

This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, and if requested, we will hold a public hearing, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing shortly after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: March 3, 2010.

Carole A. Showers,

Acting Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-893]

Fourth Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results, Preliminary Partial Rescission of Antidumping Duty Administrative Review and Intent Not To Revoke, In Part

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

SUMMARY: The Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp ("shrimp") from the People's Republic of China

("PRC"), covering the period of review ("POR") of February 1, 2008, through January 31, 2009. As discussed below, the Department preliminarily determines that certain respondents in this review made sales in the United States at prices below normal value ("NV"). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which importer-specific assessment rates are above *de minimis*.

DATES: *Effective Date:* March 12, 2010.

FOR FURTHER INFORMATION CONTACT: Robert Palmer or Irene Gorelik, 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) 482-9068 and (202) 482-6905, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from both Petitioners,¹ domestic interested parties ("DP"),² and certain PRC companies, in accordance with 19 CFR 351.213(b), during the anniversary month of February, for administrative reviews of the antidumping duty order on certain warmwater shrimp from the PRC. On March 26, 2009, the Department initiated an administrative review of 483 producers/exporters of subject merchandise from the PRC.³ See *Notice of Initiation of Administrative Reviews and Requests for Revocation in Part of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China*, 74 FR 13178 (March 26, 2009) ("*Initiation*"). However, after accounting for duplicate names and additional trade names associated with certain exporters, the number of companies upon which we initiated is actually 477 companies/groups.⁴

¹ The petitioners are the members of the Ad Hoc Shrimp Trade Action Committee (hereinafter referred to as "Petitioners").

² The domestic interested parties are the American Shrimp Processors Association and the Louisiana Shrimp Association.

³ See *Initiation* for a listing of these companies.

⁴ The duplicated companies were: Sanya Dongji Aquatic Products Co., Ltd.; Sanya Shengda Seafood Co., Ltd.; Yangjiang Jiangcheng Huanghai Marine Food Enterprises Co., Ltd.; Yangxi Add Host Aquatic Product Processing Factory; Yantai Aquatic Products Supplying and Marketing Co., Aquatic Products Haifa Food Branch; and Yantai Aquatic Products Supplying and Marketing Co., Aquatic Products Fazhan Branch.

Between April 15, 2009, and April 27, 2009, the following companies submitted "no shipment certifications"⁵: Allied Pacific Group, Gallant Ocean (Lianjiang), Ltd.; Gallant Ocean (Nanhai), Ltd.; Shantou Yelin Frozen Seafood Co., Ltd. (doing business as ("d.b.a") Shantou Yelin Quick-Freezer Marine Products Co., Ltd.); Fuqing Yihua Aquatic Food Co., Ltd.; Fuqing Minhua Trade Co., Ltd.; and Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd.

On February 24, 2010, the Department received comments from DP regarding certain surrogate values and the issue of duty adsorption. However, because of the close proximity to the preliminary results, we are unable to take DP's comments into consideration for the preliminary results. DP's comments will be considered for purposes of the final results of this review.

Respondent Selection

On May 29, 2009, in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended ("Act"), the Department selected Hilltop International ("Hilltop") and Zhanjiang Regal Integrated Marine Resources Co., Ltd. ("Regal") for individual examination in this review, since they were the two largest exporters by volume during the POR, based on CBP data of U.S. imports. See Memorandum to James Doyle, Director, Office IX, from Irene Gorelik, Senior International Trade Analyst, Office IX, "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Selection of Respondents for Individual Review," dated May 29, 2009.

Questionnaires

On June 1, 2009, the Department issued its initial non-market economy ("NME") antidumping duty questionnaire to the mandatory respondents Hilltop and Regal. Hilltop and Regal responded to the Department's initial and subsequent supplemental questionnaires between July 2009 and February 2010.

Surrogate Country and Surrogate Values

On July 10, 2009, the Department sent interested parties a letter requesting comments on the surrogate country and information pertaining to valuing factors of production ("FOPs"). On September 4, 2009, Hilltop submitted surrogate value comments regarding various

⁵ Companies have the opportunity to submit statements certifying that they did not ship the subject merchandise to the United States during the POR.

