

Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313; FCC 91-186, Adopted: June 13, 1991 and Released: July 11, 1991. The full texts of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M St., NW., Washington, DC. The complete text of this Supplemental Notice may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st St., NW., Washington, DC 20036.

The Supplemental Notice solicits comment on whether the existing price cap rules for restructured services should be supplemented with additional rules directed at the increased danger of discrimination inherent in Open Network Architecture (ONA) services. The public is asked to comment on whether local exchange carriers should be required to make the cost showings required for new services when they introduce restructured ONA services. Alternatively, price cap LECs would only be subject to the normal constraints of the restructured services test. Any cost showings submitted by the LECs will be used by the Commission to determine the reasonableness of rates.

With respect to the cost showing for "new" services introduced by price cap LECs, the Commission said it will require the submission of cost studies, as in the interim approach of the LEC Price Cap Reconsideration Order. While LECs will be required to set their rates based on a reasonable, consistent costing methodology, they will be given the opportunity to select that methodology, to justify reasonable non-uniform overhead loadings, and to seek higher returns on investment commensurate with the risks they assume. To address concerns that LECs would discriminate against ESPs that compete with LEC enhanced service operations, the Commission required the LECs to identify BSEs that will be used by LEC enhanced service operations.

#### List of Subjects in 47 CFR Parts 61 and 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91-17341 Filed 7-23-91; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 33

[FAR Case 91-41]

#### General Accounting Office Protest Costs; Correction

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule; correction.

**SUMMARY:** At 55 FR 28652, June 21, 1991, a proposed rule was published amending Federal Acquisition Regulation (FAR) 33.104 to provide that, pending a judicial resolution of the constitutionality of 31 U.S.C. 3554(c), the General Accounting Office's awards of contract protest costs will be treated as advisory recommendations. The Regulatory Flexibility Act section of that proposed rule is being corrected to present a summary of the Initial Regulatory Flexibility Analysis.

#### FOR FURTHER INFORMATION CONTACT:

Ms. Jeritta Parnell at (202) 501-3856 in reference to this correction. For general information, contact Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR Case 91-41.

#### SUPPLEMENTARY INFORMATION:

\* \* \* \* \*

#### B. Regulatory Flexibility Act

The proposed changes to FAR part 33 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the proposed rule, if implemented, may impose different requirements on both Federal agencies and contractors when GAO recommends award of protest costs. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

FAR part 33 is being revised to clarify the General Accounting Office's (GAO) authority to award bid protest costs and attorney fees. FAR 33.104(g) is amended to provide that GAO awards of bid protest costs and attorney fees are to be treated as recommendations to the agency. FAR 33.104(h) is revised to provide that an agency may pay protest costs as a result of a GAO recommendation, but such payments

may be subject to recoupment if 31 U.S.C. 3554(c) is judicially determined to be unconstitutional. The proposed changes arose as a result of a recommendation from the Department of Justice (DOJ) to revise FAR 33.104 (g) and (h) in anticipation of constitutional litigation. DOJ has determined that the current FAR coverage implements an unconstitutional statute, 31 U.S.C. 3554(c). DOJ has advised that the award of protest costs and attorney fees by GAO is unconstitutional because it violates the separation of powers doctrine. Therefore, DOJ is seeking a declaratory judgment that the provision is unconstitutional and the Comptroller General has no authority to order Executive branch agencies to pay attorney fees and protest costs to successful bid protesters. Pending a judicial determination, agencies may continue to pay protest costs out of funds available for the acquisition of services or supplies. The proposed rule would apply to all small businesses that contract with the Federal Government and which might protest to the GAO. It is not possible to estimate the number of small business entities that may be impacted by the proposed rule.

A copy of the IRFA has been submitted to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR case 91-41 in correspondence.

\* \* \* \* \*

Dated: July 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 91-17641 Filed 7-22-91; 10:08 am]

BILLING CODE 5320-34-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants: Finding on Petition to Reclassify the Grizzly Bear in the North Cascades Area as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the 12-

month finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. These findings must be made within 1 year of either the date of receipt of such a petition or of a previous positive finding. The Service finds that the petition to reclassify the North Cascades population of the grizzly bear as endangered is warranted but precluded.

**DATES:** The finding announced in this notice was made in June 21, 1991.

**ADDRESSES:** Questions or comments concerning this finding should be sent to Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, NS 312, University of Montana, Missoula, Montana 59812, telephone 406/329-3223. The petition's finding and supporting data are available at the above address during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Dr. Christopher Servheen (see **ADDRESSES** above).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 et seq.), requires that, for any petition to revise the List of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made on the merits within 12 months of the date of receipt of the petition.

