

**The Humane Society of the United States**

# On Thin Ice: The Dangerous Impact of Allowing Polar Bear Trophy Imports

**The potential consequences of S. 3525 & H.R. 4089**

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## **Executive Summary**

- In January 2007, the U.S. Fish and Wildlife Service (FWS) issued a proposed rule to list the polar bear as a threatened species under the Endangered Species Act (ESA). On May 15, 2008 this rule took effect. Despite having more than a year's notice of the impending ban on polar bear trophy imports, a number of trophy hunters rushed to Canada to hunt polar bears and predictably failed to get their imports approved before the ESA listing was finalized. Now 41 trophy hunters are seeking an undeserved legislative bailout from Congress, which if allowed, will further imperil the threatened polar bear.
- Polar bears are found exclusively in the Arctic. Of the 19 populations left in the world, 13 of them are in Canada. Polar bears are a threatened species that face extraordinary pressures, including melting ice, overharvesting, and pollution. The International Union for Conservation of Nature (IUCN) listed the polar bear as "Vulnerable" based on a projected population reduction of more than 30 percent within three generations (45 years) due to a decrease in distribution and habitat quality.
- Allowing the importation of currently stored trophies, even if it is declared to be a one-time amnesty, will dramatically increase the incentive for U.S. hunters to collect and store more polar bear trophies and start lobbying their allies in Congress for the next "one-time" amnesty. It will also encourage hunters to accelerate the pace of killing any other species proposed for ESA-listing in the future, up to the day such listing becomes effective, because hunters would have every reason to believe that Congress will simply exempt them from the law at some future date and eventually allow them to import their trophies.
- Trophy hunting of polar bears offers no substantial economic or conservation benefits. Sport hunting does not contribute to economic development, but merely brings in a small amount of cash, most of it for commercial guides and outfitters, not for conservation efforts. Much of the revenue for many Inuit communities comes from Canada's government assistance, and the total amount spent on polar bear hunting tourism is only about 1% of the cash received through these assistance payments. Therefore, the magnitude of revenue from polar bear hunting is extremely small, and largely inflated by the rhetoric of polar bear trophy hunting advocates.
- Commercial hunting of polar bears does not create an economic incentive for local communities to better protect the species or ensure its long-term viability. If anything, it encourages Canadian wildlife agencies to increase quotas and allow more killing of these imperiled animals. The extra income for a local guide operation creates incentive to generate immediate personal income without regard to future income that is shared across the region. Only regional or national policies, not individual profits, are likely to provide protection for the polar bear. Furthermore, much of the income may not reach the impoverished communities. The Nunavut newspaper, *Nunatsiaq News*, concluded in 2005 that "most of the [financial benefits from sport hunts] never reach Inuit hands."
- These trophy hunters are not representative of the average American hunter. They are wealthy individuals who have \$30,000-\$50,000 to spend on a single hunt. Many of the 41 trophy hunters are collectors of exotic animals that they've shot around the world. Their motivation is often pure bragging rights, the ability to boast having the most or the largest trophies and enter them into record books, without regard for genuine conservation. The potentially harmful consequences facing polar bears if a bailout is granted greatly outweigh the selfish desire for a head or hide in a private showcase. The millions of rank-and-file sportsmen and sportswomen in the U.S. would never dream of killing a polar bear, and do not benefit from a bailout for 41 wealthy polar bear hunters.
- The polar bear is inherently unsuitable as a target for sport hunting. It is a naturally rare species that relies on high adult survival, has a low birth rate and high cub mortality, inhabits a marginal environment, and is extremely vulnerable to the effects of habitat degradation triggered by climate change and pollution. Trophy hunters preferentially select the largest adults, which genetically may be the individuals that are most needed to sustain population numbers.