Indian sources. No other interested party submitted comments on the surrogate country or information pertaining to valuing FOPs.

Case Schedule

On October 27, 2009, in accordance with section 751(a)(3)(A) of the Act, we extended the time period for issuing the preliminary results by 120 days, until February 28, 2010. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Reviews*, 74 FR 55192 (October 27, 2009). Additionally, as explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll 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. *See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm,"* dated February 12, 2010. The revised deadline for the preliminary results of this review is now March 7, 2010.⁶

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,⁷ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTS"), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not

⁶ Where a statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed, the Department will continue its longstanding practice of reaching the determination on the next business day. In this instance, the preliminary results will be released no later than March 8, 2010.

⁷ "Tails" in this context means the tail fan, which includes the telson and the uropods.

limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this investigation. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this investigation.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce; (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); (8) certain dusted shrimp; and (9) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen ("IQF") freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this investigation are currently classified under the following HTS subheadings:

0306.13.0003, 0306.13.0006, 0306.13.0009, 0306.13.0012, 0306.13.0015, 0306.13.0018, 0306.13.0021, 0306.13.0024, 0306.13.0027, 0306.13.0040, 1605.20.1010 and 1605.20.1030. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.

Partial Rescission of Review

Preliminary Partial Rescission

As discussed in the "Background" section above, several companies filed no shipment certifications indicating that they did not export subject merchandise to the United States during the POR. In order to corroborate these claims, we sent an inquiry to CBP to determine whether CBP entry data is consistent with the statements of the Allied Pacific Group; Gallant Ocean (Lianjiang), Ltd.; Gallant Ocean (Nanhai), Ltd.; Shantou Yelin Frozen Seafood Co., Ltd.; and Shantou Yelin Quick-Freeze Marine Products Co., Ltd. *See Message from the Department to CBP, dated January 8, 2010.*

During the course of this review, Hilltop indicated that it was affiliated with certain Chinese companies, including Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., and Fuqing Minhua Trading Co., Ltd.⁸ While, based on Hilltop's submissions, we agree that they are affiliated with Hilltop pursuant to section 771(33) of the Act, and as there is no basis at this time to collapse those entities with Hilltop, we have reviewed the no shipment certifications submitted by these firms. After a review of the information on the record, we have not found any information that contradicts the claims made by these firms. Accordingly, we are preliminarily rescinding the review with respect to Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., and Fuqing Minhua Trading Co., Ltd.

With respect to Gallant Ocean (Lianjiang), Ltd., Gallant Ocean (Nanhai), Ltd., Shantou Yelin Frozen Seafood Co., Ltd., and Shantou Yelin Quick-Freeze Marine Products Co., Ltd., we reviewed PRC shrimp data obtained from CBP and found no discrepancies with the statements made by these firms. Additionally, in response to our no shipment inquiry to CBP, CBP did not indicate these companies made

⁸ *See Hilltop's Section A Questionnaire Response dated July 6, 2009, at Exhibit 2.*

shipments to the United States during the POR.

On February 19, 2010, the Department received CBP documentation which is at variance with the no shipment statement made on behalf of the Allied Pacific Group.⁹ On February 19, 2010, the Department requested comments regarding the CBP entry documentation. See Memorandum to the File, from Bob Palmer, Analyst, Office IX, re: Customs and Border Protection (“CBP”) Entry Documents, dated February 19, 2010. On February 26, 2010, DP submitted comments regarding the CBP entry documentation. See Letter from DP, re: ASPA and LSA Comments on No Shipment Inquiry, dated February 26, 2010. The information in the CBP entry documents indicates that this was a sale by a third county re-seller and not a sale for export to the United States by Allied Pacific Group.¹⁰ Therefore we are preliminarily rescinding this administrative review with respect to the Allied Pacific Group.

