

POLAR BEAR TROPHIES IMPORTATION

HEARING

BEFORE THE

COMMITTEE ON RESOURCES HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

H. J. RES. 59

To disapprove a rule affecting polar bear trophies from Canada under the 1994 amendments to the Marine Mammal Protection Act issued by the United States Fish and Wildlife Service of the Department of the Interior

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POLAR BEAR TROPHIES FROM CANADA

WEDNESDAY, APRIL 30, 1997

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, D.C.

The Committee met, pursuant to call, at 11:00 a.m., in room 1324, Longworth House Office Building, Hon. Don Young (Chairman of the Committee) presiding.

STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA; AND CHAIRMAN, COMMITTEE ON RESOURCES

The CHAIRMAN. Today we will hear testimony on H.J. Resolution 59, a resolution I introduced with Charlie Norwood, Collin Peterson, Ron Paul and Saxby Chambliss.

The purpose of this resolution is quite simple: to disapprove the Department of Interior's final rule on the importation of certain polar bear trophies.

Since coming to Congress, I have been involved with the Marine Mammal Protection Act of 1972. Over the years, I have worked hard to improve the law, and we were successful in enacting a number of positive changes in 1994. One of those provisions gave the Secretary of the Interior the authority to issue permits to Americans to import legally taken polar bear trophies from Canada both before and after 1994.

Our intent in passing this provision was clear: we wanted to make it easier for hunters to import polar bear trophies into the United States as long as that activity did not adversely affect Canadian polar bear populations. There are about 13,120 polar bears in the Northwest Territories of Canada. According to scientific experts, this population is growing by three to five percent each year. Since the annual quota for sport hunting was 132 animals in 1996, this harvest rate has little if any effect on any of Canada's polar bear populations. What this activity is doing, however, is providing thousands of dollars to the Canadian Eskimos, allowing them to maintain their cultural heritage.

On July 17, 1995, 15 months after the enactment of the 1994 amendments, the Department of the Interior issued a proposed rule allowing all pre-1994 polar bear trophies to enter the United States. This was a correct interpretation of the 1994 amendments.

We must not lose sight of the fact that these are dead bears. I mean long dead. While we cannot wish them back to life, we can attain benefits to finance conservation programs of Alaska and Russia polar bear research populations by collecting a \$1000 fee for

each bear that is imported into this country that has been long dead.

Furthermore, the 1994 amendments authorize the Secretary to make a determination on whether an import permit should be issued based on these criteria. The Canadian management program is based on scientifically sound principles that ensure the sustainability of the polar bear population. The management plan is consistent with international agreements. And the issuance of a permit is not—will not contribute to illegal trade in other bear parts.

On February 17, 1997, after years of delay, the Department of Interior issued its final rule. In a move that would make any world class gymnast blush, the Department did a complete reversal without even the benefit of a trampoline, and announced it would now limit the importation of both new and old polar bear trophies to only five of the 12 identified populations in the Canadian Northwest Territories.

While no rational explanation was provided, it is clear that in a mad rush to avoid litigation the Department has ignored both the scientific data and the Congressional intent contained in the 1994 MMPA amendments.

The bottom line in this debate is the specific criteria outlined in the 1994 amendments have been satisfied. Canada has a growing population of polar bears. Sound conservation programs exist in the Northwest Territories, and a limited number of polar bear trophies will not undermine the sustainability of these populations. Even the Marine Mammal Commission, no fan of the polar bear provision, believes the Department has erred in not allowing the importation of polar bear trophies from additional populations.

I look forward to hearing from my distinguished witnesses. I want to know why it took nearly three years to reach the wrong conclusion, why the Department is holding Canada to a higher standard than Congress intended in 1994 and when the Department intends to decide on the seven other polar bear populations.

[Correspondence may be found at end of hearing.]

The CHAIRMAN. Are there any other opening statements? Mr. Norwood.

**STATEMENT OF HON. CHARLIE NORWOOD, A U.S.
REPRESENTATIVE FROM GEORGIA**

Mr. NORWOOD. Thank you very much, Chairman Young, and members of the Committee for inviting me here this morning to be part of the Resource Committee's hearing on the Fish and Wildlife Service interpretation of the 1994 Marine Mammal Protection Act.

Two of today's panelists hail from the 10th District of Georgia. Congressman Roy Rowland represented part of the current 10th District in Washington for 12 years. While in Congress, Dr. Rowland emerged as a bipartisan leader on a wide range of issues including health care reform, the environment, budget deficit reduction and transportation. Dr. Rowland is currently the director of the Georgia Medicaid program, and I would like to welcome Dr. Rowland.

And continuing with my statement, Mr. Chairman, with the second panelist seated I would like to welcome the second Georgian, if I may.

The CHAIRMAN. You can welcome all of Georgia. You have got great people in that great State. You don't have many turkeys, you know.

Mr. NORWOOD. Some folks can't kill them.

If the Marine Mammal Protection Act of 1994 was supposed to facilitate the import of legally harvested polar bears, why are we here this morning, Mr. Chairman? I do not want to impose on your generosity for the time that you have given me today, but I will sum up simply by saying that the intent of Congress was that the Secretary may issue a permit for the importation of polar bear parts, other than internal organs, taken in sport hunts in Canada, including polar bears taken prior to the date of the enactment of the Marine Mammal Protection Act amendments of 1994.

I just—I want some questions answered here today and hope that we will get them. And it is simply this, were these bears legally harvested. It is my understanding that they were and each applicant for import certainly must have proven that.

Is the importation of these bears consistent with the conventional international trade of endangered species of which the United States is a partner? I understand it is and that each applicant must produce the proper permit to prove that.

Does Canada have a sound professional management plan in place for polar bears? I understand that Congress determined it does when it commended this act in 1994.

Will the native villagers benefit from the sport hunting of these polar bears? I understand that they benefit enormously and they will hear much testimony—we will hear much testimony today supporting this.

And finally and perhaps most importantly, will there be any negative impact on the current population of polar bears in Canada? I understand that the opposite is true here, that part of the \$1000 permit fee is used for polar bear conservation.

Mr. Chairman, thank you very much again for holding this hearing and allowing me to testify. I look forward to hearing the testimonies of our witnesses. To me it is just basic common sense to allow the importation of these polar bear trophies. And I believe it should be allowed without any additional delay.

The CHAIRMAN. I thank the gentleman. Any other opening statements?

Mr. VENTO. Mr. Chairman, I would like to welcome my colleague from Minnesota. He is from the temporary 6th Great Lake of Western Minnesota, so I am pleased to see him here and his work on the Congress is well known. Thank you.

The CHAIRMAN. Any other opening statements? If not, I will recognize Mr. Peterson, because he is the seat member, and then Dr. Rowland, who is not seated but fondly remembered.

**STATEMENT OF HON. COLLIN PETERSON, A U.S.
REPRESENTATIVE FROM MINNESOTA**

Mr. PETERSON. Thank you, Mr. Chairman. I want to thank you and the other members for the opportunity to speak here today. As I think you are aware, there are approximately 400 polar bears that were legally harvested under Canada's polar bear management program and are currently in storage in Canada because they

have not been able to be imported into the United States. Many of these animals belong to my constituents, and they are very frustrated, they thought this had been fixed.

Congress amended the Marine Mammal Protection Act of '94 to allow the importation of these legally harvested trophies. The language of this amendment specifically refers to the imports of bears harvested prior to the amendment's adoption and it said the Secretary—and I quote, “the Secretary may issue a permit for the importation of polar bear parts taken in sport hunts in Canada, including polar bears taken but not imported prior to the date of the enactment of the Marine Mammal Protection Act amendments of 1994, to an applicant which submits with its permit application proof that the polar bear was legally harvested in Canada by the applicant.”

Now I think what is in question is some report language that accompanied this legislation that said it is the Committee's intent that all conditions outlined by this amendment concerning the importation of polar bear trophies taken prior to the adoption of this amendment have to be met.

We think the correct interpretation of the requirements mandated by this language is that permit applicants must prove that they had the proper international permit, the animal was properly tagged and it can be proven that the animal was legally harvested.

The Department of Interior interpreted the language originally this way when they issued their proposed rule July 17, 1995, which as you pointed out, was almost 15 months after the enactment of the bill. And under this proposed rule, all polar bears harvested before the date of the final rule were grandfathered in and could be imported into the United States if it could be proven that they had not already been imported, that the specimen is sport hunter trophy, that the bear was legally harvested and that it was consistent with CITES.

However, the final rule published on February 18, 1997, made significant changes in this grandfather clause. In regard to previously taken polar bears, the final rule only allowed for the importation of polar bears from populations deemed to be currently sustainable. And as a result, the majority of the bears that have been previously taken are still in freezers up in Canada and my constituents and a lot of your constituents are paying storage fees and are very unhappy.

According to a review of the Administrative record of the Department of Interior on this rulemaking, in my opinion no new biological or scientific evidence was uncovered which warranted a change in the grandfather clause. Rather I think the Department reacted to advice from the Solicitor's Office regarding fears of a lawsuit from anti-hunting organizations if the grandfather clause remained as proposed. My question is why didn't the Solicitor's Office offer this interpretation when it reviewed the proposed rule in 1995? Wildlife management decisions should be made on the basis of sound scientific data and not on the basis of threats or fears of retaliatory lawsuits.

And the change in this grandfather clause ignores one of the primary motives that Congress had in amending the Marine Mammal Protection Act of '94, which was to allow the importation of these

bears. In addition, the issue of the grandfather clause was further complicated by the long time it took the Department to act on the direction of Congress. And this 15-month delay between the passage of the act, the proposed rule and the 20-month wait, does not conform with the intent and the expectation of Congress.

I had a long discussion with former Congressman Jack Fields, who is the author of this, and he does not think that this rule is in conformance with what he thought he was trying to accomplish.

This has also been pointed out, these bears are dead. This is not going to have any negative effect on anything at this point and the money, the \$1000 permit fee, is going toward polar bear conservation.

In closing, preventing the importation of these bears doesn't make any sense. It ignores the intent of Congress. It would have no negative impact on current polar bear population and denies a valuable source of funds for polar bear conservation. Accordingly, I think the Department should issue new regulations grandfathering all these bears and move in the direction that we originally intended.

Thank you very much and I would be happy to answer any questions.

The CHAIRMAN. Thank you, Congressman. Congressman Rowland.

**STATEMENT OF J. ROY ROWLAND, FORMER CONGRESSMAN,
DUBLIN, GEORGIA**

Mr. ROWLAND. Thank you very much, Mr. Chairman and members of the Committee. I appreciate the opportunity to be here today, and especially to visit with many of you who are longtime friends. I don't envy you the task that you have in governing our country, but I commend you, every Member of Congress, for shouldering that responsibility. And I want to thank my good friend and my Congressman Charlie Norwood for introducing me today.

One of the issues that I dealt with while a Member of the House is before you today. Dr. J.Y. Jones, a close personal friend and medical colleague, and also one of my constituents, approached me with the surprising information that a person from the United States could go to Canada and hunt polar bears legally under the auspices of their hunting program but could not legally bring their trophy home.

I have the utmost regard for J.Y. He is an excellent physician and surgeon with the highest personal ethics. He is greatly respected by the people in the community where we live and he gives generously of his time and resources and has done a total of 14 medical missionary trips to Honduras and Jamaica. After receiving additional information from him, including the fact that he personally had a polar bear trophy in Canada he couldn't bring home, I agreed to look into the matter and get back with him on the feasibility of amending the Marine Mammal Protection Act to allow such import.

It appeared to me that such a restriction was unwarranted in view of the fact that our neighbor Canada is perfectly capable of managing their own wildlife resources without our interference.

I discussed the import ban informally with my friend Gerry Studds, then Chairman of the House Merchant Marine and Fisheries Committee, and he expressed an interest in changing the law to allow import of polar bear trophies under certain conditions. He told me that he would have his staff research the law and prepare a proposal that might remove this restriction. Other interested Members of Congress specifically wanted to allow importation of polar bears already stored in Canada that had been legally taken. Also, those bears already harvested could have no effect on the polar bear population, so it made good sense to allow their importation if they had been legally taken.

The opportunity to make this change in the law came shortly thereafter as the reauthorization of the original Marine Mammal Protection Act came up for consideration. I talked with Congressman Studds on several occasions and our staff people worked together on the amendments. Other Members of Congress gave input and advice concerning the pending legislation, and an effort was mounted to include the needed language. The actual legislation was finalized in early 1994.

The record is clear that the Merchant Marines and Fisheries Committee was indeed successful in resolving the issue and subsequently recommended to the full House of Representatives that legally harvested polar bear trophies from Canada be permitted importation into United States by our citizens who had hunted there in the past or would do so in the future. After the House and Senate resolved their differences, the legislation was passed by both houses of Congress and it was signed into law by President Clinton on April 30, 1994, which is incidentally exactly three years ago today.

Now I have learned still today, despite the interval of three years, not a single polar bear trophy has been imported under the amended law. What is even more mind boggling is that a simple bipartisan mandate of the Congress has been expanded far beyond its original intent, I am told, to include 30 pages of rules, a complicated application process, and provisions attached that even the name of the individual hunter applying for an import permit must be published in the **Federal Register**. I am also surprised that polar bears already stored in Canada, legally harvested in years past and specifically approved by Congress for import, have been held up indefinitely by a broad and bewildering array of polar bear subpopulation evaluations.

I have been asked to testify as to what the intent of Congress was in 1994 on this issue. I believe that Congress expected the issuance of polar bear import permits to begin immediately. I know that I did. After five months of inaction on the new amendment, I joined a group of concerned Congressmen who sent a letter to Secretary Babbitt of the Interior Department urging him to use the authority granted him to develop interim regulations for polar bear imports so that waiting sportsmen could proceed with the importation without further delay. We recommended that if he believed a more detailed regulatory process be necessary, he could undertake that proceeding thereafter. Instead, the United State Fish and Wildlife Service developed these voluminous and dilatory regulations we have today.

In summary, it was never the intent of Congress, based on my knowledge, that we attempt to micromanage the Canadian polar bear conservation system or to force Canada into new international agreements, but that we simply allow U.S. hunters to apply for and receive a permit to import their trophy if a few simple criteria were met, the most key of which being that the bear was legally taken in Canada and not illegally imported already. The regulations appear to go far beyond Congressional intent. They are yet another example of the tendency toward over-regulation in many levels of the Federal bureaucracy.

I urge the members of the Committee to do what is necessary to carry out the will of Congress as passed in 1994, and I thank you, Mr. Chairman.

[Statement of J. Roy Rowland may be found at end of hearing.]

The CHAIRMAN. Thank you, Doctor. First, I agree with you 100 percent because I am one of the few people who have been on the Fishery Committee for the last 25 years and now we took it to this Committee. It was a bipartisan effort. Everybody agreed to it, including the Administration. And now we find out that we have people that think that they are God and can tell the Congress to go fly a kite. And that is why we are going to vote on this before the House and find out whether they are God or not. It is wrong when they go against the intent, including the report language. These bears are dead. It is the government of Canada that does recognize it. And what we tried to do in this business, by the way, was to improve the polar bear population.

I think we will hear testimony later on that this increased the value of the polar bear. It has protected the young. It has protected the sows. It has really, in fact, been harvesting the old boars, which are much more valuable. And that was the intent of the Congress. No way would Gerry Studds support something that wasn't that. And to have now an agency saying this is incorrect, I want to thank you for your memory. That is one reason I think that the institution should have a longer term instead of shorter term, so they do have some knowledge of what was the intent and what people thought they were doing and what does happen at a later date.

Collin, I am going to ask a question. If you can, how do you think that the polar bear populations are affected by prohibiting the importation of these bears?

Mr. PETERSON. I don't think it has a negative effect, because if we would allow the importation, the fees would be paid and that money would go to conservation. It is going to have no negative effect in terms of harvest, because no one is questioning that we are going to have to have rules going forward and that there is going to have to be a management plan in place and that we are going to have to make sure that the rules are such that we are doing the right kind of conservation. But these dead bears have been taken and it is not going to have any impact one way or the other on conservation other than negative because we don't have the money.

The CHAIRMAN. Under the present rule as being proposed by I don't know who, is there any conservation in that regulation that you can see?

Mr. PETERSON. Not that I can see.

The CHAIRMAN. That is what my interpretation is, there is none whatsoever. And if I remember correctly, Dr. Rowland, is it not true that we had testimony from our scientists, the Marine Mammal Commission, and the Canadian scientists that were meeting their goal was to promote and actually improve the polar bear population? That was testified to this Committee, is that correct?

Mr. ROWLAND. My recollection, that is exactly correct.

The CHAIRMAN. I thank the gentlemen. The gentleman—Mr. Vento.

Mr. VENTO. Well, thank you, Mr. Chairman. I understand that there is some controversy now. I was reading ahead to the other testimony and, just to understand the intent of this particular rule change, the intent here is just to knock out this rule. And then what would we be left with then?

The CHAIRMAN. What would be left is a rule that follows the intent of Congress. They have to come back—

Mr. VENTO. I think the thing is that they had proposed a rule in '95. This law passed in '94. They proposed a rule in '95 and then they came up with this final rule in February or March.

The CHAIRMAN. Which is a reversal of the original rule.

Mr. VENTO. So we knock it out with this. Then what do you put in its place?

The CHAIRMAN. Nothing until they issue another rule with the intent of Congress. They have to follow Congress.

Mr. VENTO. It would be an indication that we disagree with it.

The CHAIRMAN. There might be a—in fact, I may issue a citation of contempt of Congress, because they are not following our lead in what the Congress passed. They do not have that authority. You should accept that.

Mr. VENTO. I am simply asking what the effect would be of knocking out the rule. That is what—and so you are saying—

The CHAIRMAN. They have to come back with a rule.

Mr. VENTO. They would have to come back, but I mean the—

The CHAIRMAN. The intent—

Mr. VENTO. The issue is that there is—you will see in the next testimony that there is an issue here about the retroactivity, in other words, dealing with the grandfather. That is one issue. And then there is another issue perspectively. So what is the message we are sending here? The intent is obviously we want to grandfather importation of bear trophies that had been harvested between '94 and '97, is that the intent? You want to grandfather those in because the rule wasn't out and folks were operating on the basis—

The CHAIRMAN. And prior, as long as they are legally taken.

Mr. VENTO. Well, whatever. That is one of the intents, but then perspectively is it the intent not to deal with the—and they, incidentally, talk about 14 areas in Canada, not 13—but is it the intent then to comply with or to then live with the—they are saying you can hunt in five areas out of the 14 or six areas out of the 14. Is the message that you want to send that you want—that perspectively that their interpretation of where the hunting can be permitted is inappropriate or not?

The CHAIRMAN. It is my intent that we made an agreement with Canada. Canada defines scientifically which areas are appro-

priately being hunted. We have now an agency within the United States saying without scientific information that you cannot hunt in certain areas.

Mr. VENTO. Basically, then, there are two issues, in other words. There is the issue of the grandfather for whatever reason—

The CHAIRMAN. That is right.

Mr. VENTO.—those trophies are there. Then there is the second issue, as I see this, of whether or not—what our relationship is with the Canadian permits to hunt for trophies. They are permitting them in, apparently, all 14 areas or something of this nature and/or 13 of the 14, and we are saying that it should be restricted to five.

The CHAIRMAN. Yes, without scientific information, nothing to back it up.

Mr. VENTO. OK.

The CHAIRMAN. So what we are doing, we are imposing our will against the Canadian government, and I don't think that is what we should be doing in the case where we have reached these agreements.

Mr. VENTO. Well, I am just trying to understand what the issues were, Mr. Chairman. I am just learning about this, but I would just point out on page two of the testimony, and, you know, maybe Collin or our friend Roy—I am sorry I didn't welcome you. I want to recognize our long friendship and work.

But they point out the Service was required to determine under the 1994 amendments in consultation with the Marine Mammal Commission that these requirements were met in order to allow polar bear trophy imports. As part of these requirements, the Service is required to conclude the Canada sport hunting program is consistent with the purposes of the 1973 agreement on the conservation of bears and is based on scientifically sound quotas to ensure, the key word, the sustainability of effective population stock. Although these requirements were simply stated in the 1994 amendments, they are complex and involve multiple issues.

So I am just—I mean, this is obviously a different requirement that they are reading the '94 law in a way that is inconsistent. So we will have to try to iron it out, and I understand that, Mr. Chairman, further that this is—apparently the Solicitor, Mr. Leshy, from Interior interpreted or was responsible for being consulted, or someone in his office, with regard to this issue.

So I do think that, you know, since what you are really doing is knocking out the rule here, there is nothing being put in its place and I think we better get back to look at whether the law and what the law requires, because in fact if that interpretation is correct by a court, they could put in a rule and effect they want and they may apparently be challenged.

The CHAIRMAN. That may be true, but they cannot, regardless of what they think they will be challenged about, go against the will of Congress. If they in fact implement a rule that we have directed them to do so and then they are taken to court, we will win. I mean, this idea—every time I hear one of my agency say oh, we might have to go to court, so—they hide under the table. Any time the Sierra Club or Friends of the Earth or Friends of the Animal group threaten a lawsuit, they go hide under the table.

Mr. VENTO. Well, Mr. Chairman——

The CHAIRMAN. And we told them—this Congress told them what to do.

Mr. VENTO. Well, I think that it may be the law of unintended consequence that you didn't intend or Mr. Studds didn't or Mr. Fields didn't, but if this particular type of change did occur, I think we can rationally look at it and make a determination. And what I am suggesting to you is that maybe the answer is not so much in dealing with the rule but fundamentally looking at the law to see if there is a basis for what their action is.

The CHAIRMAN. We will look at that. We don't believe it. I had my lawyers look at it. We don't think there is any rationale. Listen to what you just said about if they are difficult, was it, and it is complex. I mean that is pure gobbly goop. That is all it is, just gobbly goop. It is a way to delay the——

Mr. VENTO. It is a complex and involved multiple issue.

The CHAIRMAN. Multiple issues. They don't define the multiple issues. They do not give us any scientific information. They do not consider Canada at all, and that was not the intent of the legislation.

Mr. VENTO. I think the witnesses adequately answered the questions.

The CHAIRMAN. All right.

Mr. VENTO. Mr. Peterson or Mr. Rowland?

Mr. PETERSON. I associate myself with the Chairman's remarks.

The CHAIRMAN. The gentleman from Georgia. Excuse me, in all due respects I have to recognize members of the Committee first.

Mr. NORWOOD. Sure.

The CHAIRMAN. The gentleman from California.

Mr. CALVERT. I have no comment, Mr. Chairman.

The CHAIRMAN. The gentleman from——

Mr. WALTER JONES. I have nothing.

The CHAIRMAN. OK, the gentleman from Georgia.

Mr. NORWOOD. Just very briefly, Mr. Chairman. I do thank these witnesses. And I was not in Congress when this was passed, but it clearly seems to everyone I can talk to that the Department did not write rules and regulations, and both of our Members here just said that they did not write rules and regulations according to the will of Congress. In fact, as we get on into this hearing a little bit, a lot of the thoughts from the USFWS, you will find that had they used a little better data, for example some data as well as Canada might have used, they may too have come up with a different decision. So I thank you gentlemen very much for being here. And thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Hawaii. You were here, I believe, were you not?

Mr. ABERCROMBIE. I beg your pardon?

The CHAIRMAN. You were on the Committee when this passed.

Mr. ABERCROMBIE. Yes. Mr. Chairman, is the next witness to come up Mr. Jones to address the——

The CHAIRMAN. Yes.

Mr. ABERCROMBIE. [continuing]—process of——

The CHAIRMAN. Yes.

Mr. ABERCROMBIE. I will withhold questions until that time.

The CHAIRMAN. All right, thank you, gentlemen. I appreciate you being here. Have a good flight, Doctor.

Mr. ROWLAND. Thank you.

The CHAIRMAN. The next witness is Mr. Marshall Jones, Assistant Director of International Affairs, U.S. Fish and Wildlife Service, Department of Interior. He is accompanied by Mr. Ken Stansell and Mr. Michael Young. Dr. John E. Reynolds, III, Chairman of Marine Mammal Commission, is accompanied by Mr. Mike Gosliner and Dr. Robert Hofman. Mr. Jones.

STATEMENT OF MARSHALL JONES, ASSISTANT DIRECTOR FOR INTERNATIONAL AFFAIRS, U.S. FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY KEN STANSELL AND MICHAEL YOUNG

Mr. MARSHALL JONES. Thank you, Mr. Chairman. We appreciate your giving us this opportunity to testify before you today on House Joint Resolution 59, which would disapprove our recent regulations for the import of polar bear trophies from Canada.

As you mentioned, Mr. Chairman, I have with me Mr. Kenneth B. Stansell, who is the Chief of our CITES Management Authority, and Mr. Michael Young from the Department of Interior's Solicitor's Office, as well as members of Mr. Stansell's staff who prepared the rule.

Mr. Chairman, the development of these regulations over the past three years has involved some of the most controversial and difficult issues that I have had to deal with in 20 years in the Fish and Wildlife Service.

Recognizing, Mr. Chairman, your views that the intent of Congress was clear, unfortunately the record which was compiled, the comments that we received during the comment period and our own review of the legislation indicated to us that we had to make findings not only involving future polar bears which might be taken in Canada, but also the bears that were already taken and that were sitting in storage. Our goal, Mr. Chairman, was to import, to allow the import of as many polar bears as meet the requirements of the law.

Before I address some of the problems, Mr. Chairman, I would like to emphasize some of the positive aspects of this rule. First of all, Mr. Chairman, we determined that five of Canada's 12 polar bear populations fully meet the criteria that were contained in the law and the 1994 amendments, and we have approved them for import. The first 16 permit applications have now been approved and another 45 permit applications are now in the review process. So that within the next few weeks, Mr. Chairman, we believe that we will have approved 50 to 60 polar bear trophy imports.

Mr. Chairman, I have the first tag which would be applied to the first permit, and we are anxious for the day when this tag is put on a trophy that is brought into the United States. And that is followed by as many trophies as will meet the requirements of the law.

Also, Mr. Chairman, we were able to approve these applications, I believe, because of our decision to address each of Canada's polar bear populations separately. We believe that this approach was fully justified by the amendments to the law and the Marine Mam-

mal Act itself. If we had chosen the alternative approach, to look at Canada on an all or none basis, Mr. Chairman, we were concerned that our decision would have had to be that because some areas of Canada didn't meet the criteria, all of Canada would have failed to meet the criteria and we wouldn't have been able to allow import of any trophies on that basis. We avoided that outcome, Mr. Chairman, by using the population by population approach.

I would also point out, Mr. Chairman, that we did not disapprove any populations. We approved some. We deferred others until we receive additional scientific data. No polar bear population has the door closed to import, although some people wanted us to disapprove some of those. We did not take that step. We have left the door open, and as soon as we can get new information which indicates they qualify under the criteria, we are prepared to approve them.

Mr. Chairman, we have received new information from Canada and are now working on a proposal to make new findings regarding two additional areas in Canada in addition to the five which have already been approved.

Now, Mr. Chairman, let me briefly address the major concern which has been raised about the regulations, our decision that all trophy imports must meet the criteria in the 1994 amendments regardless of when they were taken. We originally proposed a blanket finding which would have allowed import of all trophies taken before the 1994 amendments. However, the Marine Mammal Commission and other commenters clearly demonstrated that this approach was not legally defensible based on the specific requirements in the law and in the House Committee report which accompanied it. Thus in our final rule, we were obligated to apply the same criteria to all trophies, regardless of where they were taken.

Finally, Mr. Chairman, let me say in closing that we recognize that some are disappointed with our final rule and believe it was too restrictive. On the other hand, Mr. Chairman, I think this morning you will also hear from some who believe the rule was too permissive. Overall we believe that we have accurately and fairly implemented the '94 amendments in a way which supports Canada's polar bear management program, which we acknowledge is the best in the world, as well as the traditional hunting rights of Canada's native people and the legitimate desires of sport hunters.

For these reasons, Mr. Chairman, if House Joint Resolution 59 is enacted and the regulation is disapproved, we do not believe that under the existing provisions of the law we would be able to prepare a new final rule which is substantially different from the existing regulations. On the other hand, Mr. Chairman, we are prepared to work closely with you, with sport hunters and with Canada to facilitate the approval of all populations which meet the requirements of the law, to make those decisions promptly and to open as many doors as we can to the import of polar bear trophies.

Thank you, Mr. Chairman. I am prepared to answer any questions which you may have.

[Statement of Marshall Jones may be found at end of hearing.]

The CHAIRMAN. Dr. John Reynolds.

STATEMENT OF DR. JOHN E. REYNOLDS, III, CHAIRMAN, MARINE MAMMAL COMMISSION, MIKE GOSLINER AND DR. ROBERT J. HOFMAN

Dr. REYNOLDS. Mr. Chairman and members of the Committee, thank you for inviting the Marine Mammal Commission to testify on House Joint Resolution 59. I am accompanied today by Michael Gosliner, the Commission's General Counsel, and Robert Hofman, the Commission's Scientific Program Director.

The Marine Mammal Protection Act amendments of 1994 authorized the Department of the Interior to issue permits for importing polar bear trophies taken legally by applicants in sport hunts in Canada provided that certain findings are made. The statute places responsibility for making these findings on Interior and ascribes a consultative role to the Commission. The Commission commented on each finding required under the amendments. We did so to meet our responsibility to see that the Marine Mammal Protection Act is faithfully implemented as enacted. The Act clearly provides for authorizing the hunting of polar bears and other marine mammals and the importation of trophies in certain circumstances. And our statutory responsibility is to see that all applicable conditions are met before such taking or importation is allowed. We believe the final rule reflects the statutory criteria.

My oral statement will be confined to the finding that Canada's sport hunting program is based on scientifically sound quotas, ensuring the maintenance of the affected population stock at a sustainable level. Although the Service suggested in its proposed rule that this, as well as other findings, were not applicable to those trophies taken by U.S. hunters in Canada prior to the enactment of the amendments, a plain reading of the statute and the accompanying statement of legislative intent indicate otherwise. Our comments therefore questioned the basis upon which the Service proposed differential treatment of trophies taken before and after enactment of the amendments.

With respect to the finding of scientific soundness as it relates to pre-amendment trophies, the Commission noted that the nature of the required findings suggested that historical data be used and recommended that, at a minimum, the findings be based on present day quotas and management practices for each population.

The other key question for the Service to resolve was whether the findings of scientific soundness were to be made for the individual polar bear management units in Canada, a single Canadian population, or for some other division of the populations. The Commission generally supported the use of management units as being appropriate and recommended that the final rule link the management units to the Marine Mammal Protection Act's definition of population stock.

The Service published its final rule in February, making affirmative findings for five of the 12 management units used by Canada when the rule was proposed. The Commission believes that the final rule better reflects the statutory requirements and that the final rule is a considerable improvement over the original proposal. In the Commission's view, the Service, based on the record before it at that time, could not have sustained affirmative findings for any of the other seven management units.

With final rules now in effect, there are three options on how to proceed. First, amend the rule based on revised interpretations of the statute. Second, amend the Act to establish different requirements, or third, work within the existing regulatory framework to consider additional data as they are developed. The Commission recommends the third option, i.e. working within the existing regulatory framework.

This option enables the Service to consider new information and proposed revisions to the regulations as warranted. As described in Commission publications, this is something that is described as adaptive management, where you continually take in new data and revise your regulations.

Shortly after publication of the final rule, the Commission obtained the most recent information on the status of Canadian polar bear populations and changes to Canada's management program. To assist in its review of this information, the Commission contracted with J. Ward Testa, Ph.D., a population biologist and biometrician. Dr. Testa's report, appended to my full statement, takes into account comments from the Commission, its Committee of Scientific Advisors, and outside reviewers.

The report concluded that the Canadian polar bear program is consistent with generally accepted principles of sound resource management, that the methods and models used by Canada to set polar bear quotas are conceptually sound, and that available data supported Canada's realignment of the Queen Elizabeth Islands, Parry Channel and Baffin Bay management units into five management units.

Using the criteria adopted by the Fish and Wildlife Service in the final rule, the report also examined whether polar bears from other management units might now qualify for import permits under the Act. It concluded that two of the revised management units, Lancaster Sound and Norwegian Bay, appear to meet the necessary criteria. Based on a review of the report, the Commission, in consultation with its Committee of Scientific Advisors, has recommended that the Service, if it concurs with our analysis, initiate a rulemaking to make affirmative findings for these two additional management units.

As for the remaining six management units, the Commission believes that there are problems that Canada still needs to resolve. We are well aware that some groups believe that the rule did not go far enough to allow imports of pre-amendment trophies or polar bears taken in other management units and that other groups felt that the Service's rule was too permissive. We believe that the Service's final rule accurately and appropriately implemented the plain language of the amendment.

And I also would be happy to answer any questions you may have.

[Statement of Dr. John E. Reynolds, III may be found at end of hearing.]

The CHAIRMAN. All right, thank you. Mr. Jones, you mentioned you approved five of the 12 populations. Does the government of Canada believe all 12 populations have satisfied the criteria of the act?

Mr. MARSHALL JONES. Mr. Chairman, I don't think the government of Canada has given us a direct comment or an evaluation.

The CHAIRMAN. How did you base it?

Mr. MARSHALL JONES. We used data.

The CHAIRMAN. If they didn't give you a comment, what data did you use?

Mr. MARSHALL JONES. Mr. Chairman, we used data that was provided by Canada. We had to do the evaluation. They provided the data.

The CHAIRMAN. OK, now, in 1994 the government of Canada has communicated to the Committee and the United States that sport hunting of polar bears does not adversely affect the sustainability of the country's polar bear population and does not have a detrimental effect on maintaining these populations throughout their range. That was 1994. Now you just said they have the best system in the world.

Mr. MARSHALL JONES. Yes, sir.

The CHAIRMAN. What criteria—what did you base your finding on?