## **1. The current status of the polar bear**

### **A. Natural History**

Polar bears are found exclusively in the Arctic, in Canada, Denmark (Greenland), Norway, the Russian Federation, and the U.S. (Figure 1). Female polar bears have been found to range annually over areas from 149,000 km<sup>2</sup> to 597,000 km<sup>2</sup> (Amstrup 2003; Amstrup et al. 2008). Females reach sexual maturity at age 4-5 years; males become sexually mature at 8-10 years. Breeding occurs from March to June and birth occurs in November-January (Stirling 2011). Cubs are born in snow dens excavated by pregnant females, located primarily along or near the coastline or on fast sea ice (Amstrup 2003). Mortality of cubs can exceed 70 percent. Females remain in maternal dens for 5-6 months, during which time they subsist on stored fat. Average litter size is less than two. Cubs are usually dependent on their mothers until they reach 2.5 years of age (Amstrup 2003). A low reproductive rate, high cub mortality, and a long generation time contribute to the low reproductive potential of the species (Amstrup and Durner 1995; Schliebe et al. 2006). The main prey of polar bears is ringed seals. Polar bears are dependent on sea ice because they use the ice as a platform from which to hunt seals (Amstrup 2003). As top predators, loss of polar bears would have significant consequences to their ecosystem (ACIA 2004; Polar Bears International 2009).

### **B. Population Trends**

The global population estimate for polar bears is 20,000-25,000, divided into 19 separate populations (Stirling and Derocher 2012), 13 of which are found wholly or partially in Canada (Table 1, Figure 1). However, data used to estimate the sizes of several of these populations are poor or non-existent (Stirling and Derocher 2012). Thus, the true current population estimate for the species is actually uncertain (Stirling and Derocher 2012).

Amstrup et al. (2008) predicted that approximately two-thirds of the world's polar bears will be lost by mid-century. The International Union for Conservation of Nature (IUCN) listed the polar bear as "Vulnerable" based on a projected population reduction of more than 30 percent within three generations (45 years) due to a decrease in distribution and habitat quality (Schliebe et al. 2008).

According to the IUCN Polar Bear Specialist Group (PBSG), progressively more populations are declining over time. In 2005, two populations of the 19 were categorized as increasing, five as stable, five as declining, and seven as data deficient or unknown (Aars et al. 2006). In 2009, one population of the 19 was categorized as increasing, three as stable, eight as declining and seven data deficient (Table 1). The only population that was increasing in 2009 was severely depleted by hunting and has been recovering only since the quota there was significantly reduced (IUCN PBSG 2009a).

### **C. Threats to Polar Bear Survival**

#### *i. Melting ice*

Arctic sea ice extent has decreased in all seasons, especially in the late summer as measured in September when the sea ice extent reaches its minimum for the year (Figure 2). In September of 2012, the National

Snow and Ice Data Center (NSIDC) announced that Arctic sea ice extent reached the lowest level ever recorded, breaking the previous record set in 2007 (NSIDC 2012). Studies have shown a direct correlation between decreased sea ice extent and declining polar bear body condition, size and survival (Rode et al. 2010, 2012). These parameters are indirect measures of reproductive capacity for the population.

In fact, Arctic sea ice extent is decreasing more rapidly than predicted by global climate change models, as seen in a graph comparing satellite observations with the projections of 12 models (Figure 3). The graph also shows that the rate of decrease in Arctic sea ice extent has accelerated, as indicated by the much steeper slope of the satellite data. Arctic sea ice thickness is also in decline. The average thickness of sea ice in the Arctic Basin has declined by 2 feet in winter (NSIDC 2011). Thinner ice is more susceptible to summer melt.

The mean day of ice breakup in western Hudson Bay was three weeks earlier in 2007 compared to 1979. Progressively earlier dates of sea ice breakup shorten the feeding time for polar bears, which means they lay down fewer fat reserves and have to fast for a longer period. This is especially crucial to pregnant females, who do not feed for up to 8 months between the time the ice breaks up and when they return to the sea ice with their cubs in the spring (Stirling and Derocher 2012).