The Service received and made a positive 90-day finding and initiated a status review (55 FR 32103-32104) on the following petition:

A petition dated March 13, 1990, was received from The Humane Society of the United States, Greater Ecosystem Alliance, North Cascades Audubon Society, Kittitas Audubon Society, Pilchuck Audubon Society, Skagit Alpine Club, North Cascades Conservation Council, and Carol Rae Smith on March 14, 1990. The petition requested the Service to reclassify the grizzly bear (*Ursus arctos horribilis*) in the North Cascades area of Washington State from threatened to endangered.

The petitioners submitted information that there is a very small grizzly bear population remaining in the North Cascades area. They also indicated that a range of threats exist to the survival of the remaining small population of bears from road construction, land management activities, livestock grazing, land development, and inadequate support from management agencies. The petitioners further indicated that the present population of grizzly bears in the North Cascades area

may number fewer than 10-20 animals. They also questioned the numbers and genetic viability of the grizzly bear population on the Canadian side of the United States-Canadian border adjacent to the range of the population in the North Cascades.

As a result of the Federal Register notice, 20 letters were received by the Service with general comments on the petition. Only one, a letter from a British Columbia Ministry of Environment wildlife biologist, contained new biological information on the grizzly bear. He reports that a small population of grizzly bears, probably less than 10, occurs in an isolated population north and adjacent to the Washington Cascades.

The grizzly bear in the North Cascades is presently listed as threatened. As such, the grizzly bear receives all the normal protection afforded a listed species by the Endangered Species Act. Section 7 (Consultation) and section 9 (Prohibited Acts) fully apply. The Grizzly Bear Recovery Plan, approved in 1982, provides guidance for recovery of the species.

To advance North Cascades grizzly bear conservation, a special Interagency Grizzly Bear Work Group was formed and is working under the direction of the Northwest Ecosystem Grizzly Bear Management Subcommittee of the Interagency Grizzly Bear Committee. This Work Group embarked on a 5-year habitat evaluation and grizzly bear verification study which will be completed in 1991. The habitat evaluation effort involves: (1) Mapping of the major habitat components in the area using LANDSAT and Geographic Information Systems techniques; (2) delineation of the presence, abundance, and diversity of grizzly bear foods; (3) delineation of spring, summer, and fall denning habitat based on the habitat mapping and food data; (4) evaluation of the extent, quality, and accessibility of spring range; and (5) delineation of human activities such as roads, habitation, timber harvest, and recreation in the area. Based on this information, a technical review team of biologists will assess the value of the available habitat and the suitability of the area to support a viable grizzly bear population. The recommendation of this technical review team will be the basis for a decision on whether to attempt to recover grizzly bears in the North Cascades. The evaluation by the technical review team is scheduled to be completed in late 1991 and presented to the Interagency Grizzly Bear Committee at their fall 1991 meeting.

Reference is made in the petition to the grizzly bear population in the North Cascades being a separate subspecies of the brown bear, specifically *Ursus arctos stikeenensis*. This subspeciation is based on the classification of Hall (1984). The Service rejects the implication that the grizzly bears of the North Cascades are a distinct subspecies based on the analysis of Rausch (1963). Rausch (1963) found that for North American brown bears, based on measurements of condylobasal length, "formal recognition of segments of intergrading populations of brown bears at the subspecific level is not justified" except for the reproductively isolated populations on Kodiak-Afognak-Shuyak Islands, Alaska. Rausch (1963) further stated that *Ursus arctos horribilis* be used for brown bears over "the greater parts of the range of the species in North America" and the Service holds with this opinion.

The Service agrees with the statements in the petition that the number of grizzly bears in the North Cascades is small. Although no credible estimate can be made of the actual numbers of bears in this area, the population is so small that very few credible sights or signs have been documented in this area in the past 5 years.

The North Cascades population may be isolated from contiguous populations in Canada. R.D. Forbes, a wildlife biologist for the Ministry of Environment, Province of British Columbia, stated in a letter to Dr. Christopher Servheen dated August 13, 1990, that "healthy grizzly populations located to the north and northwest are effectively precluded from immigrating to the ecosystem by immigration barriers presented by high density human populations or extensive development not compatible to grizzly occurrence \* \* \*." The Service thus agrees with the statements of the petitioners that the North Cascades grizzly bear population may be isolated from other North American populations.

Section 4(b)(3)(B) of the Endangered Species Act requires that the Service make one of the following 12-month findings on each petition presenting substantial information: (i) The petitioned action is not warranted; (ii) the petitioned action is warranted and will be proposed promptly; or (iii) the petitioned action is warranted but precluded by other efforts to revise the lists, and expeditious progress is being made in listing and delisting species. Section 4(b)(3)(B)(ii) requires that petitions for which the action requested is found to be warranted will be

promptly published in the **Federal Register** along with a general notice and complete text of a proposed regulation to implement such action.

The Service finds that changing the listing of the North Cascades population of grizzly bears from threatened to endangered is warranted but precluded at this time. The Service is expeditiously working on listing a backlog of species having a higher priority of needing protection of the Endangered Species Act. This finding will be re-evaluated after the habitat evaluation work is completed and the Interagency Grizzly Bear Committee has deliberated the results. In the meantime the grizzly bear in the North Cascades remains listed as threatened and retains full protection under the Endangered Species Act.

