

TESTIMONY OF MARSHALL JONES,
DEPUTY DIRECTOR, U.S. FISH AND WILDLIFE SERVICE,
BEFORE THE HOUSE RESOURCES SUBCOMMITTEE ON FISHERIES CONSERVATION,
WILDLIFE AND OCEANS HEARING ON H.R. 4781,
THE NEED TO AMEND THE MARINE MAMMAL PROTECTION ACT, AND THE STATUS OF
THE U.S.-RUSSIA POLAR BEAR AGREEMENT.

June 13, 2002

Mr. Chairman and Members of the Subcommittee, I thank you for the opportunity to provide the testimony of the Department of the Interior on the Marine Mammal Protection Act (MMPA or Act) of 1972 and on H.R. 4781, the Marine Mammal Protection Act Amendments of 2002. I am Marshall Jones, Deputy Director of the U.S. Fish and Wildlife Service (Service). 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 Fish and Wildlife Service, protects and manages polar bears, sea and marine otters, walruses, three species of manatees, and dugong.

Mr. Chairman, we commend you for your leadership in crafting and introducing a bill to reauthorize the MMPA. The Administration strongly supports reauthorizing the Act, and looks forward to working with the Subcommittee in this effort. The Administration is currently carrying out its final review of its legislative proposal to reauthorize the Act. This proposal will have provisions relating to some of the areas addressed by H.R. 4781, as well as additional provisions that we believe will benefit the conservation of marine mammals. We expect the Administration proposal to be submitted soon to the Congress for its consideration. The proposal reflects the diligent and coordinated work of the Service, the National Marine Fisheries Service (NMFS), the Marine Mammal Commission, the Navy, Alaska Natives, and others, to identify areas of the Act that might benefit from well-considered changes.

My testimony will provide comments on H.R. 4781, discuss some of the areas of the MMPA that the Administration believes can benefit from amendments, and will provide an update on the status of the U.S.-Russia Bilateral Agreement for the management of the shared Alaska-Chukotka polar bear population.

H.R. 4781, the Marine Mammal Protection Act Amendments of 2002

Again, we commend you Mr. Chairman, for introducing a bill to reauthorize the MMPA. My testimony will be limited to provisions which relate to the Department of the Interior, and I will defer to the Department of Commerce to present the Administration's views on other provisions.

Section 4: Limited Authority to Export Native Handicrafts

One of the 1994 amendments to the MMPA added a prohibition on exporting marine mammals to Section 102. At that time, certain provisions of Section 104 of the Act, which authorizes the issuance of permits for various activities, were amended to reflect the new prohibition on exports. However, other appropriate corresponding changes to ensure consistency and clarity through the Act were inadvertently not made. This has resulted in confusion for the regulated public. However, without concurrent amendment to Section

101(b), the export of a product legally obtained and possessed by a non-Native would appear to be prohibited under this section. We believe these additional inconsistencies should be corrected as well.

Section 11: Extension

As a general rule the Department is opposed to legislative exemptions to allow imports of sport-hunted trophies outside of established guidelines. However, in this case, the Department supports H.R. 4781's proposed amendment to extend the time-frame for such imports as established in the 1997 amendments. This would allow for import of polar bear trophies legally taken during the time period following the 1994 amendments until the implementing regulations were published in February 18, 1997.

We understand that 60-70 polar bears from currently deferred populations were taken by hunters during this period based, largely, on expectations that may have resulted from confusion caused by the Service's proposed regulations that would have allowed these imports if the regulations had been finalized as proposed. It was determined during the public comment period on the proposed regulations, however, that such imports may exceed the scope of the 1994 amendments. As a result, the Service's final rule excluded import of any polar bear trophy until such a time as the Service had approved the population from which it was taken for import. In 1997, Congress amended the MMPA to specifically allow the import of legally harvested trophies from any population prior to the passage of the 1994 amendments (April 30, 1994).

Under the current regulations, all legally acquired trophies, regardless of the date taken, may be imported from approved populations. However, the approval of a number of populations has been deferred pending receipt of additional information on the management programs and scientific data for these populations. The trophies in question were taken from these deferred populations after April 30, 1994, and before February 18, 1997, during which time the regulations as proposed would have allowed for their import. In light of this, the Department supports extending the time frame to allow these imports.