The ability to swim long distances may help polar bears cope with reduced Arctic sea ice. Pagano et al. (2012) observed an increase in long distance swimming in female polar bears fitted with GPS collars and their young. Durner et al. (2011) followed a radio-collared female polar bear and concluded that polar bears are capable of extraordinary long distance swimming. However, during the period in question, the female lost 22 percent of her body weight and her yearling cub, so energetic and reproductive costs may be high.

In western Hudson Bay, earlier ice breakup has resulted in decreased survival of sub-adult and older bears (Stirling et al. 1999), and this has resulted in a decline in population numbers (Regehr et al. 2007). Predictive modeling of the future global distribution and abundance of polar bears forecasts further declines (Amstrup et al. 2008; Durner et al. 2009; Molnár et al. 2010; Peacock et al. 2011; Stirling and Derocher 2012).

To date, changes to sea ice and the impact on polar bear reproduction and recruitment have been gradual. Polar bear scientists are concerned that one unusual event (such as an exceptionally long ice-free season) experienced by an already stressed population could bring about rapid population decline (Peacock et al. 2011).

In January 2012, Canadian polar bear scientist Andrew Derocher stated, "It's easy to lose sight of other threats to polar bears when global warming keeps reminding us how badly we need to act. Climate change is the main threat to polar bears in the coming decades. Overharvesting, shipping, development, and pollution, however, all impact polar bears and will be important in years to come as they interact with a warming climate" (Derocher 2012).

## *ii. Overharvest*

Until recently, scientists considered overharvest to be the major threat to polar bears (Vongraven 2009; Peacock et al. 2011). The polar bear is a species that is “characterized by late maturation, a long interval between births, small litter sizes, and high adult survival. As a result, bear populations are easily depleted [by hunting]...and slow to recover” (Derocher and Stirling 1995). Average survivorship of adults in a healthy population exceeds 95 percent (Stirling 2011). Hunting reduces adult survivorship, which can cause population depletion.

Today, the primary concern for the long-term survival of the species is the effects of climate change (Stirling and Derocher 1993; Stirling and Derocher 2007; Derocher et al. 2004; Wiig et al. 1995; Stirling and Parkinson 2006; Peacock et al. 2011). However, while a warming climate is the greatest immediate threat to more southern polar bear populations, Peacock et al. (2011) contend that overharvesting remains the most significant threat to polar bear survival in other parts of the Arctic.

Hunting of polar bears for international trade and sport occurs only in Canada, where each year approximately 600 polar bears are killed (Peacock et al. 2011). Only Inuit hunters may receive polar bear permits, but in some jurisdictions they may sell their permits to non-Inuit trophy hunters or sell the parts of the bear (such as skins) for domestic and international commercial trade (Peacock et al. 2011; Stirling 2011). Scientists are concerned that hunting in Canada is having an increasingly negative impact on populations because authorities in some jurisdictions are ignoring the best available science and issuing unsustainable quotas despite declining population numbers (Regehr et al. 2007; Peacock et al. 2011; Vongraven 2011, 2012; Stirling and Derocher 2012).

For example, in 2005, scientists determined a sustainable hunting quota of 88 bears in Baffin Bay (a population Canada shares with Greenland). But the Canadian territory of Nunavut ignored this advice and instead increased its segment of the quota from 65 to 105 bears. Thereafter, scientists determined that the Baffin Bay polar bear population was declining. Greenland responded by reducing its quota, but Nunavut did not. Finally, after five years, the Canadian government stepped in and banned export of polar bear parts from Baffin Bay. Only then did Nunavut reduce its quota to pre-2005 levels (Peacock et al. 2011).

The population decline observed in western Hudson Bay (Table 1) was accelerated by unsustainable hunting (Stirling 2011; Stirling and Derocher 2012; Regehr et al. 2007). In response to the study by Regehr et al. (2007), Nunavut reduced the western Hudson Bay quota from 56 bears to 38 for the 2007-2008 hunting season, and then to eight bears per year thereafter (Vongraven 2011). However, after only four years, in August 2011, Nunavut increased the annual quota from eight to 21 bears (Nunavut 2011) over the strong objection of the IUCN PBSG (Vongraven 2011). Western Hudson Bay bears killed by foreign sport hunters and parts (such as skins) of bears killed by Inuit hunters continued to enter international commercial trade.