Mr. MARSHALL JONES. Mr. Chairman, we based our finding on the criteria that were contained in the law, and particularly one of the criteria which was the most difficult, the criteria that there must be scientifically based quotas which will provide for a sustainable population.

The CHAIRMAN. OK, and what—let us say Canada comes down with a quota all the rest of the regions of two bears or three bears or four bears per region.

Mr. MARSHALL JONES. Mr. Chairman, if there were an enforced quota for each of the populations in Canada, then most likely we would have been able to approve all of the populations.

The CHAIRMAN. But would you make a definition of enforced quota? What would be your idea of an enforced quota? Would it be two or three or five or ten or 15 or 20?

Mr. MARSHALL JONES. Mr. Chairman, Canada has the scientific basis to set their quotas, and we wouldn't try to tell them what those quotas should be.

The CHAIRMAN. Without being argumentative, then, how can you deny the rest of the regions if they set the criteria. They submitted it to you, and yet you denied it. What basis—who told you to do this?

Mr. MARSHALL JONES. Mr. Chairman, there are provinces in Canada which don't have enforced quotas. The government of the Northwest Territories has what we think is a superb system. It involves quotas and it involves checking and it involves a scientific basis. Some of the other provinces, however, Mr. Chairman, either have quotas which are guaranteed and are not adjusted no matter what happens or don't have quotas at all.

The CHAIRMAN. OK, the Marine Mammal Commission believes that the Lancaster population should be approved. Why is there disagreement?

Mr. MARSHALL JONES. Mr. Chairman, we don't have a disagreement.

The CHAIRMAN. Then why isn't it approved?

Mr. MARSHALL JONES. We received the information too late to include it in the final rule which we published.

The CHAIRMAN. OK, now my last statement. The thing that probably concerns me most, I sat in this Committee. We worked this out. We had the agreement. The Administration signed the bill. And you are sitting there and telling me you are going to work with everybody involved and you are going to do it in an expedited manner. Why should I believe you?

Mr. MARSHALL JONES. Mr. Chairman—

The CHAIRMAN. 1994, what year is—what day is today? Three years ago. What makes me think that you are going to do anything better?

Mr. MARSHALL JONES. Mr. Chairman, the issue that we had to deal with, as I mentioned, were very difficult. And understanding that your belief was that the intent of Congress was clear, when we read the law and when we looked at the criteria, we found that it required a lot of judgments on our part.

The CHAIRMAN. Did the Solicitor tell you that you were going to be sued if you issued regulations as you proposed originally?

Mr. MARSHALL JONES. No, sir. Mr. Chairman, we discussed the possibility that we could be sued. No one told us that we would.

The CHAIRMAN. By who?

Mr. MARSHALL JONES. By those who were unhappy—would be unhappy with the regulations.

The CHAIRMAN. But why—but you have a responsibility as an agency to implement the act of Congress. That is your responsibility, is it not?

Mr. MARSHALL JONES. Yes, sir, it is.

The CHAIRMAN. Then why do you run when someone threatens to sue you?

Mr. MARSHALL JONES. Mr. Chairman, we don't run.

The CHAIRMAN. You write a regulation that is contrary to what the Congress intended to do.

Mr. MARSHALL JONES. Mr. Chairman, we hope that these regulations are not contrary to the intent of Congress. We didn't believe they were. We believe that we implemented the law, but we had to address all the issues that were raised on the record.

The CHAIRMAN. My time is about up. What defense do you have, including your lawyers, about the bears, and how many are there that have been dead—why cannot we import those bears if they are legally taken under Canadian law, receive the moneys that we would receive from them, put it into polar bear research? Who insists upon not allowing those dead bears in? I can understand the future bears, but I cannot for the life of me understand a bunch of dead bears laying away in the closet, and who is going to sue you over a dead bear? I would love to take that case, by the way. And I am not a lawyer and I would win it. Some of you lawyers don't believe it. I would win that hands down. Who is going to sue you?

Mr. MARSHALL JONES. Mr. Chairman, it is probably better that I not speculate about who might sue us.

The CHAIRMAN. I would like to know, because someone told you or someone told Katie McGinty or someone told Bruce Babbitt that you are going to be sued. Now who threatened to sue you?

Mr. MARSHALL JONES. We have no formal threats of litigation.

The CHAIRMAN. Then why do you worry about it?

Mr. MARSHALL JONES. Mr. Chairman, we are allowing the import of bears already taken from all the populations which in our judgment meet the criteria of the law, and we will allow the import of further bears from every other population which meets the criteria in the law.

The CHAIRMAN. But what I am suggesting is what is the objection of a bear that was legally taken. Why not allow that bear to be taken by that hunter, bring into the United States, pay the \$1000 fine, fee, whatever you want to do, pay it? Why not? I mean, what is the rationale for not doing that?

Mr. MARSHALL JONES. Mr. Chairman, personally I agree. What you have said makes perfect common sense. Mr. Chairman, however it is not what we believe the law requires. We have to make these judgments about the criteria and whether it came from a population which—

The CHAIRMAN. My time is up, but one last one. Where does it say in the law, lawyer—you are getting paid for this. Where does it say in the law that you can be sued by allowing the importation of pre-killed 1994 bears?

Mr. MARSHALL JONES. Mr. Chairman, it says nowhere in the law.

The CHAIRMAN. Well, then you said the law wouldn't allow you to do it.

Mr. MARSHALL JONES. Mr. Chairman, I say that our duty was to implement the law and apply the criteria that were in it, and it was our judgment—Mr. Chairman, we made a proposal based on the way we wanted to read the law.

The CHAIRMAN. It wouldn't change that.

Mr. MARSHALL JONES. We made a final rule based on what our final judgment, this is what the law really says with all of its requirements.

The CHAIRMAN. Where does it say that you cannot import those bears, Mr. Lawyer?

Mr. MARSHALL JONES. Mr. Chairman, it says that they—

The CHAIRMAN. I am talking to your—you have got legal counsel there. You are paying them enough. Where does it say—in fact, the original proposal of the rule said you could and would allow the importation of pre-killed 1994 bear, every one of them. Now where and who suggested the change and on what grounds?

Mr. MARSHALL JONES. Mr. Chairman, let me ask Mr. Young from our solicitor's office to—

The CHAIRMAN. That is what I am saying. Where did it come from?

Mr. YOUNG. Thank you, Mr. Chairman. To answer your substantive question, the reason the Fish and Wildlife Service found that it could not allow importation of non-approved populations, even for the pre-amendment bears, is because one of the criteria that we have to find before issuing permits says that Canada has a sport hunting program based on scientifically sound quotas, ensuring the maintenance of the affected population stock to a sustainable level—

The CHAIRMAN. OK, stop right there. You are telling me if the species is sustainable and the Canadian government verifies that,

all right, that the bear kill prior to 1994 effects the sustainable yield of the bear population?

Mr. YOUNG. Mr. Chairman, that is not the particular criteria that we had to find here.

The CHAIRMAN. Well, I am—again, I am trying to get back to what grounds are you worried about allowing those 1994 pre-killed bears into the United States?

Mr. YOUNG. We basically were not in a position to say that for the shared populations, Baffin Bay, Davis Strait and others, certainly South Hudson Bay and Foxe Basin, they are shared stocks.

The CHAIRMAN. What difference does it make? This bear is dead. He doesn't even—I mean, this bear is no longer existing. It is a hide. It is a nothing. It is \$1000 for polar bear research.

Mr. YOUNG. Mr. Chairman, that distinction was not made on the face of the statute.

Mr. ABERCROMBIE. Mr. Chairman—

The CHAIRMAN. Boy, I will tell you, this is like dealing with the doughboy. Yes, sir.

Mr. ABERCROMBIE. Mr. Chairman, inasmuch as your time is up, would you like some help?

The CHAIRMAN. Yes, would you like—yes, Mr. Neil.

Mr. ABERCROMBIE. Thank you. Gentlemen, I think you have gotten yourself into a bind here. You are not really answering the Chairman's question, or maybe you are and that is part of our difficulty. Your assignment was not to try and find ways that this couldn't be done. Your assignment really was to see how this could be implemented. Now I can see how you could answer the Chairman saying well, how does a dead bear affect this adversely. You could say well, that bear was alive, it could have been part of a procreation process, that this dead bear and all the other dead bears were part of a process which was antithetical to the aims of the legislation and apparently antithetical to the Canadian management program, because by killing these bears you were preventing reproduction and so on and so forth.

But all the testimony that I see is to the exact opposite. There is an increase in the number of bears. Now maybe not in every region. Again, I can understand how you would do—possibly do regions and some may be sustaining themselves and reproducing maybe in excess in some regions and not in others, but you also testified that the Canadian plan—I don't know the word was excellent or what it was, but it was the finest plan.

If there is no showing that the population is being reduced, if there is no showing that the Canadian management plan is not adequate to the task at hand, and if the management plan is consistent with international agreements and it doesn't contribute to any illegal trade, then at least on the question of those bears which are already taken, it seems to me the importation should have proceeded at pace.

Now if the counsel could answer that question. I am unable to understand from the answer you gave why there is no importation if the points that I just raised are factual and a reasonable summation of the situation.

Mr. YOUNG. Thank you. I will attempt to give a more complete answer. Essentially taking the examples of the populations I have

mentioned, South Hudson and Davis Strait and Foxe Basin, those populations are shared between the Northwest Territories and the provinces of Ontario and Quebec as well as Labrador. The situation we faced was the fact that there are no enforceable quotas in either of those provinces. It is true the Northwest Territories has a managed program based on a scientific basis on quotas, but the population in its entirety does not. We felt that did not meet the requisite criteria as a prerequisite to issue permits.

Mr. ABERCROMBIE. OK, stop there. Then what you are saying is the Canadian management program is not scientifically sound and does not establish either quotas or other criteria that would allow for the importation of bears. You are saying the Canadian program is not adequate, but you are relying on, if I understand your testimony correctly, their submission of data to you.

Mr. MARSHALL JONES. Mr. Abercrombie, if I could answer your question.

Mr. ABERCROMBIE. Please.

Mr. MARSHALL JONES. And it might be helpful to take a specific example. Baffin Bay, we have a map here, Mr. Abercrombie and Mr. Chairman—

Mr. ABERCROMBIE. I can see it in part.

Mr. MARSHALL JONES. [continuing]—which shows the 14 existing new polar bear management areas.

[The map may be found at end of hearing.]

Mr. MARSHALL JONES. Baffin Bay is one of the areas which we did not yet approve. The population in the Baffin Bay area right now is judged by the data provided by Canada to be declining. And we have indications that there is concern within Canada about that population, not because of things happening in Canada, but because that population is shared with Greenland where there are no quotas right now.

So, Mr. Chairman, that is an example of an area where there is substantial hunting, where there are many bears that have been taken in the past but because the law, finally, makes no distinction about when the bear was taken—the law requires that we make the same finding whether the bear was taken in the past and is already dead or whether the bear is going to be taken next year. We still have to make the same finding, Mr. Chairman.

Mr. ABERCROMBIE. All right, you say that, but believe it or not, I spent some time reading theology and you are making a theological statement there. If someone wants to sue you on that basis, I mean, that is part of your job. Let them go ahead and sue, but that really is a theological—this is Aquinas and Erasmus arguing and meanwhile there are poor people outside the church. That to me—you already—it doesn't make sense. You have already set up the criteria with respect to sustainability of the polar bear population in—is it five of the 12 or eight of the—I have forgotten.

Mr. MARSHALL JONES. I beg your pardon?

Mr. ABERCROMBIE. You have already set up criteria, is it five of the 12 or eight of the—

Mr. MARSHALL JONES. Five of the 12 have been approved so far.

Mr. ABERCROMBIE. Five of the 12, so you just move ahead in that. And as far as—and what I meant by theology is that dead bears, maybe that is true, but to reach back in effect to me is ex

post facto. Then don't allow them to come in from Baffin Bay. You have already said that the way you are going to implement this is to do it region by region, right? Then just move ahead and do it and let the dead bears come in. That would save yourself a lot of grief. If somebody doesn't like that, let them sue you or something. That is what we have got—you have got lawyers that are paid seven days a week to deal with that. You have to have—and I am very jealous.

I will tell you I am jealous of legislative prerogative. I realize that these days everything wants to move to the executive. We want the king—everybody has to bow to the king. That is one of the reasons I am allowing the commoner to sue the king. I think that is democracy, but the legislature, for good or for ill, we are all in this body here, the members sitting at this table here, are here because we are elected by our constituents. And we are here to try and do the job. And I have been on the winning side and the losing side of legislative issues, as has the Chairman and every Member here. But I certainly expect, having given my best effort, that the legislative intent is going to be obeyed absent some ruling to the contrary by competent authority.

Now I don't think it is the business of—and I have been supportive of the Department of the Interior and Fish and Wildlife in every way that I possibly can be, because I think you have a tough job and a national question, national standards to maintain over and above regional considerations. And that is not always easy to do.

But in this particular instance it seems to me you have done the job clearly adequately, but now you are getting into the minutia, virtually theological in nature, of differentiation that may be of concern to theologians, but has the practical consequence of actually undermining the legislative intent, at least—at the very least with the question of those bears that have already been taken and in those areas where you have already made a determination that you think you understand what the sustainable population criteria has to be and that bears can be taken there.

Now if somebody wants to argue about Baffin Bay and perhaps one or two other areas that you have in mind, that is a separate issue that shouldn't prevent you from having the bears come in from the other areas where there is a sustainable population. Isn't that a reasonable position?

Mr. MARSHALL JONES. Sir, what you have said and what the Chairman said previously, I told you, I agree makes common sense, but it also is contrary to the specific language of the law which tells us regardless of when the bear was taken, whether it is already dead, whether it has been taken in a future year—

Mr. ABERCROMBIE. Well, then—

Mr. MARSHALL JONES. [continuing]—still have to make the same—

Mr. ABERCROMBIE. Well, OK, I disagree with that. I think we should move ahead in some other—just let me finish this. If that was the case, because of the length of time, I don't think it is fair. And I think over this time—I guess this was passed when you were Chair, before Mr. Miller became Ranking Member.

The CHAIRMAN. No, no, Mr. Studds was the Chair.

Mr. ABERCROMBIE. Excuse me, Mr. Studds was Chair. This is not a partisan issue here in this Committee, at least I think I can state that for the record. Because of the length of time that passed, I think you should have informed whoever was Chair of the Committee that the legislative intent was being undermined by your interpretation of the language of the bill as written and that it was going to be very difficult for you to implement the legislative intent because of the language, whether by default or design. To come to the Committee at this stage and say the language as written prevented us from doing what you sought to get done, OK, that is our fault if that happened. But it is up to you as the implementors—and this is a well-established legislative process, legislative standard.

Legislators are not supposed to write rules and regulations. If we did that we would be here 365 days and nights a year and you would be writing legislation as long as your arm. We are to establish the policies and the intentions, and it is your job to put in the rules and regulations. If you think in good faith that the language put forward and the legislative intent inherent in that language disenables you from establishing rules and regulations which will carry out that intent, it is up to you to get back to the Committee and let them know that, not go three years and then come up and say well, this is the only way we can do it, it is too bad you guys didn't do a good legislative—

The CHAIRMAN. The gentleman is absolutely correct. The thing that irritates me most, you—maybe not you personally, but the agency, both agencies, supported the language as we wrote the bill. You supported it and said it would work. It was our intent to import those dead bears and to improve the stock of the remaining bears. And we have done part of that thanks to Canada and the Eskimo people in Canada. But this is ridiculous. I mean, I have yet to hear anybody justify not allowing the dead bears in. This has got to be the dumbest thing I have ever heard in my life, that you are going to punish the Canadian people, disrespect the Congress, because you won't import dead bears that no longer can do anything. I mean, I say this is why we have a real problem with government today, is you.

The gentlelady.

Mrs. CUBIN. Thank you, Mr. Chairman. I appreciate that you agree with the common sense stated by Mr. Abercrombie and the Chairman. And God forbid we ever use common sense in government, I guess.

You made a statement, Mr. Jones, and I wrote it down and I am anxious to see the transcript of this hearing, because I wondered when you said it if it was a Freudian slip. You said we based the final rule on what we wanted the law to say. And I just couldn't help but think that that must be a Freudian slip because we are running into that a lot.

Yesterday we had a hearing on the process, the procedure before declaring the Escalante—before the President declared Escalante a national monument, and their testimony yesterday was that there was a leak to the press nine days before the declaration was made and that they did adequate communicating with members of the

delegation from Utah and all the people in Utah in those nine days to make that good policy.

The thought came to me—I couldn't get that out of my mind last night, because we are talking about different things. It seems that the—under Mr. Rashid—I am talking about him maybe more than I am you right now, at least in my assessment of that, that maybe it appeared you guys didn't think we were going to be here another two years and so you could—you didn't have to implement the things that we wanted to be done. And I am not asking for verification or denial or anything. These are just, you know, thoughts that have come to me because of all of these problems we have faced. It is not just this rule. It is many rules throughout the entire Interior Department.

And I think that, judging from what I see, the problem lies more in the Interior Department than it does in Agriculture, than it does in most of the other departments. I don't understand that exactly, but I thought, you know, the three branches of government were established for a good reason. And Mr. Abercrombie referred to this. The Legislative Branch is to pass the laws. The Judicial Branch is to interpret the laws, and the Executive Branch is to administer the laws. But when the Executive Branch doesn't use common sense, as you say you didn't, or chooses to ignore the legislative intent, then they are constitutionally violating their role, which is to enforce the law.

And I think we have to—we, the Congress, the Republicans, the Administration, we have got to start talking to each other about the same thing, about our role, and we have got to start developing some trust with one another, because we are going to be working together for a long time. And these are serious issues and these are about our country and our people. I guess I have rambled on long enough.

What happens when this sort of abuse occurs is then that forces the Congress' hand to change a law that might be a good law and nobody wins, because like Mr. Abercrombie said, we should not be putting things that are in rules and regulations into law. That is too inflexible. It is too hard to get an act of Congress. We shouldn't have to do that in order to get the will of the Congress forced.

So I just ask you as far as you can—I realize the whole thing is—you know, you are not the top guy on the totem pole. I know that, but please try harder.

Mr. ABERCROMBIE. Would you yield a moment?

Mrs. CUBIN. You bet.

Mr. ABERCROMBIE. In that context, I have the criteria. Can it be explained to me again why hasn't there been the importation of those bears already taken? Because I have the law right in front of me and it specifically says that that is to be one of the things that is to be done. And if the law as we wrote it was unclear, which of the five points in it do you think needs to be rewritten, and if so, how?

Mr. MARSHALL JONES. Sir, if I could first address the issue that was raised regarding common sense. I hope the record—

Mr. ABERCROMBIE. I didn't bring up common sense.

Mr. MARSHALL JONES. No, sir, I understand.

Mr. ABERCROMBIE. I took too long to do that. I was being theological.

Mr. MARSHALL JONES. Sir, I simply wanted to make the point that I hope the record shows what I intended to say and what I think I said was the proposed rule was based on the way we wanted to read the law. The final rule, we believe, is the way—is based on the way the law is really written. That was the distinction.

Mr. ABERCROMBIE. OK.

Mr. MARSHALL JONES. Now, sir, in terms of the criteria, there is one that is sort of buried in the paragraph above that talks about the hunter must show proof that the bear was legally taken. Then there are Roman numerals, one, two, three and four. And particularly for Roman numeral two, the statement that there is a sport hunting program based in scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level, that has been the one that has been most difficult for us, because, Mr. Abercrombie, as I mentioned, for example, for Baffin Bay—

Mr. ABERCROMBIE. Yes.

Mr. MARSHALL JONES. That is a population which data from Canada clearly shows right now is declining and one which we have information that has been provided to us from Canada that indicates they are concerned, that they find that disturbing. The reason is not because of what is happening in Canada, and that is why I say again Canada's management overall is very good, but in that case of that particular population, on the Greenland side they don't have quotas.

Mr. ABERCROMBIE. Well, then why can't you just differentiate those areas and don't allow for importation from—that would send a message to the Canadians or to anybody else.

Mr. MARSHALL JONES. Well, sir, in fact what we did was we said we cannot approve that area right now because the bears go back and forth.

Mr. ABERCROMBIE. Now why not the others? You would allow broad discretion in this law, very broad discretion. And I think you could have put it together. I am not trying to pick on you folks, but in some respects—and I was being entirely facetious when I brought up the theological argument. It is possible to make a distinction without a difference. And I think you are making distinctions here without a difference in terms of thwarting the effect of what the law is supposed to do.

At some point—you say Canada's sport hunting program is based on a scientifically sound quotas ensuring the maintenance of sustainable population on the whole. On the whole, if I understood your testimony correctly, and I have to take you at your word in it, Canada is doing that. Is that a fair statement?

Mr. MARSHALL JONES. On the whole, yes, sir, but we cannot say that all areas in Canada fit—

Mr. ABERCROMBIE. That is not what the law—I won't go on and on with it, but that is not what the law says it has to be in all areas. And we are giving you that leeway. We are not trying to write rules and regulations for individual regions or provinces in Canada, but you have that power. You have the power to do that. All I am saying is that I think, and I will—and if Mrs. Chenoweth

would allow me the—and Mrs. Cubin would allow me to steal into their time—

The CHAIRMAN. The lady's time is up and it is Mrs. Chenoweth's time now.

Mr. ABERCROMBIE. Well, could I have 30 seconds of your time?

The CHAIRMAN. Would you restart that, please. Go ahead. Mrs. Chenoweth, will you yield to the gentleman?

Mr. ABERCROMBIE. Would you yield me 30 seconds?

Mrs. CHENOWETH. Yes, Mr. Chairman, I am happy to yield to the gentleman.

Mr. ABERCROMBIE. Thank you. You could have, and still can, I think, deal with the question of those trophies that have already been taken unless you can show they were illegally taken. And I think you could by the use of the system that you set up to regard certain areas as being—as fulfilling all of these five criteria, move forward at least in those areas with the ability for Americans to be able to take these trophies and bring them back to America. And I think that you would—and if we need then to clear up language with respect to the rest of it, I think certainly the Chairman would be open to those suggestions. Thank you.

The CHAIRMAN. The gentlelady.

Mrs. CHENOWETH. Thank you, and I am happy—I just want to make a couple of statements, and then I am happy to yield my time back to the Chairman to dispense however he wishes.

I appreciate the brilliant questioning from the gentleman from Hawaii, but I do want to say that I find very little, a very thin nexus—I don't find a nexus at all in the rationale we heard today from these witnesses. And Aquinas is a very fine work, *Summa Theologica*. I am not Catholic, but I recommend anybody read it. It is an outstanding work. There is no nexus here, though.

I am as amazed as anyone else in this listening audience that we could see the will of Congress thwarted by the rulemaking process, but I would like to yield back the balance of my time to the Chairman.

The CHAIRMAN. I thank the gentlelady, and I will yield to the gentleman from Georgia, Mr. Norwood.

Mr. NORWOOD. Thank you very much, Mr. Chairman. I am looking forward to this. Mr. Jones, are you an attorney?

Mr. MARSHALL JONES. No, sir, I am not. I am a biologist.

Mr. NORWOOD. Mr. Chairman, are our witnesses under oath?

The CHAIRMAN. No.

Mr. NORWOOD. Be careful, because I am very interested in your answers to some questions I want to ask you. How many polar bear—I am no attorney either, so, you know, don't worry. How many polar bear trophies are now in storage in Canada?

Mr. MARSHALL JONES. Sir, we don't have a way to know that. We have inquired with Canada. They cannot give us a number. We have heard various numbers, but I am not in a position to verify how many there are.

Mr. NORWOOD. Well, will you do a best guess.

Mr. MARSHALL JONES. Probably several hundred, but I can't say beyond that.

Mr. NORWOOD. Have any of those trophies been imported from Canada since 1994?

Mr. MARSHALL JONES. No, sir, not yet.

Mr. NORWOOD. So nothing has happened since 1994 when Congress passed a law indicating, and incidentally signed by the President, indicating pretty clearly that one of the things we wanted to do was to allow our constituents who had polar bears in freezers in Canada to be able to bring them home. Would you—just between me and you, would you sort of agree that is what the 103rd Congress was trying to say?

Mr. MARSHALL JONES. Sir, I am not sure if I want to try to comment on the underlying intent. What I can comment upon is—

Mr. NORWOOD. I insist!

Mr. MARSHALL JONES. [continuing]—what the law says.

Mr. NORWOOD. You have to understand the intent to write a rule or regulations. I insist you comment on what you thought Congress was trying to do.

Mr. MARSHALL JONES. Sir, we read the law on its face and we read the Committee report, and we drew our conclusions from what was on the record.

Mr. NORWOOD. All right, now we have Federal laws. I am just trying to figure this out. We have Federal laws and generally they are written by a Congress who have attorneys advising them. And what you are saying is that the lawyers in Congress didn't understand the statute they were writing, but only your attorneys could interpret the statute that we wrote, is that what you are saying?

Mr. MARSHALL JONES. No, sir.

Mr. NORWOOD. Well, tell me how is it that you say you had to write these rules and regulations because your attorneys told you X, Y, Z? You wrote these based on what your lawyers told you.

Mr. MARSHALL JONES. Sir, we based our decision to prepare the regulations based on all the advice that we got from lawyers and others that we needed a regulatory process—

The CHAIRMAN. Who are the others? Who are the others?

Mr. MARSHALL JONES. Within the agency, those that we consulted with.

The CHAIRMAN. If we have to, I will subpoena all the records of your rulemaking and find out who the others are within the agency. Who in the agency?

Mr. MARSHALL JONES. Sir, the staff who worked on it—

The CHAIRMAN. And no one else—

Mr. MARSHALL JONES. [continuing]—myself and others.

The CHAIRMAN. No one else contributed to your decision?

Mr. MARSHALL JONES. Sir, I couldn't give you a list today of all those who were involved, but there were a number of people who were involved in the decision.

The CHAIRMAN. The gentleman is recognized for an additional five minutes.

Mr. NORWOOD. Thank you, Mr. Chairman. You wrote and you have said that you wrote these rules based on your interpretation of the law, which you viewed as a better interpretation of the law than Congress' interpretation of the law. Now that is what you said in terms of your rules, is that right?

Mr. MARSHALL JONES. No, sir. We didn't say that ours is better. We didn't say that we had a comment on Congress' intent. We read

the law. The law says that we can allow polar bear trophies into the United States if we make certain findings.

Mr. NORWOOD. OK, let us try it this way. Maybe you didn't say anything. Your actions prove to me that you believe that your attorneys interpreted the law of Congress better than the attorneys of Congress' interpretation of the law. Let us just be honest with each other. Common sense, do you suppose we are trying to get these polar bears back home? What do you think?

Mr. MARSHALL JONES. Yes, sir.

Mr. NORWOOD. Good, that is a great move in the right direction. That is what Congress and the President wanted to do when the law was passed. Now I am sympathetic with you, because I think you understand what this is all about and somebody somewhere has put pressure on you to say no, we are going to write these rules to suit, and the Chairman keeps trying to find out to suit who. Who is so important about our laws that they override Members of Congress? Who is it?

Mr. MARSHALL JONES. Sir, it was not our view that the regulations over—were overriding the intent of Congress or the views—

Mr. NORWOOD. You know they were. Come on, give me a break. You know. You just said what we wanted to do. Who got to you?

Mr. MARSHALL JONES. Sir, we published a proposed rule. What I said was we published a proposed rule based on the way that—

Mr. NORWOOD. Doing the opposite of what Congress wanted to do, and you know that was the opposite of what Congress wanted to do. And I am in sympathy with you, but who got to you? Who made you do that?

Mr. MARSHALL JONES. Sir, no one made us do it. We made a decision based on the whole record. I did mention we received comments from the Marine Mammal Commission. We received comments from others that pointed out to us that the law did not make a distinction between the bears that were already dead and the bears that could be taken in the future, and that we had to apply the same criteria.

Mr. NORWOOD. I presume you won't answer the question. Let me ask you this, because you said this in your testimony, that you are not prepared to change these rules. Regardless of what we do in Congress now to throw out your rules, you are going to come back with the same rules, but you will negotiate.

Mr. MARSHALL JONES. Sir, based—

Mr. NORWOOD. Now you said that and it is in the record. Basically you said it doesn't matter what we do, these are going to be the rules we are going to stay with, but you would negotiate. For whom would you negotiate?

Mr. MARSHALL JONES. Sir, I didn't use the word negotiate. What we said is—

Mr. NORWOOD. It is in the record, by the way.

Mr. MARSHALL JONES. [continuing]—we would work with you and with the hunters and with Canada to get the data so that we could approve as many populations as will meet the criteria under the law. And that is fully what we are prepared to do.

Mr. NORWOOD. Well, let me just for the record—Mr. Chairman, we have a conservation plan for Alaska written by the Service, and I quote, "a polar bear trophy legally killed in Canada in the past

or from current approved populations may be brought into the United States by the hunter once final regulations are developed." Everybody, I think, that can walk and chew gum knows that is what we were trying to do.

Now lastly, if I may, just out of curiosity, if the Fish and Wildlife Service believes polar bear hunting if properly overseen can contribute to proper polar bear conservation, do you believe that?

Mr. MARSHALL JONES. I do, sir.

Mr. NORWOOD. Good, I do, too. Why is it that this was not addressed in your polar bear conservation plan goal?

Mr. MARSHALL JONES. Sir, I am not sure that I can comment—

Mr. NORWOOD. Why didn't you address the issue of hunting and how well that improves conservation in your goals you set out, in your conservation plan?

Mr. MARSHALL JONES. Sir, since I wasn't involved in the preparation of the document, I am not the best person. I don't think we have someone here today who can comment on that.

Mr. NORWOOD. I am sure your agency will be glad to give us an answer in writing.

Mr. MARSHALL JONES. Yes, sir, absolutely.

Mr. NORWOOD. Is there anybody that you know in your agency that you might be willing to categorize as anti-hunting?

Mr. MARSHALL JONES. Sir, I have no way of knowing who might be anti-hunting or pro-hunting.

Mr. NORWOOD. Can we take a survey? How do we find that out? I would know in my office if I had people that were anti-hunting.

Mr. MARSHALL JONES. Sir, that is not a criteria for employment. The Fish and Wildlife Service is in favor of sport hunting. I am personally in favor—

Mr. NORWOOD. It seems to be, though, a criteria for writing rules that differ from the intent of Congress.

Mr. MARSHALL JONES. Sir, we don't—

Mr. NORWOOD. We think there is something that stinks about this very bad, and the Chairman pointed it out and I want to reemphasize this isn't so much about polar bears. This truly is about freedom and it is about American's freedom. That is what this really is all about. And it is about Federal agencies who thwart their nose at Congress saying we know better so we are going to write rules regardless of what your intent in the law is.

My last question, Mr. Chairman. You have said, as I understand it, and I just want to know something about it, that you have approved five of the 12 management areas, is that correct?

Mr. MARSHALL JONES. Yes, sir, that is correct.

Mr. NORWOOD. Does that mean—when you say approved, does that mean that approved for hunting and the deportation of the bear back into this country? Is that what that means?

Mr. MARSHALL JONES. Not approved for hunting. That is a decision entirely of Canada, but we—by approved I mean we have made the determination that those five populations meet the criteria that are established in the law and import is allowed into the United States now for bears taken in any one of those five populations.

Mr. NORWOOD. How does Canada feel about the conservation in those five areas? Surely you know. In those 12 areas, how do the Canadians feel about it?

Mr. MARSHALL JONES. Sir, I—

Mr. NORWOOD. I mean, you don't want them imported back into this country in hopes that we won't go up there and hunt them. Obviously you feel the conservation efforts in those other seven management units aren't real good. How does Canada feel about it?

Mr. MARSHALL JONES. Sir, I would not presume to speak for Canada. I don't think it is fair for me to characterize. What I can say is we consulted with Canada. They provided us with their data and we used their data to make our decisions. The law asked us to make the decisions, and so we made the decision that five of the 12 areas meet the criteria. In addition, sir, we have got new information regarding additional areas, and two additional areas we are now working on a finding which—

Mr. NORWOOD. State that new information for me, please.

Mr. MARSHALL JONES. Beg your pardon, sir?

Mr. NORWOOD. State that new information that you have.

Mr. MARSHALL JONES. The new information was that they took one of their large units and divided it into smaller units, into more bite-sized chunks. And those—two of those smaller units, Mr. Chairman, we believe now looks very likely that they meet the criteria under the law and we are going to publish a proposed finding regarding that very soon.

Mr. NORWOOD. Did you base your data on 1993/94 data to come up with your rules and regulations?

Mr. MARSHALL JONES. Sir, we used 1993 and '94 data supplemented by additional information where it was relevant.

Mr. NORWOOD. What about the last—the data from the last three years, what has that shown for non-approved populations?

Mr. MARSHALL JONES. Sir, the situation in each population may be a little different. And in some cases, as we discussed previously, the issue is the fact that there is a lack of quotas for control of the polar bear take in areas that are shared with either another province besides the Northwest Territories in Canada or with Greenland.

Mr. NORWOOD. Well, would new data improve our situation over five of 12?

Mr. MARSHALL JONES. Sir—

Mr. NORWOOD. I mean, your data at five of 12 management units, in my understanding, is based on 93/94. Now we are some three years later and we have new data. Will the new data give us ten out of 12, for example?

Mr. MARSHALL JONES. No, sir. We have looked at that, the new data that is available so far, and what we have been able to determine so far is that there are two additional areas which very likely will meet the criteria. And we are prepared to publish our finding that lays out the reasons for that very soon. For the other areas, sir, there still are issues—all the data that is available to us right now does not tell us that they meet the criteria under the law.

Mr. NORWOOD. One final closing comment. You have been very, very kind, Mr. Chairman. I would just like to tell you as a friend that you have written these rules based on the fact that somebody

has said well, if we don't write them this way we are going to get sued. And I can almost guarantee you you are going to get sued either way, which is not your job to worry about that. Your job is to implement the intent of Congress. And if you don't change these rules, you are going to get sued too, so don't worry about being sued.

