treating MFVN as separate from the NME entity.

Adverse Facts Available

Section 776(a) of the Act, provides that, if (1) necessary information is not available on the record or (2) 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 sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding 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.

Furthermore, section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority * * *, the administering authority * * *, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." *See also* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Rep. No. 103-316 at 870 (1994) (SAA). It is the Department's practice to make an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *Id.* An adverse inference may include reliance on information derived from the petition, the final determination in the

investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act.

As mentioned above, MFVN claimed in response to the Department's questionnaire in this administrative review that during the POR it did not export to the United States tissue paper products produced using Chinese-origin jumbo rolls/sheets. In its June 28 Response, MFVN also stated that although it was possible that it sold tissue paper produced from Chinese-origin jumbo rolls and/or cut sheets before and during 2007, it could conclusively demonstrate that as of January 1, 2008, it did not do so. *See MFVN's June 28 Response at pages 3 and 12.* In addition, MFVN stated that it could not provide any information with respect to the production of the merchandise exported from Vietnam during the period January 1, 2005, to December 31, 2007, but it could do so for the period beginning January 1, 2008, through the POR. *See June 28 Response at pages 3 and 12.* However, as explained further below, MFVN was unable to demonstrate through its accounting records at verification that all of the tissue paper it sold to the United States during the POR was produced using non-Chinese-origin jumbo rolls or cut sheets. *See MFVN Verification Report at pages 35-38.*

According to MFVN's accounting records, as of the beginning of the POR, MFVN had significant amounts of tissue paper in finished goods and work-in-progress (WIP) inventory and this entire inventory was produced and/or purchased during 2008 or earlier. *See MFVN Verification Report at pages 36-38.* MFVN was unable to provide accounting records for its production of tissue paper prior to January 1, 2009, and therefore was unable to show the source of the material it used in the production of tissue paper in inventory as of January 1, 2009. As the verification report shows, MFVN withdrew some of that inventory for sale during the POR. *See MFVN Verification Report at pages 35-36.*

As a result, for tissue paper exported by MFVN to the United States on or after January 1, 2009, which was withdrawn from, or produced from merchandise in, finished goods or WIP inventory as of January 1, 2009, the Department preliminarily finds that MFVN failed to demonstrate that it did not use Chinese-origin jumbo rolls and/or cut sheets in the production of such merchandise. As discussed further below, based on AFA, the Department preliminarily finds that such tissue paper exported to the United States was

⁵ On January 30, 2007, at the direction of CBP, the Department added the following HTSUS classifications to the AD/CVD module for tissue paper: 4802.54.3100, 4802.54.6100, and 4823.90.6700. However, we note that the six-digit classifications for these numbers were already listed in the scope.

produced from Chinese-origin jumbo rolls and/or cut sheets.

Normally, in administrative reviews involving situations where subject merchandise is further processed in a third country prior to importation into the United States, the Department conducts a substantial transformation analysis to determine the proper country of origin for antidumping/countervailing-duty (AD/CVD) purposes, either in the context of a scope proceeding or an administrative review. *See Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 69 FR 74495 (December 14, 2004). However, because MFVN consistently claimed that no Chinese-origin jumbo rolls/sheets were used in the production of the tissue paper products it exported to the United States during the POR, in this instance, the Department was precluded from collecting and analyzing the information necessary to conduct a substantial transformation analysis to determine the proper country of origin for AD/CVD purposes. Therefore, because MFVN did not provide the Department with necessary information with respect to the production of its tissue paper in inventory as of January 1, 2009, the Department's ability to conduct the administrative review of MFVN was impeded, and the application of facts available pursuant to sections 776(a)(1) and 776(a)(2) of the Act is warranted with respect to exports of tissue paper from MFVN to the United States during the POR.

Because MFVN did not provide verifiable information demonstrating that all of its tissue paper sales to the United States during the POR were made from non-Chinese-origin jumbo rolls and/or cut sheets, as claimed, the Department also concludes that MFVN did not act to the best of its ability in this review. MFVN's inability to provide its production accounting records for the Department's review at verification is unreasonable, as a company is expected to maintain such records in the normal course of business. For companies doing business in Vietnam, the Vietnamese Government has issued regulations which require companies like MFVN to retain such records for up to ten years.⁶ For example, Article 31 of a regulation issued by the Vietnamese

⁶ See Memorandum to the File dated March 31, 2011 which contains the following document, "Decree No. 129/2004/ND-CP of May 31, 2004 Detailing and Guiding the Implementation of a Number of Articles of the Accounting Law, Applicable to Business Activities," issued by the Government of the Socialist Republic of Vietnam on May 31, 2004.

government on May 31, 2004, states that companies doing business in Vietnam must retain their accounting records for at least ten years. *See Id.* This is especially true in this case where MFVN demonstrated at verification that it maintained such records for both 2009 and 2010. *See MFVN Verification Report* at pages 21, 27–28, and 36–37. MFVN claimed it made no shipments of Chinese-origin tissue paper during the POR, but then failed to provide the necessary documentation at verification, as requested, to substantiate this claim. Therefore, pursuant to section 776(b) of the Act, an adverse inference is warranted because MFVN failed to provide information the Department needed to make its determination. Accordingly, as AFA, the Department determines that during the POR MFVN exported to the United States tissue paper products produced from Chinese-origin jumbo rolls/sheets. Further, as AFA, the Department determines that tissue paper products produced in Vietnam by MFVN from Chinese-origin jumbo rolls/sheets are not substantially transformed as a result of further processing in Vietnam, and thus, the proper country of origin of such goods for AD purposes is China.