In 2012, Nunavut again proposed to increase the quota for western Hudson Bay. This proposal was again strongly opposed by the IUCN PBSG (Vongraven 2012). Despite being presented with scientific evidence and expert advice that an increased quota was unsustainable, Nunavut set the 2012-2013 quota at 24 bears (Kusugak 2012).

Polar bear scientists have lost confidence in Canada's management of the hunt. They have said that Canada has not adopted conservation measures that take into account Arctic sea ice loss (Peacock et al. 2011). Vongraven (2009) described hunt pressure in Canada as "quite high and out of control in some areas." Andrew Derocher reportedly stated, "Canada's management has drifted from a precautionary sustainable approach...to one seeking maximum harvest levels with fewer safeguards" (Ottawa Citizen 2012) and "Estimates of sustainable harvest are based on methods established 30 years ago and don't include habitat loss as a modifying factor" (Edmonton Journal 2012).

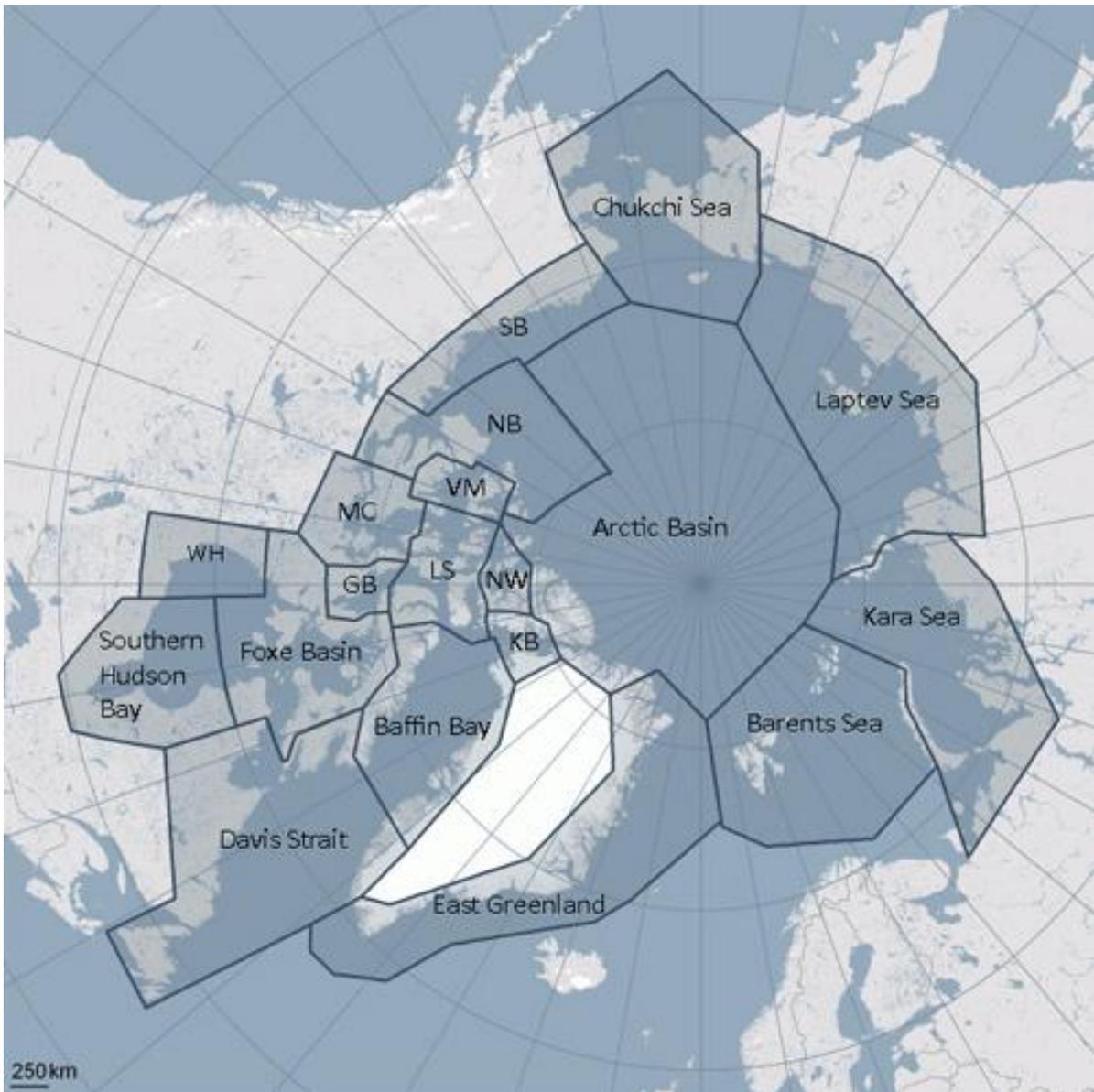
### *iii. Other dangers and threats to polar bears*