Furthermore, because the record indicates that Gallant Ocean (Lianjiang), Ltd., Gallant Ocean (Nanhai), Ltd., Shantou Yelin Frozen Seafood Co., Ltd., Shantou Yelin Quick-Freeze Marine Products Co., Ltd., Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., and Fuqing Minhua Trading Co., Ltd., did not export subject merchandise to the United States during the POR, we are preliminarily rescinding this administrative review with respect to these companies. See, e.g., *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 72 FR 53527, 53530 (September 19, 2007), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission*, 73 FR 15479, 15480 (March 24, 2008) (“*Third Fish Fillets Review*”).

Request for Revocation, In Part

On February 27, 2009, Regal, requested revocation of the *Order*. In its request for revocation, Regal argued that it has maintained three consecutive years of sales at not less than normal value. Regal argued that, as a result of

its alleged three consecutive years of no dumping, sold the subject merchandise in commercial quantities, and its submission of a certification of immediate reinstatement, it is eligible for revocation under section 351.222(b)(2) of the Department’s regulations.

We preliminarily determine not to revoke the *Order* with respect to Regal. Department regulation 351.222(b)(B)(ii)(2)(i) states that in determining whether to revoke an antidumping duty order in part, the Secretary will consider whether exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years. See 19 CFR 351.222(b)(B)(ii)(2)(i)(A). In the *Third Administrative Review of Frozen Warmwater Shrimp from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 46565 (September 10, 2009) (“*China Shrimp Third AR*”), the Department determined that Regal sold the subject merchandise at less than normal value and assigned Regal a weight-averaged dumping margin. See *China Shrimp Third AR*. Therefore, as Regal had sales at less than normal value in the third administrative review, we have determined not to revoke the order with respect to Regal because it has not met the regulatory criteria for revocation set forth in 19 CFR 351.222(b).¹¹

Duty Absorption

On April 21, 2009 and April 24, 2009, Petitioners and DP, respectively, requested that the Department determine whether antidumping duties had been absorbed for U.S. sales of shrimp made during the POR by the respondents selected for review. Section 751(a)(4) of the Act, provides for the Department, if requested, to determine during an administrative review initiated two or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer.

Because the antidumping duty order underlying this review was issued in 2005, and this review was initiated in 2009, we are conducting a duty absorption inquiry for this segment of the proceeding. Pursuant to section 777A(c)(2)(B) of the Act, we selected two exporters (*i.e.*, Hilltop and Regal) as mandatory respondents in this

administrative review. In this case, only Hilltop has an affiliated importer in the United States.

Petitioners and DP requested that the Department investigate whether all companies listed in the *Initiation* had absorbed duties. Because of the large number of companies subject to this review, the Department only selected two companies as mandatory respondents in this administrative review and thus only issued its complete questionnaire to these two companies. In determining whether antidumping duties have been absorbed, the Department requires certain specific data (*i.e.*, U.S. sales data) to ascertain whether those sales have been made at less than NV. Since U.S. sales data is only obtained from the complete questionnaire (*i.e.*, only mandatory respondents submit U.S. sales data), and no other companies in the *Initiation* were required to provide U.S. sales data, we do not have the information necessary to assess whether any other companies listed in the *Initiation* absorbed duties. Accordingly, for those companies listed in the *Initiation* not selected as mandatory respondents, we cannot make duty absorption determinations with respect to those companies.

In determining whether the respondent has absorbed antidumping duties, we presume the duties will be absorbed for constructed export price (“CEP”) sales that have been made at less than NV. This presumption can be rebutted with evidence (*e.g.*, an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. See, e.g., *Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 39735, 39737 (July 11, 2005) (unchanged in final results). On January 28, 2010, the Department requested Hilltop to provide evidence to demonstrate that its unaffiliated U.S. purchasers will pay any antidumping duties ultimately assessed on entries of subject merchandise.

