

violations of the antiboycott provisions of a party's owners, directors, officers, partners, or other related persons may be imputed to a party in determining whether these criteria are satisfied.

(3) When an acquiring firm takes reasonable steps to *uncover, correct, and disclose* to OAC conduct that gave rise to violations that the acquired business committed *before* the acquisition, OAC typically will not take such violations into account in applying this factor in settling other violations by the acquiring firm.

(E) *Exceptional cooperation with the investigation.* The party has provided exceptional cooperation to OAC during the course of the investigation.

(F) *Clarity of request to furnish prohibited information or take prohibited action.* The party responded to a request to furnish information or take action that was ambiguously worded or vague.

(G) *Violations arising out of a party's "passive" refusal to do business in connection with an agreement.* The party has acquiesced in or abided by terms or conditions that constitute a prohibited refusal to do business (e.g., responded to a tender document that contains prohibited language by sending a bid). See "active" agreements to refuse to do business in paragraph (d)(2)(ii)(I) of this supplement.

(H) *Isolated occurrence of violation.* The violation was an isolated occurrence. (Compare to long duration or high frequency of violations as an aggravating factor in paragraph (d)(2)(ii)(F) of this supplement.)

(ii) *Specific Aggravating Factors—(A) Concealment or obstruction.* The party made a deliberate effort to hide or conceal the violation. [GREAT WEIGHT]

(B) *Serious disregard for compliance responsibilities.* [GREAT WEIGHT] There is evidence that the party's conduct demonstrated a serious disregard for responsibilities associated with compliance with the antiboycott provisions (e.g.: knowing violation of party's own compliance policy or evidence that a party chose to treat potential penalties as a cost of doing business rather than develop a compliance policy).

(C) *History of compliance with the Antiboycott Regulations and export-related laws and regulations.*

(1) OAC will consider it to be an aggravating factor if:

(i) The party has been convicted of a criminal violation of the antiboycott provisions;

(ii) In the past 5 years, the party has entered into a settlement or been found liable in a boycott-related administrative enforcement case with BIS or another U.S. government agency;

(iii) In the past 3 years, the party has received a warning letter from OAC; or

(v) In the past 5 years, the party has otherwise violated the antiboycott provisions.

(2) Where necessary to ensure effective enforcement, the prior involvement in violations of the antiboycott provisions of a party's owners, directors, officers, partners, or other related persons may be imputed to a party in determining whether these criteria are satisfied.

(3) When an acquiring firm takes reasonable steps to *uncover, correct, and disclose* to OAC conduct that gave rise to violations that the acquired business committed *before* the acquisition, OAC typically will not take such violations into account in applying this factor in settling other violations by the acquiring firm.

(D) *Familiarity with the type of transaction at issue in the violation.* For example, in the case of a violation involving a letter of credit or related financial document, the party routinely pays, negotiates, confirms, or otherwise implements letters of credits or related financial documents in the course of its standard business practices.

(E) *Prior history of business with or in boycotted countries or boycotting countries.* The party has a prior history of conducting business with or in boycotted and boycotting countries. OAC may examine the volume of business that the party has conducted with or in boycotted and boycotting countries as reflected by the size and dollar amount of transactions or the percentage of a party's overall business that such business constitutes.

(F) *Long duration/high frequency of violations.* Violations that occur at frequent intervals or repeated violations occurring over an extended period of time may be treated more seriously than a single isolated violation that is committed within a brief period of time, particularly if the violations are committed by a party with a history of business with or in boycotted and boycotting countries. (Compare to isolated occurrence of violation or good-faith misinterpretation in paragraph (d)(2)(i)(H) of this supplement.)

(G) *Clarity of request to furnish prohibited information or take prohibited action.* The request to furnish information or take other prohibited action (e.g., enter into agreement to refuse to do business with a boycotted country or entity blacklisted by a boycotting country) is facially clear as to its intended purpose.

(H) *Violation relating to specific information concerning an individual entity or individual.* The party has furnished prohibited information about business relationships with specific companies or individuals.

(I) *Violations relating to "active" conduct concerning an agreement to refuse to do business.* The party has taken action that involves altering, editing, or enhancing prohibited terms or language in an agreement to refuse to do business, including a letter of credit, or drafting a clause or provision including prohibited terms or language in the course of negotiating an agreement to refuse to do business, including a letter of credit. See "passive" agreements to refuse to do business in paragraph (d)(2)(ii)(G) of this supplement.