Shipping, ecotourism, oil development, and the threat of oil spills have increased the potential for disturbing denning bears, altering polar bear distribution, and affecting polar bear health (Andersen and Aars 2008). Dangerous persistent organic pollutants transported from the south via wind and ocean currents, accumulate in the Arctic and then, through the food chain, in polar bears' fatty tissue. These contaminants can negatively affect their immune systems, hormone regulation, growth patterns, reproduction and survival. Cannibalism, disease, wildfires, and poaching also pose threats to the survival of polar bears (Stirling 2011; Jensen 2010; Chicago Tribune 2012; Angliss and Lodge 2004; Angliss and Outlaw 2008).

**Table 1. Polar bear population status.**

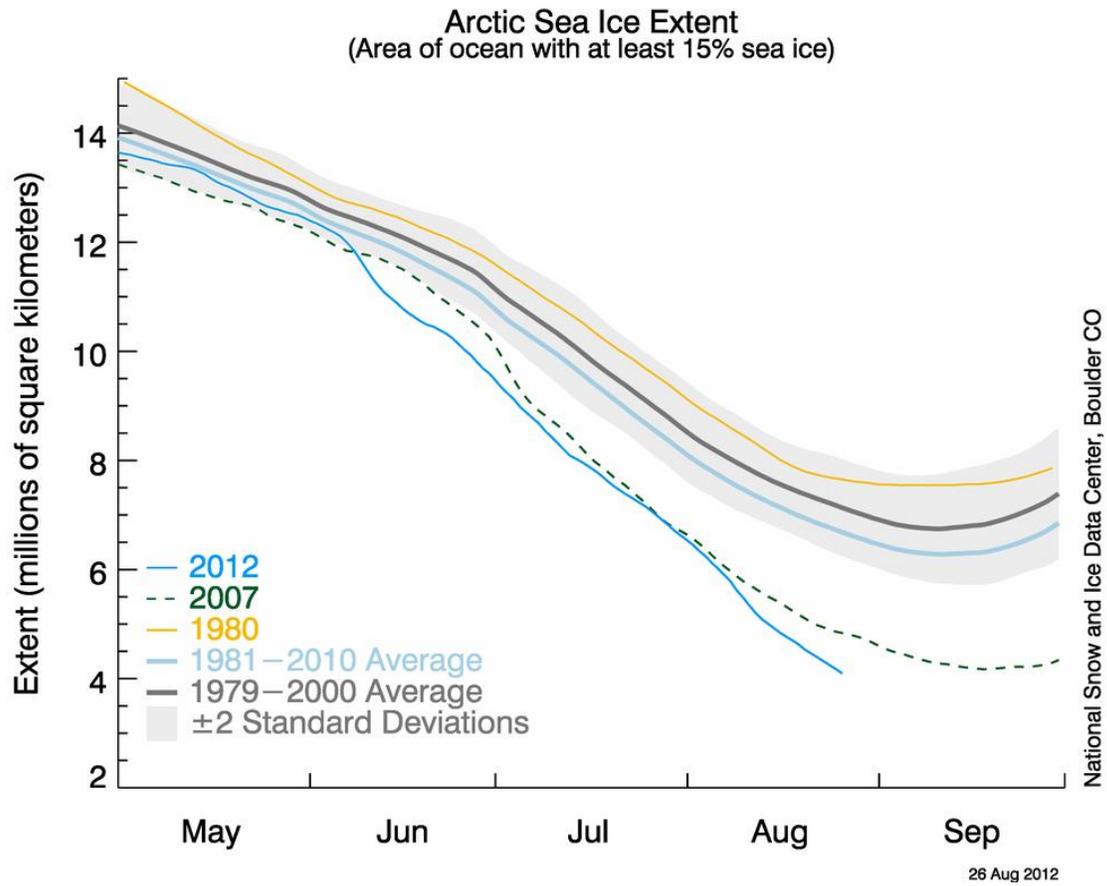
Source: Adapted from IUCN SSC Polar Bear Specialist Group (2010) at <http://pbsg.npolar.no/en/status/status-table.html>. (viewed on 5 June 2012).