On February 12, 2010, Hilltop filed a response rebutting the duty-absorption presumption with company-specific quantitative evidence that its unaffiliated U.S. purchasers will pay the full duty ultimately assessed on the subject merchandise. The quantitative evidence included invoices and financial statements on the record showing that Hilltop did not absorb duties during the POR. Moreover, we note that Hilltop’s antidumping duty

⁹ The Allied Pacific Group consists of Allied Pacific Food (Dalian) Co., Ltd.; Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd.; Zhanjiang Allied Pacific Aquaculture Co., Ltd.; Allied Pacific (H.K.) Co., Ltd.; and King Royal Investments Ltd.

¹⁰ Because the analysis is business proprietary, please see Memorandum to the File, from Bob Palmer, Analyst, Office IX, re: Analysis of Customs and Border Protection (“CBP”) Entry Documentation for Allied Pacific Group, dated March 1, 2010.

¹¹ Regal submitted its request for revocation before the publication of *China Shrimp Third AR*.

cash deposit and assessment rates have been *de minimis* in past administrative reviews. See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007); Hilltop as the successor-in-interest to Yelin Enterprise Co. Hong Kong in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results of Changed Circumstances Review*, 72 FR 33447 (June 18, 2007); and *China Shrimp Third AR*. We conclude that this information sufficiently demonstrates that the unaffiliated purchasers in the United States will ultimately pay the assessed duties. Therefore, we preliminarily find that Hilltop has not absorbed antidumping duties on U.S. sales made through its affiliated importer. See Hilltop's Response to Duty Absorption Inquiry dated February 12, 2010; see also Hilltop's Section A questionnaire response dated October 20, 2009, at Exhibits 12 and 15.

NME Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an 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 *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 has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rate Determination

A designation as an NME remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate. See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative*

Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006).

In the *Initiation*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME investigations. See *Initiation*. It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single 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 exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Notice of 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*").

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an 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.

In this administrative review, only Hilltop, Regal and Shantou Yuexing have placed sufficient evidence on the record that demonstrate an absence of *de jure* control. See Hilltop's submission of July 6, 2009; see also Regal's submission of July 7, 2009; see also Shantou Yuexing's submission of April 23, 2009. The Department has analyzed such PRC laws as the "Foreign Trade Law of the People's Republic of China" and the "Company Law of the People's Republic of China" and has found that they establish an absence of *de jure* control. See, e.g., *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001). We have no information in this proceeding that would cause us to reconsider this determination. Thus, we find that the evidence on the record supports a preliminary finding of an

absence of *de jure* government control based on: (1) An absence of restrictive stipulations associated with the exporter's business license; (2) the legal authority on the record decentralizing control over the respondent, as demonstrated by the PRC laws placed on the record of this review; and (3) other formal measures by the government decentralizing control of companies.

Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Notice of 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). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has the authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589.

The Department conducted separate rate analyses for Hilltop, Regal and Shantou Yuexing, each of which have asserted the following: (1) There is no government participation in setting export prices; (2) sales managers and authorized employees have the authority to create binding sales contracts; (3) they do not have to notify any government authorities of management selections; (4) there are no restrictions on the use of export revenue; and (5) they are responsible for financing their own losses. The questionnaire responses of Hilltop, Regal and Shantou Yuexing do not indicate that pricing is coordinated among exporters or the existence of government control of export activities.

See Hilltop's submission of July 6, 2009; see Regal's submission of July 7, 2009; see Shantou Yuexing's submission of April 23, 2009. Consequently, we preliminarily determine that Hilltop, Regal and Shantou Yuexing have met the criteria for the application of a separate rate.

In the *Initiation*, we requested that all companies listed therein wishing to qualify for separate rate status in this administrative review submit, as appropriate, either a separate rate status application or certification. See *Initiation*. As discussed above, the Department initiated this administrative review with respect to 477 companies, and we are preliminarily rescinding the review with respect to eleven¹² companies due to the lack of shipments during the POR. Thus, including Hilltop, Regal, and Shantou Yuexing, 466 companies remain subject to this review. Only Hilltop, Regal and Shantou Yuexing provided, as appropriate, either a separate rate application or certification. No other company listed in the *Initiation*, has demonstrated its eligibility for separate rate status in this administrative review. Therefore, the Department preliminarily determines that there were exports of merchandise under review from PRC exporters that did not demonstrate their eligibility for separate rate status. As a result, the Department is treating these PRC exporters as part of the PRC-wide entity, subject to the PRC-wide rate.