And I just want you to know that I only have one polar bear from the 10th District of Georgia, but as long as I can breathe air I am coming after this situation till you change it, because you are tramping on the freedoms of Americans and Members of Congress.

And with that, Mr. Chairman, I appreciate your patience.

The CHAIRMAN. Thank you, Mr. Norwood.

Mrs. CUBIN. Mr. Chairman.

The CHAIRMAN. Yes, go ahead.

Mrs. CUBIN. Mr. Chair, may I have a point of personal privilege?

The CHAIRMAN. Yes.

Mrs. CUBIN. I would like to first tell these gentlemen that my parents taught me you never talk about someone while they are in the room, you talk to them, but I have to violate that because I don't know where we are. I don't know where this leaves us. Where are we? Three alternatives have been brought forward by the Department. One of them is that we can change the law again.

The CHAIRMAN. Which they would not sign.

Mrs. CUBIN. Oh.

The CHAIRMAN. I can just about guarantee you that. Whoever is behind this would never allow it to be signed, but go ahead.

Mrs. CUBIN. OK, so—all right, so I just want to know what are our options. I think that we have made it clear how we feel about what the intent of this is, what the intent of the legislation was. Could somebody tell me how do we get that intent implemented?

The CHAIRMAN. No one can really tell because they don't want to do it.

Mrs. CUBIN. Well—

The CHAIRMAN. Go ahead and answer.

Mrs. CUBIN. How can we—

The CHAIRMAN. Before you do that, just let me interrupt for a moment. Two things occurred to me. This is Monday, July 17, 1995. The notice announces proposed legal and scientific findings for the importation of polar bears, including ones taken but not imported prior to the enactment of the 1994 amendments to the Marine Mammal Protection Act. The purpose is to find that Northwest Territories and only the area in Canada currently allows sport hunting has monitored enforced sport hunting programs that ensures polar bears are legally taken consistent with the purpose of the Conservation Act scientifically, et cetera, et cetera. It says polar bears taken in the Northwest Territory prior to the amendment through the effective date of the final rule of the Service proposes they issue permits. That is your statement. You recognize that?

Mr. MARSHALL JONES. Sir, let me ask Mr. Stansell if he recognizes that language.

The CHAIRMAN. That is yours.

Mr. MARSHALL JONES. Yes, sir.

The CHAIRMAN. Now we have a different proposal and we still haven't—and by the way, I am officially requesting all documentations, all correspondence, all input from every party involved in these regulations, including any outside influence, including other organizations. If you don't send it to me as quick as possible, you will be subpoenaed. Is that understood?

Mr. MARSHALL JONES. We will provide you—

The CHAIRMAN. I mean every—

Mr. MARSHALL JONES. [continuing]—everything that we have.

The CHAIRMAN. Every little iota, all e-mail, all correspondence, all memos, everybody involved in this decisionmaking process. Secondly, let us—I am an old teacher. Read the law. The Secretary may issue a permit for importation of polar bear parts, other than the internal organs, taken in sport hunts in Canada, including polar bears taken but not imported prior to the date of the enactment of the Marine Mammal Protection Act of 1994 to the applicant which submits with his permit application proof that the polar bear was legally harvested in Canada by the applicant. Now you are telling me the law, and you base the denial of importation on the words—and I think it was two. Canada has a sport hunting program based on scientifically sound quotas.

Now my old teaching tales tell me has is when and had is when. I am referring to the bears killed prior to 1994. If that word said had a sport hunting program, had a monitored program, then you could in fact say you had a reason that it can't be documented for importation of those bears. Has is prospective. Now, lawyer friend, sitting at the table making big bucks, tell me how you could base the law on any other interpretation?

Has is only to apply to the conservation units set up by Canada and in fact scientifically studied and being promoted for the continuation of the species. You can not apply has to a dead bear.

Mr. YOUNG. Mr. Chairman, first of all, if I am making big bucks, I would like somebody to show me where it says that on my pay stub.

The CHAIRMAN. If you don't, you will.

Mr. YOUNG. In answer to your question, the problem is not with the first sentence of 104(c)(5). If the statute had stopped there, we would have had full discretion to have issued permits for any legally taken sport trophy. The problem was with the subsequent language, which—

The CHAIRMAN. Which language?

Mr. YOUNG. I am sorry?

The CHAIRMAN. Which language?

Mr. YOUNG. The language in the first sentence where it says the Secretary may issue a permit down to the point where it says—

The CHAIRMAN. Including polar bears taken—

Mr. YOUNG. [continuing]—legally harvested in Canada by the applicant.

The CHAIRMAN. That is right.

Mr. YOUNG. But the subsection continues such permit shall be issued if the Secretary makes the following findings.

The CHAIRMAN. Right.

Mr. YOUNG. Which are connected with an and, each one being a mandatory criteria.

The CHAIRMAN. Now let me stress the word has and had. Has, the intent of this Congress was prospective to protect the polar bears, to help the Eskimo people and to make this thing work. It does not apply—the has cannot apply to a dead animal. It has been dead prior to 1994. If you want to solve this problem with a pick, gentlemen, I am going to tell you how to solve it. You give me my so many bears that have been legally killed, applied for, and allow the importation, then we can discuss the rest of it. Because there is no legal ground for what you have done. I am not a lawyer, but I happen to be a school teacher, and you tell me whether I am wrong with the has and had. Had—if it said had, that would mean the bear has been killed, had an—I would agree, but has is prospective.

Mr. MARSHALL JONES. Sir, if I could respond to that, one of the suggestions which was made during the formal comment period was that we should look at every year from the day polar bear hunting started in Canada and go through year by year and make a finding that it was OK in 1973 from this population so trophies can come in, but in 1974 it is not and then in '75 it is OK again. For exactly the same reason, sir, that you have just outlined, we made the decision that no, it doesn't ask us to go back and look at each year. It asks us to make a judgment exactly what you are saying, how Canada is today.

The CHAIRMAN. OK, before you go on let me—I am going to let you get out of here because I know you have been here a long time. Please listen to what I have to say on this. It was the intent of this Congress that if in fact the permittee applied to you, the Secretary of Interior, and Canada said this bear was legally taken, it is a dead bear. That is a fact. You could issue a permit for the importation of that bear. The intent of this legislation was to protect the bear. Again I want to stress this. You are dealing with something that is impossible. You are protecting something that is gone and will never return. If you want to protect the bear, then think of the future.

I won't even argue the five areas. I think you are wrong. I won't argue it right now. I think you are not listening to the scientific information. I think the gentleman from Georgia is absolutely correct, but if you insist on saying the Congress did not intend, show me where the law says we did not intend. And you can't. The lawyer can't show it to me. You can't show it to me. It is not in writing. And I am going to suggest respectfully you had better think about this very seriously, because like Mr. Norwood said, this is wrong. I sat on that Committee. Mr. Neil sat on that Committee and we knew what we intended. And you knew what we intended and your lawyers agreed with the bill that we passed. And I still want to know who the others are.

Any other questions? You are excused, but you are not forgotten. And you will be on my list until you are able to sit in my office—and by the way, I suggest you set that up. You better find a solution to this problem. You are excused.

I apologize to panel two. I am going to have some fun here. Akeegok, all right—I should be pretty good with that. I have got a lot of my Eskimo friends in Alaska who want to hunt polar bears, for those in the audience that smile and grin when someone says

something. When I am done, that will happen—the Northwest Territories; Dr. William Morrill, Safari Club International; Ms. Naomi Rose, Marine Mammal Scientist, Humane Society of United States, Washington, D.C.; Mr. J.Y. Jones, Dublin, Georgia.

And, Mr. Charlie Norwood, you are welcome to introduce your friend from Georgia.

Mr. NORWOOD. My friend and constituent. Mr. Chairman and members, I would like to introduce you to Dr. J.Y. Jones, who also resides in the 10th District. He is an ophthalmologist in Dublin, Georgia. J.Y. spends a great deal of his time, Mr. Chairman, free time, doing two things, volunteering his medical expertise in third world nations, and hunting, among other species, polar bears. Most recently Dr. Jones has served as a leader in working to reform the Marine Mammal Protection Act to permit the import of locally harvested polar bear trophies from Canada. It has been four years since Dr. Jones himself legally took a polar bear in Canada, yet he has been unable to import it.

And, Mr. Chairman, I feel like that anybody that is crazy enough to hunt on ice ought to be able to bring his trophy home. So with that I would like to welcome my friend Dr. Jones. Mr. Chairman, thank you.

The CHAIRMAN. Dr. Jones, thank you for being here. I will go in the order which I introduced you, though. The gentleman from far, far away, Northwest Territories. Dave, you are up. You are welcome. Welcome to America, and congratulations on your efforts to try to preserve the polar bear and conservation methods. Go ahead, sir.

STATEMENT OF DAVE AKEEAGOK, GRISE FIORD, NORTHWEST TERRITORIES, CANADA

Mr. AKEEAGOK. Thank you, Mr. Chairman and members of the Committee. [Inuktituk spoken] That in my language meant thank you for inviting me and giving me a chance to speak. First of all, I would like to let you know who I am. My name is David Akeagok. I am an Inuk from Grise Fiord, which is Canada's most northern community. I am one of the Board of Directors for the Iviq Hunters and Trappers Organization, which represents the hunters and trappers interest in management of the wildlife. Also all my life I have hunted for food, which includes polar bear. Now that I live in the modern world, I also have a nine to five job at the local government.

There are two main reasons why I came here to testify. First is to let you know that sport hunting is an important part of our social, economic and cultural livelihood. Also, if I may be blunt, sir, we would like you to stay out of our business and don't tell us how to manage our wildlife. We do not desire to judge your system or tell you what to do.

We have a management system that is working very well and we are proud of. What I don't understand is why when scientists and us both work together and agree together to have a good sound management agreement with our government, now it appears your country disapproves it and are now telling us how to live our lives.

Please, Mr. Chairman, I mean please, don't be the second culture to try and control our wildlife again. We are losing our faith and

our self esteem in our culture when people from the worlds of trees and the hot sun are trying to control our lives.

We still live off the land for survival. We want to continue this for our future generations.

In our eyes sport hunting is subsistence hunting, since we do not increase quota or change current quota that is given to us by our government. In saying that, we don't use the fur for clothing as much as we used to, but now we can get non-Inuit to come up and shoot for us. They can take the worthless parts. We will keep the valuable part, which is the meat.

Also sport hunting is keeping our culture alive by a law that a non-Inuk hunter must hunt a polar bear by using traditional ways of hunting, which is dog team. And it is an important part of our culture.

It is a very important part of our community economy also because the money from the sport hunt that comes into the community is very high. Currently it is the third highest funding that comes into our community where we live in an expensive place where now that we are in the modern world everything has to be transported by plane or by an annual sealift, which when I mean everything I mean modern day food like hamburgers and that, which 50 percent is now coming in from the south. A single sport hunter brings to the community in around \$20,000, and the money is shared all across the community.

Mr. Chairman, let me tell you in 1994 when you approved the law for importation of polar bears we said finally the United States of America believed and recognized our management system, which we are very proud of. But in 1997, which is now, we feel you lied to us and betrayed us, and now we feel useless and are asking ourselves what did we do wrong. And we hope to get some answers.

Mr. Chairman, Kujanamik, niliatigonaqaagavigna, which I mean—which I just said thank you for giving me a chance to voice my concerns. And I will try to answer your concerns and concerns of others while I am here in your country. Thank you.

The CHAIRMAN. Thank you, David. And I will have a couple questions for you. Dr. William Morrill, Safari Club International.

**STATEMENT OF DR. WILLIAM MORRILL, SAFARI CLUB
INTERNATIONAL, HERNDON, VIRGINIA**

Dr. MORRILL. Thank you, Mr. Chairman. I come before this Committee today to talk about conservation, about the best large mammal sustainable use system in the world.

Theoretical conservation was something I learned in school, but it is not the subject. Conservation on the ground in places like Kane Basin and Resolute, conservation that involves people and wildlife alike, that is what we are here to discuss, conservation that cuts through theoretical considerations and gets to the bottom line. Is it working? The answer for Canada is yes. Conservation that cuts through recognizing the elasticity of wildlife populations, but nonetheless has the foresight to be conservative and to balance that with the recognition that the resource will be used.

I am not here today to talk about why the Canadian system won't work. I am here today to talk about that it does, maybe imperfectly, but well enough to meet the four conditions U.S. Con-

gress put forth in the 1994 amendments to the Marine Mammal Protection Act. There is a question that has been asked by a number of people, why not most, if not all, of the polar bear areas that were open to quota imports when the Canadians provided data that supported the harvest and export as outlined in the law Congress passed.

The four conditions are the Canadians have a monitored and enforced sport hunting program consistent with the agreement on the conservation of polar bears. They meet condition number one. The Canadian polar bear hunting program is based on scientifically sound quotas, thereby meeting condition number two. The export and import are based upon existing treaties and conventions, thereby meeting condition number three. And the regulations in the final rule make the legal trade impossible, thereby meeting condition number four.

There are two additional outstanding attributes of the Canadian system. The first is adaptive management. Adaptive management is basically research while the resource is being sustainably used. Canada has perfected that, and you can see that by the discussions which have gone on so far today and I think we will get into with questions. Central to adaptive management is the need to monitor, resulting in both learning and reducing uncertainty while resulting in adaptation of management.

The second is the flexible quota system of Canada. It is an example of using management flexibility. If an over-harvest of bears occurs in one or more years, the following years quotas are reduced and vice versa. This recognizes people within the system of management in Canada.

In summary, the Canadian system is scientifically based, rigorously monitored, strongly enforced, ecologically and politically appropriate and flexible for good conservation of the polar bear.

But, the U.S. Fish and Wildlife Service added two additional conditions, first that any subpopulation or shared population would need to have cooperative management agreements in place between various governmental agencies. And this was addressed, I think, by Congressman Jack Fields, who said prior to the passage of this and for the record, "let me first state that it is not the intent of the language that the Secretary attempt to impose polar bear management policy or practices on Canada through the imposition of any polar bear import criteria."

The Inuit are very proud of their management, their heritage as hunters and their ability to survive in the harshest climate in the Earth. The point that becomes even more vivid is the fact that the four conditions put forth by Congress were met.

Data was provided to the U.S. Fish and Wildlife Service in January of 1996 that would have allowed for a minimum of two more areas and in fact would have allowed under Congress' conditions for all but one of the areas to be opened. And yet Congress took that—excuse me, Fish and Wildlife Service took selective data on December 20, 1996, even beyond that time.

Sport hunting has reduced the number of polar bears actually taken under the quota. It has provide conservation incentive to the local people living there. Canada has met the requirements that Canada placed upon importation of polar bear parts under the 1994

amendments. The U.S. Fish and Wildlife Service has, in fact, done exactly what Mr. Fields feared they would, and approved only a fraction of the areas that would have been approved if they had followed the direction given to it by Congress. There was an injustice here. The injustice is to Canada and her sustainable use program, to her people who lives in the harshest environment of the world and to the great white bear itself.

Safari Club asks you to intervene on their behalf once again. Thank you very much.

[Statement of Dr. William Morrill may be found at end of hearing.]

The CHAIRMAN. Thank you, Doctor. Dr. Rose.

STATEMENT OF DR. NAOMI ROSE, MARINE MAMMAL SCIENTIST, HUMAN SOCIETY OF THE UNITED STATES, WASHINGTON, DC

Dr. ROSE. Good morning. I am Naomi Rose, Marine Mammal Scientist for the Humane Society of the United States. On behalf of our four and a half million members and constituents, I would like to thank you, Mr. Chairman and the members of the House Resources Committee, for inviting me here to testify on the issue of polar bear trophy imports.

While the HSUS disagrees with many elements of the Fish and Wildlife Service's final rule, we strongly agree with its decision to defer approval of trophy imports for seven of the 12 polar bear populations in Canada. Therefore, we oppose passage of House Joint Resolution 59, as we understand its purpose is to disapprove the Service's current final rule with the goal of gaining import approval for those seven populations in a new final rule.

My testimony today deals principally with our concerns regarding the scientific soundness of Canada's management program. The IUCN Polar Bear Specialist Group issued several resolutions in 1997. One affirmed the basic requirements for sound conservation practices. These include accurate information on: one, the number, location, sex and age of harvested polar bears; two, geographic boundaries of populations; three, size and sex age composition of the population; and four, rates of birth and death for the population. Canada's management program, at best, has accurate harvest information. It may have the best information available for two, three and four, but the best available information is not necessarily accurate.

Regarding geographic boundaries, the boundaries for Canada's polar bear populations are based on the radio collaring of a relatively small number of female bears and mark-recapture studies of bears from limited accessible areas, resulting in non-random sampling biases. In most mammals, females have smaller home ranges and are more sedentary than males. It is clear that polar bear researchers still have a very limited understanding of male ranging patterns and their effect on gene flow between populations.

In addition, the geographic boundaries of the populations are continually being revised. Just this past year, Canada split Parry Channel, Baffin Bay and Queen Elizabeth Islands into Lancaster Sound, Norwegian Bay, Kane Basin, Baffin Bay and Queen Elizabeth Islands. There is reason to question the biological basis for

these changing boundary designations because of the uncertainty regarding genetic exchange and the question of reliability of small biased samples. In short, the boundaries appear to be more a convenience for human managers than a manifestation of actual biological processes in the bears.

As for population estimates, sex-age composition and life history parameters, polar bear habitat makes the collection of accurate biological data extremely difficult. This is not a reflection on the data collectors. It is an inherent characteristic of the remote habitat and the species. Especially for the northern populations that have been little studied, population and life history data are poor. The Service has correctly disapproved several populations for which data are incomplete or for which Canada currently rates the population estimates as fair or poor. Based on data through the 95/96 season, these populations include Gulf of Boothia, part of Queen Elizabeth Islands, Baffin Bay, Davis Strait and Southern Hudson Bay.

There are still many unknown or poorly described aspects of polar bear life history and reproductive behavior. Much of the known life history information comes from Western Hudson Bay. This southern population, the most accessible to researchers, demonstrates higher birth rates, shorter interbirth intervals, and larger average litter sizes than other populations, all of which suggests that it is increasing relatively faster or declining less rapidly than other populations. In short, many management model assumptions come from an apparently nonrepresentative, best-case population, and using best-case assumptions can easily lead to over harvesting.

Another factor influencing the Service's disapproval of several populations is that these populations cross national and provincial boundaries and joint management agreements are not yet in place. For example, Canada and Greenland will not finalize negotiations on joint management agreements until they complete research involving their shared populations, including Parry Channel/Baffin Bay. Given the lack of implemented joint management agreements, the Service was correct in deferring approval, as these populations do not yet have monitored, enforced and demonstrably sustainable management programs.

I understand that the Safari Club and Dr. Jones, a fellow witness here, believe that the Service was in error evaluating the various polar bear populations in Canada separately rather than as a whole. I believe this is one aspect of the situation about which the HSUS might agree with them. The HSUS also believes that Canada should have been evaluated as a whole rather than as a series of management units. We base this belief on a strict legal interpretation of the language of the 1994 amendments, which refers to Canada, not subpopulations within Canada.

Yet both the Northwest Territories authorities and the Service acknowledge that Ontario does not protect pregnant females and females with cubs and Quebec's quota system is fixed and guaranteed and is not based on current scientific information. Thus, had the Service considered Canada as a whole, it would not have been able to make the first two statutory findings.

In conclusion, the HSUS believes the Service was correct to disapprove imports from seven of the 12 populations in Canada, as the management programs for these populations do not meet the

statutory requirements for being scientifically sound, adequately monitored and enforced.

Thank you for your consideration of our comments. I am prepared to answer any questions you may have.

[Statement of Naomi Rose may be found at end of hearing.]

The CHAIRMAN. Dr. Jones.

STATEMENT OF DR. J.Y. JONES, DUBLIN, GEORGIA

Dr. J.Y. JONES. Mr. Chairman and members of the Committee, I am J.Y. Jones, an ophthalmologist from Georgia. I am a lifelong hunter, and I speak today on behalf of America's 80 million sportsmen and sportswomen. Thank you very much for allowing me to testify in that capacity. And thank you, Congressman Norwood, for introducing me.

I must identify the fact that I am a devout Christian, having dedicated myself to Jesus Christ many years ago after finding no real meaning in life apart from him. I mention this to draw a significant parallel. I cannot disavow what I hold as my core beliefs, for to deny them denies who I am. In the same way, I am a hunter. I can trace my ancestry to soldiers who fought in the Revolution and the Civil War. Our menfolk were always hunters. I believe that all men are hunters in their inmost being, but in my case the opportunity to hunt at a young age cemented this innate aspect of my character into a dynamic force.

I connect this with my Christian faith to draw the parallel I mentioned. My faith in Christ is not what I do, but what I am. So it is also with my hunting avocation. As our Constitution declares that I have a right to the pursuit of happiness within the rational constraints of the law, surely this includes my right to hunt. My heritage is under siege today, and the necessity of this hearing is proof of that.

I would like to tell the story of Dr. Michael Werner. Dr. Werner was a general surgeon from Wyoming who hunted and harvested a polar bear in Canada in 1990. In 1993 he developed a type of brain tumor. He suffered through multiple brain operations, but he died in 1995. He never saw his bear imported.

Mr. Joe Cafmeyer from Michigan is now 84 years old. He has waited for 24 years to import his polar bear.

Canada's Eskimos have already benefited from the 1994 polar bear sport hunting amendments to the MMPA, though this cannot be sustained unless the rules are dramatically improved. The facts: the total harvest of polar bears has declined by about 106 bears per year since the law was changed. The value of sport hunts to the Eskimos has increased by a factor of three.

I am here today to protest three major points. First, there is the issue of grandfathering bears that are stored in Canada. The final rule gives six excellent reasons why all these bears should be approved for import. Paradoxically, "based on comments received and a review of the MMPA", the Service then disapproves these bears unless they were taken from an approved population. One must ask the Service why Congress specifically included bears already stored in Canada in the amendments to the MMPA. Did they think Congress really expected hunters like Joe Cafmeyer to select the population 24 years ago that would be importable today? One

couldn't do that with a 1996 hunt! The answer is obvious. Congress intended to clear up the backlog of stored bears. The Service has taken some bad advice in ignoring this relevant fact.

Second, only five of Canada's 13 polar bear populations were approved for import whether harvested in the past, present or future. These disapprovals were based on two super-criteria, neither mandated by Congress, those being that each subpopulation be either stable or increasing, and that comanagement agreements with other jurisdictions be in place. The Service consistently refers to Canada's 12 polar bear populations in the final rule.

At the February 1996 Polar Bear Technical Committee meeting in Quebec City, which I attended, this key IUCN group approved redrawing three old populations into four new populations. Only two of these new populations are shared with Greenland, where the Service has taken the unprecedented step of requiring as an import criterion an agreement between two foreign governments.

The new Lancaster Sound population is entirely within Canada and entirely within sustained yield. In some years past, Lancaster Sound has been home to the largest number of total sport hunts. While this population is mentioned, it is not considered a new population for purposes of permit issue. The Service had two representatives at that meeting in Quebec City, but this new information failed to make the final rule. Later data are included in the final rule in at least two other instances. It appears that the Service wants to approve as few polar bear import permits as possible.

Lastly, in virtually every communication I have had with the Marine Mammal Commission, opposition was expressed to Congress going around the waiver provision built into the original law, a process which would have kept the MMC on center stage. Throughout the rulemaking, the MMC has erected barricades to obstruct importation of polar bear trophies as mandated by Congress, bringing up repeatedly legalistic, non-scientific questions that Congress by its action has already answered. I believe this obstructionism sheds light on why so much good data are ignored in the final rule. We need to remove the MMC from the decision-making process when it comes to polar bears.

Please consider these facts:

Congress intended for U.S. hunters to bring home polar bear trophies stored in Canada, but that process has been deliberately obstructed.

Congress intended approval of imports of all legally harvested future polar bear trophies from Canada, but the intent has been subverted.

Congress intended for the MMC to help expedite the process, but they have instead obstructed the process.

Please do something to help us. Thank you for the opportunity to comment.

[Statement of Dr. J.Y. Jones may be found at end of hearing.]

The CHAIRMAN. Thank you, Doctor. I appreciate your decoration and your enthusiasm. You have been in it a long time.

David, first let me say—is it Dave or David?

Mr. AKEEAGOK. David.

The CHAIRMAN. David. Let me first say that I am not to tell you or your government how to manage your game. This is the Admin-

istration who is trying to do it, an agency within the United States Government. That is why we are having the hearings today, to try to find out how they arrived at this decision. But one of the things you said, I think, in your testimony that is counteracted by Dr. Rose is that they claim that sport hunting is not subsistence hunting. And you said that sport hunting is subsistence hunting. Can you explain that again.

Mr. AKEEAGOK. To us sport hunting is subsistence because, for example, the government gives us in Lancaster Sound 25 bears for us to have. They give us—they say there are 25 bears for you to eat. And we take that and say OK, we will take those and then we say in a meeting, the whole community comes in and says we will set aside this many for sport hunters for them to take home to them, but we will keep the meat. So when a sport hunter comes in and shoots that bear, he leaves the meat to us, and that provides meat for us, which is subsistence hunting.

The CHAIRMAN. In reality what is happening, they are pulling the trigger. They are taking the hair, which you can't eat, and they are leaving you the meat?

Mr. AKEEAGOK. Yes.

The CHAIRMAN. That is subsistence.

Mr. AKEEAGOK. Yes, sir.

The CHAIRMAN. All right, now, another question. What if all hunters stopped coming up there, what would happen to your community?

Mr. AKEEAGOK. For now, we are relying on money, as in any other world. If sport hunting stops, one third of the economy will collapse, and those that have invested in their time to do sport hunting will not be able to function.

The CHAIRMAN. When you hunt, sport hunting or most of your quota of sport hunting, you don't hunt the sows or the cubs, do you?

Mr. AKEEAGOK. No, sir.

The CHAIRMAN. You hunt the big boars?

Mr. AKEEAGOK. Yes, sir.

The CHAIRMAN. Prior to sport hunting being allowed, did you kill sows and cubs?

Mr. AKEEAGOK. Prior to the '50's that was the case, but with the law that was agreed upon, sows and cubs were not allowed. But if a sow has no cub, we are still allowed to hunt those.

The CHAIRMAN. Well, anyway, David, I appreciate you coming all this way, because this was our understanding, that in fact it improved the population of the polar bear and was a conservation method.

Dr. Rose, do you agree that the Inuits or the Eskimos have a right to hunt subsistence?

Dr. ROSE. The HSUS does not oppose subsistence hunting in Canada or in Alaska.

The CHAIRMAN. He just explained subsistence hunting. Do you agree with that interpretation?

Dr. ROSE. I respectfully disagree with it, because although the meat is left behind in the community, so is \$20,000.

The CHAIRMAN. So what is wrong with that?

Dr. ROSE. I am not—I don't think there is anything wrong with them wanting to make a living. I certainly don't think there is anything wrong with that, but——

The CHAIRMAN. It is the only thing available, so what is wrong with it?

Dr. ROSE. I have concerns about putting that much value on the animal which makes—there is pressure there. I mean, you——

The CHAIRMAN. Now wait a minute now. The pressure——

Dr. ROSE. There is pressure there to increase the——

The CHAIRMAN. How many are they allowed to shoot?

Dr. ROSE. What is the quota?

The CHAIRMAN. Yes, what is the quota?

Dr. ROSE. It is different for each population.

The CHAIRMAN. Now wait a minute. Let us use David.

Dr. ROSE. 25.

The CHAIRMAN. OK, now where does the pressure come from? They make a decision what shall be shot and not be shot, but they put a value which is important to them, and they don't kill the sows and cubs. They kill the big boars. Now what is wrong with that principle?

Dr. ROSE. The population estimates are based, as I said in my testimony, on numbers that I consider to be not robust. And if there is such a value placed on the animal, I have grave concerns that there will be pressure on the managers to say that there are in fact more bears in a population than there really are. That has already been done. There was——

The CHAIRMAN. Where?

Dr. ROSE. In—let me get this correct. In Davis Strait there were believed to be 950 bears and the quota was 58 bears. And the model that they said used that in order to sustain 58 bears there should really be 1400 bears in that population, so they changed the number to 1400 bears. They came up with 450 bears because that was what the——

The CHAIRMAN. Did they kill 450 bears?

Dr. ROSE. No, but the quota was only sustainable under their model if there were 1400 bears, and they originally thought there were only 950.

The CHAIRMAN. Let us get back to the permits. Did your group or yourself individually contact the Fish and Wildlife on this issue?

Dr. ROSE. No, sir.

The CHAIRMAN. Nobody at all talked to them?

Dr. ROSE. No, sir.

The CHAIRMAN. Nobody communicated to them, in fact, that there was a possibility of a lawsuit?

Dr. ROSE. Not to my knowledge.

The CHAIRMAN. Not to your knowledge?

Dr. ROSE. Not to my knowledge.

The CHAIRMAN. All right, because I am going to get those documents.

Dr. ROSE. And I am the only mammal scientist at the HSUS and I would have done it if anybody.

The CHAIRMAN. I realize that, but I am going to get the documents, so the next time if there is any fingerprints——

Dr. ROSE. We submitted comments, sir. We submitted comments during the public comment period.

The CHAIRMAN. Oh, comments?

Dr. ROSE. Yes.

The CHAIRMAN. All right, you submitted—there was no contact, but you submitted comments?

Dr. ROSE. I am sorry. I thought you meant outside of the public comment process. I am sorry. I misunderstood you.

The CHAIRMAN. All right, at least we can get that part straightened out.

Dr. ROSE. We submitted three sets of comments.

The CHAIRMAN. Dr. Morrill, you are not an expert on polar bears, are you?

Dr. MORRILL. No, sir, I am not.

The CHAIRMAN. You base your testimony on?

Dr. MORRILL. I base my testimony on the fact that I have 25 years experience as a wildlife biologist, that I am familiar with sustainable use programs in three continents of the world and have overseen different projects and programs pertaining to sustainable use and wildlife management.

The CHAIRMAN. Would you say that the testimony that the Fish and Wildlife presented today has any image of conservation?

Dr. MORRILL. I am sorry?

The CHAIRMAN. The testimony of the Fish and Wildlife, is there any image of conservation in there?

Dr. MORRILL. In what Fish and Wildlife Service was saying?

The CHAIRMAN. About the 100 bears—I am going to get back to Dr. Rose, why she objects to the 100 bears coming in. I don't understand, still don't understand that.

Dr. MORRILL. I listened to—you can make conservation out of anything. They were talking about regulation, and conservation, of course, usually fits within regulation in some form, but conservation occurs on the ground in the place where the animals are involving the people where the animals are. That is where conservation occurs. It doesn't, unfortunately, occur in Washington, D.C.

The CHAIRMAN. Dr. Rose, again, are you supporting or objecting to the importation of the dead bears?

Dr. ROSE. This may surprise you, and if you do look at our comments to the Fish and Wildlife Service, we actually—I will be very honest with you, we just oppose the entire import provision in the MMPA. We opposed it at the time. Again, the record shows that. So we don't think any bears from Canada should be imported into the United States. So what will surprise you is to find that I do find that this final rule which says that prior bears, you know, pre-amendment bears can't come in but, you know, bears that have been approved—populations that have been approved can come in but populations that have not been approved can't come in, it does strike me as being somewhat illogical.

The CHAIRMAN. It is not common sense, is it?

Dr. ROSE. I am not disagreeing with that, however I do oppose the whole permit import—

The CHAIRMAN. Oh, I understand where you are coming from there, but the idea that the base says you can't import a dead bear—

Dr. ROSE. Our comments stated we felt that the amendments, the language of the law, said that they did have to look at the past history, the past conservation management history. They disagreed with us. We disagree with them. I told you we didn't agree with every element in the final rule at the beginning of my testimony.

The CHAIRMAN. The gentlelady from Wyoming.

Mrs. CUBIN. I don't have any questions.

The CHAIRMAN. The gentlelady from Idaho.

Mrs. CHENOWETH. Mr. Chairman, I just have a few questions. And then I will yield back the balance of my time. Dr. Rose, you mentioned that—on page 2 at the top of your testimony that little is known about the sex differences and ranging behavior and that males range more widely than females and that—on page 3, paragraph 2, you say part of the problem here is that many contaminants from industrialized nations thousands of miles away end up in the food chain in the Arctic where the polar bear, as top predator, concentrates them in its tissue. That may, may, result in the bears experiencing decreased fertility or a diminished immune response. Are you positive? Do you have scientific information to back up this allegation in your testimony that the bears are experiencing decreased fertility and a diminished immune response?

Dr. ROSE. The whole point of my testimony, ma'am, is that scientists are not sure about these things. I did say may, and I am very careful to use that sort of language when we don't have positive proof. Science very rarely does, but with polar bears in particular the information is particularly non-robust, in my opinion, and therefore it is the very potential for this sort of thing that causes me concern. The precautionary principle should apply.

Mrs. CHENOWETH. You go on to state that given the vulnerability of the Arctic ecosystem to environmental degradation, which I really can't seem to put together, including the potential for global warming to shrink the polar bear's habitat.

Dr. ROSE. Uh-huh.

Mrs. CHENOWETH. Now this seems to be reaching very, very far in order to justify these people not being allowed their trophy.

Dr. ROSE. All of that testimony was simply to set the stage for saying that the polar bear, and particularly because of its marginal environment, because of its harsh marginal environment and because of the threats that it is facing from, as I said, the potential of things like global warming and contaminants, organochlorines and pollutants, that this is a species that is inherently unsuited to a frivolous sport hunt.

