

Committee on Resources

Witness Testimony

**TESTIMONY OF MARSHALL P. JONES, ASSISTANT DIRECTOR FOR INTERNATIONAL AFFAIRS
UNITED STATES FISH AND WILDLIFE SERVICE
BEFORE THE HOUSE RESOURCES COMMITTEE
REGARDING HOUSE JOINT RESOLUTION 59**

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 Service'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.

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