



## **THE HUMANE SOCIETY OF THE UNITED STATES**

### **Hearing on H.R. 1054, a Bill to Amend the Marine Mammal Protection Act of 1972 to Allow Importation of Certain Polar Bear Trophies Taken in Sport Hunts in Canada**

#### **U.S. House of Representatives Subcommittee on Insular Affairs, Oceans and Wildlife**

#### **Testimony of Michael Markarian Chief Operating Officer The Humane Society of the United States**

**September 22, 2009**

I am Michael Markarian, chief operating officer of The Humane Society of the United States, and I want to thank you, Chairwoman Bordallo, and members of the Subcommittee for the opportunity to testify in opposition to H.R. 1054, a bill to amend the Marine Mammal Protection Act of 1972 to allow importation of certain polar bear trophies taken in sport hunts in Canada. On behalf of The HSUS, the nation's largest animal protection organization, and our more than 11 million supporters, we strongly oppose this legislation, which would roll back polar bear conservation efforts and set a dangerous precedent for gutting the protections provided under the Marine Mammal Protection Act and the Endangered Species Act.

#### **Overview of the Threats to Polar Bears**

The polar bear has been protected in the U.S. since 1972, when the Marine Mammal Protection Act (MMPA) was passed, which prohibited the killing of and trade in all marine mammals, including the hunting or importation of sport-hunted polar bears. Unfortunately, in 1994 the trophy hunting lobby tore a loophole in the MMPA, allowing more than 900 sport-hunted polar bear trophies to be imported into the U.S. from Canada since 1997.

In May 2008, the polar bear was listed as "threatened" under the Endangered Species Act (ESA) and from that point on the MMPA prohibited all importation of sport-hunted polar bears into the U.S., as polar bears are now considered "depleted" under that statute. These bears are under serious threat from global climate change and should not be forced to contend with systematic pressure from trophy hunters to roll back long-sought protections.

#### ***Melting Sea Ice***

A decline in polar bear numbers in recent years has been linked to the retreat of sea ice—a critical hunting ground for polar bears—and its formation later in the year. Warming temperatures also break up sea ice earlier, and this trend is expected to continue. The Arctic

Climate Impact Assessment reported in 2004 that the covering of summer ice in the Arctic has shrunk by 15 to 20 percent in the past 30 years and that decline is expected to accelerate. Further predicted reductions of 10 to 15 percent of annual sea ice and 50 to 100 percent of summer sea ice in the next 50 to 100 years present a considerable threat to the species.

Melting ice has forced bears to swim longer distances to obtain food, which may exhaust them, leading to drowning, and it has resulted in a decreased prey base. Polar bears have been forced ashore before they have had time to build up sufficient fat stores, resulting in thinner, stressed bears, decreased reproductive rates, and lower juvenile survival rates.

Some scientists believe that in five years the Arctic may be ice free during the summer.

### ***Pollutants***

The Arctic is also considered a “sink” for environmental contaminants, including heavy metals and organochlorines, which are carried northward in rivers, oceans and air currents. These toxins are accumulated at higher levels along the food chain and researchers have found high levels of pollutants in polar bears, which can severely compromise the animals’ health and reproductive capacity. The lead author of a study recently published in the *Journal of Zoology*, which details the problem of polar bears becoming smaller due to these environmental threats, stated that polar bear is “one of the most contaminated individuals in the world.”

### ***Starvation and Cannibalism***

There are increasing reports of starving polar bears in the Arctic attacking and feeding on one another. In 2006, a new study by American and Canadian scientists reviewed three examples of polar bears preying on each other. One incident was documented in 2004 in Alaska, in which a male polar bear broke into the den of a female polar bear and killed her shortly after she gave birth. During 24 years of research in northern Alaska’s southern Beaufort Sea region and 34 years in northwest Canada, the researchers had never before seen incidents of polar bears stalking, killing and eating other polar bears. One of the researchers stated, “It’s very important new information. It shows in a really graphic way how severe the problem of global warming is for polar bears.”