Mrs. CHENOWETH. At the bottom of your testimony on page 5, you indicate that in spite of all the global warming and all the toxic stuff, that these industrialized nations are sending thousands of miles away to influence their food chain and their tissues and so forth, that increased sightings and encounters—you admit to increased sightings and encounters which could result in the redistribution of the population in question as a result of more bears moving into an area frequented by hunters. Now that is very, very inconsistent.

Dr. ROSE. No, it is not, ma'am, because what I was saying was that, for instance, global warming could be forcing the population farther south. In other words, local hunters would in fact see more

bears, not because there were more bears but because the bears that used to be farther north have now moved south. So the numbers are the same, but the density has increased.

Mrs. CHENOWETH. People are seeing more bears, but we know very little about it.

Dr. ROSE. I am simply offering an alternate hypothesis that the managers don't seem to be considering.

Mrs. CHENOWETH. And your final part of your testimony, which you did not offer verbally, was that Dr. Jones, who I think is one of the finest witnesses that we have ever had here, it reads Dr. Jones in his testimony viciously excoriates the Marine Mammal Commission for its conduct on this issue. Doctor, there is no way this gentleman could be vicious, no way at all. And I think that this pie in the sky non-scientific opinion is very little reason to oppose people being allowed—before this rule came in, people being allowed to bring their trophies into America. I think that we are just seeing a personal opinion that is influencing, and I think we will find that, influencing a policy that is sadly in opposition to that which the Congress directed. I am very sad to see that. Someday we are going to have to get back to the point where we deal with realities and where we don't attack people like Dr. Jones. I hope someday while I am still here in Congress that we are dealing with facts and not opinions. Thank you, Mister—Madam Chairman.

Mrs. CUBIN. [presiding] I wanted to express my appreciation to Dr. Jones for bringing up Mr. Werner. He is from my community. I knew him all my life, and I do appreciate your bringing up his memory.

Mr. Norwood, do you have questions?

Mr. NORWOOD. Yes, ma'am, I do. And some of these are yes answers, please, for in terms of time. But first let me say, David, that in your testimony you said our country disapproves or your management system. And I want to just humbly tell you that not everyone in our country does disapprove of your management system. There are some people who do, but surely you know many of us do not, too.

Ms. Rose, I am sort of interested in your written testimony attacking my friend, Dr. Jones, too. And I have noticed that you seem to imply that he is a pawn of the Sierra Club and that he is this—

Dr. ROSE. Safari Club, sir.

Mr. NORWOOD. Safari Club. And you seem to say that he is a vicious individual, and I thought I would talk about that just a minute, because, you know, I can't imagine what you are going to call me when I try to defund the Marine Mammal Commission, but probably worse than vicious. But just so—for the record, my friend, who is a hunter and a conservationist, Dr. Jones, is not just a member of the Safari Club. He is a member of the National Rifle Association and the North American Hunting Club and the Foundation for North American Wild Sheep, the Grand Slam Club, Quail Unlimited, Ducks Unlimited, National Turkey Federation, Foundation of North America Big Game, Rocky Mountain Elk Foundation, Middle Georgia Gunners Association, Georgia Forestry

Commission, Georgia Outdoor Riders Association, National Wildlife Refuge Association, The Wildlife Society.

And I would submit to you, madam, that those groups do more for—pardon me, I am upset with you—with conservation in this country than perhaps the Humane Society ever thought about doing. It doesn't require a comment.

Now I want to just ask you some simple questions. Did the Humane Society find that it was in agreement with the ruling that the Wildlife Service has recently put out regarding polar bears?

Dr. ROSE. We agree with their decision to defer those seven populations. We do not agree with their findings that the Canadian sport hunt program is monitored and enforced in agreement with the International Agreement on Conservation of Polar Bears, and we don't find that it is scientifically sound.

Mr. NORWOOD. Well, would you have liked for them to have been a lot tougher?

Dr. ROSE. Absolutely, sir.

Mr. NORWOOD. So you worked hard in order to try to make sure that they did not really promulgate a rule that went along with the intent of Congress, that you and your group knew a lot more about all this than the people in this country who write the laws. And there was no excuse in us doing what Congress wanted to do when your group knew so much better. Was that the approach?

Dr. ROSE. No, sir.

Mr. NORWOOD. No?

Dr. ROSE. We submitted comments, as we are allowed to do under the democratic system, to submit public comment during the public comment period when rules and regulations are proposed. And we agreed with the Service's interpretation that Congress directed the Secretary of the Interior to make certain findings. We disagree that—with their findings. We don't think that the four findings they made were correct, and so in fact we disagreed in that regard with the Service, and by the way, with the Marine Mammal Commission.

Mr. NORWOOD. Well, so you are saying that the Humane Society really felt that the Marine Mammal and Wildlife should have gone a lot further and totally ignored the law passed by Congress in 1994? That was—you have every right to submit comments, but within your comments were you trying to push these agencies to write rules and regulations that were absolutely the opposite and went much further than Congress wanted to have happen?

Dr. ROSE. We were reading the statute on its face that said that Congress had directed the Secretary of the Interior to make certain findings. And we—in other words, it was up to the Secretary to make those findings, to make those decisions. And we disagreed with those decisions that were made.

Mr. NORWOOD. Is the answer yes or no? Did you push through comment to try to get these agencies to undo what Congress wanted to have done?

Dr. ROSE. In our opinion, no, sir, we did not.

Mr. NORWOOD. There probably is a difference in opinion there. Let me ask you this. Have you ever been to the Northwest Territories of Canada to examine their polar bear management program firsthand?

Dr. ROSE. I am sorry, sir, could you repeat that, please?

Mr. NORWOOD. Have you ever been to the Northwest Territories of Canada to examine their polar bear management program first-hand?

Dr. ROSE. No, sir, but I have been in communication with the Northwest Territories.

Mr. NORWOOD. Do you know where it is based, the management program?

Dr. ROSE. In Yellowknife.

Mr. NORWOOD. In Canada?

Dr. ROSE. Yes, sir.

Mr. NORWOOD. Where is it based?

Dr. ROSE. In Yellowknife.

Mr. NORWOOD. I am asking you if—

Dr. ROSE. I have been in contact with the biologists who are in the Department of Renewable Resources, the Department of Resources and Wildlife—

Mr. NORWOOD. Well, the next time you call them you will probably want to know they have moved. Have you ever—

Dr. ROSE. To Iqaluit, yes, sir.

Mr. NORWOOD. Have you ever attended one of the IUCN Polar Bear Specialty Group meetings?

Dr. ROSE. Again, no, sir, but I am in communication with—

Mr. NORWOOD. Are you a member of that body?

Dr. ROSE. No, I am not.

Mr. NORWOOD. You mentioned in your testimony the ever-changing boundaries of the Canadian polar bear populations. Are you aware that such changes are submitted to the IUCN Polar Bear Technical Committee for review and that the scientific data must pass scrutiny of this international body, and do you know that the last time they were changed was before 1996?

Dr. ROSE. Yes, I am aware that—

Mr. NORWOOD. Are you familiar with all that?

Dr. ROSE. I am aware of how the ICUN PBSG reviews those things, yes, sir.

Mr. NORWOOD. You mentioned in your testimony that most of the scientific studies have been done on female polar bears?

Dr. ROSE. According to my review of all the research, yes, sir.

Mr. NORWOOD. I wonder why that is?

Dr. ROSE. My guess is because they are easier to approach, handle, anesthetize. They are more easy to—they are easier to find because of their ties to denning sights. I really—

Mr. NORWOOD. David, is that right? Are females easier to find than males?

Mr. AKEEAGOK. No, sir. The females are harder to find than the males.

Mr. NORWOOD. That is what I would think. Are they easier to work with? I mean, are they nicer than the males?

Mr. AKEEAGOK. Pardon?

Mr. NORWOOD. Are the females nicer than the males?

Mrs. CUBIN. Yes, they are.

Mr. NORWOOD. Polar bears, David. Well, let me just help you, because the reason that we have our information on females is because the neck of an adult male polar bear is larger than the head

and satellite tracking collars fall off the males pretty easily. But males, just so you will know for the future, are instead marked and recaptured by tattooing a mark on the under side of the lips rather than placing the tag around their neck. That will be of interest later on.

You say that there are relatively few polar bears tagged each year for scientific purposes. Do you know how many are tagged by the Northwest Territories each year?

Dr. ROSE. About two or three hundred a year, to my understanding.

Mr. NORWOOD. That, just so you will know for the future, is 436 bears, about 20 percent of the population.

Are you aware of a recently published article in *International Bear News*, February 1997, Volume 6, Number 1, page 12, in case you want to look it up, which suggests that cannibalism is five to ten times higher in non-hunted bear populations as opposed to hunted populations? Are you aware of that?

Dr. ROSE. I am not aware of that. I am aware that Dr. Ian Stirling, who is a Canadian biologist, stated that he does not believe cannibalism is a significant mortality factor in polar bears.

Mr. NORWOOD. David, do you find that when there is an abundance of bears, in particular polar bears, that there is cannibalism that goes on? In other words, the male eat their young, that kind of thing?

Mr. AKEEAGOK. Yes, sir.

Mr. WALTER JONES. J.Y., tell me about that.

Dr. J.Y. JONES. I would be glad to comment on that. It is true that cannibalism in the Canadian population is not a major problem, but I would point out that it is eminently hunted. We feel that it probably is a major problem in the Alaskan population, which is very lightly hunted, and in other polar bear populations around the world. But there is no question in the hunted Canadian population that Dr. Stirling would be addressing that it would be a minor problem. That is a hunted population.

Mr. NORWOOD. But if it were not, because we can't import bears, we would expect, perhaps, that the numbers of bears might remain somewhere around the same because of cannibalism?

Dr. J.Y. JONES. Well, you might—I don't know that you could infer that it would go up or down because of cannibalism, but I think what you wind up with is a major population shift toward older males and fewer cubs and females. This cannibalism study that you refer to demonstrated very clearly that the victims of cannibalism were not just cubs either. There were female bears as well, and so what you wind up with is a shift toward the very population that sport hunters are after or would like to harvest, which is the adult male polar bear. The—you require a certain number of adult male polar bears, of course, to maintain the population just for purposes of fertility and breeding, but when you have too many of them and when these old adult males are not removed from the population, you have a shift toward the older adult male and a shift away from cubs and females. It is as simple as that.

The CHAIRMAN. How much time do you want?

Mr. NORWOOD. One last final question.

The CHAIRMAN. Before you do that, I heard the lady. She said how disgusting those old males are.

Mrs. CUBIN. Excuse me, Mr. Chairman. I said and we all know how disgusting old males—

The CHAIRMAN. Old males are. May I suggest respectfully some younger ones are also disgusting.

Mr. NORWOOD. Dr. Morrill, just a brief question, because I wasn't sure I heard you right in your comments. We have heard today that the Wildlife Service has approved five of the 12 management units in Canada. And I thought you said that perhaps if we would listen to the Canadians just a little bit we would find that they would in their management system have approved a great deal more than five out of 12. Did I hear that right?

Dr. MORRILL. At the Polar Bear Specialist Group in 19—January of 1995—excuse me, 1996, the Canadians showed that all except one population was at a sustainable level. So given what Congress had said in the four conditions, then the Canadians—11 out of the 12 at that—excuse me, 12 out of the 13 at that time, because they divided one of the areas during that particular meeting, 12 out of the 13 would have been approved.

Mr. NORWOOD. And that was some of the testimony in 1994 that we took justifying the law that was passed then.

Ms. Rose, my last question, just because I am real curious about it. I understand that the Canadian Humane Society has sued your Humane Society. What is that all about?

Dr. ROSE. I couldn't tell you, sir. I am the Marine Mammal Scientist. I am not in the executive level of the Humane Society of the United States.

Mr. NORWOOD. Well, why—did the courts find you guilty—not you personally, the Humane Society guilty in misappropriation of funds?

Dr. ROSE. I am sorry, I can't comment to that, sir.

Mr. NORWOOD. Why?

Dr. ROSE. Because I am low on the totem pole. I am just in the wildlife department. I don't—

Mr. NORWOOD. Do you not know the answer?

Dr. ROSE. I do not know the answer, sir.

Mr. NORWOOD. Could you give us the name of somebody who might know the answer?

Dr. ROSE. You are free to contact Mr. Paul Irwin or Ms. Patti Forkan at the Humane Society of the United States.

Mr. NORWOOD. Were you not aware of this suit?

Dr. ROSE. Oh, I am certainly aware of it. It is mentioned in the Safari Club's publications and in other publications.

Mr. NORWOOD. And so within inside the Humane Society you all didn't talk about this we are being sued, for pity sakes, by another Humane Society or talk about the fact the courts have found us guilty for misappropriation of funds? You all didn't talk about that?

Dr. ROSE. Do you want me to testify to office gossip or what I know for a fact?

Mr. NORWOOD. I am not really asking you did you read the summary of the court records. I am asking you was that generalized knowledge inside the Humane Society?

Dr. ROSE. I was aware of it, but I just don't know the details, sir.

Mr. NORWOOD. OK, well, I don't either. I am just curious how in the world that could have happened. There must be a difference in opinion in the Humane Society.

Dr. ROSE. You do have to contact my bosses. I really don't know.

Mr. NORWOOD. Thank you very much, Mr. Chairman.

The CHAIRMAN. The gentlelady, do you have another question?

Mrs. CUBIN. Mr. Chairman, yes, I didn't ask questions before, and I just want to make a brief statement. Philosophically Dr. Rose and I are very, very far apart, but, you know, I think that the harm that has been done here has been done by the bureaucracy and not by people interested in this issue. I think it is perfectly acceptable that people disagree on issues philosophically and respect one another for that, and I just kind of want to go on the record that way. Any wrongdoing that I see was not done on the part of the interested public. It was done on the part of our own government.

The CHAIRMAN. Only if they were involved with the decision-making by the agency which had the responsibility to implement the Congressional act and intent of the law. Then I get very concerned.

Mrs. CUBIN. Mr. Chairman.

The CHAIRMAN. Yes.

Mrs. CUBIN. I would even disagree with you on that. If I had—

The CHAIRMAN. I wouldn't expect you not to do anything else, but go ahead.

Mrs. CUBIN. If I—you know, I think that as a citizen concerned about an issue I have every right to deal at every level to get my view represented. I think when I am an elected official, when I am a bureaucrat it is a whole different deal, but anyway.

The CHAIRMAN. I understand.

Mrs. CUBIN. For the record—

The CHAIRMAN. I am just saying that my concern is for some reason this July of 1995 complete flip flop. I mean this is the most amazing thing I have ever seen. And the lawyer agree they wrote it. And that didn't happen overnight. Somebody working—I am going to restate it again. The lawyers in this room, the agencies in this room supported this legislation. If there was a problem when we wrote it, they should have let us know at that time. And that is what I am after. This is, like Charlie Norwood said, there is something very wrong here. And this is why our government has lost its credibility big time.

The CHAIRMAN. And, David, again I want to thank you for being here. That bell, don't jump, that bell is for a vote. And I hope to get up to your area sometime. I had the privilege of harvesting a polar bear in 1964 before all this nonsense took place.

And we do have an abundance, Doctor, of polar bears in Alaska to the point now we have lost three persons this last year. They also like to chew on people. An abundance of them and a terrible management system. If I can ever implement a program such as David has, I am certainly going to try to encourage it, because I think it is the right way to go. It helps the local people, but more than that it manages species that really now have some serious problems.

With that, we have a vote. This hearing is adjourned.

[Whereupon, at 1:38 p.m., the Committee was adjourned; and the following was submitted for the record:]

STATEMENT OF THE HONORABLE GEORGE MILLER, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. Young has asked our speakers to comment on whether the final rule reflects the legislative intent of the 1994 Amendments to the Marine Mammal Protection Act. Before these proceedings begin today, I would like to take a few moments to comment on the issues of intent and purpose.

We should remember that the purpose of the Marine Mammal Protection Act is to protect marine mammals and their habitat. The 1994 Amendments did not change this purpose. Any rule promulgated in accordance with the Amendments, must be consistent with the overall Act and must allow only for sustainable activities.

The Committee Report for the 1994 Amendments is quite clear that it is our intent to insure that sport hunting of polar bears does not adversely affect the sustainability of polar bear populations throughout their range in Canada. It is not sufficient that the overall numbers of polar bears grow, each separate polar bear population must grow as well, ideally to the MMPA goal of its optimum sustainable population.

I understand that there is some debate regarding whether sport trophies taken prior to the enactment of the 1994 amendments should be subject to the same conservation provisions as are applied to sport trophies taken after 1994. Again, I want to reference the Committee Report—which I have been told was agreed to by Mr. Young's staff at the time, and we have no dissenting views to indicate otherwise. The Report states: "It is the Committee's intent that all conditions outlined by this amendment concerning importation of polar bear trophies taken prior to the adoption of this amendment have to be met."

I think we are all in agreement that agency decisions should be based upon solid scientific data and in accordance with sound, and effective, management principles. But what action is to be taken when the data is incomplete or practices are questionable? Was it the intent of Congress and the MMPA to err on the side of conservation and protection, or to err on the side of increased marine mammal takings?

Finally, I think we should remember that the MMPA Amendments of 1994 require the Secretary to consider both the Convention on International Trade in Endangered Species (CITES) as well as the 1973 Agreement on the Conservation of Polar Bears when analyzing Canada's polar bear management plans. These international agreements embody sound hunting and management practices. To take one example, the Polar Bear Agreement requires that pregnant and nursing females, as well as their cubs, be protected from hunting activities. Decisions based on principles such as these are ones we all can support.

I look forward to hearing today's testimony and substantive discussion of the issues.

STATEMENT OF HON. RANDY "DUKE" CUNNINGHAM, A U.S. REPRESENTATIVE FROM CALIFORNIA

Chairman Young, Ranking Member Miller, and members of the Committee, thank you for the opportunity to speak in support of this resolution, H.J.Res. 59, disapproving the Department of Interior's Final Rule titled Importation of Polar Bear Trophies from Canada Under the 1994 Amendments to the Marine Mammal Protection Act.

Today is the third anniversary of the date that the President signed the polar bear amendments to the Marine Mammal Protection Act (MMPA). Three full years have passed, and the U.S. Fish and Wildlife Service has yet to issue its first permit.

As a fiscal conservative, I am very sensitive to wasted time and dollars. In this case too many of both have been thrown away by the agencies involved. Thousands of dollars have been lost in conservation funds that could have been generated by the issuance of permits. Thousands of dollars have been denied the Inuit people who depend on this vital resource. Thousands of sportsmen have stayed home or gone elsewhere, because of the failure by the Fish and Wildlife Service to carry out the intent of Congress.

This fiasco was a long time coming. To begin, Congress very thoroughly considered the polar bear issue in 1994. We collected information from both the U.S. Fish and Wildlife Service and the Canadian government. When the amendments were adopted in 1994, Congress concluded that the Canadian government was efficiently managing its polar bear populations. Congress provided the Secretary of the Interior tools to make sure that the shift to sport hunting as a larger component of polar bear management did not threaten the Canadian management program. We then asked the Secretary to issue permits.

Congress certainly did not expect a three-year delay in the process. I have tried to understand what went on to create the mess by reviewing the process as it unfolded. However, that does not answer why the Clinton Administration dragged its feet despite clear motivation and direction by members of this Committee. I would like to share with you the time line to make clear that Congress did its utmost to get this new law administered:

- April 30, 1994: President Clinton signed the amendments to the MMPA.
- June 20, 1994: Congressmen Young and Fields wrote to the Fish and Wildlife Service asking it to expedite the process and that it should use interim regulations to issue permits.
- August 24, 1994: The Fish and Wildlife Service, the Marine Mammal Commission, and the State Department met to design an approach for developing findings. The Fish and Wildlife Service had a goal of publishing regulations by January 1, 1995.
- August 29, 1994: The Fish and Wildlife Service responded to Congressmen Young and Fields informing them that rules need to be developed for the permits and that findings have to be made.
- September 28, 1994: 25 members of Congress joined me in a letter to the Secretary, noting that five months had passed with no action and urging him to use his existing authority to promptly issue permits.
- October 27, 1994: The Fish and Wildlife Service published a notice in the Federal Register outlining the process it would follow to make the required findings and saying that it would issue regulations covering the permit procedures.
- November 2, 1994: Congressman Jack Fields (R-TX), the principal author of the polar bear amendments, wrote to Assistant Secretary Frampton in response to the October 27 notice. He reminded the Assistant Secretary that in 1993, the Fish and Wildlife Service had told Congress that sport hunting was part of the Canadian management system and that it was not harmful or in conflict with the Polar Bear Convention. Congressman Fields also reminded the Fish and Wildlife Service that it was not Congress' intent to impose management practices on Canada and that Congress knew that Canada managed by subpopulation. Congressman Fields also recommended to the Fish and Wildlife Service that it should stop focusing on the past management by Canadian authorities and instead focus on the future impact that increased hunting by American hunters would have on Canadian polar bear populations.
- January 3, 1995: The Fish and Wildlife Service published a proposed rule on the permit procedures.
- January, 1995: The Fish and Wildlife Service sends a draft proposed finding to the Marine Mammal Commission for review.
- March and April, 1995: The Fish and Wildlife Service held a series of internal meetings and prepared draft findings.
- July 17, 1995: The Fish and Wildlife Service published proposed findings. The public comment period was set to end on August 31, 1995, but was extended through November, 1995.
- September 7, 1995: The Fish and Wildlife Service wrote to Congressman Young, saying that it will have a rule out shortly ("this fall ") and then it will focus on the issue of Parry Channel, where most of the hunting of polar bears occurs in Canada, as a separate rulemaking.
- November 9, 1995: The Marine Mammal Commission provided comments to the Fish and Wildlife Service.
- July, 1996: The Fish and Wildlife Service received more data on Parry Channel populations but decided not to pull back the final rule, which they were preparing, and not to publish a new proposal since the research and data-gathering on Parry Channel was still ongoing.
- August 15, 1996: Draft final rule goes out for review and approval by various offices within the Fish and Wildlife Service.

- October, 1996: The Fish and Wildlife Service received more data on the Parry Channel issue. However, it decided not to act on the new data at that time because the final rule was near final publication.

- January, 1997: The Fish and Wildlife Service obtained further information about the Parry Channel area from the Polar Bear Technical Committee meeting.

- February 18, 1997: Final rule published, effective March 20, 1997.

- March 5, 1997: The Fish and Wildlife Service wrote to Canada asking for further information and saying it could possibly have a proposed rule on the Parry Channel area out by the end of April.

- April 22, 1997: The Marine Mammal Commission filed a scientific evaluation with a positive finding on management of two of the areas into which Parry Channel had been restructured: Lancaster Sound and Norwegian Bay.

Following all of this effort, one would expect the Fish and Wildlife Service to publish a comprehensive rule meeting the criteria set forward by Congress. Unfortunately, the Fish and Wildlife Service has put forward a rule that is incomplete. Its final rule contains no provisions allowing for the import of grandfathered polar-bear trophies from before 1994. In fact, the Fish and Wildlife Service has determined that only five of Canada's twelve polar bear populations are stable. In addition, according to the Service's own data, there is little, if any, hunting of these populations.

However, the Fish and Wildlife Service determined that it was unable to determine the sustainability of any the other seven polar bear populations if hunting were allowed. When Congress passed the polar bear amendments to the MMPA, we considered this issue and instructed the Fish and Wildlife Service to consider Canada capable of managing its own populations. The Fish and Wildlife Service disregarded this information and moved forward with a rule which is inconsistent with the intent of Congress.

For this reason, I would encourage my colleagues to vote for H.J.Res. 59, and direct the Fish and Wildlife Service to return to Congress a rule which is comparable with the amendments we passed in 1994. Mr. Chairman thank you for this time.

105TH CONGRESS
1ST SESSION

H. J. RES. 59

To disapprove a rule affecting polar bear trophies from Canada under the 1994 amendments to the Marine Mammal Protection Act issued by the United States Fish and Wildlife Service of the Department of the Interior.

IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 1997

Mr. YOUNG of Alaska (for himself, Mr. PETERSON of Minnesota, and Mr. NORWOOD) introduced the following joint resolution; which was referred to the Committee on Resources

JOINT RESOLUTION

To disapprove a rule affecting polar bear trophies from Canada under the 1994 amendments to the Marine Mammal Protection Act issued by the United States Fish and Wildlife Service of the Department of the Interior.

- 1 *Resolved by the Senate and House of Representatives*
- 2 *of the United States of America in Congress assembled,*
- 3 That Congress disapproves the rule submitted by the
- 4 United States Fish and Wildlife Service of the Depart-
- 5 ment of the Interior relating to polar bear trophies from

1 Canada under the 1994 amendments to the Marine Mam-
2 mal Protection Act, and such rule shall have no force or
3 effect.

TESTIMONY
HOUSE NATURAL RESOURCES COMMITTEE
FORMER CONGRESSMAN J ROY ROWLAND
April 30, 1997

Mr. Chairman and members of the Committee, I appreciate the opportunity to be here today, and especially to visit with many of you who are longtime friends. I do not envy you the task that you have in governing our country, but I commend you, every member of Congress, for shouldering the responsibility.

One of the issues that I dealt with while a member of the House is before you today. Dr. J.Y. Jones, a close personal friend and medical colleague, and also one of my constituents, approached me with the surprising information that a person from the United States could go to Canada and hunt polar bears legally under the auspices of their sport hunting program, but could not legally bring their trophy home. I have the utmost regard for J.Y., as he is in my opinion an excellent physician and surgeon with the highest personal ethics. He is greatly respected by the people in the community where we live. He did my own mother's cataract surgery, in fact. Also, he gives generously of his time and resources in an uncommon way, and he has done a total of fourteen medical missionary trips to Honduras and Jamaica. After receiving additional information from him, including the fact that he personally had a trophy polar bear in Canada he couldn't bring home, I agreed to look into the matter and get back with him on the feasibility of amending the Marine Mammal Protection Act to allow such import.

It appeared to me that such a restriction was unwarranted in view of the fact that our neighbor Canada is our closest trading partner, shares with us the world's longest unguarded boundary, and is a nation perfectly capable of managing their own wildlife resources without our interference.

I discussed the import ban informally with my friend Gerry Studds, then chairman of the House Merchant Marine and Fisheries Committee, and he expressed an interest in changing the law to allow import of polar bear trophies under certain conditions. He told me that he would have his staff research the law and prepare a proposal that might remove this restriction. Other interested members of Congress specifically wanted to allow importation of polar bears already stored in Canada that had been legally taken. These hunters had given their financial support to the polar bear conservation program there despite the fact they couldn't bring the bear home. Also, those bears already harvested could have no negative effect on the polar bear population, so it made good sense to allow their importation, if they were legally taken and had not been imported into the U.S. in violation of existing law.

The opportunity to make this change in the law came shortly thereafter as the reauthorization of the original Marine Mammal Protection Act came up for consideration. I talked with Congressman Studds on several occasions, and our staff people worked together on the amendments. Other members of Congress gave input and advice concerning the pending legislation, and an effort was mounted to include the needed language. The actual legislation was finalized in early 1994.

The record is clear that the Merchant Marine and Fisheries Committee was indeed successful in resolving the issue and subsequently recommended to the full House of

Representatives that legally harvested polar bear trophies from Canada be permitted importation into the U.S. by our citizens who had hunted there in the past, or who would do so in the future. After the House and Senate resolved their differences, the legislation was passed by both houses of Congress. This legislation was signed into law by President Clinton exactly three years ago today, on April 30, 1994.

Now I have learned that still today, despite the interval of three years, not a single polar bear trophy has been imported under the amended law. What is even more mind boggling is that a simple bipartisan mandate of Congress has been expanded far beyond its original intent, I'm told, to include 30 pages of rules, a complicated application process, a large portion of the Canadian polar bear population still excluded from importation, and provisions attached such that even the name of the individual hunter applying for an import permit must be published in the Federal Register. I am also surprised that polar bears already stored in Canada, legally harvested in years past and specifically approved by Congress for import, have been held up indefinitely by a broad and bewildering array of polar bear subpopulation evaluations.

I have been asked to testify as to what the intent of Congress was in 1994 on this issue. I agree fully with the interpretive language inserted into the Congressional Record by Congressman Jack Fields of Texas during floor debate on the bill. He stated firmly that Canada already had a healthy polar bear population, that Canada already had a polar bear management program that was based on scientific principles, and that such a program ensured a sustainable polar bear population. He further stated that the Canadian polar bear management program was consistent with international conservation agreements, and that it was not the intent of the language of the bill that the Secretary of the Interior attempt to impose polar bear management policy or practices on Canada by the imposition of any polar bear import criteria. I understand that there was no one from either party who rose to challenge these statements.

I believe that Congress expected issuance of polar bear import permits to begin immediately. I know that I did. After five months of inaction on the new amendment, I joined a group of concerned Congressmen who sent a letter to Secretary Babbitt of the Interior Department urging him to use the authority granted him by Part 13 of Title 50, Code of Federal Regulations, to develop interim regulations for polar bear imports so that waiting sportsmen could proceed with importation without further delay. We recommended that if he believed a more detailed regulatory process to be necessary, he could undertake that proceeding thereafter. Instead, the U.S. Fish and Wildlife Service developed these voluminous and dilatory regulations we have today.

In summary, it was never the intent of Congress, based on my knowledge, that we attempt to micromanage the Canadian polar bear conservation system or to force Canada into new international agreements, but that we simply allow U.S. hunters to apply for and receive a permit to import their trophy if a few simple criteria were met, the most key of which being that the bear was legally taken in Canada and not illegally imported already. The regulations appear to me to go far beyond Congressional intent. They are yet another example of the tendency towards over-regulation in some levels of the Federal bureaucracy.

Ladies and gentlemen, I urge you to do whatever is necessary to carry out the will of Congress as passed in 1994.

**TESTIMONY OF MARSHALL P. JONES, ASSISTANT DIRECTOR FOR
INTERNATIONAL AFFAIRS, UNITED STATES FISH AND WILDLIFE SERVICE,
DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE RESOURCES
COMMITTEE, REGARDING HOUSE JOINT RESOLUTION 59 TO DISAPPROVE
POLAR BEAR TROPHY REGULATIONS.**

April 30, 1997

Mr. Chairman, I appreciate the opportunity to testify on House Joint Resolution 59, to disapprove the Fish and Wildlife Services's polar bear trophy regulations.

These regulations were issued under the 1994 Amendments to the Marine Mammal Protection Act, and became effective on March 20, 1997. They established application requirements, permit procedures, and a permit issuance fee to allow for the import of polar bear trophies from Canada under certain conditions. The Service has approved 16 permits under this authority to date, and is currently processing more than 45 additional applications.

House Joint Resolution 59, if enacted by both Houses and signed by the President, would rescind these regulations and remand the issue back to the Service for further consideration. No further permits would be issued.

The Service believes that its final rule accurately implements the specific terms of the statute, as amended in 1994. This statute provided measures allowing for the issuance of permits to import sport-hunted polar bear trophies when specific criteria are met.

There are an estimated 28,000 polar bears worldwide, half of which are distributed in Canada. Canada is the only country to allow polar bears to be harvested by non-residents, through a regulated sport-hunt in the Northwest Territories. Although polar bears occur in the Yukon Territory and four Provinces, all populations are shared with the Northwest Territories. Canada currently manages each of fourteen populations of polar bears as separate units with complex shared management responsibilities among Provincial, Territorial, and Federal governments and Indigenous Co-management Boards. Polar bear hunting is an important part of the culture and economy of indigenous peoples, with a number of communities within the range of each polar bear population. The total sustainable harvest for each population is divided among communities that harvest polar bears and each community decides what portion of its quota, if any, to designate for sport hunters. While there is substantial economic return to the community from sport hunts, only a few communities take part currently, as it reduces hunting opportunities for indigenous hunters. On average, 10 to 15 percent of the total annual polar bear harvest in the Northwest Territories is allocated to sport hunters.

The Service fully supports sustainable use programs based on sound wildlife management

principles. We believe that the intent of Congress in passing the 1994 Amendments was not to seek change in Canada's management program, nor to seek to impose polar bear management policy or practices on Canada. The Service made an extraordinary effort to work with Canada since the enactment of the 1994 Amendments to gather the biological and management data needed to establish these regulations. The Service relied heavily upon this peer reviewed data to independently make the required findings of the 1994 Amendments, and in the regulations publicly recognized the significant achievements of Canada in establishing an effective polar bear management program.

While the Service fully supports Canada's efforts, those efforts must also comply with the stricter provisions of the Marine Mammal Protection Act. These include general import requirements which were not explicitly addressed in the 1994 Amendments, such as the general prohibition on the import of marine mammals that were pregnant or nursing at the time of take and the general provision of the Act which requires that all applications, including applications for polar bear trophy import permits, be published in the Federal Register for 30 days to afford opportunity for public review and comment.

In addition to these general requirements, Congress provided in the 1994 Amendments specific new requirements that must be met. The Service was required to determine, in consultation with the Marine Mammal Commission, that these requirements were met in order to allow polar bear trophy imports. As part of these requirements, the Service was required to conclude that Canada's sport-hunting program is consistent with the purposes of the 1973 Agreement on the Conservation of Polar Bears, and is based on scientifically sound quotas to ensure the sustainability of the affected population stock. Although these requirements were simply stated in the 1994 Amendments, they are complex and involve multiple issues.

Based on recent scientific data, fourteen polar bear population stocks are identified within Canada. These include the addition of Kane Basin and Norwegian Bay, and the renaming of Parry Channel as Lancaster Sound. At the time of the rulemaking, however, Canada identified twelve polar bear populations within its jurisdiction. The Service decided to evaluate the status of polar bears within each population as well as the adequacy of the management program in place, to determine if the statutory criteria were met on a population-by-population basis. This is consistent with the term "population stock" as defined by the Act and represented the current scientific evidence on Canada's polar bear populations. It also reflected the management regime; each of Canada's polar bear populations is managed independently and thus should be considered independently under the 1994 Amendments.

