

TESTIMONY OF ROWAN GOULD, DEPUTY DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES, SUBCOMMITTEE ON INSULAR AFFAIRS, OCEANS AND WILDLIFE, ON H.R. 1054

September 22, 2009

Introduction

Chairwoman Bordallo and Members of the Subcommittee, I am Rowan Gould, Deputy Director of the U.S. Fish and Wildlife Service (Service), within the U.S. Department of the Interior (Department). I appreciate the opportunity to appear before the Subcommittee today to testify on H.R. 1054, which would amend the Marine Mammal Protection Act (MMPA) of 1972 to allow importation into the United States of polar bear trophies taken in sport hunts in Canada before May 15, 2008, the effective date of listing the polar bear as a threatened species under the Endangered Species Act (ESA) of 1973.

Today my testimony will focus on the legal framework that has guided the Department and the Service regarding the importation of the polar bear under the MMPA and effects of the ESA listing. In addition, I will highlight the outreach that the Service conducted to inform hunters of the potential impact of an ESA listing on their ability to import sport hunted polar bear trophies.

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. 1054 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.

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.

Conclusion

In summary, prior to the listing of the polar bear under the ESA, the Service applied the provisions of the MMPA to allow the import of sport-hunted polar bear trophies legally harvested from approved populations in Canada. Following the ESA listing of the species, the Service has likewise adhered to the MMPA provisions thereby prohibiting additional imports of sport-hunted polar bear trophies from Canada.

Madame Chairwoman and Members of the Subcommittee, thank you for the opportunity to testify on H.R. 1054. We look forward to continuing to work with the Subcommittee on this issue. I would be happy to answer any questions.