### ***Population Declines***

The over-hunting of adult polar bears can cause a catastrophic crash in their population. Well over half of the polar bear populations are either of unknown, severely reduced, or declining status. The International Union for Conservation of Nature (IUCN) Red List of Threatened Species cites “a potential risk of over-harvest due to increased quotas, excessive quotas or no quotas in Canada and Greenland and poaching in Russia.” According to the results of a 2009 meeting of the Polar Bear Specialist Group, part of the IUCN, of the 19 discrete polar bear populations worldwide, only one, in the Canadian high Arctic, is increasing, while eight are declining. Three populations appeared to be stable, while seven are too poorly monitored to know their status. The previous meeting in 2005 concluded that only five populations were in decline at that time.

According to the U.S. Geological Survey, the world’s population of 20,000 to 25,000 polar bears will decline sharply as their habitat continues to shrink. As their habitat melts, polar bears will

struggle, lead shorter lives, produce fewer or no offspring, and the survival rate of their offspring will be reduced. Steven Amstrup of the USGS stated, “Our results have demonstrated that as the sea ice goes, so goes the polar bear.” He stated that polar bears in their southern range will die off first as sea ice melts, as they are forced to come ashore earlier in the year, facing food shortages before they have stored enough fat to last through the season.

### **Hunters Were Well Aware of the Risks to Trophy Imports**

The trophy hunters who claim they were harmed by the threatened listing had sufficient warning that the polar bear might be listed and that their trophy import applications might be denied. The U.S. Fish and Wildlife Service (USFWS) proposed to list the polar bear in January 2007, triggering an ESA requirement that the USFWS finalize the listing by January 2008—and the entire process was highly publicized. The actual listing did not occur until months later, in May 2008.

In fact, most if not all of the 41 polar bear trophies that would be affected by H.R. 1054 were shot in bad faith, since the dates of the sport hunts occurred in late 2007 or early 2008—after the agency and hunting groups provided ample warning that trophy imports might soon be barred.

### ***Case Pending in Federal Court***

This very issue of whether to allow sport-hunted polar bear trophy imports has been raised and is now being considered by a federal court. In 2008, as part of the litigation over USFWS’s listing decision, several hunting groups asked a federal court to order the USFWS to allow the importation of trophies of bears killed prior to the ESA listing. Judge Wilken of the Northern District of California denied the request on procedural grounds. Judge Wilken specifically noted that hunters had fair warning of the impending ESA listing and “assumed the risk...they would be unable to import their trophies” by continuing with their hunts. The same issue is now before the D.C. District Court.

The USFWS, under the Bush Administration, argued strongly in court against requiring the agency to allow polar bear imports. The government responded to the hunters’ request by noting that allowing importation would severely undermine current MMPA provisions. The MMPA specifically prohibits the importation of any “depleted” animal, regardless of when the animal was taken.

The government’s brief in the case noted, “As a result of the polar bear’s depleted status under the MMPA, no importation of polar bear trophies from Canada is permitted....The Court should decline to order Defendants to grant special permission for the import of polar bear trophies...”

The agency added, “Therefore, when [the USFWS] issued the final rule listing the polar bear as threatened under the ESA with an immediate effective date, the polar bear automatically gained depleted status under the MMPA as of May 15, 2008. Because the polar bear now has depleted status under the MMPA, the statute specifically precludes importation of polar bears or polar bear parts except for scientific research purposes, photography for educational or commercial purposes, or enhancing the survival or recovery of the species. See *id.* § 1371(a)(3)(B). Importation of sport-hunted trophies under Section 1374(c)(5) is not included in the list of allowable exceptions.”

The USFWS also noted that allowing the importation of sport-hunted polar bear trophies from Canada “would be inappropriate” because the agency would have to go back and process applications for some pre-listing trophies, which “would be burdensome for [the agency], and confusing for the regulated community.” Further, the USFWS explained that, in order to allow importation, the agency would have to withdraw and amend the listing rule, which “would be inequitable” given the substantial time and resources the agency spent finalizing the rule. If H.R. 1054 is enacted, the USFWS may indeed need to amend the listing rule to clarify the status of polar bear trophies killed prior to listing, requiring yet more agency resources.