If Canada's polar bears had to be considered to constitute a single population, then no sport-hunted trophies could be allowed from any area in Canada because the sustainable management criterion in the Amendments would not have been satisfied. However, the plain language of the Amendments allowed a separate decision to be made on the five populations that did satisfy all of the statutory criteria.

In applying the various criteria in the Act and the 1994 Amendments to the twelve polar bear populations, the Service was able to approve five of the twelve populations as of February 1997. Final decision on the remaining populations was deferred pending receipt of additional information from ongoing research or management actions in Canada. This is due primarily to the fact that these populations are shared with governments other than the Northwest Territories, where sufficient information is not readily available to render an appropriate final decision at this time. For these shared populations, a finding would need to show that the co-management of the shared government is also consistent with the Agreement on the Conservation of Polar Bears and that the "affected population stock" is collectively managed under scientifically sound quotas at a sustainable level. Baffin Bay, Queen Elizabeth, and the new Kane Basin populations are shared solely with Greenland. The Foxe Basin population is shared with Quebec, while the Southern Hudson Bay population is shared with Quebec and Ontario, and the Davis Strait population is shared with Quebec, Newfoundland-Labrador, and Greenland.

As indicated in the preamble to the final rule, the Service will continue to review any new information as it becomes available to determine if and when the importation of sport-hunted trophies may be allowed from additional populations. Currently the Service is reviewing new research and management data on the area formerly known as Parry Channel, and expects to publish a proposed rule for public comment shortly. In addition, the Service will consider other additional populations as soon as new information becomes available, recognizing that much of that information will be based on Canada's ongoing research and co-management discussions with Ontario, Quebec and Greenland.

In this regard, questions have been raised concerning what was the most recent data used by the Service in making its necessary findings. This appears to be the result of several tables presented in the proposed and final rule that display harvest statistics through the 1993/94 season. The most current data and scientific research available were used in completing the final rule, including reference citations. Since the rule was first proposed in 1995, and the final rule was based on that proposal, the 1993/94 information available at that time serves as the bulk of the supporting data. However, where available, 1995 information provided through personal communications with Canada was fully considered in development of the final rule.

This issue has focused specifically on the Parry Channel-Baffin Bay area where a significant percentage of pre-Amendment sport hunting occurred, and where decisions on imports have been deferred. No new information on this area was submitted during the comment period on the proposed rule, which originally closed on August 31, 1995 and which was subsequently extended through November 6, 1995. At that time, Canada advised that the current status information on the Parry Channel and Baffin Bay areas "would disqualify these populations," but that new additional information could be available for review in early 1996. In July of 1996, additional new biological information was made available, indicating that perhaps three distinct populations had been identified, and that research and inventory studies were ongoing. In October of 1996, the Service received additional new management information on the area formerly known as Parry Channel. At that time the public comment procedure had closed, the Service's deliberative

process on the proposed rule was well under way, and a recommended decision was undergoing internal review within the Department of the Interior. Since these data were not previously available to the public for review and comment, the Service determined not to hold up a final decision on the proposed rule pending the receipt of further public review and comment. The Service discussed the status of this information in the preamble of the final rule and as I indicated earlier, is currently developing a new proposed rule to address this area for publication shortly.

Particular concerns have been raised relative to the way the final regulations address importation of polar bear trophies taken prior to the adoption of the Amendments. In considering these imports, the Service initially proposed to issue an aggregate finding covering the Northwest Territories historic sport-hunting program starting in 1972. At least since that time, the Government of the Northwest Territories has managed polar bears under a quota, had data collection and monitoring systems in place, and demonstrated a progressive management program for polar bears.

In response to this proposal, the Service received substantive comments on this aspect of the proposal from the Marine Mammal Commission and others. These comments noted that the proposed aggregate findings seemed to be contrary to the statutory requirements. The Amendments require that permits for the importation of polar bear trophies must be limited to populations that satisfy the statutory criteria. The comments pointed out that the 1994 Amendments do not distinguish pre-Amendment polar bears from bears taken after April 30, 1994, and that permits for the import of any polar bear trophy, including pre-Amendment bears, may only be issued after the criteria listed in the 1994 Amendments are met.

The Marine Mammal Commission's comments noted that the approach in the proposed rule seemed to have overlooked the requirement that the Service determine that Canada's sport-hunting program be based on scientifically sound quotas ensuring the maintenance of the affected population stock at sustainable levels. The Commission recommended that, at an absolute minimum, the Service should allow trophies to be imported only from those populations for which the Service has made a current affirmative finding.

Prompted by these comments, the Service re-examined this aspect of its proposal. Based on this review, the Service determined in the final rule that the provision that allows permits to be issued for pre-Amendment trophies is tied to the same statutory criteria that apply to the import of polar bears taken after the passage of the 1994 Amendments. Support for this interpretation is found in the House Report on the 1994 Amendments which states, "it is the Committee's intent that all conditions outlined by this amendment concerning importation of polar bear trophies taken prior to the adoption of this amendment have to be met." Thus, the final rule allows for the import of pre-Amendment trophies only from approved populations.

For those pre-Amendment trophies that were taken from currently deferred populations, the Service will promptly consider any new information as stated above for those populations. If the Service is able to approve the population at some future time, then permits could be issued for

the import of pre-Amendment trophies of polar bears taken from any newly approved population.

Mr Chairman, I have touched briefly on a number of the more controversial issues that have been raised as a result of these regulations, and outlined the Services's rationale for its decisions. The subject of import of sport-hunted polar bear trophies is controversial, and perhaps more complex than it might first appear to be under a quick reading of the 1994 Amendments. The Service has done its utmost to fulfill the spirit of the 1994 Amendments while at the same time establishing regulations that are consistent with the very specific requirements in those Amendments, the full statute, and the 1973 Agreement on the Conservation of Polar Bears. The Service believes that it has been successful in that effort with this final rule. The final rule is based on sound biological and management principles that reflect the current state of polar bear management in Canada. As new information becomes available, the Service is prepared to consider the eligibility of additional populations for the approval of trophy imports. The Service believes that polar bear conservation can best be served by allowing the existing regulations to remain in place.

If the draft joint resolution were to become law, thereby disapproving the Service's final rule, the further promulgation of implementing regulations on polar bear trophy imports would not occur under the existing statutory language in the absence of significant new biological or management data. The Service has done the best it can do within the limits imposed by the best available scientific data and the MMPA. Therefore, Mr. Chairman, the Administration opposes House Joint Resolution 59 given that with the language provided by the 1994 Amendments, the Service does not believe it could develop a new regulation that would be substantially different from the current regulation.

Statement of John E. Reynolds, III, Ph.D.,
Chairman of the Marine Mammal Commission,
Before the House Subcommittee on Fisheries, Wildlife,
and Oceans, House Resources Committee,
Regarding House Joint Resolution 59 to Disapprove a Rule
Affecting Polar Bear Trophies from Canada

April 30, 1997

Thank you for inviting the Marine Mammal Commission to testify on House Joint Resolution 59, which would disapprove the rule published by the Fish and Wildlife Service on 18 February 1997 to authorize the import of polar bear trophies from Canada. I am accompanied by Michael L. Gosliner, General Counsel to the Commission, and Robert J. Hofman, Ph.D., the Commission's Scientific Program Director.

As we understand it from your letter, the purpose of this hearing is to consider the Resolution and to obtain comments from witnesses concerning: 1) whether the final rule reflects the legislative intent of Congress, 2) Canada's program for the conservation and management of polar bears, and 3) sport hunts conducted in Canada.

The 1994 Amendments

The Commission first became involved in this issue in 1993, when Congressman Studds requested our views on the advisability of amending the Marine Mammal Protection Act to permit the importation of legally harvested polar bear trophies from Canada. Mr. Studds specifically asked for the Commission's views on three points -- whether the Canadian polar bear population was relatively healthy, whether permitting trophy imports potentially would result in pressure on the Canadian government to allow more bears to be killed, and whether the Canadian hunt conflicted in any way with the 1973 Agreement on the Conservation of Polar Bears.

The Commission responded that it was not clear that an amendment was needed and noted the existence of the Marine Mammal Protection Act's waiver provision, which allows the Secretary of the Interior (or Commerce) to authorize the taking and importing of marine mammals, provided certain showings are made. The Commission indicated its belief that the waiver process provided the best way to examine whether the Canadian program met the requirements of the Act and was consistent with the requirements of the Agreement on the Conservation of Polar Bears. The Commission advised that amendment should be considered only after a waiver had been sought or specific problems or impediments with the process identified. Further views of the Commission were not sought as the trophy import amendment was drafted and considered.

The Commission's suggestion that amendment should not be

considered before either a waiver had been sought or specific impediments to securing a waiver identified was not made to oppose the sport hunting of polar bears, to oppose imports of legally taken trophies from Canada, or to find fault with the Canadian program. Rather, it was to recognize that the Marine Mammal Protection Act already included a mechanism whereby importations of sport hunted trophies could be allowed. The Commission believed that that process should be given a chance to work as the original drafters of the Act intended and should be bypassed only if it did not work.

The Marine Mammal Protection Act Amendments of 1994, which included section 104(c)(5), were signed into law on 30 April 1994. Section 104(c)(5) authorizes the Secretary of the Interior to issue a permit for the importation of a polar bear trophy taken legally by the applicant in a sport hunt in Canada, provided four findings are made. Before issuing any such permit, the Secretary, in consultation with the Marine Mammal Commission and after providing notice and opportunity for public comment, must find that:

- (i) Canada has a monitored and enforced sport hunting program consistent with the purposes of the Agreement on the Conservation of Polar Bears;
- (ii) Canada has a sport hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level;
- (iii) the export and subsequent import are consistent with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and other international agreements and conventions; and
- (iv) the export and subsequent import are not likely to contribute to illegal trade in bear parts.

The statute places responsibility for making these findings on the Department of the Interior and ascribes a consultative role to the Commission. Additionally, the Service, before issuing a permit under this provision, must determine that each bear to be imported was legally harvested in Canada by the applicant.

Consultations

In making its findings, the Service began consultations with the Commission during the summer of 1994. In October 1994, the Commission commented on a draft Federal Register notice regarding the development of regulations to govern polar bear imports from Canada and provided the Fish and Wildlife Service with an outline of the questions it believed the Service would need to address to make the statutorily mandated findings.

Canada provided the Service extensive information on its polar bear program in December 1994. A copy of Canada's submission was forwarded to the Commission in late January 1995. The material was reviewed by the Commission and members of the Committee of Scientific Advisors in preparation for commenting on a draft of the proposed rule being prepared by the Service. The Service provided a draft of its proposed rule to the Commission for comment at the end of March 1995. The Commission completed its review within a week. Extensive comments on the draft were provided to the Service during a 10 April 1995 telephone discussion.

After making revisions, the Service published its proposed rule on 17 July 1995. The comment period on the proposal was originally scheduled to close on 31 August. However, after receiving requests from two non-governmental organizations to extend the comment period, the Service informed the Commission that it intended to do so. The comment period was ultimately reopened until 6 November 1995. The Commission, in consultation with its Committee of Scientific Advisors, completed its review and forwarded comments to the Service on 9 November.

The Commission's Comments on the Proposed Rule

I would be pleased to submit a copy of the Commission's comments for inclusion in the record. For purposes of my testimony, I will confine myself to a few key points.

The Commission provided detailed comments on each of the findings required under the 1994 amendments. We did so to meet our responsibility to see that the Marine Mammal Protection Act is faithfully implemented as enacted. The Marine Mammal Protection Act clearly provides for authorizing the hunting of polar bears and other marine mammals and the importation of trophies in certain circumstances. Our statutory responsibility is to see that all applicable conditions are met before such taking or importation is allowed. On all but a few issues, the Commission concurred with the findings initially proposed by the Fish and Wildlife Service. In many instances, however, we believed that additional explanation was needed to justify a proposed finding. We believe that, as a result of the Commission's carefully considered comments on the proposed rule, the final rule more accurately reflects the statutory criteria.

As noted above, the 1994 amendments specify four findings that must be made by the Fish and Wildlife Service before imports of polar bear trophies can be permitted. The first is that Canada's sport hunting program be consistent with the purposes of the Agreement on the Conservation of Polar Bears. To make such a finding, the Service must determine that one of the exceptions in Article III of the Agreement allows for the taking of polar bears by non-nationals in sport hunts. The Commission is fully aware

of the declaration made by Canada in 1976 at the time it ratified the Agreement. The declaration stated Canada's view that the exceptions in Article III.1, subparagraphs (d) and (e) permitted "a token sports hunt based on scientifically sound settlement quotas as an exercise of the traditional rights of the local people." Nevertheless, the 1994 amendments to the Marine Mammal Protection Act clearly placed the responsibility for making the determination of treaty consistency with the Fish and Wildlife Service. That is, while Canada's interpretation of the treaty provisions is certainly important, it is not dispositive of the issue for purposes of section 104(c)(5).

The Commission's position on this issue has been a consistent one. In its 1993 letter to Mr. Studds, the Commission advised that the bases for Canada's conclusions were by no means clear. The Commission pointed out that Article III.1.(d) appeared on its face to be limited to local people exercising traditional rights. The situation with respect to the exception in Article III.1.(e) was less clear. The Commission noted the possible problems with making such a finding of consistency, including a statement made by the Fish and Wildlife Service in support of Senate ratification of the Agreement in 1975 that took the position that the Article III.1.(e) exception applied only to nationals of the country in which bears are taken. Despite this caution from the Commission, the 1994 amendments included a requirement that the Canadian program be found consistent with the purposes of the Agreement before trophy imports could be permitted.

The Commission, in commenting on the Fish and Wildlife Service's proposed rule, provided a comprehensive discussion of the consistency of the Canadian program with each applicable element of the Agreement on the Conservation of Polar Bears. Our analysis was based in large part on a Commission contract report prepared prior to consideration of the 1994 amendments and in a context wholly unrelated to the question of polar bear imports from Canada. That report examined the possible inconsistencies between U.S. law and the provisions of the Agreement. Among other things, the report provided the basis for the Commission's recommendation to the Service that the best interpretation of the exception under Article III.1.(e) would allow a party to the Agreement to allow any person, including a non-national, to take a polar bear, as long as the take occurs in an area where the nationals of that country have engaged in or might have engaged in taking by traditional means.

The second required finding is that Canada's sport hunting program be based on "scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level." The Service suggested in its proposed rule that this, as well as the other findings, were not applicable to those trophies taken by U.S. hunters in Canada prior to enactment of the 1994

amendments. The Commission did not see how the Service could have arrived at such a conclusion based on a plain reading of the statute. Section 104(c)(5)(A) clearly indicates that the four required findings are to be made before any import permit is issued. In addition, the legislative report on the amendments explained that "all conditions outlined by this amendment concerning importation of polar bear trophies taken prior to the adoption of this amendment have to be met." Given the plain meaning of the statutory provision and the statement of legislative intent, the Commission believed that the Service was courting adverse and costly litigation if it permitted the importation of pre-amendment trophies without making the specified findings.

The Commission also commented on the timing of the finding of scientific soundness as it relates to pre-amendment trophies. The Commission noted that the nature of the required finding suggested that historical data be used. That is, a quota would be considered scientifically sound if it ensured the maintenance of the affected population at a sustainable level at the time a bear was taken. While the Commission realized that an examination of historical data would be a bit more involved, we did not believe that it would be overly burdensome, if as the Safari Club International's Renewable Wildlife Resources Committee has contended, Canada has had "forty plus years of sustainable harvest involving a healthy population...."

As a plausible alternative interpretation of the statutory provision, the Commission suggested that the findings be based upon present day quotas and management practices for each population. This interpretation was ultimately adopted by the Service in its final rule.

The other key question that the Service needed to resolve was whether the findings of scientific soundness should be made for individual polar bear management units in Canada, for a single Canadian population, or for some other division of the populations that occur in Canada. The Commission's comments generally supported the use of management units as being conservative, but recommended that the Service provide additional justification in the final rule to link the management units to the Marine Mammal Protection Act's definition of "population stock." The Service found merit in the Commission's advice and explained the basis for equating management units with populations in the final rule.

The Final Rule

The Service published its final rule on 18 February 1997, making affirmative findings for 5 of the 12 management units used by Canada when the rule was proposed. The Commission believes that the final rule is a considerable improvement over the

original proposal and, in general, supports the Service's conclusions. The rule noted, but did not rely on, data that became available after the extended comment period ended. In the Commission's view, it would have been difficult for the Service, based on the record before it at that time, to sustain affirmative findings for any of the other seven management units. Also, we find no fault with the Service's assessment that, rather than revising the proposed findings to reflect more recent data, which would have required additional notice and comment, it made sense to conclude the initial rulemaking and then consider revisions.

We are well aware that some groups believe that the rule did not go far enough to allow imports of pre-amendment trophies or polar bears taken in other management units. With respect to pre-amendment bears, we recognize that these bears are already dead and, as such, whether or not they are allowed into the United States will have no bearing on the status of the populations. Nevertheless, the Fish and Wildlife Service is bound to implement the law as enacted, regardless of what expectations there may have been. The plain language of the statute is controlling and that language clearly requires the specified findings be applicable to all trophies, including those taken prior to enactment of the 1994 amendments.

Prospective Actions

With final rules now in effect, we are in a position to consider where to go from here. Essentially, there are three available options: 1) amend the rule based on revised interpretations of the statutory requirements; 2) amend the Marine Mammal Protection Act to establish different requirements; or 3) work within the existing regulatory framework to consider additional data as they are developed.

The first option is fraught with difficulty. It would require overturning the Service's initial determinations which we believe are consistent with the statutory language. Moreover, a reviewing court is likely to examine carefully whether the Service has developed a new record sufficient to overcome its initial determinations.

The second option, statutory amendment, is the most direct way to change the status quo. If Congress does not believe that the 1994 amendments, as implemented by the Service, achieved the desired result, it can revise or eliminate some or all of the statutory requirements. For example, if Congress believes that all trophies currently in storage in Canada should be allowed to be imported into the United States, it could amend the Act to accomplish this by requiring that an applicant, to qualify for a permit, merely demonstrate that the bear was legally taken in Canada before a certain date.

The third option, working within the existing regulatory framework, is the one recommended by the Commission. We believe that the four criteria adopted by Congress in 1994 are appropriate and that appropriate findings relative to each should be required before imports from a particular management unit are allowed. We note that this option is not a static one. Rather, we expect the Service will consider new information as it becomes available and propose revisions to the regulations as warranted.

As noted above, the final rule was not based on population and management data regarding Canada's polar bear program that have become available since the close of the comment period. Additional population data are now available and Canada has revised its delineation of the 12 management units since that time. Based on more recent movement data, what formerly had been considered three management units, the Queen Elizabeth Islands, Parry Channel, and Baffin Bay, have been reorganized into a smaller Queen Elizabeth Islands management unit, a revised Baffin Bay management unit, and new Kane Basin, Lancaster Sound, and Norwegian Bay management units. The boundary between the Baffin Bay and Davis Strait management units has also been revised somewhat.

Shortly after publication of the final rule, the Commission requested that the Service provide it the most recent information on the status of Canadian polar bear populations and on changes to Canada's management program. To assist in its review of this information, the Commission contracted with J. Ward Testa, Ph.D., a population biologist and biometrician, to evaluate the new data and information. Dr. Testa was asked to evaluate: 1) whether Canada's polar bear conservation program is based upon sound principles of resource management; 2) whether the procedure being used by Canadian scientists to estimate sustainable polar bear harvests is conceptually sound and reflects current knowledge about polar bears; 3) whether the judgments concerning the number, discreteness, and status of putative polar bear populations in Canada are based upon the best available data and appropriate analyses; and 4) the likelihood that the data and procedures being used to assess population status and manage harvests will allow polar bear populations in Canada to grow or be maintained at current levels.

Dr. Testa, after having considered comments from the Commission and outside reviewers on a draft report, submitted a final report on 21 April 1997. A copy is attached. The report concluded that the Canadian polar bear program is consistent with generally accepted principles of sound resource management. It also concluded that the methods and models used by Canada to set polar bear quotas to be conceptually sound. The report agreed that available data supported Canada's realignment of the Queen Elizabeth Islands, Parry Channel, and Baffin Bay management units.

Using the criteria adopted by the Fish and Wildlife Service in the final rule, the report examined whether polar bears from any other management units might now qualify for import permits under the Marine Mammal Protection Act. It concluded that two of the revised management units, Lancaster Sound and Norwegian Bay, no longer shared harvests with Greenland or with other Canadian provinces, have good histories of quota compliance, and have population estimates that are as reliable as those for other management units for which the Service made affirmative findings. Based upon the analyses in the report and our independent review of recent data, the Commission, in consultation with its Committee of Scientific Advisors, has recommended that the Service, if it concurs with our analysis, initiate a rulemaking to make affirmative findings for these two management units.

As for the remaining six management units for which findings have not been made, the Commission believes there are problems that Canada needs to resolve. Before an affirmative finding can be made for the Gulf of Boothia management unit, a better population estimate is needed. The remaining management units, Foxe Basin, Southern Hudson Bay, Davis Strait, Baffin Bay, and Kane Basin, all include areas outside of the Northwest Territories. Consistent with the criteria established by the Service in the final rule, the Commission believes that harvest agreements need to be concluded between the Northwest Territories and the entities with which the various populations are shared (Greenland, Ontario, Quebec, Labrador, and Newfoundland) before a finding of sustainability can be made.

**Importation of Polar Bear Trophies From Canada Under the 1994
Amendments to the Marine Mammal Protection Act**

Prepared for
Marine Mammal Commission
4340 East-West Highway, Room 905
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By

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April 21, 1997

The purpose of this report is to review and evaluate Canada's polar bear management program, **particularly as it relates to the present status and sustainability of the polar bear populations for which the Fish and Wildlife Service (FWS) postponed final decisions on import permits for sport hunting trophies.** I provide a general evaluation that addresses:

1. whether Canada's polar bear conservation program is based upon sound principles of resource management;
2. whether the procedure being used by Canadian scientists to estimate sustainable polar bear harvests is conceptually sound and reflects current knowledge about polar bears;
3. whether the judgements concerning the number, discreteness, and status of putative polar bear populations in Canada are based upon the best available data and appropriate analyses; and
4. the likelihood that the data and procedures being used to assess population status and manage harvests will allow polar bear populations in Canada to grow or be maintained at their current levels.

My evaluation is based primarily on the FWS rule, 50 C.F.R. §18.30, published in the Federal Register on February 18, 1997 (62 Fed. Reg. 7301-7331), and on the minutes of the Jan. 31-Feb. 2, 1996 meeting of Canada's Polar Bear Technical Committee (PBTC) and the submission by the Northwest Territories (NWT) to the Jan. 23-25, 1997 PBTC meeting. I consulted with Ian Stirling of the Canadian Wildlife Service (CWS), Wendy Calvert (CWS), Mitch Taylor (NWT), Stephen Atkinson (NWT), Francois Messier (Univ. Saskatchewan), Doug DeMaster (National Marine Mammal Laboratory), Donald Siniff (Univ. Minnesota), Steve Amstrup (FWS), and Jack Lentfer (former FWS polar bear biologist), experts on polar bear population dynamics and management, to learn more about the Canadian program.

Evaluation

1. I agree with the FWS appraisal, and its approval of the principles and practices outlined in the NWT Polar Bear Management Plan. Due thought has been given to the program and much has been accomplished, particularly with regard to broad scientific and political collaboration, community education about conservation principles, a high level of community involvement with management decisions, and implementation of adaptive, sustainable harvest quotas at the community level. These resonate well with the basic conservation principles proposed by Mangel et al. (1996).

2. Are the procedures being used to estimate sustainable harvests conceptually sound?

The Canadian models assume that a 3% harvest of the female population can be sustained. This rate is in accord with most brown and polar bear population models, where a rate of 3-6% is usually calculated from life history parameters. I harbor some reservations about the modeling aspects because few of the technical details are documented, and because most members of the PBTC are also unfamiliar with those details. Polar bear population parameters used for estimating sustainable yield are based primarily on Taylor et al. (1987). As a comparison, I applied the general formulation for population growth described by Eberhardt and Siniff (1977) to the range of polar bear parameters given by Taylor et al. (1987) to affirm potential harvest rates and evaluate sensitivity (see the attached figure). This simple formulation predicts a sustainable harvest of around 5% without unusual sensitivity to any one parameter value. The Canadian approach to sustained harvests may also be conservative in that no assumption of density dependence is included. Hence, there is no "optimum" or "maximum" sustained yield. Unless the vital rates on which they base their models are obtained from populations experiencing maximum growth, populations reduced by harvest may increase in productivity. The results from my general population model, lack of density dependence in the Canadian approach, a likely skew of the population sex ratio toward females, and consultation with other bear specialists, convinces me that a 3% sustainable harvest of female polar bears assumed under the Canadian plan is sustainable, and probably conservative.

It should be remembered that these low rates of harvest, even if somewhat greater than 3%, are unlikely to result in irreversible reductions of bear numbers on the time scale of Canada's research and management actions. First, a 3% harvest rate is probably conservative for reasons discussed earlier. As long as the harvest of females is less than the sustainable rate, the bear population should grow until density dependent reductions in productivity occur. Second, inadvertent overharvest of $n\%$ would result in a rate of decline near $n-3\%$. Harvests of 4-6% (up to twice the Canadian harvest objective) of the original population would take from 9-23 years to reduce the female population by 30%. In this context, overharvest is possible, but reversible in the same or shorter time span by regulating or eliminating quotas, particularly if density dependent effects come into play.

The objective of a 2:1 male:female ratio in the harvest increases potential allowable harvest by 50%. I was initially skeptical about whether this was truly sustainable, or a short term effect that would reduce the male population until the harvest objective of 2:1 was unobtainable. My own simulations, however, confirmed the effects cited in the NWT's submission to the January 1997 PBTC meeting. A reduction in males of roughly 30% is predicted by Canadian biologists (I estimated less), with a shift in the average age of harvested males of about 2 years. The higher, sustainable harvest is possible essentially by "using" the natural mortality to which males are not subjected in those 2 years (i.e., the harvest is "compensatory" in a mathematical, rather than a biological sense). In my simulations, this effect was robust to altered assumptions about age-specific survival and

heavier harvest rates. Sustainable harvest (H) is calculated after the fact as a function of total population size (N) and proportion of females in the population (p):

$$H = N * (0.015 / p).$$

At an even sex ratio in harvest and population, harvest is 3% of the total population. As the sex ratio of the harvest varies, the variable p maintains female harvest at no more than 3% of the female population. This is basically sound over the range of harvests prescribed under the NWT's quota system. In practice, the Canadians constrain p to be greater than 0.33, so that even an all male harvest cannot exceed 4.5% of the total population. The major assumptions are that females equal or exceed the number of males in the population, and that harvest of 3% of the female population is sustainable. I'm aware of no evidence that male polar bears survive at higher rates than females, and would therefore outnumber females. If anything, the opposite is probably true, particularly with ongoing harvests that tend to favor males (e.g., Derocher and Stirling 1995).

Sport harvests in the NWT are allocated locally, after total harvest quotas for the population are determined. Tags are issued to each community. Sport hunts, including unsuccessful hunts, are counted against the community quota. Thus, the import allowance and therefore encouragement of U.S. sport hunting can only decrease the female harvest, or have no effect. However, this point is confused somewhat by the Flexible Quota option that was recently implemented. Under this system, the quota for the current year (Q_t) is based on the two year total of females allowed (2F), the actual number of females killed the previous year (K_{t-1}), and the proportion of females in the previous year's harvest (P_{t-1}).

$$Q_t = (2F - K_{t-1}) / P_{t-1}$$

This is simply a way to average the quota over two years when a village inadvertently exceeds its quota in a given year. Under this system, an overharvest of females results in an automatic reduction in next year's quota, so the average take of females can not exceed the sustainable rate. Females below the quota are counted as "credits" against possible overharvest, but the value of 2F - K_{t-1} cannot exceed the normal annual quota, F. Given that sex identification of polar bears can be difficult, this allows villages more flexibility in their harvests without allowing overharvest. However, under this system the unused sport tags, unless they are assigned a sex and counted, are rolled over into next year's quota as credits that could be used to offset past or future overharvest. I emphasize that this does not allow overharvest, but appears to remove, or at least reduce, a conservative element from the sport harvest plan that was in place. Because the sport harvest is more strongly male-biased than the subsistence harvest, its effect on females is usually less. On balance, and recognizing the experimental nature of the Flexible Quota system, I think it is conceptually sound and needs a chance to have its wrinkles worked out. The Canadians have worked hard to explain the system in all the villages, and it is incorporated in agreements with the local hunters' and trappers' organizations (HTOs).

3. Are the judgements concerning the number, discreteness, and status of putative polar bear populations in Canada based upon the best available data and appropriate analyses? The population boundaries used by the Canadians are the result of extensive research with satellite and conventional telemetry. Genetic studies have also been used, but these generally provide less resolution for management purposes than satellite telemetry. The satellite telemetry and analytical methods being used are state of the art, and reflect an enormous fiscal investment. Bethke et al. (1996) utilized statistical clustering procedures combined with home range plotting methods to delineate boundaries for three polar bear populations. Similar methods have recently been applied to reorganize the Parry Channel, Baffin Bay, and Queen Elizabeth Island populations into 5 populations, where mark-recapture methods have been or are being applied to estimate population sizes. These will be discussed individually later. There are inevitably some uncertainties about whether the conclusions concerning polar bear stocks, their spatial boundaries, degree of separation, and sizes are completely correct, but the conclusions are certainly based on the best available data and analyses.

4. The final question is whether the data and procedures being used to assess population status and establish quotas will allow population growth or maintenance, particularly for populations for which the FWS postponed final decision about approving import permits. In general, the intent of the legislation, as cited in the FWS rule, is to ensure that the import of polar bear trophies into the United States would not result in unsustainable harvest levels. Of the criteria cited by FWS as the bases for its decisions for approving imports are whether the sport hunting programs include (a) reasonable measures to ensure the population is managed for sustainability, (b) harvest quotas calculated and based on scientific principles, (c) management agreements between representatives of the communities that share the population to achieve the sustainability of the program through, among other things, the allocation of the population quota, and (d) compliance with quotas and other aspects of the program. The estimate of population size is of critical importance to the question of sustainability in criteria (a) and must be evaluated for each population. Calculation of harvest quotas (b) has been reviewed above and, in general, meets the FWS criteria. Criteria (c) and (d) were especially pivotal in the FWS rule, and remain so for populations shared across political boundaries.

Taylor (1993) explained the wisdom of using conservative estimates, rather than the mean or point estimates, for the population as the basis for management decisions. Her simulations are not relevant outside the U.S. management framework, but the principle of her argument applies equally in the Canadian case. Because most management scenarios involve population estimates taken at intervals of many years, estimates of sustainable harvest will likely be applied, good or bad, for many years before new information can be obtained to revise the harvest. The information available to me was insufficient to thoroughly review how conservative the Canadian estimates are. In most cases estimates were judged subjectively to be "conservative" because of known biases in estimation procedure (usually some form of heterogeneity in recapture probabilities). Absent statistical bounds for these, the FWS ruling was based on the qualitative information about the population estimates being

used by the Canadians. Research is ongoing to improve these. New estimates have been provided for the revised population management units in the NWT submission to the PBTC meeting on Jan 23-25, 1997. These are summarized in the attached table for populations for which final rule is pending, and will be used to review the populations for which FWS postponed final ruling. Differences between actual harvests and calculated sustainable harvests were the basis for judging whether populations were stable (final column of table).

Foxe Basin (FB)

The FWS rule cites a population estimate (2020) that has since been improved and revised upward, based on mark-recapture methods, to 2300 (SE=70). It is basically a point estimate, not the statistical lower bound (M. Taylor memo to Dan Pike, Table 3 in PBTC meeting, Jan 23-25, 1997). Managing for the lower 80% confidence interval on that estimate (2082 bears) would provide 90% probability of avoiding overharvest. The value being used may still be conservative, based on recapture biases known to managers, but the probability of overharvest based on the subjective assessment of bias is not known. FWS was also concerned that there was not rigorous appraisal of restrictions in Quebec and Ontario of hunting cubs, females with cubs, and denning bears. Further, there is no enforced quota for Quebec hunters. While no formal agreements with Quebec and Ontario users have been signed, all parties are monitoring their respective harvests and sharing data. In recent years, Quebec and Ontario have taken only 3% of the total harvest, but hunting success can be dramatically changed by favorable ice conditions in a single year. While communication and progress toward cooperative harvesting are favorable signs, as is the recent agreement in NWT to reduce harvest levels in FB, formal harvest agreements are necessary to ensure compliance with harvest quotas.

Southern Hudson Bay (SH)

The harvest impacts of NWT, Ontario and Manitoba are more evenly shared in this case than for any other population. For this reason, I agree with the FWS appraisal that cooperative agreements should be in place to ensure that harvests of this shared population meet the requirements of the International Agreement on the Conservation of Polar Bears concerning protection for females with cubs and denning bears, and that harvests can be regulated.

Davis Strait (DS)

The primary FWS reservation, the lack of harvest agreements between NWT, Quebec, Labrador and Greenland, appears valid. Therefore, ensuring compliance with annual harvest quotas is problematic. Also, reliable population estimates are some years away.

Gulf of Boothia (GB)

The FWS believes the quota is not sound because the population estimates are poor and there has been "a small but persistent overharvest". NWT revised an early estimate of 333 upward

to 900 bears based on known biases in the methods used and local knowledge from Inuit hunters. Incorporation of local knowledge from Inuit hunters was considered justifiable by FWS in M'Clintock Channel (MC), where the population estimate was revised downward, but was discounted as "anecdotal" for GB. However, the density of bears in GB is easily the highest in any of the management areas (Taylor and Lee 1995), so the belief that the estimate is conservative is open to question. No new data are available to evaluate whether the population estimate should be considered conservative, and new estimates are at least three or four years away.