(e) *Determination of Scope of Denial or Exclusion Order.* In deciding whether and what scope of denial or exclusion order is appropriate, the following factors are particularly relevant: The presence of mitigating or aggravating factors of great weight; the degree of seriousness involved; in a business context, the extent to which senior management participated in or was aware of the conduct in question; the number of

violations; the existence and seriousness of prior violations; the likelihood of future violations (taking into account relevant efforts to comply with the antiboycott provisions); and whether a monetary penalty can be expected to have a sufficient deterrent effect.

(f) *How OAC Makes Suspension and Deferral Decisions—(1) Civil Penalties.* In appropriate cases, payment of a civil monetary penalty may be deferred or suspended. See § 764.3(a)(1)(iii) of the EAR. In determining whether suspension or deferral is appropriate, OAC may consider, for example, whether the party has demonstrated a limited ability to pay a penalty that would be appropriate for such violations, so that suspended or deferred payment can be expected to have sufficient deterrent value, and whether, in light of all the circumstances, such suspension or deferral is necessary to make the impact of the penalty consistent with the impact of OAC penalties on other parties who committed similar violations.

(2) *Denial of Export Privileges and Exclusion from Practice.* In deciding whether a denial or exclusion order should be suspended, OAC may consider, for example, the adverse economic consequences of the order on the party, its employees, and other persons, as well as on the national interest in the competitiveness of U.S. businesses. An otherwise appropriate denial or exclusion order will be suspended on the basis of adverse economic consequences only if it is found that future violations of the antiboycott provisions are unlikely and if there are adequate measures (usually a substantial civil penalty) to achieve the necessary deterrent effect.

Dated: June 26, 2006.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AT38

Endangered and Threatened Wildlife and Plants; Designating the Greater Yellowstone Ecosystem Population of Grizzly Bears as a Distinct Population Segment; Removing the Yellowstone Distinct Population Segment of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice seeking to recover public comments.

SUMMARY: On November 17, 2005, the U.S. Fish and Wildlife Service (Service,

or we) proposed to designate the Greater Yellowstone Ecosystem population of grizzly bears as a distinct population segment (DPS) and to then remove this DPS from the Federal List of Endangered and Threatened Wildlife. The public comment period for the proposed rule was open from November 17, 2005, until March 20, 2006. Due to a technological error, we did not receive complete information from a small number of interested parties who provided comments during the comment period for the proposed rule. This notice gives instructions for those commenters concerning how to resubmit their comments to us.

DATES: We will accept the resubmitted e-mail comments for the proposed rule from only those commenters described below until the close of business on July 14, 2006.

ADDRESSES: We encourage eligible commenters to resubmit their comments via e-mail to: *grizzly_delisting@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, 309 University Hall, University of Montana, Missoula, Montana 59812, or telephone (406) 243-4903.

SUPPLEMENTARY INFORMATION:

Background

On November 17, 2005, the Service proposed to designate the Greater Yellowstone Ecosystem population of grizzly bears as a DPS and to then remove this DPS from the Federal List of Endangered and Threatened Wildlife (70 FR 69854). The public comment period for the proposed rule was open from November 17, 2005, until March 20, 2006. During this time, the Service received approximately 215,000

comments, 190,000 of which were submitted via e-mail. Over the course of the comment period, there were 2,220 e-mails that were incorrectly identified as spam by the filter used by the government e-mail system and, therefore, only part of the comment was received. We were able to contact all but 22 commenters. For these 22 commenters, we do not possess complete contact information. We are publishing this **Federal Register** notice in order to contact these 22 individuals. The information that we have for these 22 commenters consists of first and last names and partial e-mail addresses for 15 of the respondents and the first 26 characters of e-mail addresses (and no names) for the remaining 7 respondents. We have placed these partial names and e-mail addresses on a Web site where they can be viewed. By checking the Web site, e-mail respondents will be able to determine if their comment was one of the 22 comments that were incompletely received. Please visit http://mountain-prairie.fws.gov/grizzly_delisting.html to see if your e-mail may be one of the 22 comments that we are requesting be resubmitted.

We request that these 22 people resubmit their original comments by the date listed in the **DATES** section above. Comments will only be accepted from e-mail addresses that have identical information to that found on the Web site (http://mountain-prairie.fws.gov/grizzly_delisting.html). This is not a reopening of the comment period but rather an attempt to retrieve specific comments that were already submitted during the comment period.

Resubmitting Public Comments

When resubmitting comments by e-mail, please avoid the use of special characters and any form of encryption.

Please also include your name and return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address under the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the above address listed under the **FOR FURTHER INFORMATION CONTACT** section.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 22, 2006.

Marshall Jones,

Acting Director, U.S. Fish and Wildlife Service.

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