### ***Repeated Warnings by Hunting Groups***

Even the largest hunting organizations warned their members repeatedly, ensuring that trophy hunters who shot polar bears prior to their listing under the ESA were given more than sufficient notice about the impending listing. Conservation Force, a group leading the campaign to allow the importation of additional sport-hunted polar bear trophies into the U.S., repeatedly issued stern, unambiguous warnings to its members. In the group’s December 2007 newsletter, which was e-mailed to members in November, nearly six months before the species was listed, it stated:

“American hunters are asking us whether they should even look at polar bear hunts in light of the current effort by the U.S. Fish & Wildlife Service to list this species as threatened. The listing, you’ll recall, will trigger provisions in the Marine Mammal Protection Act banning all polar bear trophy imports to the US,” and that even though it was unclear what the final outcome would be, “[t]he bottom line is, no American hunter should be putting hard, non-returnable money down on a polar bear hunt at this point. Also, Americans with polar bear trophies still in Canada need to get them home soon or risk losing them...the threat to polar bear hunting is real and imminent.”<sup>i</sup>

In Conservation Force’s newsletter the following month, members were adamantly warned: “It may be the end of the world as we know it” and “the end of the modern world in which we live.”<sup>ii</sup> Members were also warned that “we feel compelled to tell you that American trophy hunters are likely to be barred from importing bears they take this season. Moreover, there is a chance that bears taken previous to this season may be barred as well. American clients with polar bear trophies still in Canada or Nunavut need to get those bears home.”<sup>iii</sup>

In March, Conservation Force warned its members: “Make no mistake—there is still a real possibility the polar bear is going to be listed.”<sup>iv</sup>

In April, Conservation Force told its members, “Many hunters have forgone their hunts rather than risk that the bear may be listed and trophy imports will probably be prohibited to all hunters who don’t have a permit in hand before the effective date of the final listing rule.”<sup>v</sup> In a bulletin titled “Grim News For Polar Bear Hunters,” Conservation Force stated that “[t]he bottom line here is, the service is widely expected to list some or all of the polar bear populations as threatened next month, and that will stop all imports of those listed immediately.” After Conservation Force personally called the USFWS, it was confirmed that “No already-permitted bears would be allowed into the US after May 15. End of story. As for unpermitted bears, the news was even more bleak. At this point, there was no time to even get a permit.”<sup>vi</sup>

Safari Club International members were informed about the potential listing in no less than eight different newsletters sent from the organization,<sup>vii viii ix x xi xii xiii</sup> including one that stated, “If some or all of the polar bear populations are listed, the FWS has indicated that imports of

trophies from any listed populations would be barred as of that date, regardless of where in the process the application is.”<sup>xiv</sup> The U.S. Sportsmen’s Alliance also informed its members in at least one of its newsletters.<sup>xv</sup>

After being given more than a year of notice from the USFWS and warnings from various hunting organizations, some chose to either book a hunt in the few months prior to the listing, or chose to wait to submit an application to import their trophies even after the species was listed. These individuals did so at their own risk.

In fact, the number of polar bear trophies imported into the U.S. rose dramatically in advance of the listing—to 112 trophies in 2007, more than doubling the previous year’s number of 52 imports. The hunting groups were urging people to get their polar bears before the listing took effect, and that’s clearly what most hunters did. These last few bears killed simply represent poor planning on the part of a few hunters who didn’t listen, when most of their counterparts knew what was coming and rushed in to get their bears. It’s a self-inflicted problem, and now they’re crying over spilt milk.

### **H.R. 1054 Would Harm Polar Bear Conservation Efforts**

H.R. 1054 is essentially an attempt by trophy hunters to repeat history and amend the MMPA to allow the importation of sport-hunted polar bear trophies, as they did 15 years ago. The original Act of 1972 barred the importation of all marine mammal parts, including polar bears—the same law that prohibits American citizens from bringing whale meat back from Japan or seal fur back from Canada. But the trophy hunters and their congressional allies successfully punched a gaping loophole through the law in 1994, and opened the door to polar bear heads and hides.

