

**TESTIMONY OF ROWAN GOULD  
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U.S. DEPARTMENT OF THE INTERIOR**

**BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES  
SUBCOMMITTEE ON FISHERIES, WILDLIFE, OCEANS AND INSULAR AFFAIRS**

**REGARDING**

**H.R. 670 – TO CONVEY CERTAIN SUBMERGED LANDS TO THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN ORDER TO GIVE THAT TERRITORY THE SAME BENEFITS IN ITS SUBMERGED LANDS AS GUAM, THE VIRGIN ISLANDS, AND AMERICAN SAMOA HAVE IN THEIR SUBMERGED LANDS, H.R. 991 – TO AMEND THE MARINE MAMMAL PROTECTION ACT OF 1972 TO ALLOW IMPORTATION OF POLAR BEAR TROPHIES TAKEN IN SPORT HUNTS IN CANADA BEFORE THE DATE THE POLAR BEAR WAS DETERMINED TO BE A THREATENED SPECIES UNDER THE ENDANGERED SPECIES ACT OF 1973, H.R. 1160 – THE MCKINNEY LAKE NATIONAL FISH HATCHERY CONVEYANCE ACT, AND H.R. 1670 – THE SIKES ACT AMENDMENTS ACT OF 2011**

**MAY 12, 2011**

**INTRODUCTION**

Chairman Fleming and Members of the Subcommittee, I am Rowan Gould, Acting Director of the U.S. Fish and Wildlife Service (Service), within the Department of the Interior (Department). I appreciate the opportunity to appear before the Subcommittee today to testify on: H.R. 670, to convey certain submerged lands to the Commonwealth of the Northern Mariana Islands in order to give that territory the same benefits in its submerged lands as Guam, the Virgin Islands, and American Samoa have in their submerged lands; H.R. 991, to amend the Marine Mammal Protection Act of 1972 to allow importation of polar bear trophies taken in sport hunts in Canada before the date the polar bear was determined to be a threatened species under the Endangered Species Act of 1973; H.R. 1160, the McKinney Lake National Fish Hatchery Conveyance Act; and H.R. 1670, the Sikes Act Amendments Act of 2011.

## **H.R. 991**

H.R. 991 would amend the Marine Mammal Protection Act (MMPA) of 1972 to allow importation of polar bear trophies taken in sport hunts in Canada before the date the polar bear was determined to be a threatened species under the Endangered Species Act (ESA) of 1973.

### **Legal Framework for Importing Sport-hunted Polar Bear Trophies**

The polar bear was listed as threatened under the ESA on May 15, 2008, primarily due to ongoing and predicted loss of sea-ice habitat caused by climate change. If the polar bear was protected only under the ESA, the Service could have continued to allow the import of sport-hunted polar bear trophies from Canada. This could have been accomplished either by including a provision in the special rule issued for this species under section 4(d) of the ESA authorizing such imports or by applying the provisions of section 9(c)(2) of the ESA, which would have allowed sport-hunted polar bear trophies to be imported for personal use by the hunter without additional ESA authorization (as long as the trophy was imported with a Canadian export permit issued under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and all other requirements of law were met).

However, the polar bear is also protected under the MMPA, which has its own legal requirements, separate and distinct from those of the ESA, relative to the importation of marine mammals. The MMPA establishes a federal responsibility, shared by the Secretaries of the Interior and Commerce, for the management and conservation of marine mammals. The Secretary of the Interior, through the Service, protects and manages polar bears, sea and marine otters, walruses, three species of manatees, and dugongs.

Until the polar bear was listed under the ESA, section 104(c)(5) of the MMPA had provided for the import of certain polar bear trophies from approved populations in Canada. However, any marine mammal listed as threatened or endangered under the ESA is considered “depleted” under section 3(1)(C) of the MMPA, and consequently, sections 101(a)(3)(B) and 102(b)(3) of the MMPA prevent the import of sport-hunted polar bear trophies.

The Service has interpreted the existing grandfather clause (section 104(c)(5)(D) of the MMPA), as continuing to authorize the issuance and use of permits that allow the import of polar bears legally harvested in Canada prior to February 18, 1997. As of May 15, 2008, when the ESA listing took effect, except for those trophies that qualify under this grandfather clause, any permit previously issued under section 104(c)(5) could no longer be used to import a sport-hunted polar bear trophy, and no new permits could be issued or additional imports allowed under that section.

#### Outreach to Polar Bear Hunters on the Potential Impact of an ESA Listing

Once the proposed rule to list the polar bear as threatened was published in January 2007, the Service conducted extensive outreach efforts on the potential impact of an ESA listing on the import of sport-hunted trophies. Hunters were advised that, although the Service was able to authorize the importation of polar bear trophies taken in Canada under the provisions of section 104(c)(5) of the MMPA while the species was proposed for listing, the Service would not be able to continue to authorize imports under this section of the MMPA if and when the listing became

final. The Service wanted hunters to be fully aware of the fact that if the polar bear were listed, then hunters would no longer be able to import their sport-hunted trophies.