Queen Elizabeth Island (QE), Parry Channel (PC) & Baffin Bay (BB)

According to the minutes from the 1996 meeting of the PBTC, these management areas have been revised into smaller *Baffin Bay* and *Queen Elizabeth Island* areas, and new *Kane Basin (KB)*, *Lancaster Sound (LS)*, and *Norwegian Bay (NW)* areas (see attached map). The new areas are based on the cluster analysis methods of Bethke et al. (1996) applied to data from 96 bears equipped with satellite transmitters. Population estimates were based on mark-recapture methods. Though analyses are preliminary, the estimate in LS appears as good as those made in other management areas approved in the rule, such as North Beaufort. NW is a small population (100) where adherence to quotas has been generally good (4/yr under a quota of 4.5 in 1991/92-1995/96). The harvest exceeded the quota in NW in 1995/96 after good compliance the previous five years, but is not considered a problem because agreements to impose quota reductions (the Flexible Quota option) in such cases is in place. FWS's objections concerning the old BB and PC areas were based primarily on the absence of harvest management agreements with Greenland. Those objections are inapplicable to LS and NW, but still apply in KB, and in the new BB management areas. LS and NW appear to meet the criteria for import approvals. The revised QE management area purportedly has a small population, but there is no harvest or quota.

Conclusions

1. In its general application, the FWS rule addresses the requirements of the 1994 MMPA amendments and evaluates the Canadian management plan fairly. The management plan for NWT appears to meet the standards required for the import of polar bear trophies to be allowed from certain of its identified polar bear stocks. It is based upon sound principles of adaptive resource management as described in Holling (1978) and Mangel et al. (1996), uses the best available data and analyses, and implements an adaptive formula for sustainable harvest.
2. Revisions based on new data and analyses subdivide the old Baffin Bay, Parry Channel, and Queen Elizabeth Island management areas into five new management areas. Two of these, Lancaster Sound and Norwegian Bay, no longer have shared harvests with Greenland or other Canadian provinces, have good histories of quota compliance, and their population estimates are as good as those from other areas accepted in the FWS rule.

3. A better population estimate is needed for the Gulf of Boothia.
4. Harvest regulation in Foxe Basin, Southern Hudson Bay, Davis Strait, Baffin Bay, and Kane Basin need to be addressed with co-management agreements.

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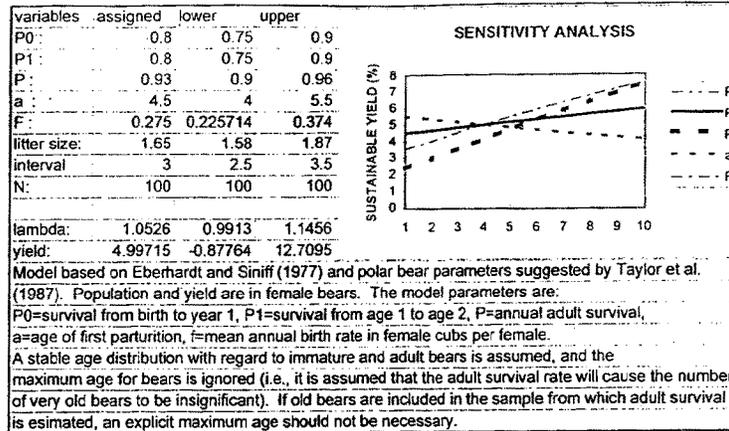


Table of population estimates and harvest summaries for selected Canadian polar bear populations extracted from Appendix 1.a of the NWT¹ submission to the January 23-25, 1997 meeting of the PBTC.

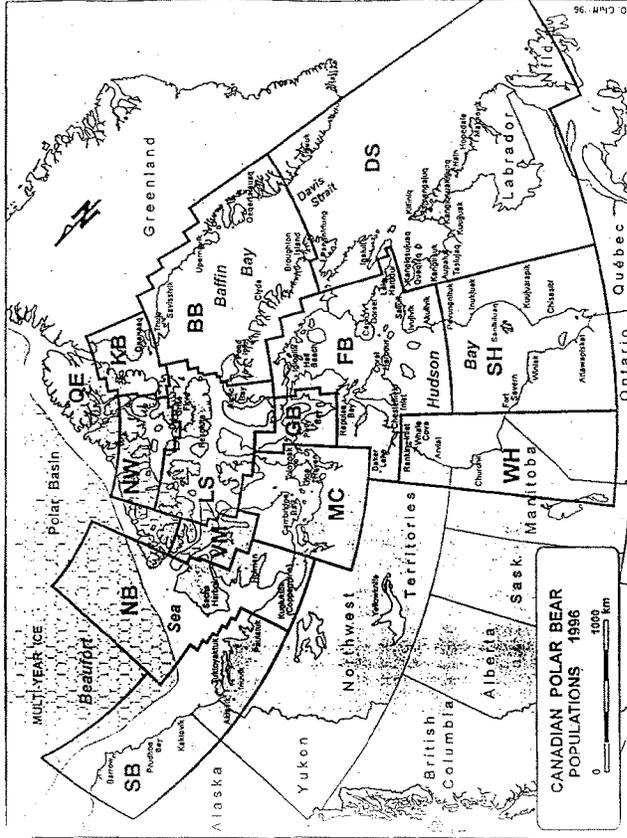
Population	Estimate ¹	Reliability	5 Year Average 1991/92-95/96			3 Year Average 1993/94-95/96			Current Year 1995/96			Trend 5/3/1 YR
			Kill	% Female	Target	Kill	% Female	Target	Kill	% Female	Target	
GB	900	poor	37.2	42.3	31.9	35.3	46.1	29.3	36	55.5	24.3	0*/0*/0*
LS	1700	good	81.2	24.9	76.5	81.7	26.0	76.5	80	26.9	76.5	0*/0*/0*
NW	100	fair	4.0	30.0	4.5	4.7	42.9	3.5	7	57.1	2.6	0/0/0*
KB	200	fair	6.2	37.1	8.1	6.3	38.1	7.9	6	35.0	8.6	0/0/0
BB	2200	good	122.2	35.4	93.2	120.3	35.0	94.3	117	34.2	96.5	-/-
FB	2300	good	117.8	38.4	78.9	104.0	37.5	80.8	95	35.1	86.3	0*/0*/0*
DS	1200	fair	56.9	36.4	49.5	56.3	35.1	51.3	57	36.0	50.0	-/-
SH	1000	fair	45.4	35.0	41.9	40.3	31.3	45.0	47	35.6	41.2	0*/+0*
QE	(200?)	none	0	--	0	0	--	0	0	--	0	0/0/0

¹Reliability

good--minimum capture bias, acceptable precision
 fair --capture bias problem, precision uncertain
 poor --considerable uncertainty, bias and/or few data
 none--no information available

²Population trend

- overharvest
 0 no change, difference of 3 or less between the kill and [calculated] sustainable harvest
 0* population believed stable because of management changes
 + underharvest



MC - M'Clintock Channel
 GB - Gulf of Boothia
 FB - Foxe Basin
 WH - Western Hudson Bay
 SH - Southern Hudson Bay
 DS - Davis Strait
 BB - Baffin Bay

SB - Southern Beaufort Sea
 NB - Northern Beaufort Sea
 VM - Viscount Melville
 NW - Norwegian Bay
 LS - Lancaster Sound
 OF - Queen Elizabeth Islands
 KB - Kane Basin

CANADIAN POLAR BEAR POPULATIONS 1996



Safari Club International

A NON-PROFIT ORGANIZATION • DEDICATED TO CONSERVING WILDLIFE AND PRESERVING HUNTING

**TESTIMONY OF
SAFARI CLUB INTERNATIONAL**

**Before the Committee on Resources
United States House of Representatives**

April 30, 1997

On

**1994 Amendments to the
Marine Mammal Protection Act**

**Submitted by Dr. William I. Morrill
Director of Conservation,
Safari Club International**

Chairman Young and members of the Subcommittee:

It is a pleasure for Safari Club International to comment on the progress of the 1994 Amendment to the Marine Mammal Protection Act (MMPA) and the Canadian system of sustainable use of polar bears. My name is William I. Morrill and I am the Director of Conservation for Safari Club International (SCI). I have a Ph.D. in ecological planning, am a Certified Wildlife Biologist by The Wildlife Society, and have experience with wildlife management systems in Asia, Africa, North and South America, as well as sustainable use programs both in North America and overseas.

There is a question that has been asked over and over again by professional managers, by Canadians, by Americans, by Congressmen and by sportsmen. That question is: "Why were not most, if not all, the polar bear areas, open to quota imports when the Canadians provided data that supported the harvest and export as outlined in the law Congress passed.

Four Conditions of the 1994 Amendments

Under the 1994 Amendments to the Marine Mammal Protection Act, there was a call for the importation of bear parts taken in sport hunts in Canada providing four conditions were met.

The conditions were:

1. That Canada has a monitored and enforced sport hunting program consistent with the Agreement on the Conservation of Polar Bears;
2. that the sport hunting program is based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level;
3. that the export and import are based upon existing treaties and conventions; and
4. that the import will not contribute to illegal trade.

In reviewing the conditions established by Congress and matching those condition with information supplied by Canada, SCI finds there is ample reason to conclude, as the Congress did, that all four conditions have been met by the Canadians and that as a result, all but one of the areas (Fox Basin, and this is because of previously un-corrected overharvest) should have been opened for the importation of polar bears.

The Canadians have a monitored and enforced sport hunting program consistent with the Agreement on the Conservation of Polar Bears, thereby meeting Condition number 1. Article II states that each party: . . . "shall manage polar bear populations in accordance with sound conservation principles based on the best available scientific data." Canada has shown through published scientific papers, yearly meetings of the Polar

Bear Technical Committee, and other information that they have a monitored and enforced sport hunting program based upon sound principles of wildlife management. Sport hunted bears are included in the overall quota set for polar bears by the Department of Resources, Wildlife and Economic Development. (I will touch on the setting of quotas in more detail shortly.) The quota for a population is then divided among the communities living in the polar bears range. The community decides what number of their community quota tags will be set aside for sport hunts. For instance, Griese Fiord, as a community was awarded 34 total quota tags because of their location proximity to three different populations (25 from Lancaster Sound, 4 from Norwegian Bay and 5 from Kane Basin). The community of Griese Fiord decided to set aside ten of their tags for sport hunts. (These hunts are divided into 5 from Lancaster Sound, 3 from Norwegian Bay and 2 from Kane Basin). This system is based upon every bear taken being included in a quota, regardless of the reason, whether it is taken for subsistence, nuisance or defense kills, or sport hunts. This quota is monitored by both the community and the government. The Canadian Department of Resources, Wildlife and Economic Development is the government entity with the responsibility to monitor and enforce this activity. It accomplishes this by issuing and then requiring reporting on each tag.

The Canadian polar bear hunting program is based on scientifically sound quotas, thereby meeting Condition number 2. The Canadian polar bear sport hunting program is based on scientifically sound quotas derived from a quota system based upon a maximum take of 3% of a sub-population of polar bears. This is supported by a technical paper published by Mitch Taylor (one of the leading Canadian Polar Bear biologists) and others in 1987, that pointed out the sustainable harvest rate for polar bear females was between 0.7 and 4.4%, with some experts considering a maximum of 6% being acceptable. Safari Club International's analysis agrees that the harvest quota of 3% for the female population to be conservative given the existing knowledge of North American bears (This is supported by the article by Taylor and Cluff, 1995 and the consultant report to the Marine Mammal Commission (MMC) by Testa, 1997).

Canada began monitoring its take of polar bears in the 1950's and began limiting that take through quotas in 1967. Quotas are derived on the basis of sub-populations, rather than lumping the sub-populations into one population and risking overharvest of a sub-population. Those population designations are the result of extensive research by the Canadians using radio collars and tracking the movements of bears by satellite as well as conventional telemetry (radio tracking) and sampling techniques called capture-recapture and capture-kill. This information has been analyzed by plotting it on a map and determining, by the bear movements, where there are manageable populations of bear. For instance, in 1995, data was gathered, analyzed and presented in January 1996 that showed, through a statistical technique called cluster analysis, that the polar bears in Parry

Channel, besides being distinct from Baffin Bay, were actually three distinct sub-populations, called Lancaster Bay, Kane Basin and Norwegian Sound. Therefore, not only were these populations not shared with Greenland, they were not shared with the Baffin Bay population. This ongoing analysis (called adaptive management and necessary in any sustainable use system) allowed for sustainable quotas for each population.

The export and import are based upon existing treaties and conventions thereby meeting Condition number 3. The amendments and Canada are in compliance with Articles I and III of the Agreement on the Conservation of Polar Bears of 1993 and the Convention on International Trade in Endangered Species.

The regulations in the final rule make illegal trade impossible, thereby meeting Condition number 4. There is not now, nor does the record show there is any illegal trade in Canadian polar bears, addressing condition number four. Additionally, the United States Fish and Wildlife Service (USFWS) regulations require the destruction of the gall bladder and bile, two substances purported to have traditional medicinal value.

Summary of the Canadian System. There are two additional outstanding attributes of the Canadian polar bear management system. The first, adaptive management, recognizes the need for concurrent research and management, and the second addresses the need for flexibility in any management system involving people.

The Canadian system of polar bear sustainable use is an excellent example of adaptive management (as described in Lancia et al. 1996). The term adaptive, in this instance, refers to the managers learning through research on wildlife populations as they manage them. This, by definition, is what the Canadians are accomplishing with the polar bear and why their sustainable use management system is considered the best in the world for a large mammal. An evaluation of the Canadian's conservative approach to harvest (one half of the estimated maximum percentage of females) demonstrates their caution in the initial and middle stages of any program. Central to adaptive management is the need to monitor, resulting in both learning and reducing uncertainty while resulting in adaptation of management. Constant adjustment adheres to the principle that as information increases there is a potential (and likelihood) for increased sustainable use (increased quotas).

Also pivotal to successful management is recognizing both the ecological and the political reality. These two realities must be included to reach successful solutions in resource management. The Canadian flexible quota system is an example of using management flexibility (if an overharvest of bears occur in one or more years, the following years quota is reduced and vice versa). This also addresses the realities that incentives to local people can (and should) be used to encourage good conservation. Without flexible

quotas, disincentives for conservation exist, in the form of encouraging the maximum use of the quota in one year.

In summary, the Canadian system is scientifically based, rigorously monitored, strongly enforced, ecologically and politically appropriate, and flexible for good conservation of the polar bear.

The four conditions Congress placed on importation of polar bears under the 1994 Amendment to the Marine Mammal Protection Act were met by Canada for all but one of the areas (Fox Basin). All other areas should have been approved, especially given information presented at the January 1996 Polar Bear Technical Committee meeting in Quebec. However, that was not the case.

The USFWS added two additional conditions in their proposed rule.

First, that any sub-population (shared population) would need to have cooperative management agreement in place between various governmental agencies.

Currently all NWT communities have signed a polar bear Management Agreement or Memorandum of Understanding (MOU). Inter-jurisdictional agreements (called for by USFWS) are being discussed with Greenland, Labrador (Newfoundland), Quebec, Ontario, Manitoba, and have been completed with Alaska.

I must emphasize this is the process that Canada is operating under, even if the MOUs had not been signed. For the USFWS to require agreements, could be interpreted by Canada (and the people living with the bear, the Inuit) as meddling in their affairs. The Congress, in passing the amendments to the MMPA, did not intend for the USFWS to intervene in the management practices of the Canadians. In fact, Congressman Jack Fields, the author of this amendment spoke directly to this issue when the House was considering this legislation:

"Let me first state that it is not the intent of the language that the Secretary attempt to impose polar bear management policy or practices on Canada through the imposition of any polar bear import criteria."

The Inuit are very proud of their management, their heritage as hunters and their ability to survive in the harshest climate on earth. This point becomes even more vivid since Congress' four conditions under the 1994 Amendments were met by Canada at the passage of the amendment.

Requiring international agreements prior to allowing imports may prove counter productive. International Agreements move with more lethargy than the USFWS issuing the final rule for polar bear. While it is most likely an agreement will be reached, the only restriction until that time,

is that Baffin Bay and Davis Strait will not be able to use any of their quota for American hunters who want to import their bears. This, Safari Club International finds, is counterproductive to good conservation and could be interpreted as slightly overbearing, especially in light of the fact that one of Canada's stated goals is to manage its populations in a sustainable manner.

The significant issue to remember is that Canada has a quota and sport hunted polar bears are only a small portion of that quota but this has had a positive impact upon polar bear conservation.

The second condition was that bears come only from a stable or increasing population. At the January 1996 Polar Bear Technical Committee Meeting in Quebec, only one polar bear population, Fox Basin, was reported to be overharvesting their quota (not in sustainable yield). Fox Basin, given the Canadian system of flexible quotas and adaptive management (concurrent research with ongoing management), has agreed to a reduction in quota to bring its use level into sustainability.

Why would the communities utilizing the Fox Basin population of polar bears agree to reduce the number of bears they could take? Because it is in Canada's (and the communities) best interest to manage its polar bears in a sustainable manner both for foreign exchange and conservation. When the USFWS does not recognize a country representation that their population is stable or increasing, the USFWS is communicating distrust in the exporting country's management capabilities. Canada instituted programs in 1992 to bring all polar bear populations to a sustainable level. It would seem paternalistic to require Canada to "prove" its program to its southern neighbor, specially since Canada initiated their program in advance of the 1994 MMC Amendment.

Notwithstanding the previous observations, to the USFWS's credit, it approved 5 of the 12 designated "populations" in the final rule for importation of polar bear. (In reality there were 13 populations since Parry Channel (PC)/Baffin Bay (BB) was recognized as divided into BB, Kane Basin and Lancaster Sound due to satellite telemetry analysis at the January 1996 Polar Bear Technical Committee Meeting in Quebec). The criteria for importation are listed above.

The approved areas were: Southern Beaufort Sea (SB), Northern Beaufort Sea (NB), Viscount Melville (VM), M'Clintock Channel (MC) and Western Hudson Bay (WH) and SCI has some questions in relation to some areas not approved.

Was all information available evaluated? A chronological development might provide assistance in determining this. The Service published a notice of Proposed Rule on July 17, 1995, requesting information on importation of polar bear trophies from twelve polar bear populations in Canada. The Service collected and then evidently partially utilized

information gathered until December of 1996 ("In a December 20, 1996 memo to the Service, it was stated that. . ."). This is puzzling as to why certain information was determined to be significant, and other information (obtained by USFWS reps at the Polar Bear Technical Committee Meeting in January/February of 1996) such as the designation of Lancaster Sound (LS), and Norwegian Bay (NW) populations from the old Parry Channel population was more or less ignored. All the more puzzling is why the LS and NB populations, which were determined to be in sustained yield, had signed MOUs and whose populations were not shared with any other government, were not approved in the Final Rule. SCI is puzzled as to why those two populations were not approved since information was available February 1 of 1996, a full 11 months before the final rule.

Even the 1997 analysis of the Marine Mammal Commission consultant determined that more areas should be approved immediately (see attached Testa's report to the MMC 1997). Safari Club agrees. Canada has records over the last five years for all populations and as of the January 1996 Polar Bear Specialist Committee meeting, all but Fox Basin were being harvested under the quota set by Canada. Given the Canadian management system, bears will continue to be harvested under quota, even those populations shared with Greenland and informal agreements between Greenland and communities such as Griese Fiord already exist. The only difference is none of the quota will go to sport hunts until an international agreement of cooperation is signed.

Safari Club International would like to make four additional points.

Congress was aware of the Canadian System and agreed it was appropriate when it adopted the 1994 Amendments. There is ample evidence in the Committee Report and the floor statements that show that Congress had already approved the main aspects of Canada's program. This is supported as a matter of law as shown in the Oct. 31, 1995 Memorandum from Kathy Kearney to John Jackson, attached to my testimony.

Hunting is recognized by IUCN.

The IUCN Polar Bear Specialist Group (PBSG) took the position that sport hunting provides incentives for conservation. (Please see the attached Conservation Consequences of Native Guided Sport Hunting" from the World Conservation Union (IUCN).) The IUCN PBSG also recognizes the need for sound conservation practices including accurate information which is identical to Canada's requirements (See Basic Requirements for Sound Conservation Practices.)

Sport Hunting is Good for Conservation

Conservation needs incentives. Sport hunting polar bear provides that incentive to the tune of over \$2 million. The typical value to the community of a Northwest Territories polar bear sport hunt in 1990 was \$11,400 US (Edwards and Allen 1992). The average number of hunts prior to the 1994

polar bear amendment to the Marine Mammal Act was 64.5 per year. In 1994/95 there were 126 polar bear sport hunts in the Northwest Territories. In 1995/96 there were 132. In 1994/95 and 1995/96 the cost of a sport hunt ranges from \$14,000 US to \$22,000 US, with an average cost of \$20,500 U.S. The increase in number of hunters and cost per hunt was solely due to the influx of U.S. hunters. U.S. sport hunters increased the value of the sport hunts (pooled successful + unsuccessful) from \$870,750 US to \$2,665,000 US, an increase of almost two-million dollars. The total value of polar bear sport hunts is more than five times the annual value of hide sales (\$521,739 US), and 2.7 times and almost four times the cost of the harvest/population inventory/management program. In addition to the direct value of the hunt there are other associated values. Airfare to and from the community is additional. Most polar bear sport hunters also elect to harvest a musk-ox. Most polar bear sports hunters buy carvings and other souvenirs. When in the community, the hunter typically pays their own hotel costs and meals. Tips are usually provided for hotel staff and particularly for guides on successful hunts. A study of four high Arctic communities indicated the actual cash input to the community from these additional activities ranged from \$6,500-15,000 U.S. Thus the actual post-1994 Marine Mammal Act cash input to communities would range from \$2,665,000-4,615,000 U.S. per year for the total polar bear plus additional activities tourist hunt.

Sport Hunting Actually Reduces the Number of Polar Bears Killed

The Canadians have provided data and analysis that shows where trophy hunting has been established the number of bears actually harvested from the entire quota has decreased. During the time that polar bear sport hunts were increasing from the pre-1994 average of 64 per year to the post-1994 average of 130 per year, the Canadian Northwest Territories (NWT) quota for polar bears was decreased from 610 to 535. The total NWT kill of polar bears in 1993/94 from all causes was 554 with a five year average of 551.5. The post-1994 average kill (94/95 and 95/96) was reduced to 445. There were two main factors influencing this reduction in the number of polar bears killed. The main factor was that since sport hunters did not always take a bear, and more tags from the quota were given to sport hunts because of increased economic return, fewer bears were actually taken. Additionally sport hunters preference for larger males resulted in a greater percentage of males were taken shifting the harvest away from taking female bears. The research and harvest programs were able to quantify these reductions. The second primary factor was the increase in economic value from these conservation measures.

These two last points sum up America's contribution to Canada's polar bear conservation program. The first one being incentive. Incentives make people active participants in conservation, rather than passive observers. Throughout the world, the conservation community is learning this lesson. The second being conservation, which motivated a bipartisan group of Congressman to pass the amendments that would allow the

importation of legally taken bear parts. But the American hunter cannot contribute to this significant effort, providing economic and conservation benefit unless polar bears can be imported into the US.

Canada met the requirements that Congress placed on importation of polar bear parts under the 1994 Amendment to the Marine Mammal Protection Act. The author and co-sponsor of the bill called for the Secretary not to "impose polar bear management policy or practices on Canada". The USFWS has done just that, and approved only a fraction of the areas that would have been approved if the USFWS had followed the direction given to it by the Congress.

There was injustice done here. The injustice is to Canada and her sustainable use program, to her people who live in the harshest environment in the world and to the great white bear itself. Safari Club asks you to intervene once again on their behalf.

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BASIC REQUIREMENTS FOR SOUND CONSERVATION PRACTICES

The IUCN Polar Bear Specialists Group

Recognizing that sound conservation practices for polar bears may vary among countries from total protection to sustainable harvesting, and

Recognizing that the rights of local people to harvest polar bears is identified in the International Agreement for the Conservation of Polar Bears and their Habitat (Article I and Article III) provided this harvest is conducted according to sound conservation practices, and

Noting that sound conservation practices for sustainable harvesting of polar bears requires accurate information on:

- 1) the number, location, sex, and age of harvested animals, and
- 2) geographic boundaries of polar bear populations, and
- 3) population number and sex-age composition, and
- 4) rates of birth and death for the population; therefore

Recommends that these data be collected for populations from which polar bears are harvested, and be used to regulate the number of animals harvested to sustainable levels.

**Conservation Consequences of Native Guided Sport Hunting
Under a Strict Quota System in Canada**

The IUCN Polar Bear Specialist Group,

Noting that management of the polar bear harvest in Canada is based on the establishment of sustainable annual quotas for each population, research on population size, and demographic parameters, and

Noting that in populations where native subsistence users guide non-resident sport hunters, bears taken on such hunts are not additive to, but rather comprise part of, the total allocated quota, and

Noting that allocation of some part of a quota to sport hunting causes fewer bears to be taken because not all sport hunts result in the taking of a bear, and unsuccessful tags allocated cannot be re-used by anyone else, and

Noting that compared to the subsistence hunt, a higher proportion of the bears taken in the sports hunt are males, which provides an additional measure of protection to adult females,

Therefore acknowledges that in accordance with the best available scientific information, the allocation of some fraction of an enforced sustainable quota to native guided sport hunting in Canada is not a conservation concern.

MEMORANDUM

TO: John Jackson
President, Safari Club International

FROM: Kathy Kearney

DATE: October 31, 1995

RE: Importation of polar bear hunting trophies

I. INTRODUCTION

The United States Fish and Wildlife Service of the Department of the Interior (Service) has announced the Supplemental Proposed Rule and Findings: Importation of Polar Bear Trophies from Canada; Proposed Rule on Legal and Scientific Findings to Implement Section 104(c)(5)(A) of the 1994 Amendments to the Marine Mammal Protection Act. Pursuant to conditions set out in the 1994 Amendments,¹ the Service proposes to find that the Canadian sport-hunt program (Canadian Program) is consistent with the purposes of the 1973 Agreement on the Conservation of Polar Bears (Treaty).² This proposed finding raises the issues of the interpretation of the conditions set out in the 1994 Amendments and whether Congress has already established the consistency between the Canadian Program and the Treaty necessary to satisfy the conditions. The legislative history of the 1994 Amendments and the Treaty demonstrate Congress has found and accepted the Canadian Program to be consistent with the purposes of the Treaty. Therefore, the finding set forth in the proposed rules by the Fish and

¹Marine Mammal Protection Act, 16 U.S.C., Section 1374 (c)(5)(A).

²Importation of Polar Bear Trophies From Canada, 60 Fed. Reg. 36,382 (1995).

Wildlife Service of the Department of the Interior is correct.

II. INTERPRETATION OF THE 1994 AMENDMENTS

A. The Plain Language of the Statute

The initial inquiry of statutory interpretation is to examine the plain language of the provision in question.³ It is an established rule of interpretation that a statute should be read so that none of the language contained therein is rendered superfluous.⁴ Section 104 (c)(5)(A) of the 1994 Amendment states:

(5)(A) The Secretary may issue a permit for the importation of polar bear parts (other than internal organs) taken in sport hunts in Canada, . . . to an applicant which submits with its permit application proof that the polar bear was legally harvested in Canada. Such a permit shall be issued if the Secretary, in consultation with the Marine Mammal Commission and after notice and opportunity for public comment, finds that

(i) Canada has a monitored and enforced sport hunting program consistent with the purposes of the Agreement on the Conservation Polar Bears;

(ii) Canada has a sport hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level;

Applying the rules of construction to this provision of the statute, it becomes impossible to interpret the condition to mean that a finding must be made as to the consistency of the Canadian Program, conceptually, and the Treaty; to do so would cause the entire provision to become unnecessary. Without acceptance of the Canadian Program on a conceptual level there

³United States v. Hurt, 795 F. 2d 765, 770 (9th Cir. 1986), amended 808 F. 2d 707 (9th Cir.), cert. denied, 484 U.S. 816, 108 S. Ct. 69, 98 L. Ed. 2d 33 (1987).

⁴Connecticut Department of Income Maintenance v. Heckler, 471 U.S. 524, 530 n.15, 105 S. Ct. 2210 (1985).

would be no reason to contemplate importation allowances. The entire provision would be useless and superfluous. The logical interpretation is that this condition is in place to ensure that the Canadian Program will be carried out with appropriate monitoring and enforcement to protect the polar bear population, as envisioned by the Treaty. Reading the provision in this way allows the language of the entire provision to have meaning and use; specifically, to allow the importation of trophy bears resulting from a hunt conducted in accordance with the Canadian Program, as long as this Program does not adversely affect the polar bear population.

B. The Legislative History of the Statute

The plain language of a statute is usually sufficient for interpretation of an unambiguous provision of a statute. Extrinsic aid, such as legislative history, is used if the provision is deemed ambiguous.⁵ However, "if the language is unambiguous, its plain meaning controls unless Congress has 'clearly expressed' a contrary legislative intent."⁶ If it is opined that the plain language of the conditions set forth in 104 (c)(5)(A) deems it necessary for a contemporaneous finding of consistency, the "clearly expressed" intent of Congress to have made this finding will control. The legislative history should be examined to show the clearly expressed intent of Congress.

The committee report "represent[s] the most persuasive indicia of congressional intent."⁷ The "Background" section of the House committee report acknowledged that "Canada is the only

⁵Weber v. Heaney, 793 F. Supp. 1438 (1992).

⁶Pyramid Lake Paiute Tribe v. U.S. Department of Navy, 898 F. 2d 1410, 1417 (1990) (quoting United States v. Hurt, supra.)

⁷ Weber v. Heaney, at 1448.

country which allows polar bears to be harvested by non-residents through a regulated sport hunt."⁸ The report states, "[i]t was also determined that the sport hunting of polar bears in Canada does not conflict with the Agreement on the Conservation of Polar Bears."⁹ It is clear that the bill was introduced to Congress with the understanding that the consistency of the Canadian Program and the Treaty would not be at issue. The conditions set forth for the allowance of the importation provided that "the Secretary keep abreast of Canada's annual polar bear harvest and exercise his authority as specifically provided in this Act, to revoke such permits in the event that the sustainability of these populations is no longer certain."¹⁰ The intent of the conditions is not to challenge the consistency of the Canadian Program, but to ensure that it is carried out consistently with the purposes of the Treaty.

The legislative history of the statute also includes Congressional debate. In construing statutes, legislative debates "are considered at least probative of legislative intent so long as they are consistent with the statutory language and the rest of the legislative history."¹¹ In a statement before the House of Representatives, Congressman Fields, who drafted and cosponsored the Amendments, testified that the Canadian Program is "consistent with the international conservation agreements."¹²

⁸ H.R. Rep. No. 439, 103rd Cong., 2d Session (1994).
(Submitted by Mr. Studds, from the Committee on Merchant Marine and Fisheries, to accompany H.R. 2760.)

⁹Id.

¹⁰ Id.

¹¹ Weber v. Heaney at 1450.

¹²140 Cong. Rec. H2714 (1994).

Congress has clearly shown their intent on finding the Canadian Program to be consistent with the Treaty. This interpretation of the 1994 Amendments is supported by examination of the Treaty itself, which also shows the acceptance of the Canadian Program by the U.S. Legislature.

III. INTERPRETATION OF THE TREATY

The Treaty prohibits the taking of polar bears, except as provided in Article III. This provision allows the taking of polar bears, in part, "by local people using traditional methods in the exercise of their traditional rights and in accordance with the laws of that Party."¹³ The Canadian Program is legal under this exception.

The law for interpreting a treaty starts "with the text of the treaty and the context in which the written words are used."¹⁴ In deciphering a "difficult" passage or when a conflict of interpretation arises, one must delve beyond the mere words of a treaty and analyze the document through records of drafting and negotiation.¹⁵ Additionally, one may also look to the constructive meaning of the documents through the actions of the signatories.¹⁶ Treaties are not interpreted in the same manner as other documents. Rather, as the Supreme Court has held, "[t]reaties are construed more liberally than private agreements, and to ascertain their meaning

¹³Agreement on the Conservation of Polar Bears, 1973, Article III Section 1 (d).

¹⁴Air France v. Saks, 470 U.S. 392, 397, 105 S.Ct. 1338, 1341, 84 L. Ed. 2d 289 (1985).

¹⁵Floyd v. Eastern Airlines, Inc., 872 F. 2d 1462, cert. granted 110 S. Ct. 2585, 496 U.S. 904, 110 L. ed. 2d 266 reversed 111 S. Ct. 1489, 499 U.S. 530, 113 L. Ed. 2d 569, on remand 937 F. 2d 1555 (1989); Harris v. U.S., 768 F. 2d 1240, cert. granted and vacated 107 S. Ct. 450, 479 U.S. 957, 93 L. Ed. 2d 398, on remand 943 F. 2d 38 (1985).

¹⁶ Id.

we may look beyond the written words to the history of the treaty, the negotiations, and the practical construction adopted by the parties."¹⁷

A. The Plain Language of the Treaty

The use of ambiguous terms in Article III, 1 (d) of the Treaty, such as "traditional methods" and "traditional rights" make it necessary to look beyond the plain language of the document. These terms, on their face, do not have set definitions. "Traditional rights" of local people will differ greatly from one group of people to the next. It is necessary to discern the understanding of the signatories as to the meaning of the phrases and exemptions contained in the provision. Thus we will look to the legislative history of the Treaty as well as the post-Treaty actions of the signatories.

B. Legislative History

The established Canadian Program existed prior to the signing of the Treaty. This fact was known by the United States Congress as early as 1972, when the discussion of a Treaty was in the initial stages.¹⁸ During the Congressional hearings regarding the Treaty, the Canadian Program was discussed in detail. The congressmen were aware of the fact that the quotas were being sold to tourists from foreign countries for recreational sport-hunting. Moreover,

¹⁷Air France, 470 U.S. at 396, 105 S. Ct. at 1341 (quoting Choctaw Nations of Indians v. United States, 313 U.S. 423, 431-432, 63 S.Ct. 672, 678, 87 L. Ed. 877 (1943)).