Rate for Non-Selected Companies

Based on timely requests from Petitioners, DP and certain PRC exporters, the Department originally initiated this review with respect to 477 companies/groups. In accordance with section 777A(c)(2)(B) of the Act, as stated above, the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made. As stated previously, the Department selected two exporters, Hilltop and Regal as mandatory respondents in this review. In addition to the mandatory respondents, only Shantou Yuexing submitted timely information as requested by the Department and remains subject to

review as a cooperative separate rate respondent.

We note that the statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance. Consequently, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding zero and *de minimis* rates and rates based entirely on adverse facts available ("AFA"), and applies that resulting weighted-average margin to non-selected cooperative separate-rate respondents. See, e.g., *Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review*, 73 FR 8273 (February 13, 2008) unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008). In this instance, consistent with our practice, we have preliminarily established a margin for the separate rate respondent based on the rate we calculated for the mandatory respondent whose rate was not *de minimis*. For the China-wide entity, we have assigned the entity's current rate and only rate ever determined for the entity in this proceeding.

Surrogate Country

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are at a level of economic development comparable to that of the NME country and significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Normal Value" section below and in the Memorandum

to the File through Catherine Bertrand, Program Manager, Office IX, from Bob Palmer, Case Analyst, Office IX, "Fourth Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Surrogate Factor Valuations for the Preliminary Results," dated concurrently with this notice ("Surrogate Values Memo").

As discussed in the "NME Country Status" section, the Department considers the PRC to be an NME country. The Department determined that India, Indonesia, the Philippines, Colombia, Thailand and Peru are countries comparable to the PRC in terms of economic development. See the Department's letter to all interested parties, dated July 20, 2009. Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from these countries. See *Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process*, dated March 1, 2004. The Department finds India to be a reliable source for surrogate values because India is at a comparable level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data. Furthermore, the Department notes that India has been the primary surrogate country in past segments. As noted above, Hilltop submitted surrogate value data for certain, but not all, FOPs for India on September 4, 2009. Given the above facts, the Department has selected India as the primary surrogate country for this review and placed surrogate value data for certain FOPs not provided by Hilltop. See Surrogate Values Memo.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, we calculated the export price ("EP") for sales to the United States for Regal, because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight, foreign brokerage and handling, customs duties, domestic brokerage and handling and other movement expenses incurred. For the services provided by an NME vendor or paid for using an NME currency, we based the deduction of these movement charges on surrogate

¹² These include Gallant Ocean (Lianjiang), Ltd.; Gallant Ocean (Nanhai), Ltd.; Shantou Yelin Frozen Seafood Co., Ltd., d.b.a. Shantou Yelin Quick-Freeze Marine Products Co., Ltd.; Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd.; Fuqing Yihua Aquatic Food Co., Ltd.; Fuqing Minhua Trading Co., Ltd.; and the companies of the Allied Pacific Group (comprised of Allied Pacific Food (Dalian) Co., Ltd.; Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd.; Zhanjiang Allied Pacific Aquaculture Co., Ltd.; Allied Pacific (H.K.) Co., Ltd.; and King Royal Investments Ltd.).

values. See Surrogate Values Memo for details regarding the surrogate values for movement expenses. For expenses provided by a market economy vendor and paid in U.S. dollars, we used the actual cost per kilogram of the freight. See Regal Analysis Memo.