We note, however, that under H.R. 4781, imports of polar bear trophies taken since February 18, 1997, would continue to be allowed only from approved populations. U.S. trophy hunters should only take bears from those populations which have been found to be sustainable. The February 18, 1997, final regulations establish clear importing requirements for imports of trophies. Trophies taken after that date can only be imported in compliance with those regulations. H.R. 4781 would not change this fact.

Section 12: Polar Bear Permits

The Department supports the proposed amendment to Section 104 which would remove the requirement to publish two notices in the **Federal Register** for each permit application to import trophies of "grandfathered" polar bear trophies or trophies sport-hunted from approved populations. From 1997 to 2002, we processed more than 481 applications for polar bear trophy import permits, and received no comments in response to the **Federal Register** notices. The proposed amendment would streamline the permitting process and reduce the administrative expense of publishing notices. The public would still be given the opportunity to comment on findings to approve new Canadian polar bear populations for import, and would continue to have access, on a semiannual basis, to current information on permits.

The Service notes, however, that there is one other subsection in the current law that requires amendment so that all subsections of the MMPA reflect the proposed change. To fully accomplish this change, the phrase "expeditiously after the expiration of the applicable 30 day period under subsection (d)(2)," should be deleted from the first sentence of Subsection 104(c)(5)(D).

Additional comments regarding Section 119 of the MMPA

In previous testimony before this Subcommittee, we presented information on the value and benefits of Section 119, which authorizes the Secretaries of the Interior and Commerce to enter into cooperative agreements with Alaska Native Organizations to conserve marine mammals taken for subsistence and handicraft purposes. The Service currently has three cooperative agreements in place: (1) for sea otters, with the Alaska Sea Otter and Steller Sea Lion Commission; (2) for polar bears, with the Alaska Nanuuq Commission; and (3) for Pacific walruses, with the Eskimo Walrus Commission.

These agreements have been in place since 1997 and provide a contractual framework for accomplishing specific activities, which are detailed through "scopes-of-work" attached to the cooperative agreement. A basic benefit of these agreements and the resources they provide is improved communication, not only between the Commissions and ourselves, but also among the Commission members and hunters. This communication is crucial; marine mammals are a vitally important cultural and subsistence resource for Alaska Natives, and are visible indicators of changes in the marine environment. Given the size and remoteness of the marine systems in Alaska, monitoring the health and status of marine mammal populations is a highly challenging endeavor. Alaska Natives, as subsistence users, are often first to note changes in marine mammals that are important to assessing conditions in the marine environment. Section 119 recognizes these connections, and allows their potential benefits to be realized by providing a mechanism to access information available only to Alaska Natives.

We note that H.R. 4781 does not include specific authorizations for Section 119. Currently, the authorization language for that section provides for authorizations of \$1.5 million for the Department of Commerce and \$1 million for the Department of the Interior. It is important to include specifically identified authorizations for this section so that funding may be directed to support Cooperative Agreements with Alaska Natives. Including these authorizations sends a clear message to our Native constituents that we support such agreements and appreciate the accomplishments achieved to date through our existing cooperative agreements.

Pending Administration Proposals

The Administration is currently in the final stages of its review of a comprehensive MMPA reauthorization package. Because this bill is still under review, I cannot discuss its specific contents at this time, but I would like to present our thoughts on some general themes that the Service and other participating agencies have addressed throughout the course of developing this proposal. We look forward to working with the Committee on these issues in the future.

Proposed Harvest Management

We have testified twice before this Committee on the need to address subsistence harvest management issues. At the 2000 hearing, then-Chairman Young challenged those directly involved in marine mammal management in Alaska to develop a proposal supporting management of subsistence harvest by Alaska Natives. Of primary consideration in the need to address this are the limitations inherent in the current Section 119. Management strategies developed under the existing framework are limited, as they are strictly voluntary efforts carried out on a village-by-village basis, with further limitations related to the varying levels of compliance. Currently, the MMPA does not allow enforceable harvest management until a marine mammal stock becomes depleted; both the Department and our Alaska Native partners agree that sound management of marine mammal harvests must occur prior to depletion, in order to avoid depletion. A

further part of Chairman Young's challenge was to develop a proposal to be implemented at a local level. Since then, we have been working hard with our federal and non-federal partners to meet that challenge.

In October 2001, we described to the Subcommittee a proposal considered by this group that would provide a mechanism for Alaska Native Organizations to initiate the development of harvest management agreements containing management restrictions, related to subsistence harvest, that would be administered by either the tribal or federal signatories to the agreement. Under this proposal, violations of the terms of the agreement, or of tribal ordinances enacted pursuant to the agreement, would be violations of the Act. We look forward to working with the Subcommittee on this important issue.