Beginning in January 2008, the Service addressed a large number of telephone and e-mail communications on this issue, including inquiries from hunters, Canadian outfitters and taxidermists, and the media. The Service attempted to inform all potential applicants that a decision on the listing was imminent and that, if the species was listed, further imports would be prohibited. During the 2008 Convention of Safari Club International, the Service also provided information at the Convention regarding the impacts of a potential listing on the importation of sport-hunted polar bear trophies.

Under the MMPA, the process for reviewing applications for the issuance of import permits requires publication of a notice of receipt of an application in the *Federal Register* and allowance of a 30-day public comment period. In addition, once a U.S. import permit is issued, the Canadian Management Authority must issue a *CITES* export permit. Given that the permitting process can take between 50 and 90 days, the Service attempted to provide as much information as possible to potential hunters, as quickly as possible. The Service also worked closely with the Canadian *CITES* Management Authority to ensure permittees had accurate information about obtaining the required Canadian *CITES* export permit.

On May 5, 2008, the Service attempted to contact those individuals who had already been issued a permit to import a trophy, but had not already done so, to inform them of a court decision and

the potential that an ESA listing might go into effect on or before May 15. Permittees were informed that trophies must be imported before the listing's effective date.

#### Status of Pending Polar Bear Trophy Import Permit Applications

On the day the polar bear was listed under the ESA, the Service had 44 permit applications pending for which a final decision had not been made on whether or not to issue a permit.

Notice of many of these applications had already been published in the *Federal Register*, but the required 30-day comment period was still open or just recently closed. Other applications had only recently been received and the notice had not yet been published in the *Federal Register*. In addition to these individuals, it is possible that other U.S. hunters had taken bears from an approved population prior to the listing date, but had not yet applied to the Service for the required import permits; in the absence of applications for them, the Service cannot state how many additional bears were taken by U.S. hunters prior to the effective date of the ESA listing. With the exception of one permit application that qualified for import under the grandfather clause, all applications that were received prior to the listing of the polar bear under the ESA were for bears taken from populations that had previously been approved for importation.

The Department recognizes that there were a number of hunters who both applied for permits and successfully completed their polar bear hunts prior to the May 15, 2008 listing. We also recognize that, by court order, the Service's final decision to list the polar bear under the ESA went into effect immediately, whereas such decisions normally take effect 30 days after the publication date of the final listing decision. The ESA listing triggered an immediate change in the status of the polar bear under the MMPA such that polar bear trophies could no longer be

imported into the United States. If the ESA listing had taken effect 30 days after the publication date, as is normally the case, some of these hunters may have had the opportunity to import their trophies before the listing took effect.

The Administration does not oppose legislation allowing those hunters who both applied for a permit and completed their legal hunt of a polar bear from an approved population prior to the ESA listing to import their polar bear trophies, provided that the hunter is required to submit proof that the bear was legally harvested in Canada from an approved population prior to the effective date of the ESA listing. The Department does not support any broader changes to the MMPA that would allow additional sport-hunted polar bear trophies to be imported beyond those where hunters submitted their import permit application and completed their hunt prior to the ESA listing. Therefore, the Department does not support H.R. 991 as currently written because it would allow the import of polar bear trophies regardless of whether the hunter had applied for the permit prior to the ESA listing.

### **H.R. 1160**

H.R. 1160 directs the Secretary of the Interior to convey the McKinney Lake National Fish Hatchery to the state of North Carolina to be used by the North Carolina Wildlife Resources Commission as a component of the fish and wildlife management program of the state. The legislation also requires the state to allow the Service to use such property for the propagation of any critically important aquatic resource held in public trust to address the specific restoration or recovery needs of such resource.

### The National Fish Hatchery System

The Service's Fisheries Program has played a vital role in conserving America's fishery resources for 140 years, and today is a key partner and an essential component with States, Tribes, Federal agencies, other Service programs, and private interests in a larger effort to conserve fish and aquatic resources and their habitats. The National Fish Hatchery System consists of 71 National Fish Hatcheries, 9 Fish Health Centers, 7 Fish Technology Centers, one Historic National Fish Hatchery, and the Aquatic Animal Drug Approval Partnership Program. It is comprised of nearly 16,000 acres of lands and waters, of which 4,000 are administered through agreements, easements and/or leases. The National Fish Hatchery System has land holdings in 34 states that are widely dispersed geographically.

As the Nation's only Fish Hatchery System, these facilities and their highly-trained personnel provide a network unique in national conservation efforts because of the suite of capabilities available. These include propagation of healthy and genetically-appropriate aquatic animals and plants to help recover and re-establish wild populations; and scientific leadership in development of aquaculture, conservation genetics, fish nutrition, and disease diagnostic technologies. Working closely with State, Tribal, and nongovernmental organizations, the Program provides substantive educational and recreational opportunities to citizens of all ages, as well as substantial economic benefits for local communities.