#### References Cited

- Hall, E.R. 1984. Geographic variation among brown and grizzly bears (*Ursus arctos*) in North America. Special Publication of the Museum of Natural History, University of Kansas, No. 13, 16 pp.
- Rausch, R.L. 1963. Geographic variation in size in North American brown bears, *Ursus arctos* L., as indicated by condylobasal length. Can. J. Zool. 41:33-45.

#### Author

This notice was prepared by Dr. Christopher Servheen (see **ADDRESSES**).

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended. (16 U.S.C. 1531-1544).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: July 9, 1991.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 91-17516 Filed 7-23-91; 8:45 am]

BILLING CODE 4310-55-M

#### 50 CFR Part 23

#### Changes To Be Proposed in Appendices to the Endangered Species Convention

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Request for information.

**SUMMARY:** The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention) regulates international trade in certain animal and plant species, which are listed in the appendices of this treaty. The United

States, as a Party to CITES, may propose amendments to the appendices for consideration by the other Parties.

This notice invites comments and information from the public on species that have been identified as candidates for U.S. proposals to amend Appendix I or II at the next biennial meeting of Party nations. The meeting is scheduled for March 2-13, 1992, in Kyoto, Japan.

**DATES:** The Service will consider all comments received September 6, 1991, on proposals described in this notice.

**ADDRESSES:** Please send correspondence concerning this notice to Chief, Office of Scientific Authority; room 725, Arlington Square Building; U.S. Fish and Wildlife Service; Washington, DC 20240. Fax number (703) 358-2202. Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. Comments and other information received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

**FOR FURTHER INFORMATION CONTACT:** Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address, telephone (703) 358-1708 (or FTS 921-1708).

**SUPPLEMENTARY INFORMATION:** In its previous notice on this subject (56 FR 4965; February 7, 1991) the U.S. Fish and Wildlife Service (Service) requested information on plant and animal species that might lead the Service to prepare proposals to amend the listings under CITES for consideration at the next regular meeting of the Conference of the Parties (COP6). That notice described the provisions of CITES for listing species in the appendices and set forth information requirements for proposals. The present notice announces the proposals received, explains why the Service does not intend to consider certain proposals, and describes those proposals that will receive further consideration prior to deciding whether to submit any of these proposals to the CITES Secretariat by the October 4, 1991, deadline.

The Service received more proposals for species changes to CITES appendices than in recent years before other meetings of the Conference of the Parties, and in addition, has reason to develop certain other proposals on its own initiatives. Therefore, in deciding which proposals to consider further, the Service generally focused on native species, and those species for which the information indicating possible threat to the species is most complete, and for

which the threat appears to be most severe.

The Service continues to consider submitting proposals on the following species: Painted stork (as possible listing in appendix II pursuant to article II.2b); Goffin's cockatoo, blue-streaked lory, and blue-fronted amazon (transfer each to appendix I); Goliath frog (list in appendix I or II); box turtle and wood turtle (appendix II); paddlefish (appendix I or II); blue-fin tuna (appendix II); unionids (from I to II and add others to II); American mahogany (appendix II); Venus fly-trap (appendix II); Montezuma quail (remove from appendix II); San Diego horned lizard (remove from appendix II); Mexican bobcat (remove from appendix I); pronghorns (present as geographic listing), northern elephant seal (remove from appendix II); *Turbinicarpus* spp. (clarify listing), Queen conch (add to appendix II); commoner *lignum vitae* (add to appendix II); and scarlet macaw (register captive breeding facility). Additional information on each of these possible proposals is presented in a later section, and information sought is discussed.

The Service for reasons presented above and discussed later, does not intend to submit proposals for the whip-tailed wallaby, hippopotamus, American black bear, Ducor's cockatoo, red-vented cockatoo, gray-cheeked parakeet, red-masked conure, ploceids, fringillids, emberizids, estrildids, file snakes, bog turtle, blue shark, requiem sharks, hammerhead sharks, three *Ariocarpus* cacti, trilliums, Brazilian rosewood, North Andean walnut, and several Central American tree species.

#### Proposals Which the Service Does Not Plan To Submit

The Humane Society of the United States proposed that the whip-tailed wallaby be included in appendix II of CITES. The population was estimated to be about 900,000 animals in 1987-1988, sustains a commercial harvest with recent quotas at about 5.5 percent of population, and has recovered from drought periods. The Humane Society of the United States and the International Wildlife Coalition requested the Service to propose listing the hippopotamus in appendix I and II, respectively, although no draft proposal or trade statistics were submitted.

The World Wildlife Fund-U.S. requested the Service to submit a proposal to list the American black bear on appendix II under the provisions of Article II, paragraph 2(b) of the Convention (similarity of appearance), and the Humane Society of the United