Southern Sea Otter - Fishery Interaction Data

Pursuant to Section 118 of the Act, the Department is interested in gathering information on fishery interactions with southern sea otters in California. It is known that southern sea otters are incidentally taken in fishing operations. MMPA reauthorization could provide an opportunity to enhance efforts to assess the impact of commercial fisheries on this threatened sea otter population.

Research Grants

The Administration also continues to be interested in the potential for research grants as described in Section 110(a). For example, one change to this provision that might be considered is a clarification that research grants authorized under this provision may be targeted at plant or animal community-level problems.

Community-level, or ecosystem-based, research could prove especially important in light of the significant, but poorly understood, environmental changes occurring off Alaska in the Bering Sea and Chukchi Sea regions. These environmental changes, which include rapid and extensive sea ice retreat, extreme weather events, and diminished benthic productivity, could have widespread effects. There is a pressing need to monitor the health and stability of these marine communities, and to resolve uncertainties concerning the causes of population declines of marine mammals, sea birds, and other living resources of these communities. Because residents of these regions largely depend upon marine resources for their livelihoods, research on subsistence uses of such resources, and providing ways for the continuation of such uses, should be integral parts of the effort to study these communities.

Similarly, there is concern over possible widespread changes to the California coastal marine community. These changes may be adversely affecting prospects for recovery of the threatened southern sea otter population. This community would similarly benefit from a system-wide study.

Definition of Harassment

Finally, the participating agencies have been looking at ways that the definition of the term "harassment," found in Section 3(18)(A) of the Act, can be clarified. The definition, added to the Act as part of the 1994 amendments, is viewed by some as ambiguous and confusing. Many also believe that it could be amended to provide greater notice and predictability to the regulated community and to improve the ability of federal agencies to enforce the prohibition on harassment, while continuing to protect marine mammals in the wild. A new definition of harassment, developed by the participating agencies, is included in the draft legislative package currently under final review within the Administration.

Polar Bear Bilateral Agreement with Russia

As we reported during the October 2001 hearing before this committee, the United States and Russia signed a Bilateral Agreement on October 16, 2000, for the management of the Alaska-Chukotka polar bear population. Since that Agreement was signed, the Department has drafted implementing legislation for the agreement and remains committed to actively pursuing this Agreement with our Russian and Native partners. Significant steps remain, however, prior to active implementation. These steps include submission of the Agreement by the Administration to the Senate, consent to the Agreement by the Senate, and enactment of implementing legislation.

Timing on these steps is becoming increasingly important as our Russian partners, and our Native partners in both Alaska and Russia, are eager to activate the Agreement. Further delays may dampen the current support and enthusiasm of our partners. Additionally, the Agreement enjoys broad support within the Conservation community, which is also eager to see the Agreement implemented.

The benefits of the Agreement are significant, primarily to ensure long-term, science based conservation of the Alaska-Chukotka polar bear population. A particular concern addressed by the Agreement is the widely different harvest provisions and practices of the United States and Russia. Unknown (but potentially significant) levels of illegal harvest are occurring in Chukotka. While lawful harvest by Alaska Natives for subsistence purposes occurs in Alaska, as we previously discussed, United States law does not allow restrictions of this harvest unless a polar bear population becomes "depleted" under the MMPA. The Russian Federation will soon open a lawful polar bear hunting opportunity for the subsistence purposes of native Chukotkans. When this happens, there will be an immediate, pressing need for the coordination of harvest restrictions on both sides of the border to prevent an unsustainable combined harvest that could lead to the Alaska-Chukotka polar bear population becoming depleted under the MMPA and threatened or endangered under the Endangered Species Act. The Agreement will create a management framework to prevent this from happening.

Conclusion

Mr. Chairman, in closing I would like to again commend you for your leadership in introducing H.R. 4781. This Administration is committed to conserving and managing marine mammals by working with our partners in a cooperative fashion. In particular, I want to emphasize the commitment to continued collaboration with our Alaska Native partners to further enhance their role in the conservation and management of marine mammals. We believe that these changes will allow us to be more effective in addressing our responsibilities in marine mammal management, and we look forward to working with you and members of the Committee to enact meaningful improvements during this Congress.

Mr. Chairman, this concludes my remarks. I am happy to answer any questions that you might have.

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