Because the Department preliminarily finds that tissue paper products produced by MFVN from Chinese-origin jumbo rolls/sheets are not substantially transformed as a result of further processing in Vietnam and thus constitute subject merchandise, we must assign a rate to MFVN for cash deposit purposes with respect to future entries. As discussed, below, the Department is preliminarily assigning a rate of 112.64 percent to MFVN.

Selection of Adverse Facts Available Rate

Section 776(b) of the Act authorizes the Department to use as AFA, information derived from the petition, the final determination in the less-than-fair-value (LTFV) investigation, any previous administrative review, or any information placed on the record. In selecting an AFA rate in reviews, the Department's practice has been to assign the highest margin on the record of any segment of the proceeding. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003). The Court of International Trade (CIT) and the Federal Circuit have consistently upheld the Department's practice in this regard. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*); *NSK Ltd. v.*

United States, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a LTFV investigation); *see also Kompass Food Trading Int'l v. United States*, 24 CIT 678, 689 (July 31, 2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). As discussed above, the Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See SAA* at 870; *see also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 22.

Consistent with the statute, court precedent, and numerous other cases,⁷ as AFA, we are assigning to exports of tissue paper from MFVN, as described in the "Cash Deposit Requirements" section below, the highest rate on the record of any segment of this proceeding, *i.e.*, 112.64 percent. As discussed further below, this rate has been corroborated.

Corroboration of Adverse Fact Available Rate

Section 776(c) of the Act provides that when the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent

⁷ *See, e.g., Fresh Garlic from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Results of New Shipper Reviews*, 70 FR 69942, 69946 (November 18, 2005); and *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329, 26330 (May 4, 2006).

practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA states that "corroborate" means to determine that the information used has probative value. See SAA at 870. The Department has determined that to have probative value, information must be reliable and relevant. See *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 58642 (October 16, 2007), and accompanying Issues and Decision Memorandum at Comment 6.

To be considered corroborated, information must be found to be both reliable and relevant. The AFA rate of 112.64 percent that we are applying in the current review represents the highest rate from the petition in the LTFV investigation segment of this proceeding. See *Tissue Paper Order*. The Department corroborated the information used to calculate the 112.64 percent rate in the LTFV investigation. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 7475 (February 14, 2005). Furthermore, this rate was applied in several administrative reviews subsequent to the LTFV investigation, and no information has been presented in this segment of the proceeding that calls into question the reliability of this information. See *Certain Tissue Paper from the People's Republic of China: Preliminary Results and Preliminary Rescission of the 2007-2008 Administrative Review and Intent Not to Revoke Order in Part*, 74 FR 15449 (April 6, 2009) (unchanged in *Certain Tissue Paper Products from the People's Republic of China: Final Results and Partial Rescission of the 2007-2008 Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 74 FR 52176, 52177 (October 9, 2009); and *Certain Tissue Paper from the People's Republic of China: Preliminary Results of the 2008-2009 Administrative Review*, 75 FR 18812 (April 13, 2010) (unchanged in *Certain Tissue Paper Products from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 75 FR 63806, 63807 (October 18, 2010)). Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected

margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. See *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense, resulting in an unusually high margin). Similarly, the Department does not apply a margin that has been discredited. See *D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (finding that the Department cannot use a margin that has been judicially invalidated in its calculations). The AFA rate we are applying for the instant review was calculated based on export price information and production data from the petition, as well as the most appropriate surrogate value information available to the Department during the LTFV investigation. As there is no information on the record of this review that demonstrates this rate is not appropriate for use as AFA, we determine this rate has relevance.

Because the AFA rate, 112.64 percent, is both reliable and relevant, we determine that it has probative value. As a result, we determine that the 112.64 percent rate is corroborated to the extent practicable for the purposes of this administrative review, in accordance with section 776(c) of the Act, and may reasonably be applied as AFA to exports of tissue paper from MFVN for cash deposit purposes.

Preliminary Results of Review

As a result of our review, we preliminarily determine that exports of tissue paper from Vietnam produced by MFVN using Chinese-origin jumbo rolls and/or cut sheets constitute subject merchandise, and therefore the following cash deposit rate applies to MFVN:

CERTAIN TISSUE PAPER PRODUCTS FROM THE PRC

Producer/exporter	Margin (percent)
Max Fortune (Vietnam) Paper Products Company Limited (MFVN)	112.64

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results

of the administrative review for all shipments of certain tissue paper products from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) A cash deposit rate of 112.64 percent will be required for tissue paper produced and/or exported by MFVN; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash deposit rate will be PRC-wide rate of 112.64 percent; and (4) for all non-PRC exporters of subject merchandise, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: March 31, 2011.

Ronald K. Lorentzen,
Deputy Assistant Secretary for Import Administration.

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BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA340

Endangered Species; File No. 14344

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that The University of California, Davis, Bodega Marine Laboratory, 2099 Westside Road, Bodega Bay, CA 94923 [Gary Cherr, Ph.D., Principal Investigator] has been issued a permit to take white abalone (*Haliotis sorenseni*) for purposes of scientific research and enhancement.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West