¹⁸Hearing Before the Subcommittee on International Organization and Movements of the Committee on Foreign Affairs, House of Representatives, 92nd Congress, 2nd Session, on H.J. Resolution 1179, July 26, 1972.

Canada was the first country to deposit a ratified Treaty, and it was accompanied by a Declaration making clear the understanding that the exceptions listed in Section III of the Treaty were to include the rights of the local people to sell their quotas for sport-hunt purposes.¹⁹ Nearly two years later, the United States deposited their ratification documents, presumably with the knowledge of Canada's interpretation as contained in the Declaration.

C. Post-Treaty Action

The Supreme Court has held "once an agency's statutory construction has been 'fully brought to the attention of the public and the Congress,' and the latter has not sought to alter that interpretation, although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned."²⁰ For the past two decades Canada has continued its policy of allowing the quotas to be sold to non-nationals, without action by Congress (or any other signatory) to dispute this practice. In 1981 the signatories agreed to extend the Agreement on the Conservation of Polar Bears, without efforts to alter Canada's Program. In fact, the Canadian program was enhanced by the 1994 Amendments, allowing the importation of the sport-hunted polar bear trophies. The action of Canada in continuing their sport-hunt program and the non-action by the other signatories in response, proves that the practice has been accepted as consistent with the purposes and intent of the Treaty.

Additionally, under the scrutiny of the Polar Bear Specialist Group, which monitors the

¹⁹Declaration, Canadian Minister of Foreign Affairs, ratification documents, deposited at Oslo, December 16, 1974.

²⁰United States Et al. v. Rutherford Et al., 442 U.S. 544, 554, 99 S. Ct. 2470, 61 L. Ed. 2d 68 (1979) (quoting Apex Hosiery Co. v. Leader, 310 U.S. 40, 46 (1956)).

compliance of the signatories with the Treaty, "all countries were complying fairly well to the intent, if not necessarily the letter of the Agreement."²¹ The Canadian Program has been articulated as complying with the intent of the Treaty by those who have specifically set out to ensure compliance.

IV. CONCLUSION

The proposed finding of the Service is correct: the importation of the polar bear trophies within the Canadian sport hunt program is consistent with the purpose and intent of the Treaty.

Pursuant to established rules of statutory construction, the 1994 Amendments, on its face, shows the consistency exists between the Canadian Program and the Treaty. This is supported by the legislative history of the Amendments, which reveals Congress clearly expressed the consistency prior to enactment of the Amendments. Moreover, analysis of the Treaty demonstrates the consistency was established at the Treaty's inception in the early 1970's. Congress' actions since that time have further established the consistency.

²¹Importation of Polar Bear Trophies From Canada, 60 Fed. Reg. 36,382 (1995) (quoting from the 1993 Polar Bear Specialist Group polar bear meeting.)



STATEMENT OF
NAOMI A. ROSE, PH.D.
MARINE MAMMAL SCIENTIST
THE HUMANE SOCIETY OF THE UNITED STATES

TO THE
HOUSE RESOURCES COMMITTEE

REGARDING HOUSE JOINT RESOLUTION 59
TO DISAPPROVE A RULE AFFECTING
POLAR BEAR TROPHIES FROM CANADA

APRIL 30, 1997

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INTRODUCTION

Good morning. I am Dr. Naomi Rose, marine mammal scientist for The Humane Society of the United States (HSUS). On behalf of the 4.5 million members and constituents of The HSUS, I would like to thank you, Mr. Chairman, and the members of the House Resources Committee for inviting me here to testify today regarding the issue of polar bear trophy imports from Canada.

While The HSUS disagrees with many elements of the final rule published on February 18, 1997 by the U.S. Fish and Wildlife Service (the Service), we strongly agree with its decision to defer approval of trophy imports for seven of the 12 polar bear populations in Canada. Therefore, we oppose passage of House Joint Resolution 59, as we understand its purpose is to disapprove the Service's current final rule with the goal of gaining import approval for those seven remaining polar bear populations in a new final rule.

The HSUS submitted extensive comments during the public comment period for the Service's proposed rule on polar bear trophy imports from Canada. The Service was directed by the 1994 Amendments to the Marine Mammal Protection Act (MMPA) to determine whether: 1) Canada has a monitored and enforced sport hunting program consistent with the purposes of the Agreement on the Conservation of Polar Bears; 2) Canada has a sport hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level; 3) the export and subsequent import are consistent with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and other international agreements and conventions; and 4) the export and subsequent import are not likely to contribute to illegal trade in bear parts. The HSUS firmly believes that Canada's sport hunt program does not meet requirements 1 and 2.

In the opinion of The HSUS, Canada's sport hunt program is not consistent with the International Agreement on the Conservation of Polar Bears. HSUS comments to the Service dealing with the legal issues were submitted on our behalf by our attorney, Mark Colley, of the firm Holland and Knight. However, my spoken testimony today will deal principally with our concerns regarding the scientific soundness of Canada's management program.

BACKGROUND INFORMATION

The polar bear is a long-lived species that is characterized by high adult survivorship, long intervals between births, small litter sizes, and late maturation. These characteristics typify a species that is extremely vulnerable to disturbances in its population or habitat. The polar bear is the top predator of the Arctic

ecosystem, feeding mainly on ringed seals. Individuals have large home ranges, but little is known about sex differences in ranging behavior, as most (if not all) radio-collared bears have been female and mark-recapture studies have not sampled the populations with sufficient randomness (bears tend to be captured and recovered within limited areas). However, it is reasonable to assume that males range more widely than females, as females are periodically tied to denning sites and males may need to travel through several female territories to maximize mating opportunities.

Because of the behavior of atmospheric and oceanic currents, many contaminants from industrialized nations thousands of miles away end up in the food chain in the Arctic, where the polar bear, as top predator, concentrates them in its tissues. These concentrated contaminants may result in the bears' experiencing decreased fertility and/or a diminished immune response. Given that polar bears exhibit low reproductive rates and high adult survivorship, such impacts would significantly affect a population's productivity. In addition, because of the bears' longevity and low reproductive rate, significant negative impacts from a flawed harvest management regime or from habitat degradation may not become apparent to managers or scientists for many years, even decades.

The HSUS strongly believes that Canada's management program does not take into sufficient account the potential impacts of such environmental factors. In fact, Canada's management models are to a large extent based on "best-case" assumptions, *e.g.*, that populations are experiencing maximal recruitment rates and that the only factor affecting whether a population is increasing or decreasing is whether the harvest is at, above, or below quota. Given the vulnerability of the Arctic ecosystem to environmental degradation, including the potential for global warming to shrink suitable polar bear habitat, these assumptions are overly optimistic and simplistic and are definitely not precautionary.

EVALUATION OF POLAR BEAR DATA

The World Conservation Union Species Survival Commission Polar Bear Specialist Group (IUCN/SSC PBSG) issued a number of resolutions from its 1997 meeting in Oslo, Norway. One affirmed the basic requirements for sound conservation practices. These include accurate information on: 1) the number, location, sex, and age of harvested animals; 2) geographic boundaries of polar bear populations; 3) population number and sex-age composition (of the population); and 4) rates of birth and death for the population. Canada's management program at best has accurate harvest information (although for some populations, there are concerns about reporting). It may claim to have the best information available for the parameters in (2), (3), and (4), but having the best information available is not the same as having accurate information.

Regarding geographic boundaries, the geographic (and hence genetic) boundaries for all polar bear populations in Canada are based on the radio-collaring of a relatively small number of female bears and mark-recapture studies from the harvest and research tagging programs; the mark-recapture studies tend to sample bears from limited, accessible areas, resulting in non-random sampling biases (see above). The emphasis on female bears in most of the research work in Canada (and elsewhere) is not unusual, but in this case is particularly noteworthy. In most mammals, and most probably in polar bears, females have smaller home ranges and are more sedentary than males. It is clear that polar bear researchers still have a very limited understanding of male ranging patterns and their effect on gene flow between "populations."

In addition, the geographic boundaries of the populations (or more accurately, management subunits) are continually being revised. Just this past year, Canada split the erstwhile Parry Channel, Baffin Bay, and Queen Elizabeth Islands populations into Lancaster Sound, Norwegian Bay, Kane Basin, Baffin Bay, and Queen Elizabeth Islands (for the last, which is in the extreme north, data are virtually non-existent and no bears were hunted in the 1995-1996 season). There is reason to question the biological basis for these ever-changing boundary designations, because of the uncertainty of the amount of genetic exchange between the "populations" through male movements (and even female movements for the less-studied populations) and the reliability of basing the designations on, in several cases, small, biased samples. In short, the boundaries appear to be more a convenience for human managers than a manifestation of actual biological processes in the bears.

As for population estimates, sex-age composition, and life history parameters, polar bear habitat is remote and relatively inhospitable to humans, making the collection of accurate biological data extremely difficult, as it generally is with marine mammals. This is not a reflection on the data collectors; it is an inherent characteristic of the habitat and the species. Especially for the northern populations that have been little studied, population and life history data are poor. The Service has correctly disapproved several populations for which data are incomplete or for which Canada currently rates the population estimates as "fair" or "poor" (qualitative descriptions to begin with when an accurate evaluation requires quantitative descriptions). Based on data through the 1995-1996 season, these populations include Gulf of Boothia, part of Queen Elizabeth Islands (Norwegian Bay), Baffin Bay, Davis Strait, and Southern Hudson Bay.

Compared to many other species, including other bears, there are still many unknown or poorly described aspects of polar bear life history and reproductive behavior. Much of the life history information used in Canada's management program comes from the best-studied population, Western Hudson Bay. This

southern population, the most accessible to researchers, demonstrates higher birth rates, shorter inter-birth intervals, and larger average litter sizes than other populations, all of which suggest that it is "increasing relatively faster or declining less rapidly"¹ than other, more northerly populations. In short, the assumptions upon which Canada bases its management models are based on an apparently non-representative, "best-case" population. Using "best-case" assumptions can easily lead to over-harvesting.

The IUCN/SSC PBSG also issued a resolution that concluded that "the allocation of some fraction of an enforced sustainable quota to native guided sport hunting in Canada is not a conservation concern." The language of this resolution stops short of confirming that Canada's present management program *in fact has* enforced sustainable quotas. It is carefully phrased to note that such quotas are the goal of the program and that if this goal is achieved, then sport hunting is not a conservation concern. The HSUS would have to agree that, if the quotas *were* enforced and sustainable, then sport hunting would not be a conservation concern, although it would certainly continue to be an animal welfare concern. However, we believe it is premature to consider Canada's polar bear populations, especially the seven disapproved populations, to be within sustained yield. As stated earlier, this is not because the data are not the best available, but because the best available data on polar bears are still largely uncertain.

Local knowledge has been invoked on numerous occasions, by hunters, Canada's management program, and the Service in its final rule, as an important and vital source of information on which to base management decisions. While local knowledge is a useful source of information to consider when making management decisions, it is problematic in many ways and its evaluation must take into account potential biases and misinterpretations. For example, local hunters have reported more sightings of and encounters with polar bears in several populations, which have been interpreted by Canada as reliable signs that these populations are increasing. Apparently, Canada's managers have not considered alternate explanations for these increased sightings, which appear equally likely, given the quality of the information provided.

For example, it seems equally likely that these increased sightings and encounters could be the result of a re-distribution of the populations in question, the result of more bears (from a stable or even decreasing population) moving into the areas frequented by local hunters. In such a case, local density increases, while overall population does not. In fact, these increased sightings could just as easily be a

¹ Ramsay, M.A. and I. Stirling. 1988. Reproductive biology and ecology of female polar bears (*Ursus maritimus*). *J. Zool. (Lond.)* 214:601-634 (p. 625).

sign of some major environmental change that is forcing bears into a new distribution pattern. The only way to choose, with any reliability, between these two equally likely hypotheses is to test them by collecting data that ideally would give two different results depending on which hypothesis was correct.

As another example, these accounts from local hunters are anecdotal and anecdotal observations are often exaggerated or inflated, even when made in good faith. That is, it is equally likely that these reports of increased sightings of bears do not represent real increases in bear numbers, but are merely artifacts of observer bias or expectations. There is also the very real possibility that, given the significant economic value of sport hunting, local observers are highly motivated to exaggerate the number of polar bear sightings to management authorities. In short, local knowledge is subject to misinterpretation that can be influenced by political or economic considerations. This must be taken into account when factoring local knowledge into management decisions.

It is important to note that another factor influencing the Service's disapproval of several populations is that these populations cross national or provincial boundaries (they are shared between the Northwest Territories and either Greenland, another Canadian province, or both) and joint management agreements are not yet in place. Management agreements have been drafted for Davis Strait (shared with Quebec, Newfoundland, Labrador, and Greenland), Foxe Basin (shared with Quebec), and Southern Hudson Bay (shared with Quebec and Ontario), but are not yet fully implemented. Canada and Greenland will not finalize negotiations on joint management agreements until they complete research projects involving their shared populations, including Parry Channel/Baffin Bay (conservatively considered as a unit for the purposes of the final rule, given the incomplete status of the on-going data collection on geographic boundaries and population estimates). Given the lack of implemented management agreements, the Service was correct in deferring approval, as these populations do not yet have monitored, enforced, and demonstrably sustainable management programs.

OTHER ISSUES

I would like briefly to respond to some points raised by Dr. J. Y. Jones, also scheduled to be a witness here today, in a letter he wrote to Senator Paul Coverdell on February 18, 1997, regarding the Service's final rule. First, however, I note that Dr. Jones, while listed as a "sportsman" and public witness, has in fact been the director of Safari Club International's "Polar Bear Initiative" from its outset (thus he is an avowed advocate of polar bear sport hunting). This means that there are in fact two representatives of the same sport-hunting organization testifying on this panel today, contributing to an unbalanced presentation of views covering this issue.

As for his letter, Dr. Jones makes several statements that I find disturbing. To begin with, he writes, in reference to a polar bear trophy he currently has stored in Canada, "My bear was taken in 1993 from a currently disapproved population (among other things, how would I have known that back then?) so I can't import it." It is likely that Dr. Jones killed this bear in early 1993 (the Canadian polar bear hunting season runs from October to May), as two dozen recently submitted import permit applications indicate that most American sport-hunters hunt Canadian polar bears in the spring. Throughout 1993, it was illegal across the board to import polar bear trophies from Canada, a fact that Dr. Jones would certainly have known. He went on his hunt almost one year before a proposal was publically announced to amend the MMPA to allow polar bear trophy imports. Dr. Jones should have had no expectation of being allowed to import his trophy in early 1993, unless he had some private knowledge of which the general public was wholly unaware.

He also reiterates some erroneous biological information submitted by Safari Club International to the Service during the public comment period on the proposed rule. He writes that targeting older adult male bears "is excellent conservation because older adult males are an indicator of a stagnant and declining population... [by killing adult males] the sport hunter...contributes positively to population dynamics." I cannot express strongly enough that this statement is absolutely without any basis in biological fact or evolutionary theory. To begin with, the presence of older adult males in a polar bear population is a perfectly natural, logical outcome of high adult survivorship. In addition, according to all polar bear research, older adult males are the primary breeders. Their presence is rather an indication of a vigorous, productive population enjoying the genetic benefits of active sexual selection. Given that these older adult males (presumably also the physically robust individuals, as they would otherwise not be of interest to sport hunters) experience extremely low natural mortality, specifically targeting them with an outside, "unnatural" source of mortality (the sport hunter) could have significant genetic consequences to populations. In short, Dr. Jones' argument runs completely counter to the theory of natural selection.

Dr. Jones also wrote "USFWS has chosen to regard various subpopulations of polar bears in Canada, rather than considering the whole (again in violation of Congressman [Jack] Field's expressed and documented interpretation of Congress' intent.)" I believe this is one aspect of the situation about which The HSUS might agree with Dr. Jones. The HSUS also believes that Canada should have been evaluated as a whole, rather than as a series of management subunits or populations, subdivided without sufficient supporting data. My testimony today refers to "Canada" as a whole, rather than referring to its management subunits. We submitted comments to this effect to the Service. We base this belief on a strict legal interpretation of the language of the 1994 Amendments, which refers

to "Canada," not provinces or management subunits within Canada.

However, had this been done, I do not believe the results would have been what Dr. Jones apparently expected. While he clearly believes that the *Northwest Territories* have a management program that is sustainable overall, he has apparently mistaken the Northwest Territories for Canada as a whole in the context of polar bear management. One must consider that polar bears are found in other Canadian provinces. Both the Northwest Territories authorities and the Service acknowledge that the management programs of Ontario and Quebec do not comply with the International Agreement nor with sound management practices. Ontario does not protect pregnant females and females with cubs; Quebec's quota system is fixed and "guaranteed" and is not based on any current scientific information at all. Had the Service considered Canada as a whole, it would most certainly not have been able to make the first two statutory findings. The HSUS firmly believes this should have been the case.

Dr. Jones also rather viciously excoriates the Marine Mammal Commission for its conduct on this issue, calling them obstructionist, among other things, which The HSUS finds somewhat inexplicable. Rather than being obstructionist from the hunters' point of view, the Commission has in fact agreed with the Service regarding the four statutory findings, a decision The HSUS considers unfortunate. We believe both the Commission and the Service are incorrect in this regard, as discussed above. As for the scientific aspects of the situation, The HSUS feels the Commission did not state its concerns regarding numerous aspects of Canada's scientific analyses and assumptions with sufficient strength to the Service. In general, The HSUS fully supports the Commission in its objective advisory capacity to the agencies and those members of Congress involved in the implementation of the MMPA; however, in this case, we feel the Commission has not performed adequately. Dr. Jones' attitude toward the Commission seems to us to be singularly misguided on this issue.

CONCLUSION

The HSUS believes the Service was completely correct to disapprove imports from seven of the 12 populations in Canada, as the management programs for these populations do not meet the statutory requirements of being scientifically sound and/or adequately monitored and enforced. Therefore, The HSUS urges the Resources Committee to vote no on HJR 59, as we understand its purpose is to disapprove the Service's current final rule with the goal of gaining import approval for these seven populations in a new final rule. Thank you for considering our comments and recommendations on this matter.

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November 6, 1995

Director, Fish and Wildlife Service
 c/o Office of Management Authority
 4401 N. Fairfax Drive, Room 420C
 Arlington, VA 22203

TRANSMITTED BY FACSIMILE: 703/358-2281

RE: 60 FR 36382, Supplemental proposed rule and findings to implement § 104(c)(5)(A) of the 1994 Amendments of the Marine Mammal Protection Act and 60 FR 54210, Reopening of comment period

On behalf of the almost three million members and constituents of The Humane Society of the United States (HSUS) and Earth Island Institute (EII), I would like to submit the following additional comments on the notice by the Fish and Wildlife Service (Service) announcing the legal and scientific findings on the importation of polar bears taken in sport hunts in Canada, as published on July 17, 1995 in the Federal Register, Vol. 60, No. 136, pp. 36382-36400. The comment period for this notice was reopened for 15 days on October 20, 1995 (Federal Register, Vol. 60, No. 203, p. 54210).

In the intervening time between the close of the first comment period (August 31, 1995) and the close of the second (November 6, 1995), I was able to review reprints of several polar bear studies conducted in western Hudson Bay by Ian Stirling and his colleagues, as well as the 1993 proceedings of the meeting of the IUCN/SSC Polar Bear Specialist Group (PBSG). I also reviewed comments submitted by Safari Club International (SCI) and I received correspondence from Dr. Stirling, who responded to several questions I posed to him regarding polar bear life history parameters. Based on the additional information I have been able to review, I wish to submit these brief additional comments to The HSUS' original August 31 submission.

Population Status and Distribution

Based on my review of five of the reprints that Dr. Stirling provided to me, I verified that total annual sample size for the work conducted by him and his colleagues on the western Hudson Bay population since

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1965 has averaged less than 200 bears. In years when capture effort was intensive, sample sizes were less than 350 bears. Based on the PBSG proceedings, sample sizes for radio tracking studies in other populations in Canada were quite small (less than 75 bears total collared over several years in each population). While these sample sizes represent solid effort on the part of researchers to collect data in remote and relatively inaccessible habitat, they are nevertheless relatively small compared to those of other, terrestrial mammalian species that are hunted and subject to management studies. Thus my review of additional information confirms my earlier comments on the issue of sample size; population estimates and boundary designations must be considered at best preliminary for all polar bear populations, most particularly for those other than western Hudson Bay's.

Reproduction and Survival

The bears sampled from the western Hudson Bay population also represent only a portion of the total polar bear population in Canada. In other words, the most intensively studied bears, from which most life history information has been derived, are from one segment of one population and may not be representative of the rest of the bears in Canada and elsewhere.

In fact, the reproductive parameters of the western Hudson Bay population are apparently *not* representative of more northern populations (Ramsay and Stirling 1988). The western Hudson Bay population demonstrates higher natality rates, shorter interbirth intervals, and larger average litter sizes, all of which suggest that this population is "increasing relatively faster or declining less rapidly" (Ramsay and Stirling 1988, p. 625) than other, more northerly populations. Yet most of the information on mating behavior and reproductive parameters (e.g. Ramsay and Stirling 1986; Stirling 1988; Ramsay and Stirling 1988; Derocher and Stirling 1994) comes from this potentially expanding population. This merely emphasizes that decisions for other populations that are based on this information should be made based strongly on the precautionary principle.

As for information on male polar bears, Dr. Stirling confirmed in his correspondence with me (letter from Ian Stirling, CWS to Naomi Rose, HSUS, August 17, 1995) that little is known about male reproductive success (e.g. Ramsay and Stirling 1986; Stirling 1988). However, he emphasized to me that the operational sex ratio is skewed, as many females are not available to breed each year (due to their 2- to 3-year interbirth breeding interval), allowing pregnancy rates to remain high even when a sex-selective harvest for males persists for years. With all due respect to Dr. Stirling's analysis of this situation, I believe that pregnancy rates are only one important concern. Another concern is paternity; that

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is, it is important to the population not only *that* females become pregnant but also *who makes* the females pregnant.

In other words, selectively removing the largest males from the population (which sport hunting does) may have long term consequences to the genetic robustness of the population. I made this point in my earlier comments and my review of additional information has merely increased my concern in this regard. Apparently males engage in direct intrasexual competition for access to females, because they cannot control territories and females are not gregarious (Ramsay and Stirling 1986; Stirling 1988). My concern arises because sport hunters are likely to target those males who would tend to be the *winners* of these encounters, i.e. the larger, older males. It is troublesome that this important point is overlooked by managers and many scientists. **Again, any management program that encourages the removal of a population's probable primary breeders (in a species that is subject to strong selection pressures due to exacting environmental and anthropogenic factors) should not be considered to be sound.**

In several "game" mammal management programs, a large proportion of the male population is considered superfluous (since male reproductive variance is high and many males never mate at all). This reasoning has apparently been applied to the polar bear. Dr. Stirling, for example, believes that males may mate with 5-10 females each year. Because this degree of polygyny allows the pregnancy rate to remain high when the tertiary sex ratio is skewed toward females, he apparently considers selectively targeting males in a sport hunt to have a negligible effect on the population. However, I emphasize again that it is inappropriate to consider large numbers of male polar bears superfluous. While some may never get to mate at all, most probably will -- even if one male can monopolize 5-10 females one year (which is actually a very small number, compared to, for instance, highly polygynous "game" ungulates), Arctic conditions change so much from year to year that there is no guarantee that he will be able to do so another year.

Thus male polar bear lifetime reproductive variance is probably much lower than that of other "game" mammals. Most male polar bears probably get to mate successfully at least once or twice in a lifetime and many probably mate several times over a multi-year reproductive life span, and the contribution of their genes to the population may be significant. In addition, it must be emphasized again that the speculative figure of 5-10 females per male is from observations of the western Hudson Bay population; given the even lower environmental potential for polygyny (Emlen and Oring 1977) of the more northerly populations, male reproductive variance is possibly even lower there and each male more contributory to his population's gene pool. Selectively removing adult male polar bears may allow

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female pregnancy rates to remain high, but the consequences for the population's gene pool should not be ignored. Doing so is absolutely not precautionary.

Comments Submitted by Others

One common theme that ran through comments submitted by pro-hunting advocates (e.g. SCI and the National Rifle Association) was that the Service cannot impose regulatory policy on Canada's management program. They apparently interpreted several of the Service's proposals, such as the proposed prohibition on import permits for female bears taken in the month of October (option #3, p. 36390, 60 FR 36382), as attempts to do so. Of course, none of the Service's proposals attempt to impose policy on Canada, as the Service has absolutely no jurisdiction to do so. The proposed regulations will impose restrictions *only on U.S. hunters*, as is completely appropriate and well within the Service's jurisdiction. Under the Service's proposed rule, Canada would be free to continue to regulate its hunt as it sees fit; U.S. hunters in fact would continue to be able to hunt under the laws of Canada. The proposed regulations would only affect the ability of U.S. hunters to import their trophies into the U.S.

SCI listed four "adverse effects" of any proposal that reduces sport hunting (to my knowledge, none of these effects are substantiated with empirical data, although the SCI commenter apparently considers them to be inevitable consequences). I would like to comment on these four "effects." The first "effect" is that more bears would be harvested without sport hunting, because unused sport hunting tags are destroyed and count against the overall hunting quota. Several points argue against this. One, it is unclear from the Federal Register notice and other documents whether all non-sport hunting tags are used (Table 3 of 60 FR 36382 indicates that at least in some populations, not all tags were used, but it is not shown whether the unused tags were sport hunting or non-sport hunting tags). If they are not all used, for whatever reason, then SCI's assertion that "the bear [*sic*] are going to be harvested anyway" (SCI comments, August 30, 1995, p. 3) is untrue.

Two, the population where most of the sport hunting currently occurs (Parry Channel/Baffin Bay) has exceeded its quota by 86 bears for the last 5 years on average; in the year of the last recorded harvest (1993/1994), the quota was exceeded by 89 bears. This suggests that sport hunting in fact leads to more bears being harvested rather than less and it certainly does not support SCI's contention. Three, since the overall quota is constrained by the polar bear's sensitivity to the removal of females, if only non-sport hunting were allowed, the realized hunt would arguably be lower overall. Hunters would not be selectively targeting males and might discontinue the hunt when the harvest of females reached 33% of the quota,

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since any further non-selective kills would have to be of males to conform to the sex-selective harvest model (male to female harvest ratio of 2:1) and this could not be guaranteed (such sub-quota hunts have apparently actually taken place recently - M. Taylor, personal communication).

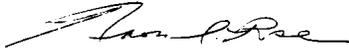
The second "effect" of reducing sport hunting is that more females are harvested. Applying the argument outlined just above, this is not necessarily true. In addition, if the overall quota is formulated sustainably (bear in mind that The HSUS does not believe it is in this case), the proportion of females in the harvest should not be a factor in population sustainability. The third "effect" is that more bears, presumably cubs and perhaps females, are devoured by cannibalistic males. While cannibalism does occur in polar bears (Ramsay and Stirling 1986), it is apparently quite rare. Stirling (1988, p. 138) states, "Undoubtedly [infanticide] happens, but after several thousand hours of watching polar bears...I am not convinced it is a frequent occurrence." Males killing females apparently occurs even less often (Stirling 1988). In addition, reducing the number of males in a population would not necessarily reduce the occurrence of cannibalism, which would only be the case if cannibalism were a result of increased density. Finally, even if cannibalism were a significant mortality factor, reducing its occurrence would not necessarily be beneficial to the population, if, for instance, it played a role in eliminating undesirable genes from the gene pool or increased a genetically robust male's reproductive success.

The last "effect" is that more bears are killed during sexual competition for females. There is little indication that bears are killed outright as a result of sexual competition among males (e.g. Ramsay and Stirling 1986). In fact, Ramsay and Stirling (1986) suggest that serious wounds are capable of healing very well relatively rapidly. And even though intrasexual competition obviously plays a role in increasing the overall mortality rate for males, it is not necessarily beneficial to decrease its level. Sexual selection is very complicated and its role in the genetic robustness of a species, particularly the sex upon which it primarily acts, may be substantial. Reducing its force on a population may in fact have long-term negative consequences, especially as sport hunters target those males most likely to be the *winner* in sexual competition (as I noted above).

Thank you for the opportunity to submit these additional comments.

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Sincerely,



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 Marine Mammal Scientist
 Wildlife and Habitat Protection

cc: Mark Berman, Earth Island Institute
 Mark Colley, Esq. and Laura Gasser, Esq., Holland and Knight
 Chris Wold, Esq., CIEL
 Senator John Kerry, U.S. Senate
 Representative Gerry Studds, U.S. House of Representatives
 John Twiss, Marine Mammal Commission

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TESTIMONY OF DR. J.Y. JONES

Mr. Chairman, esteemed members of the committee, my name is J. Y. Jones, and I am an ophthalmologist from Dublin, GA. I am a lifelong hunter. I thank you very much for looking into the matter before us, and I deeply appreciate the opportunity to give input.

The unique privilege of testifying before you today results from my being a hunter who has taken almost all of the 40 or so huntable big game species in North America using the same rifle. I am writing a book about my experiences, and I have also written some 50 articles for several outdoor publications. I have hunted polar bear with the Inuit of the Northwest Territories of Canada, and I harvested a large male polar bear there in 1993. I have served for the past five years as the head of a group of several hundred sportsmen who have been instrumental in urging Congress to amend the U.S. Marine Mammal Protection Act (MMPA). We were successful in achieving victory in 1994 to allow legal U.S. hunters to import their hard earned polar bear trophies from Canada. I have had observer status with the IUCN Polar Bear Specialist Group, and I have attended their meeting in that capacity. I am recognized by many as a legitimate lay expert on the subject of the polar bear. I have hunted with the Arctic natives by dogsled, by snowmobile, and on foot for nine different species of big game, so I know the customs and the challenges of the North country better than most.

I also must identify the fact that I am a devout Christian, having dedicated myself to Jesus Christ many years ago after finding no real meaning in life apart from Him. I mention this to draw a significant parallel. I cannot disavow what I hold as my core beliefs, because to deny them is to deny who I am. In a somewhat similar manner, I am a hunter. I held my first rifle in my hands before I was able to walk, a .22 caliber weapon that was a gift from my father which he procured during his service in Europe during World War II. My people have lived in the mountains of North Georgia and North Carolina for many generations, and I can trace my ancestry back to soldiers who fought in the American Revolution and in the Civil War. The menfolk in my family line were always hunters. I believe that all men are hunters in their innermost being, or else our species might well have disappeared from the Earth thousands of years ago. In my case, though, the opportunity to hunt at an early age cemented this instinctive aspect of my character into a living and powerful driving force that only another person of like mind canathom.

I intimate this in connection with my Christian faith to draw the parallel I mentioned. My faith in Christ is not what I *do*, but is rather what I *am*. So it is also with my hunting avocation. I am a hunter, and as our United States Constitution declares for me that I have a right to the pursuit of happiness within the rational constraints of the law, this surely includes my right to hunt. My heritage is under siege by misunderstanding and encroaching forces which would deny me this cherished right if they could. The honor of participating in this activity I love is not one I hold lightly, and the privilege of harvesting excess game animals (those which would die anyway from other causes if not taken in fair chase hunting) is somewhat akin to denying me the right to worship unhindered.

I am not alone in my thinking on this subject. Dudley Young has stated, "What is religious about hunting is that it leads us to remember and accept the violent nature of our condition, that every animal that eats will in turn one day be eaten. The hunt keeps us honest."⁽¹⁾ Erich Fromm has said, "In the act of hunting, a man becomes, however briefly, a part of nature again. He returns to the natural state, becomes one with the

animal, and is freed of the existential split: to be part of nature and to transcend it by virtue of his consciousness.”(2)

It is just such a relationship that makes the hunter the very best conservationist, and leads men and women who hunt to establish and maintain by their sweat and labor the myriad of hunter groups dedicated to stewardship of our wildlife resources. My grandfather was born in the mountains of North Georgia in 1885, and was a farmer and of necessity a hunter of small game only. He died in 1959, amazingly never having laid eyes on a wild deer or a wild turkey, such was the state of affairs with the wildlife of the continent during his lifetime. Those same two animals are commonplace in that part of our country today, thanks to the efforts and leadership of sportsmen.

Theodore Roosevelt was an early visionary in the conservation movement a century ago, and his legacy continues today, in part, in the Boone and Crockett Club. I am a member or supporter of a long list of such groups, and I contribute many hours of time and other resources toward making such organizations effective in the conservation effort. Some of these groups are dedicated toward all animals (Safari Club International, for example, which has spent well over \$10 million on some 600 projects around the world that benefit various animal species and their native stewards.) Other organizations are species specific, and their exploits are legendary in bringing back various animals from the brink of disaster. In all cases, hunters are the heroes, the men and women who go to work, donate their time and money, and make the real difference. I would point out at this time that never in history has any species been made extinct by regulated sport hunting, which is in no way to be confused with unregulated hunting, the excesses of market hunting, and the uncontrolled habitat destruction that characterized less enlightened times in our nation's past. **Trophy hunting is unquestionably the highest use of any animal**, because the trophy hunter seeks the oldest male of the species, which is biologically the least necessary to the propagation of most animal populations. The remainder of the animal's body is wasted in few circumstances, so the portrayal of the trophy hunter as one who shoots, rips off the head, and leaves the rest of the carcass to rot is patently untrue.

I would like to tell the story of Dr. Michael Werner. Dr. Werner was a hard working general surgeon from the State of Wyoming who hunted polar bear legally by dogsled with the Inuit near Baffin Island in subzero weather in April of 1990. He took a giant male polar bear on a grueling and impossibly difficult hunt. He partook of this experience because he was a hunter like me, a man more interested in the experience and the challenge than in having a tangible trophy of the adventure. He was very happy with the hunt and held little hope of ever actually seeing his bear at home until the move to reauthorize the MMPA and include the needed amendment surfaced. He contributed to the cause by writing letters to his representatives in Congress and by donating to help defray expenses incurred in the effort. His letters to me are filled with hope, the letters of a man who saw the light of possibility where once there had been none.