### McKinney Lake National Fish Hatchery

The McKinney Lake National Fish Hatchery was established on December 27, 1937, and is located in Hoffman, North Carolina, between Southern Pines and Rockingham. This 422-acre

site includes an estimated 100 acres for the warm water fish hatchery facility. The remaining acreage consists primarily of forested watershed including the 70-acre McKinney Lake, which serves as the water supply reservoir for the hatchery. The property also includes six buildings, three residences, and 23 earthen ponds.

The original purpose of the hatchery was to produce largemouth bass, channel catfish, and sunfish, to support the Service's farm pond distribution program. This program was aimed at providing native fingerling fish species to people who requested assistance with private ponds. The Service eventually transferred the farm pond distribution program to state agencies and, as a result, the McKinney Lake hatchery began to raise other species, including striped bass, to restore populations along the Atlantic Coast. Within a relatively short period of time, these efforts were quite successful.

In 1996, the Service offered the McKinney Lake facility to North Carolina. Since that time, the North Carolina Wildlife Resources Commission has operated the hatchery under a Memorandum of Understanding with the Service, primarily for the purpose of raising catchable size channel catfish for the Commission's Community Fishing Program. Under this agreement, the Commission assumes full responsibility for all costs and expenses related to operation of hatchery facilities.

The hatchery is an important part of the local community and through its work connects people to the outdoors in important ways. Each spring, the hatchery grows fingerling-sized channel catfish three to four inches in length to a harvestable size of 8 to 12 inches for the Commission's



Community Fishing Program. In April, the fish are collected and stocked into more than 40 community water bodies across the state, including Richmond County. The Community Fishing Program promotes family-oriented recreational activities in urban areas. Many sites feature a handicap-accessible fishing pier and solar-powered fish feeders to make fishing more enjoyable for all anglers. This program provides an opportunity for people of all ages to get outdoors and gain a greater connection with nature.

The Department supports H.R. 1160 and the conveyance of the McKinney Lake National Fish Hatchery and its operations to the North Carolina Wildlife Resources Commission (which already manages this property under a Memorandum of Understanding with the Department) for the purposes of fish and wildlife management. This would allow for the continued operation of the hatchery and the important role it plays in the State's urban fishing program and in addressing the specific restoration or recovery needs of aquatic resources held in public trust. It is our understanding that the State of North Carolina supports the proposed conveyance.

Accordingly, we recommend that the bill be revised to make clear that the conveyance is subject to the State agreeing to receive the property (this revision would also avoid potential constitutional concerns). This could be accomplished by adding "and subject to the State's agreement" after "without reimbursement" in section 2(b) of the bill.

### **H.R. 1670**

H.R. 1670 would add state-owned lands supporting Army National Guard facilities to the requirements of Integrated Natural Resource Management Plans (INRMPs) under the Sikes Act.

The Service appreciates Congresswoman Bordallo's efforts to amend the Sikes Act in this way, and the Subcommittee's hearing on H.R. 1670.

The Service, the states, and Department of Defense (DOD) have long recognized the importance and value of working cooperatively to conserve fish and wildlife resources on military lands.

Military lands provide valuable habitat for fish and wildlife, as well as significant opportunities for hunting, fishing and other wildlife-associated recreation. The Sikes Act, and its amendments, have fostered an effective framework for our partnership with DOD and the states. Through this partnership, we have been able to increase our abilities to conserve fish and wildlife resources found on military installations, while also supporting the national defense and other missions of lands managed by the DOD.

The Department of Defense manages approximately 30 million acres of land on about 400 military installations in the United States. Military lands contain rare and unique plant and animal species and native habitats such as old-growth forests, tall-grass prairies, and vernal pool wetlands. Over 400 threatened and endangered species live on DOD-managed lands. Public access to many of these sites is limited due to security and safety concerns; thus they are sheltered from disturbance and development. These lands and the species they support are an essential component of our Nation's biodiversity, and the development, implementation, and improvement of INRMPs supports the long-term health of the habitats supported on military installations.

The Service is proud of its on-going partnership with DOD and the states to conserve fish and

wildlife resources on military installations. The Service looks forward to continued participation and cooperation with the DOD and state fish and wildlife agencies through the Sikes Act.

On May 25, 2010, during the 111<sup>th</sup> Congress, the Department testified on H.R. 5284, a bill similar to H.R. 1670. We refer the Subcommittee to that testimony for a description of the history of the Sikes Act and the Service's roles and responsibilities under the law. In that testimony we supported the provision in H.R. 5284 to add state-owned lands supporting Army National Guard facilities to the requirements of INRMPs under the Sikes Act. H.R. 1670 is comprised solely of that provision, which the Service believes is a valuable amendment for improved Sikes Act coverage of State-owned facilities used in national defense. Accordingly, the Department supports H.R. 1670.

### **H.R. 670**

H.R. 670 would convey certain submerged lands to the Commonwealth of the Northern Mariana Islands in order to give that territory the same benefits in its submerged lands as Guam, the Virgin Islands, and American Samoa have in their submerged lands. The Department of the Interior has submitted a Statement for the Record on this legislation.

### **CONCLUSION**

Thank you for the opportunity to testify this morning. I am happy to answer any questions the Subcommittee may have and look forward to working with the Subcommittee members as you consider these bills.