Constructed Export Price

For Hilltop's sales, we based U.S. price on constructed export price ("CEP") in accordance with section 772(b) of the Act, because sales were made on behalf of the China-based company by its U.S. affiliate to unaffiliated purchasers in the United States. For these sales, we based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States. We deducted, where appropriate, commissions, inventory carrying costs, credit expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by Chinese service providers or paid for in Chinese Yuan, we valued these services using surrogate values. See Surrogate Values Memo for details regarding the surrogate values for movement expenses. For those expenses that were provided by a market-economy provider and paid for in market-economy currency, we used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for both mandatory respondents, see Surrogate Values Memo.

Normal Value

Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and

the calculation of production costs invalid under the Department's normal methodologies.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by the respondents for the POR. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below).

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to each Indian import surrogate value, a surrogate freight cost calculated from the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. See *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997).

For these preliminary results, in accordance with the Department's practice, we used data from the *Indian Import Statistics* in order to calculate surrogate values for most of the respondent's material inputs. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). The record shows that the Indian import statistics represent import data that are contemporaneous with the POR, product-specific, and tax-exclusive. Where we could not obtain publicly available information contemporaneous to the POR with which to value FOPs, we adjusted the surrogate values, where appropriate, using the Indian Wholesale Price Index ("WPI") as published by the International Monetary Fund Financial Statistics. See Surrogate Value Memo.

To value shrimp larvae for the respondents, which have an integrated

production process, the Department valued shrimp larvae using an average of the price derived from the Nekkanti Sea Foods Ltd. financial statement for 04/2002–03/2003, and the price quoted in *Fishing Chimes*, which is an Indian seafood industry publication. However, because the shrimp larvae prices are dated before the POR, we inflated the price to be contemporaneous with the POR using WPI. See Surrogate Value Memo.

We valued electricity using the updated electricity price data for small, medium, and large industries, as published by the Central Electricity Authority, an administrative body of the Government of India, in its publication entitled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated March 2008. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to small, medium, and large industries in India. We did not inflate this value because utility rates represent current rates, as indicated by the effective dates listed for each of the rates provided. See Surrogate Values Memo.

Consistent with 19 CFR 351.408(c)(3), we valued direct, indirect, and packing labor, using the most recently calculated regression-based wage rate, which relies on 2007 data. This wage rate can currently be found on the Department's Web site on Import Administration's home page, Reference Material, Expected Wages of Selected NME Countries, revised in December 2009, <http://ia.ita.doc.gov/wages/07wages/final/final-2009-2007-wages.html>. The source of these wage-rate data on the Import Administration's web site is the 2006 and 2007 data in Chapter 5B of the International Labour Statistics. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by Regal and Hilltop.

To value water, the Department used data from the Maharashtra Industrial Development Corporation (<http://www.midcindia.org>) since it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from April 2009 through June 2009, of which 193 were for the "inside industrial areas" usage category and the other 193 were for the "outside industrial areas" usage category. Because the value was not contemporaneous with the POR, we deflated the rate. See Surrogate Values Memo.

We valued truck freight expenses using a per-unit average rate calculated from data on the Info Banc Web site: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this Web site contains inland freight truck rates between many large Indian cities.

We continued our recent practice to value brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. See *Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); *Certain Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review*, 74 FR 17149 (April 14, 2009); *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Antidumping Duty Review*, 73 FR 31961 (June 5, 2008); and *Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review*, 72 FR 5268 (February 5, 2007). Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot-rolled carbon steel flat products from India, and Himalaya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. See Surrogate Values Memo. Since the resulting value is not contemporaneous with the POR, we inflated the rates using the WPI. The Department derived the average per-unit amount from each source and adjusted each average rate for inflation. Finally, the Department averaged the average per-unit amounts to derive an overall average rate for the POR.

To value factory overhead, sales, general and administrative expenses, and profit, we relied upon publicly available information in the 2007–2008 annual report of Falcon Marine Exports Ltd., an integrated Indian producer of subject merchandise. See Surrogate Values Memo.