And they made the same arguments back then that they’re making now. Law-abiding hunters shot their polar bears legally in Canada, they said, and the trophies were just sitting in storage, so it wouldn’t hurt just to let them transport those already-dead bears across the border. The problem was that this policy change opened the floodgates to more and more American trophy hunters trekking north to get the prized bear—many of them competing for the Safari Club’s “Bears of the World” award—and in that decade and a half, more than 900 polar bear trophies were imported from Canada.

Now that the polar bear has been listed as a threatened species, the ban on imports has been restored. But trophy hunters are making the same tired argument that they made in 1994. H.R. 1054 is being cast as a private relief measure to help 41 hunters bring in their personal trophies, but in reality the legislation would roll back a federal policy and provide even more incentive for American trophy hunters to accelerate the killing of species with pending ESA listing decisions and, when import of the trophies are barred, make the same personal appeal to Congress over and over again.

### ***Importing Trophies is Inconsistent with Conservation***

Further, although the MMPA generally prohibits the importation of depleted species, the law provides specific procedures for importing these animals. A depleted species may be imported if the importation is likely to “enhance” the species’ survival by “contribut[ing] significantly to...increasing distribution” of animals. Congress crafted this narrow exception to ensure that

only importations that actually benefit species are permitted. If trophy hunters are allowed to circumvent this process, Congress's carefully limited exceptions are rendered meaningless.

The U.S. does not allow sport hunting of polar bears in Alaska, and only Alaskan natives are allowed to hunt these bears for subsistence. American trophy hunters cannot legally shoot polar bears at home, and should not be encouraged to add to the mortality of polar bears in other countries. Only a few dozen Americans participate in the trophy hunting of Canadian polar bears. The millions of sportsmen and gun owners in the U.S. are not impacted by this issue.

The MMPA had barred the import of sport-hunted polar bear trophies between 1972 and 1994, and that ban has now been restored. The MMPA does not allow trophy imports of walruses, whales, or other marine mammals. It would be inconsistent with American conservation law to allow the importation of polar bear trophies.

Additionally, trophy hunting is harmful to the survival of polar bears. Polar bears rely on high adult survivorship to maintain populations. Sport hunters target the largest and most fit animals and are not always able to distinguish females from males in the field. These animals may be critical to ensuring the survival of polar bear populations under stress from climate change and habitat degradation. Before the passage of the MMPA, sport hunting was identified as the primary or sole cause of polar bear population declines in places such as Alaska. Once sport hunting was prohibited in the U.S., some populations began to recover.

Commercial hunting is an incentive for higher polar bear mortality. An American trophy hunter pays about \$35,000 for a polar bear hunt in Nunavut. Because the sport hunts are highly lucrative, Canadian wildlife managers may feel pressure to increase quotas beyond sustainable levels. In 2005, Nunavut increased hunting quotas by 29%, despite concerns expressed by polar bear researchers that the increase in take could be harmful to the populations.

Finally, there is no evidence that money charged for polar bear hunting permits is essential to local communities or wildlife conservation. An August 2005 article in the *Nunatsiaq News*, a Nunavut newspaper, concluded that "most of the [financial benefits from sport hunts] never reach Inuit hands, and when they do, those earnings vary substantially from community to community." Even if a portion of the money went to polar bear conservation, it is still unsustainable for sport hunters to kill a species that is threatened by climate change and vanishing habitat. Saving these bears will not come from money derived from killing them, but from eliminating the financial incentives to increase the quotas and from protecting their habitat.

And even if the 41 sport-hunted polar bear trophies affected by H.R. 1054 somehow aided polar bear conservation efforts, which is unlikely, there would be no *additional* conservation value by allowing their importation. Denying these imports would not lead to a refund for hunters, who knew the financial risks they were taking when they paid to shoot the bears.

### ***CITES Protection***

The USFWS is considering submitting a proposal to protect polar bears from international trade at next year's meeting of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The proposal would transfer the polar bear from CITES Appendix II, which allows regulated international commercial trade, to Appendix I,

which prohibits all international commercial trade in the listed species. The purpose of CITES is to prevent over-exploitation of species through international trade.