Unfortunately, in October of 1993, Dr. Werner developed a glioblastoma, a type of brain tumor. He suffered through multiple brain operations, several in the United States and also multiple procedures in Japan, where he underwent an experimental radiation therapy that required repeated open skull treatments. Despite a will to live that amazed me and an eternal spirit of optimism, he died in 1995. He never saw his bear imported, of course, but he never gave up hope and he talked about someday obtaining his import permit in every communication I had with him before his demise. I pray his family will eventually have his trophy home at last.

Another person who waits expectantly is Mr. Joseph Cafmeyer of Taylor, MI. This gentleman went polar bear hunting from Pond Inlet, on Baffin Island, in May of 1973. He had obtained his license before the MMPA went into effect, and erroneously assumed he could thus bring his polar bear trophy home despite that law. He has repeatedly lobbied for assistance in his quest to do so. Mr. Cafmeyer is now 84 years old, and has perhaps waited longer than any other sportsman in America to get his polar bear home. But for his wife's debilitating illness he would be with us today.

I have long been a student of North American large mammals, and I have long known of the excellent biological studies and the complex of strategies that constitute the Canadian polar bear management system. It had always seemed ridiculous to me that hunters from all other 180+ nations of the world (besides the U.S.A.) could go hunting in Canada and take their polar bear home to wherever they lived, using only the internationally recognized Convention on International Trade in Endangered Species (CITES) permit. I would clarify at this point that **despite the polar bear being listed under that treaty, it has never been classified as endangered anywhere in its range.** Because of this information, and the plight of hunters like Dr. Werner and Mr. Cafmeyer, I decided to take a leadership role in trying to convince Congress to amend the law.

Originally, the modest accomplishment of allowing U.S. hunters to import Canadian polar bears seemed a small task because all the scientific information was so solid. I also wanted to try to get Congress to authorize a sport hunting program in Alaska so our own Arctic natives (the Inupiat) could benefit from their natural resources. Natives of Alaska now kill in the neighborhood of 75 polar bears per year, but must utilize the entire bear themselves in most cases. They are prohibited from selling the whole skins, or even giving them away to a non-native. Most Alaska natives do not participate in making hand crafted articles from marine mammal products, so polar bear skins are most often wasted when a bear is killed (3). Considering the zero economic return to the natives from the bears, it made sense to include such a provision in any amendment. It proved to be politically impossible to accomplish this task in 1994.

I want to include another anecdote that illustrates a point. I wrote an article for a recent issue of *Safari* magazine which was entitled "Plight of the Hunter." It is about the two Eskimo guides on my own polar bear hunt, and the devastating effect such legislation has had on their economy, their culture, and their self esteem. My chief guide was a family woman who still lives in Resolute Bay, NWT, Canada, some 600 miles north of the Arctic Circle. The assistant guide's name was Ekaksak, a man who had struggled mightily with alcohol for years. Many long conversations with him as we traveled the Arctic ice pack by dogsled revealed clearly to me that his main problem was a missing sense of self worth. Our trade policy toward Inuit marine mammal products, in combination with the animal rights movement in North America and in Europe, has dramatically reduced useful employment and earned income for these Native Americans(4), however well intended is the MMPA. Ekaksak made two long and dangerous trips as a guide to the North Pole seeking that self esteem and the usefulness we all need. He never found it. He died recently in his sleep in a house fire in Resolute Bay, in part a victim of the modern white man's potent brand of economic boycott.

I have a special place in my heart for the native peoples of North America. I have always carried a deep interest in their history, their culture, and their unique styles of survival. My own brother is an anthropologist who specializes in the Southeastern Indians of my home area, so the topic has been ever before me. Our policy towards our Arctic

Native Americans is an unintended duplication of the deliberate plan of the 1870s, when we subdued indigenous North Americans by denying them the use of the plains bison, literally wiping out the resource in the process. Many plains Indians died as a result of that planned atrocity, either succumbing to a broken heart or dying of starvation, nobody seemed to care which at the time. We are now denying the peoples of the Arctic, no less Native Americans, the use of their most basic resources as well.

Can we not come up with something better than this for the end of the Twentieth Century? **The United Nations has declared 1995-2005 the Decade of the Indigenous Peoples.** Can we not at least allow import of all legally harvested sport Canadian polar bear trophies from Canada, as was intended by Congress when it passed the 1994 MMPA amendment package?

For the record, I would point out to the committee that the Inuit and Inuvialuit (Eskimos) of Canada's Arctic have already benefited from the polar bear sport hunting amendments to the MMPA, even before import permits are issued, though the benefit cannot be sustained unless the rules are dramatically improved or outright discarded:

- (1) **The total harvest of polar bears has declined by about 106 bears per year as a direct result, down from 551.5 bears to 445 bears.**
This is because of increased value, and increased conservation incentive, for the Inuit and Inuvialuit who conduct the hunts. They have been happy to reduce quotas to comply with authorities in scientific management.
- (2) **The value of sport hunts to the Inuit and Inuvialuit people has increased from \$870,750 per year to \$2,665,000 per year.** These gentle and unique people are thus encouraged to conserve both their bears and their culture.

Congress passed the MMPA Amendments of 1994 with the unambiguous understanding that sport hunters would be allowed to bring home their Canadian polar bear trophies. I was aware of ongoing discussions between Congressmen and their staffs on the wording of the amendments regarding polar bear trophies. As best I could tell, there was never any misinterpretation about the meaning that Congress intended. Let it be clearly stated that this was a bipartisan bill which passed both houses of Congress unanimously. There was expressed at one point some concern that allowing U.S. hunters to import polar bear trophies might increase the pressure to allow more hunts, but as the above figures indicate, the exact opposite has occurred. It was anticipated by all that little further action would be needed by the U.S. Fish and Wildlife Service (the Service) before they began issuing permits, after they consulted with the Marine Mammal Commission (MMC), as required by the law.

Unfortunately, what everyone expected is not what has occurred. What we have, I believe, is a monumental case of the bureaucracy at its worst. Initially, there was no action at all for many months, despite pleas from numerous Congressmen that permits be issued {(5) and (6)}. The Service then elected to go through a complete rulemaking process that has tied up every polar bear harvested by U.S. hunters in Canada in the past 25 years for at least the intervening three years. A reading of the four simple statements containing only 83 words in the MMPA amendments section 104 (c)(5)(A)(i-iv) reveals no intent by Congress to delay or impede the process in such a way.

The Service consistently denies that they have taken this route for capricious or political reasons (i.e.-an anti-hunting, anti-conservationist mentality or influence.) They also have repeatedly cited the floor debate on the bill, in which Congressman Jack Fields of Texas clarified Congressional intent without challenge, but they have failed to implement his interpretation. He stated in the debate the following: "...Canada-a country whose polar bear population is healthy. Canada's polar bear management program is based on science, which ensures a sustainable polar bear population and is consistent with international conservation agreements...it is not the intent of the language that the Secretary attempt to impose polar bear management policy or practices on Canada by the **imposition of any polar bear import criteria.**" (Emphases added.)

These statements mean that Congress passed the MMPA amendments of 1994 with the undeniable conviction that all four of the above findings had *already* been satisfied. It also means that the 30 pages of polar bear trophy import rules published on February 18, 1997, which disallow import of most polar bear trophies, are *de facto* evidence of an intent by the Service to obstruct the will of Congress. It is readily apparent that what the Service has done is "impose polar bear management policy...on Canada by the imposition...of ...polar bear import criteria" almost ad infinitum. **The Service has acted as if the polar bear were on the verge of extinction, which it is by no means.**

Despite their erroneous conclusions, the Service did an admirable job of evaluating the Canadian polar bear management system, it must be admitted, even though the whole exercise was a gross waste of taxpayer funds. The final rule is replete with shining compliments regarding the sterling example the whole Canadian program represents, and in *every case* all questions are resolved in favor of the Canada's position and interpretation, regardless of the issue addressed in the final rule. This includes direct positive statements on each of the four Congressionally mandated findings, and on page 7323 the statement that "It is the Service's judgment that Canada has the best polar bear management programs in the world." One can *almost* read into the wording the following: "and we only wish we had the mandate and the authority to manage our Alaskan polar bears as effectively by allowing a native-guided sport hunt under a quota system there." At least I hope they would like that. It is conservation at its best, and we ought to want to emulate Canada.

This gives rise to three questions which will further demonstrate a willful attempt to circumvent the will of Congress.

First, there is the issue of "**grandfathering**" bears that are stored in Canada, **all of which were projected in the proposed rule (of July 17, 1995) for import approval up to the date of the final rule.** Besides the obvious fact that these bears are neutral from a conservation standpoint, being already harvested, there is another important issue this raises. (One can state, in fact, that already harvested bears will have an undeniably positive effect when allowed import, since each import permit will provide \$1000 for polar bear conservation in Alaska and Russia.)

One must question the Service about their interpretation of why Congress specifically included bears already stored in Canada in the language of the amendments to the MMPA. Did the Service think Congress really expected hunters like Joseph Cafmeyer to select a population 24 years ago that would be importable today? One couldn't do that with a 1996 hunt with any certainty, much less a 1973 hunt! The answer is more than obvious—**Congress intended to clear up the backlog of stored bears** and make a lot of long-suffering and vocal constituents happy without a shot being fired or another bear

being hunted. Indeed the final rule (page 7320) gives six excellent reasons why the Service proposed originally to "grandfather" for import all bears taken up to the date of the final rule, a most reasonable approach since Congress specifically passed a law including those bears for import. Amazingly, the very next statement after that very apt review of those six good reasons states, without any significant explanation, that "based on comments received and a review of the MMPA the Service finds that pre-Amendment bears must have been taken from approved populations."

We have learned that the comments which resulted in the change from the proposed rule to the final rule came about as a result of objections by the MMC and the Humane Society of the U.S., a well known extremist animal rights organization and avowed antihunting group which has been recently investigated by the *Washington Post* for misuse of donor funds. According to columnist Rich Landers of *The Spokane-Review*, such organizations are "the Jim and Tammy Bakker Show of goodwill toward critters." (7) It is appalling that any agency of our government would even appear to align itself with a radical organization to obstruct the will of Congress.

The Solicitor's Office of the Department of the Interior was also involved in this unexpected and devastating change in the proposed rule. The Solicitor's office decreed, in an indefensible opinion, that all bears taken in the past must come from **currently** approved populations to be importable. Even more weakly, they ruled that once a positive finding has been made for an area (present or future) then bears taken in the past suddenly meet the import criteria! I go back to my original argument, i.e., the original intent of Congress. Wasn't the MMPA *specifically* amended to allow import of just those bears the Service now presumes to disapprove (or indefinitely defer approval, if one prefers.) Ironically they find themselves in the position of *basing their disapproval* on the Solicitor's Office's review of that very MMPA that Congress amended! The Service has taken some bad advice in ignoring the facts.

Second, despite all the positive findings on the Canadian polar bear management system, only five of Canada's *thirteen* huntable polar bear populations were approved for import. These disapprovals were based on **two super-criteria not required by Congress**, those being that each subpopulation be either stable or increasing, and that co-management agreements with other jurisdictions be in place.

The Service consistently refers to Canada's *twelve* polar bear populations in the final rule. At the January-February 1996 Polar Bear Technical Committee meeting in Quebec City, Canada, which I attended, **this key IUCN group** approved redrawing the old Baffin Bay, Parry Channel, and Queen Elizabeth Islands populations into four distinct new populations, based on revised population studies and movements of collared bears. Only two of these populations (Baffin Bay and Kane Basin) are shared with Greenland, where the Service has taken the unprecedented step of requiring as a **polar bear import criterion** an agreement between two foreign governments.

The new Lancaster Sound population and the new Norwegian Bay populations are entirely within Canada and entirely within sustained yield (8). While these new populations are alluded to on page 7316, they are not considered as new populations for purposes of permit issue. The Service had two representatives at that meeting in Quebec City (Mr. Scott Schliebe of the Marine Mammals Management Section in Anchorage, AK, and Ms. Lyn Noonan of the Office of Management Authority in Washington, DC) Ms. Noonan actually chaired a session of the meeting (as well as one at the 1995 meeting.) Why the information on the new boundaries and population data approved by this

international body (and the automatic approval the data convey even under the dubious **Service polar bear import criteria**) failed to make the final rule is quite mysterious. Why, on pages 7310 and 7319, do the rules refer to data that came in as late as December 20, 1996, but leave out this key earlier information? I believe it was because, for whatever reason, the Service was determined to override Congress and approve as few polar bear imports as possible, and to delay all permits for as long as possible. If this is indeed the case, another obvious reason to disallow import of bears from the newly approved (by the IUCN) Lancaster Sound population is that it has the most sport hunts of any of polar bear population in Canada (in some past years Lancaster Sound has been home to the largest number of total sport hunts.)

This brings up the final point I would like to make. In every communication I have ever had with MMC Director John Twiss, both in person and in print, he has expressed opposition to Congress infringing on the waiver process built into the original MMPA. The record shows that the cumbersome waiver process doesn't work, and it has been used only once in 24 years. Mr. Twiss admits in a number of places and in a number of ways that the waiver process would likely never actually allow one to import a marine mammal (9), but the fact is that the unwieldy and burdensome effort would have kept the MMC on center stage. I dutifully sent him copies of my correspondence and tried to involve him in the line of thinking I was following, assuming him to be interested in genuine conservation. Unfortunately, despite my good faith attempts to keep him informed, it appears that he callously used the information in the most damaging way possible.

Throughout the process, and even down to the final rule, the MMC has erected every possible barricade to obstruct importation of polar bear trophies as mandated by Congress. As one example of this obstructionism, **the MMC received the materials on the polar bear rulemaking from the Service in January of 1995, but failed to respond until November of 1995** (after the Service sent them a reminder letter in *October 1995* that their input was required.) We have learned much about the extent of this obstructionism, and I believe that this sheds light on why so much good data are ignored or omitted completely in the final rule. One respected polar bear biologist made the statement in correspondence that the MMC was "going overboard..." The MMC is mentioned in the rule as supporting the will of Congress not a single time with reference to the new law, but many times the MMC (starting on page 7320) is quoted as raising some issue that might possibly complicate the process, invalidate or limit import of trophies, call into question Canada's management practices, or **establish polar bear import criteria**. The nature of the questions raised by the MMC, **most of them legalistic and not scientific**, were already answered by Congress in its intent on the bill (i.e., Congress knew about the fact of the Canadian sport hunting program when it passed the amendments, so isn't it safe to assume the MMC didn't need to address the *legality* of their sport hunts? In like manner, Congress was unquestionably aware that Canada has an exemplary management program for polar bears, so questions aimed at population versus subpopulation management structures had likewise implicitly been answered by Congress.)

On page 7325, it appears that even the Service has about had enough of the obstructionism of the MMC when they refer cryptically to "the theoretically absurd outcome hypothesized by the MMC..." Way to go, Service! It appears to me that many of the questions raised by the MMC were more than *theoretically* absurd.

Esteemed Committee members, I submit the following items for your consideration in review:

- * Congress *intended* for U.S. hunters to bring home all legally harvested sport polar bear trophies stored in Canada, but the law has been intentionally obstructed and delayed in its implementation;
- * Congress *intended* a blanket approval of imports of all legally harvested future polar bear trophies from Canada, but the intent has been subverted by an obstructionist mindset, a questionable quest for unneeded information, and then ignoring valid scientific information in their possession that would have opened up more populations of polar bears for import; and
- * Congress *intended* for the MMC to help expedite the process, but they have instead acted as an obstructionist bureaucracy that has done everything in their power to derail the entire amendment and thwart the will of Congress as regards sport hunted polar bear trophies. The MMC needs to be removed from the process as regards polar bears.

Finally, the Service has just published a booklet entitled *Polar Bear Conservation Plan for Alaska*. On the front cover is the name of the head of the Canadian Federal Government's polar bear management program, Dr. Ian Stirling, who is quoted as saying, "To me, the polar bear is the Arctic incarnate." I agree.

I know Dr. Stirling personally. He is one of the top experts on polar bears in the world today, and not coincidentally a strong supporter of sport hunting of the bears as a management tool. It is ironic that his quote is used on the cover of a booklet that fails to mention, even in passing, the possibility of a sport hunt in managing polar bears in Alaska. Without it (or for pity's sake at least letting our Inupiat sell the whole skins of the bears for a paltry few hundred dollars apiece) the Alaskan bears will continue to be wasted at the rate of 75 or so per year. Our nation refuses to recognize the value of a sport hunt for our own bears, and our bureaucrats seem determined to restrict participation of U.S. hunters in the Canadian program, about which the IUCN Polar Bear Specialist Group has stated, "...native guided sport hunting in Canada is not a conservation concern."⁽¹⁰⁾

Dr. Mitchell Taylor, another personal acquaintance who is the main polar bear biologist for the Northwest Territories of Canada, was asked recently what percentage of native polar bear hunts should go to sport hunters *for best conservation*. His answer: "All of them." That will never happen, of course. But the highly selective sport hunter seeking a large male polar bear is unsuccessful more than 20% of the time, and refuses to knowingly harvest females, cubs, and small bears. And his or her presence gives a huge economic incentive to the natives to do likewise.

Please do something to help us. Thank you for the opportunity to comment.

Respectfully submitted,
J. Y. Jones M.D.

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- (2) Erich Fromm, *The Anatomy of Human Destructiveness* (New York, Holt, Rinehart and Winston, 1973,) p. 132.
- (3) Haugen, Scott, North Slope Borough School District, Barrow, AK, Letter dated March 5, 1993.
- (4) Berton, Pierre, *The Mysterious North* (McClelland & Stewart, Inc., Toronto, Ontario, Canada, 1989,) p. 261-262.
- (5) The Honorable Jack Fields, Letter to USFWS Director (the late) Mollie Beattie, June 20, 1994.

- (6) The Congressional Sportsmen's Caucus, Letter to Mr. Bruce Babbitt, Secretary of the Interior, September 28, 1994.
- (7) Landers, Rich, *The Spokane Review*, February 20, 1997, "Rights Folks Send Mixed Me\$\$ages"
- (8) IUCN Polar Bear Technical Committee Meeting minutes, Quebec City, Canada, January 31-February 2, 1996, p. 38.
- (9) Twiss, John, Letter to the Honorable Gerry Studds, 17 June 1993, p. 5, "whether the MMPA's requirements *can be met*." (Emphasis added)
- (10) IUCN Polar Bear Specialist Group Meeting minutes, "Conservation Consequences of Native Guided Sport Hunting Under a Strict Quota System in Canada," Oslo, Norway, February 3-7, 1997.

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Congress of the United States
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SUBCOMMITTEE ON HUMAN INTELLIGENCE,
ANALYSIS, AND COUNTERINTELLIGENCE

April 25, 1997

The Honorable Don Young
Chairman
House Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am forwarding to you copies of my correspondence with Dort S. Bigg, a constituent of mine. You should find them of interest in connection with the Committee's April 30 hearing regarding the U.S. Fish and Wildlife Service's February 18 rule for the importation of polar bear trophies.

I believe that Mr. Bigg's case is illustrative of the lack of fairness in the U.S. Fish and Wildlife Service's position regarding bears that were legally taken between the 1994 amendment to the Marine Mammal Act and the release of the February 18 import rule. I would very much appreciate it if you would keep Mr. Bigg's case in mind during the upcoming hearing and as the Committee considers your resolution, H.J.Res. 59, or related legislation.

Thank you for your consideration in this matter. As always, please do not hesitate to contact me if I may be of any assistance.

Sincerely,



Charles F. Bass
Member of Congress

CFB:mv
enclosures

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APR 15 1997

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DORT S. BIGG
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April 4, 1997

**Congressman Charles Bass
1728 Longworth House Office Building
Washington, D.C. 20515-2912**

Dear Congressman Bass:

With reference to my problem concerning the importation of my polar bear, I am advised that a hearing has been scheduled before the Resources Committee for April 30. Congressman Don Young and others have introduced a resolution disapproving the proposed rule. The hearing will focus on the claims that the Service did not follow Congressional intent and did not base their rules for import on sound scientific data. I strongly feel, as do many others, that the Service acted in an irresponsible and capricious manner and that their decision was based upon a political judgment rather than science. The rules will result in serious harm to bear populations and are causing terrible hardships to native villages. It would also be interesting to learn why the Service took three years to issue the rule when congressional intent was clear.

I am enclosing a copy of a letter that I have sent to the Service concerning the grandfathering provisions which will effectively bar the importation of my bear without any justifiable logic.

Anything you can do to assist, would be deeply appreciated.

Respectfully,



Dort S. Bigg

DSB/stb/97811

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DORT S. BIGO
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March 19, 1997

Office of Management Authority
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, Room 432
Arlington, VA 22203

RE: Importation of Sport-Hunted Polar Bears

To Whom It May Concern:

The proposed rules which appeared in the Federal Register, Vol. 60 No. 136, July 17, 1995, provided that sport-hunted polar bears taken in the Northwest Territories of Canada between December 21, 1972 and the "effective date of the final rule" may be imported regardless of the subpopulation from which they were taken if they otherwise qualified under the rules. The "final rules" altered this "grandfathering" provision by retroactively imposing territorial restrictions based upon sustainable use findings in certain subpopulations. This action was based upon U.S.F. & W.'s interpretation of the Amendment concluding that the "grandfather" provision is "tied to the same statutory criteria that applied to the importation of polar bears taken since the passage of the Amendment."

Specifically, the Amendment has been interpreted to require a finding, *inter alia*, that "the affected population stock" [is managed] at a sustainable level.

The glaring flaw in this reasoning is that there is no population stock which is "affected" in any way (adversely or beneficially) by the importation of bears which are already dead and were already dead before the issuance of the final rule. There is no logic in U.S.F. & W.'s interpretation.

There certainly is no justice in it. One could conceivably contrive a case against the importation of bears taken prior to the Amendment as a "reward" for those who took

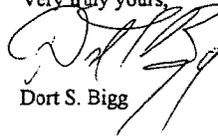
Office of Management Authority
Page 2
February 27, 1997

bears when importation was totally illegal. But there is no logic, nor fairness, nor any reasonable basis to bar importation of a bear taken by someone who waited for the Amendment to pass and had no clue that U.S.F. & W. would carve out "subpopulations" and retroactively impose restrictions based upon those findings.

Congress obviously expected the importation program to be in operation within two years (see 5(C)(i) and (ii)) and clearly expected further importations to be subject to the findings of the Secretary. It is far from clear that Congress intended "grandfathered" bears to be subject to any requirements other than those specifically set forth in the sentence dealing with this subject, to wit: "sport hunted...legally harvested in Canada by the applicant." Logically, Congress could not have intended that findings and rulings made subsequent to the Amendment would be applicable to bears harvested after the Amendment but before the promulgation of the rules.

There is no specific language in the Amendment which directly addresses the status of bears in this category. If, arguendo, S.F. & W. is essentially free to exercise its discretion in this regard, I would certainly hope and expect that such trophies would be importable. Simple justice and fair play and a recognition of the fact that the importation can have no affect whatsoever on the population, mandates that such trophies should be importable. I strongly urge U.S.F. & W. to issue a clarifying order to that affect.

Very truly yours,



Dort S. Bigg

DSB/slb/91152

MAR 25 1997

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DORR S. BIGG
E-MAIL: BIGGD@WIGGIN-NOURIE.COM

March 18, 1997

Congressman Charles Bass
1728 Longworth House Office Building
Washington, D.C. 20515-2912

Dear Congressman Bass:

I can't thank you enough for your prompt and courteous response to my recent inquiry regarding the importation of my polar bear. For your entertainment, I am pleased to enclose a copy of the story of my bear hunt which appeared today in Safari Magazine.

My problems with U.S. Fish and Wildlife, unfortunately, are not over, but have just begun. Most observers in the conservation and hunting communities feel that the regulations which have just been published are seriously flawed. I have reason to believe that lawsuits are imminent. In fact, I am advised that the Canadian Government which views the "findings" of U.S.F. & W. as highly officious and erroneous, is the most likely to bring suit first.

An examination of the new regulations will reveal that U.S. F. & W. has divided Canada's Northwest Territories into seven "subpopulations" and has made a determination with respect to each as to whether or not it can support a "sustainable harvest" of polar bears. This determination, though based upon information and data from the appropriate Canadian authorities reaches conclusions contrary to those reached by their Canadian counterparts.

Be that as it may, my principal complaint arises out of the manner in which the U.S.F. & W. proposes to treat those bears which were legally taken before the implementation of the new rules, i.e., the "grandfather" clause. Specifically, U.S.F & W. bars the importation of bears legally harvested prior to the new rules if they were taken in areas which they have now determined not to have a "sustainable harvest." Where is the logic or justice in that decision?!

Congressman Charles Bass
Page 2
March 18, 1997

I am a law-biding and conservation-conscious hunter. Though I long dreamt of a polar bear hunt, I am not one of those who went and killed a bear in the full knowledge that it could not be imported. I did not even consider going until the 1994 Amendment of the Marine Mammal Act had become law. In reliance upon that law, I went on my hunt which was dangerous, physically demanding (especially for one of my age) and very expensive (\$18,000+). I took my bear in strict adherence to the law, traveling only by dog sled and with a further self-imposed handicap, I used a primitive muzzle loading firearm.

It never occurred to me that import restrictions would be retroactively imposed upon my right to bring my trophy home. I waited almost two and half years from the time of my original request for a permit application form. During this interim, I was briefly encouraged by the publication of proposed rules (copy enclosed) under which my bear would have been importable.

I am stunned and crushed by the proposed "final rules." If there is anything you can do to persuade U.S.F. & W. that the "grandfather" rule is grossly unfair to someone in my position and that it is grossly illogical. The bear is already dead and banning its import serves no conservation purpose.

I maintain a large collection of mounted animals. It is freely displayed to the public. Over 2,000 people per year take the tour. Most of them are school children. We never charge any one. My wife Meredith and I have provided in our wills to leave the entire collection to the town in which we live, together with enough money to house and maintain it in perpetuity. It is the present and future generations of school children who will be deprived of the opportunity to see this beautiful bear.

Very truly yours,

Dort S. Bigg

DSB/slb/94319

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* ALSO ADMITTED TO PRACTICE IN VERMONT
* ALSO ADMITTED TO PRACTICE IN CONNECTICUT
* ALSO ADMITTED TO PRACTICE IN NEW HAMPSHIRE

February 7, 1997

Congressman Charles Bass
1728 Longworth House Office Building
Washington, D.C. 20515-2912

Dear Congressman Bass:

Some time ago I wrote to you for assistance with regard to the importation of a polar bear which I legally hunted and took in Canada in April, 1995. I am enclosing herewith a copy of my letter to you and your response. I am also enclosing a copy of the response which you received from U.S. Fish and Wildlife Service.

For your information, U.S. Fish and Wildlife Service continues to thwart the will of Congress. They have not even prepared application forms for the importation of polar bear trophies.

After a period of years during which various "reasons" for the delay were expressed, they are no longer expressing any reasons at all. I have been unable to determine the identity of the "decision-maker" nor the reason for further delays.

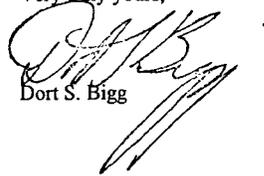
Anything which you could find out would be deeply appreciated. My personal opinion is that the Department is so fearful of a lawsuit by the "anti-hunters" that they are simply stalling.

Finally, I should remark that it is perfectly clear to me that those bears which were legally taken after the recent amendment to the Marine Mammals Act and prior to the promulgation of the new regulations will be "grandfathered" and allowed for importation no matter what else occurs. Accordingly, I cannot conceive of a single valid reason why trophies fall in this category should not be released now.

Congressman Charles Bass
Page 2
February 7, 1997

Thanking you in advance for your kind consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. S. Bigg', with a large, sweeping flourish extending downwards and to the right.

Dort S. Bigg

DSB/slb
Enclosures

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COMMITTEE ON THE BUDGET
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COMMITTEE ON SELECT
INTELLIGENCE

**Congress of the United States
House of Representatives
Washington, DC 20515-2902**

February 24, 1997

Mr. Dort S. Bigg
Wiggin and Nourie, P. A.
20 Market Street
PO Box 808
Manchester, New Hampshire 03105

Dear Dort:

Thank you for your inquiry into the U.S. Fish and Wildlife Service's rules pertaining to the importation of Polar bear trophies. I appreciate the opportunity to answer your questions.

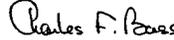
I understand your frustration with the slow pace of the process, but you will be happy to know that the Fish and Wildlife Service published the rules in question on February 18, 1997. Because you are on the Service's mailing list, you should receive a copy of the rules and an import application. Nevertheless, I have enclosed a copy of the rules for your convenience.

You may be interested to know that you are correct that bears taken in approved or eventually-approved areas will be "grandfathered" under the rules. Should you have any further questions, you may contact either Margaret Tieger, Chief of the Branch of Permits, or her assistant, Lynn Noonan, Permit Biologist. They may be reached at:

U.S. Fish and Wildlife Service
Office of Management Authority
4401 North Fairfax Drive, Room 430
Arlington, VA 22203
703-358-2104 (phone) / 703-358-2281 (fax)

Thank you again for your inquiry. Please feel free to contact me again should any other issue of concern to you arise.

Sincerely,



Charles F. Bass
Member of Congress

CFB:mv
enclosure

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Reply to: Manchester

September 21, 1995

Congressman Charles Bass
 1728 Longworth House Office Building
 Washington, D.C. 20515-2912

Dear Congressman Bass:

Nearly two years ago, an amendment to the Marine Mammal Protection Act was passed whereby sport hunters could import into the United States polar bears legally taken in Canada. In reliance upon that amendment, I spent a lot of money I could ill afford and at great personal risk spent 16 days in the High Arctic traveling by dog sled and living in igloos to take a polar bear. Not satisfied with the physical rigors of such a hunt (the temperature went to 38 degrees below zero), I used a primitive muzzle loading rifle to bag my bear.

Prior to departure on that hunt, I communicated with U.S. Fish and Wildlife Service requesting an application for import. Approximately one year and half later, U.S. Fish and Wildlife has not even developed the form of application. Moreover, they have tentatively determined (contrary to the findings of Canadian authorities) that the bears in the region I hunted are being "over harvested." For all practical purposes, the proposed regulation amounts to a virtual reclosure of polar bear hunting to U.S. citizens who want to bring their trophies home. This proposed action thwarts the will of Congress as expressed in the amendment.

There are many excellent and compelling reasons, both ecological and economic why the proposed regulations should not be adopted. These reasons are very well articulated in two enclosures with this letter. I am also enclosing a copy of a letter which I personally wrote to the Service pertaining to my individual case.

I am a member and officer of the New England Chapter of Safari Club International. I can tell you that I am far from

September 21, 1995
Page 2

being alone in my views on this subject. Anything which you could do to urge the Service to accelerate and finalize their rules and to implement the will of Congress as it is disclosed in the Amendments would be deeply appreciated not only by the undersigned, but by many others.

Very truly yours,

Dort S. Bigg

DSB/slb
Enclosures

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October 19, 1995

Mr. Dort S. Bigg
Wiggin and Nourie, P. A.
20 Market Street
PO Box 808
Manchester, New Hampshire 03105

Dear Dort:

Thank you for contacting me regarding the U.S. Fish and Wildlife's delay in finalizing rules pertaining to the import of trophies. It was good to hear from you.

I understand your position on this matter. Therefore, I have written to the U.S. Fish and Wildlife Service on your behalf. In this letter, I have requested that they address your concerns and specifically explain the delay in fully implementing the Marine Mammal Protection Act. Additionally, I have requested that you and I both receive a copy of the Service's response.

Again, thank you for taking the time to contact me. Please do not hesitate to do so if I can be of future assistance.

Sincerely,


Charles F. Bass
Member of Congress

CFB:mv

OCT 27 1995

142 NORTH MAIN STREET
CONCORD, NH 03301

170 MAIN STREET
NASHUA, NH 03060

89 MAIN STREET
LITTLETON, NH 03561

ONE WEST STREET
SUITE 208
LESTER, NH 03061



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

MAY 13 1995

FWS/AIA/OMA 95-02945

MAY - 8 1995

Dort S. Bigg
20 Market Street
P.O. Box 808
Manchester, New Hampshire 03105-0808

Dear Mr. Bigg:

Thank you for your letter of September 21, 1995, concerning the 1994 Amendments to the Marine Mammal Protection Act and the progress of the regulation promulgation process for import of sport-hunted polar bear taken in Canada.

As you are aware, the Act was amended in 1994 to allow for the issuance of permits for the import of sport-hunted polar bears taken in Canada. However, such permits may only be issued when the Fish and Wildlife Service can make specific legal and scientific findings as required in Section 104(c)(5)(B) of the Act, and after establishment of the application requirements and the permit issuance fee. Consequently, the Service must complete the rulemaking process prior to processing any permit requests.

A proposed rule to establish the permitting process and a separate proposed rule to discuss the required legal and scientific findings were published in the Federal Register for public comment in 1995. As anticipated, there was substantial public comment. The Service is currently reviewing the comments received which need to be considered in drafting the final rule. We assure you that the Service is working as expeditiously as possible to complete the regulatory process.

As we have indicated directly to Mr. Bigg in previous conversations and correspondence, his name is maintained on the mailing list for this issue. A copy of future Federal Register notices associated with the rulemaking process as well as any application form and instructions will be provided to him as soon as they are available.

Please let us know if we can provide further assistance.

Sincerely,


Marshall Jones
Assistant Director, International Affairs

Identical letter sent to Honorable Charles Bass

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