Where appropriate, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

The Department has determined that the following preliminary dumping

margins exist for the period February 1, 2008, through January 31, 2009:

CERTAIN FROZEN WARMWATER SHRIMP FROM THE PRC

Manufacturer/Exporter	Margin (percent)
Hilltop International	0.01
Zhanjiang Regal Integrated Marine Resources Co., Ltd.	1.36
Shantou Yuexing Enterprises Co.	1.36
PRC-Wide Entity ¹³	112.81

¹³The PRC-wide entity includes the 466 companies currently under review that have not established their entitlement to a separate rate.

As stated above in the “Rates for Non-Selected Companies” section of this notice, in addition to the mandatory respondents Hilltop and Regal, Shantou Yuexing qualifies for a separate rate in this review. Moreover, as stated above in the “Respondent Selection” section of this notice, we limited this review by selecting the largest exporters and did not select Shantou Yuexing as a mandatory respondent. Therefore, Shantou Yuexing is being assigned the dumping margin based on the calculated margin of the mandatory respondent whose calculated rate is not zero or *de minimis*, in accordance with Department practice. Accordingly, we have assigned Shantou Yuexing the calculated dumping margin assigned to Regal, because Regal is the only mandatory respondent with a rate that is not zero or *de minimis*.

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it

rebutts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments may be filed no later than five days after the deadline for filing case briefs. See 19 CFR 351.309(d). The Department urges interested parties to provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), for the mandatory respondents, we calculated an exporter/importer (or customer)-specific assessment rate for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). See 19 CFR 351.212(b)(1). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importer's/customer's entries during the POR. See 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). See 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. See 19 CFR 351.106(c)(2).

For the companies receiving a separate rate that were not selected for individual review, we will assign an assessment rate based on the cash deposit rate calculated for the Regal pursuant to section 735(c)(5)(B) of the Act. Where the weighted average *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. See 19 CFR 351.106(c)(2).

For those companies for which this review has been preliminarily rescinded,¹⁴ the Department intends to assess antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2), if the review is rescinded for these companies in the final results.

Cash Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be that established in the final results of review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for

¹⁴ These include Gallant Ocean (Lianjiang), Ltd.; Gallant Ocean (Nanhai), Ltd.; Shantou Yelin Frozen Seafood Co., Ltd. (d.b.a., Shantou Yelin Quick-Freeze Marine Products Co., Ltd.); Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd.; Fuqing Yihua Aquatic Food Co., Ltd.; Fuqing Minhua Trading Co., Ltd.; and the companies of the Allied Pacific Group (comprised of Allied Pacific Food (Dalian) Co., Ltd.; Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd.; Zhanjiang Allied Pacific Aquaculture Co., Ltd.; Allied Pacific (H.K.) Co., Ltd.; and King Royal Investments Ltd.).

all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, and thus, are a part of the PRC-wide entity, the cash-deposit rate will be the PRC-wide rate of 112.81 percent; and (3) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until further notice.

Notification of Interested Parties

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 POR. 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.

This administrative review, and this notice are in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: March 8, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-5473 Filed 3-11-10; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XV04

Endangered Species; File No. 14759

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Joseph Hightower, Ph.D., North Carolina Cooperative Fish and Wildlife Research Unit, North Carolina State University, Raleigh, NC 27695, has applied in due form for a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before April 12, 2010.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the

Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov/>, and then selecting File No. 14759 from the list of available applications. The application 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 Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713-2289; fax (301) 713-0376; and
- Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727) 824-5312; fax (727) 824-5309.

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

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is NMFS.Pr1Comments@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: File No. 14759.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Kate Swails, (301) 713-2289.

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

The applicant is seeking a five-year permit to assess the presence, abundance, and distribution of shortnose sturgeon within North Carolina rivers (Chowan, Roanoke, Tar-Pamlico, Neuse, and Cape Fear) and estuaries (Albemarle Sound) using non-lethal sampling methods combining hydroacoustic surveys (side-scan, DIDSON) with gill nets. Annually up to 10 shortnose sturgeon from the Chowan, Tar-Pamlico, Neuse, Cape Fear river systems and Albemarle Sound, and up to 20 shortnose sturgeon from the Roanoke River, would be captured,