

subsequent 15-day period to December 13, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230-0002, and in the "Reading Room" section of the Board's Web site, which is accessible via <http://www.trade.gov/ftz>. For further information, contact Christopher Kemp at [Christopher.Kemp@trade.gov](mailto:Christopher.Kemp@trade.gov) or (202) 482-0862.

Dated: September 23, 2010.

**Elizabeth Whiteman,**

*Acting Executive Secretary.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-533-821]

#### **Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Court Decision Not in Harmony with Final Results of Administrative Review**

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

**SUMMARY:** On September 13, 2010, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) results of redetermination pursuant to the CIT's remand in *United States Steel Corporation, et al. v. United States et al. and Essar Steel Limited v. United States et al.*, Slip Op. 09-152, Remand Order (December 30, 2009)(*Essar*). See *Final Results of Redetermination Pursuant to Court Remand*, dated July 15, 2010 (found at <http://ia.ita.doc.gov/remands>); and *United States Steel Corporation, et al. v. United States et al. and Essar Steel Limited v. United States et al.*, Slip Op. 10-104 (September 13, 2010) (*Essar*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results of the administrative review of the countervailing duty order on certain hot-rolled carbon steel flat products (HRCS) from India covering the period of review (POR) of January 1, 2006, through December 31, 2006. See *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of*

*Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) (*Final Results*), and accompanying Issues and Decision Memorandum (I&D Memorandum).

**EFFECTIVE DATE:** September 28, 2010.

**FOR FURTHER INFORMATION CONTACT:** Gayle Longest, AD/CVD Operations, Office 3, Import Administration International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-3338.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On July 14, 2008, the Department published its final results in the countervailing duty administrative review of HRCS from India covering the POR of January 1, 2006, through December 31, 2006. See *Final Results*. In the *Final Results*, the Department did not include central sales taxes paid on domestic purchases of iron ore lumps and for high-grade iron ore fines because we did not have information on import duties and other taxes and fees payable on imports of iron ore to be included in the calculation of the benchmark. See I&D Memorandum at "Sale of High-Grade Iron Ore for Less Than Adequate Remuneration" section and Comment 4. In *Essar*, the CIT determined that the Department's *Final Results* were not supported by substantial evidence on the record, and it remanded to the Department the issue of the deduction of Central Sales Tax from the government price in order for the Department to reevaluate the record evidence supporting this decision.

Moreover, subsequent to the *Final Results*, we discovered that the transportation and delivery charges (*i.e.*, all transportation and handling costs, duties and fees) for iron ore lumps and fines from Vizag port to Hazira port had not been included in either the iron ore lumps or fines calculations. Therefore, the we asked the court for a voluntary remand to adjust *Essar's* delivered purchase price for fines from NMDC to include missing delivery charges. In *Essar*, the CIT granted the Department's request for a voluntary remand to correct the freight calculations for *Essar's* purchases of iron ore fines from the National Mineral Development Corporation (NMDC). Specifically, the CIT ordered the Department to adjust the government price for iron ore lumps and fines used in the price comparison to measure the adequacy of remuneration (1) to correct freight calculations for *Essar's* purchases of iron ore fines from the NMDC and (2) to

account for slurry pipe transportation cost to Vizag.

On July 15, 2010, the Department issued its final results of redetermination pursuant to *Essar*. The remand redetermination explained that, in accordance with the CIT's instructions, the Department has made redeterminations with respect to the calculation of the government price for iron ore lumps and fines as well as *Essar's* purchases of lumps and fines for the following three issues. First, we adjusted our iron ore calculations to measure the adequacy of remuneration of sales of lumps and fines by the GOI to *Essar* to include Central Sales Tax for *Essar's* purchase of iron ore lumps and high-grade iron ore fines from the NMDC and to include import duties payable on iron ore with regard to the corresponding benchmark prices. Second, we corrected the government price for iron ore lumps and fines to address erroneous freight calculations for *Essar's* purchases of iron ore from NMDC. Third, for fines purchases from NMDC made on or after the date the slurry pipeline became operational, we have replaced the per metric ton (MT) rail cost with the per MT slurry transportation costs. The Department's redetermination resulted in changes to the *Final Results* for *Essar's* net subsidy rate concerning the sale of iron ore for less than adequate remuneration program from 13.21 percent to 19.35 percent. Therefore, the Department's redetermination resulted in the total net countervailable subsidy rate received by *Essar* in the *Final Results* changing from 17.50 percent to 23.64 percent.

##### **Timken Notice**

In its decision in *Timken*, 893 F.2d at 341, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Essar* on September 13, 2010, constitutes a final decision of that court that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will issue an amended final results consistent with

these redeterminations and instruct U.S. Customs and Border Protection to assess countervailing duties on entries of the subject merchandise during the POR from Essar based on the revised assessment rates calculated by the Department.

This notice is issued and published in accordance with section 516A(e)(1) of the Tariff Act of 1930, as amended.

Dated: September 22, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 100604243-0430-02]

RIN 0648-XW88

#### Endangered and Threatened Wildlife; Notice of 90-Day Finding on a Petition To List Warsaw Grouper as Threatened or Endangered Under the Endangered Species Act (ESA)

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

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We (NMFS) announce a 90-day finding on a petition to list warsaw grouper (*Epinephelus nigritus*) as threatened or endangered under the ESA. We find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

**ADDRESSES:** Copies of the petition and related materials are available upon request from the Chief, Protected Resources Division, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or online from the NMFS HQ Web site: <http://www.nmfs.noaa.gov/pr/species/fish/warsawgrouper.htm>.

**FOR FURTHER INFORMATION CONTACT:** Michael Barnette, NMFS Southeast Region, 727-551-5794, or Marta Nammack, NMFS Office of Protected Resources, 301-713-1401.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 3, 2010, we received a petition from the WildEarth Guardians to list warsaw grouper (*Epinephelus nigritus*) as threatened or endangered

under the ESA. Copies of this petition are available from us (see **ADDRESSES**, above).

#### ESA Statutory and Regulatory Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When it is found that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a “positive 90-day finding”), we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, within 1 year of receipt of the petition, we shall conclude the review with a finding as to whether, in fact, the petitioned action is warranted. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a “may be warranted” finding does not prejudice the outcome of the status review.

Under the ESA, a listing determination may address a “species,” which is defined to also include subspecies and, for any vertebrate species, a distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A species, subspecies, or DPS is “endangered” if it is in danger of extinction throughout all or a significant portion of its range, and “threatened” if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). The ESA requires us to determine whether species are threatened or endangered because of any one or a combination of the following five section 4(a)(1) factors: (1) The present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) any other natural or manmade factors

affecting the species’ existence (16 U.S.C. 1533(a)(1)).

ESA-implementing regulations issued jointly by NMFS and the U.S. Fish and Wildlife Service (USFWS; 50 CFR 424.14(b)) define “substantial information” in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may meet the ESA’s definition of either an endangered or a threatened species, and that such status may be the result of one or a combination of the factors listed under section 4(a)(1) of the ESA. Thus, we first evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the species at issue faces extinction risk that is cause for concern. Risk classifications of the petitioned species by other organizations or made under other statutes may be informative, but may not provide rationale for a positive 90-day finding; many times these classifications are generalized for a group of species, or only describe traits of species that could increase their vulnerability to extinction if they were being adversely impacted. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species at issue (*e.g.*, population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity), and the potential contribution of identified demographic risks to