The Appendix I designation would mean that countries agree to prohibit international trade for primarily commercial purposes and thus ensure that international trade will not contribute to the ongoing decrease in polar bear numbers. The announcement that the USFWS is seriously considering submitting this proposal illustrates the fact that the polar bear is seriously threatened with extinction and affected by international trade, and that recent protections granted under the ESA should not be stripped away.

The USFWS should be praised for listing this important and imperiled species under the ESA. Now that the agency is considering a proposal to move polar bears from Appendix II to Appendix I of CITES, it's time to give polar bears greater protection, not less.

## **Conclusion**

In summary, the passage of H.R. 1054 would reward a few dozen individuals who gambled at their own risk, and attempted to game the system knowing that the door would soon be closed to polar bear trophy imports, as it was previously for more than two decades. The ESA and MMPA protections should not be subverted simply to pacify a handful of trophy hunters who, with full knowledge that the species would likely be listed because of serious threats to its survival, chose to ignore all warnings from the U.S. government, animal protection organizations and hunting groups, and pursue a bearskin rug for their trophy room. It's a self-inflicted problem, yet they are asking Congress for a government bail-out.

We shouldn't allow the importation of threatened or endangered species trophies just because they're stockpiled in a warehouse and the animals have already been killed. Whether its elephant ivory or polar bear pelts, each time we allow trade in these protected species, we resuscitate the market for these items, increase the incentive for poaching and sport hunting, and make it harder for law enforcement to crack down on trafficking in wildlife contraband. Thus, even if these 41 trophies in question don't harm polar bear populations since the animals are already dead, the cumulative impacts of shooting more and more bears, putting the trophies in storage, and continuing to ask Congress to allow imports over and over again, are severe and set a dangerous precedent.

Congress should resist the temptation to interfere with the ongoing legal cases the trophy hunters themselves chose to initiate, and should reject this same pattern of behavior that was used to amend the MMPA in 1994 and allow the commercial killing of hundreds of polar bears for trophies. Allowing imports, driven by personal stories, has always been the tack of the trophy hunting groups and it's precisely what has allowed all of this killing by Americans to occur. Congress should send a strong message that this behavior will not be tolerated and that imperiled species deserve protection. In order for the MMPA protections and ESA listings to have meaning, we strongly urge the Subcommittee to reject H.R. 1054.

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<sup>i</sup> Conservation Force. "The Hunting Report" Newsletter. December 2007. Volume 27, Number 12. Page 9.

<sup>ii</sup> Conservation Force. "The Hunting Report" Bulletin. January 2008. Volume 28, Number 1. Page 2.

<sup>iii</sup> Conservation Force. "The Hunting Report" Extra Bulletin. January 9, 2008.

<sup>iv</sup> Conservation Force. "The Hunting Report" Extra Bulletin. March 6, 2008.

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- <sup>v</sup> Conservation Force. "The Hunting Report" Bulletin. April 2008. Volume 28, Number 4. Page 1.
- <sup>vi</sup> Conservation Force. "The Hunting Report" Extra Bulletin. April 29, 2008.
- <sup>vii</sup> Safari Club International. "SCI Action Alert" E-mail. September 21, 2007.
- <sup>viii</sup> Safari Club International. "In the Crosshairs" E-mail bulletin. October 4, 2007.
- <sup>ix</sup> Safari Club International. "In the Crosshairs" E-mail bulletin. October 19, 2007.
- <sup>x</sup> Safari Club International. "In the Crosshairs" E-mail bulletin. October 23, 2007.
- <sup>xi</sup> Safari Club International. "In the Crosshairs" E-mail bulletin. January 7, 2008.
- <sup>xii</sup> Safari Club International. "In the Crosshairs" E-mail bulletin. February 22, 2008.
- <sup>xiii</sup> Safari Club International. "In the Crosshairs" E-mail bulletin. April 17, 2008.
- <sup>xiv</sup> Safari Club International. "In the Crosshairs" E-mail bulletin. April 29, 2008.
- <sup>xv</sup> U.S. Sportsmen's Alliance. "On Target" e-mail newsletter. October 31, 2007.