Population	Range State	Aerial survey / Mark-recapture analysis		Additional / Alternative Analysis (Simulation: based on simulation; TEK: based on traditional ecological knowledge)				Historical annual removals (5 yr mean)	Potential maximum annual removals	Status	Current trend	Estimated risk of future decline
		Number (year of estimate)	±2 SE or 95% CI	Number (year of est.)	±2 SE or min-max range	Simulation	TEK					
Arctic Basin	All	Unknown						N/A	0	Data deficient	Data deficient	Data deficient
Baffin Bay	Canada Greenland	2074 (1997)	1544-2604	1546 (2004)	690-2402	X		212	176	Data deficient	Declining	Very high
Barents Sea	Norway Russia	2650 (2004)	1900-3600					1	0	Data deficient	Data deficient	Data deficient
Chukchi Sea	USA Russia	Unknown						37 - plus unknown but substantial in Russia (100-200)	No quotas	Reduced	Declining	Data deficient
Davis Strait	Canada Greenland	2142 (2007)	1811-2534					60	66	Not reduced	Declining	Very high
East Greenland	Greenland	Unknown						58	54	Data deficient	Data deficient	Data deficient
Foxe Basin	Canada	2197 (1994)	1677-2717	2300 (2004)	1780-2820	X	X	101	108	Data deficient	Data deficient	Data deficient
Gulf of Boothia	Canada	1592 (2000)	870-2314					60	74	Not reduced	Stable	Very low
Kane Basin	Canada Greenland	164 (1998)	94-234					11	15	Reduced	Declining	Very high
Kara Sea	Russia	Unknown						N/A	0	Data deficient	Data deficient	Data deficient
Lancaster Sound	Canada	2541 (1998)	1759-3323					83	85	Data deficient	Declining	Higher
Laptev Sea	Russia	800-1200 (1993)						N/A	0	Data deficient	Data deficient	Data deficient
M'Clintock Channel	Canada	284 (2000)	166-402					2	3	Reduced	Increasing	Very low
Northern Beaufort Sea	Canada	1202 (2006)	686-1718					29	65	Not reduced	Stable	Data deficient
Norwegian Bay	Canada	190 (1998)	102-278					4	4	Data deficient	Declining	Very high
Southern Beaufort Sea	Canada USA	1526 (2006)	1210-1842					44	80	Reduced	Declining	Moderate
Southern Hudson Bay	Canada	900-1000 (2005)	396-950 (ON) 70-100 (James Bay)					35	61	Not reduced	Stable	Very high
Viscount Melville Sound	Canada	161 (1992)	121-201	215 (1996)	99-331	X		5	7	Data deficient	Data deficient	Data deficient
Western Hudson Bay	Canada	935 (2004)	791-1079					44	16	Reduced	Declining	Very high

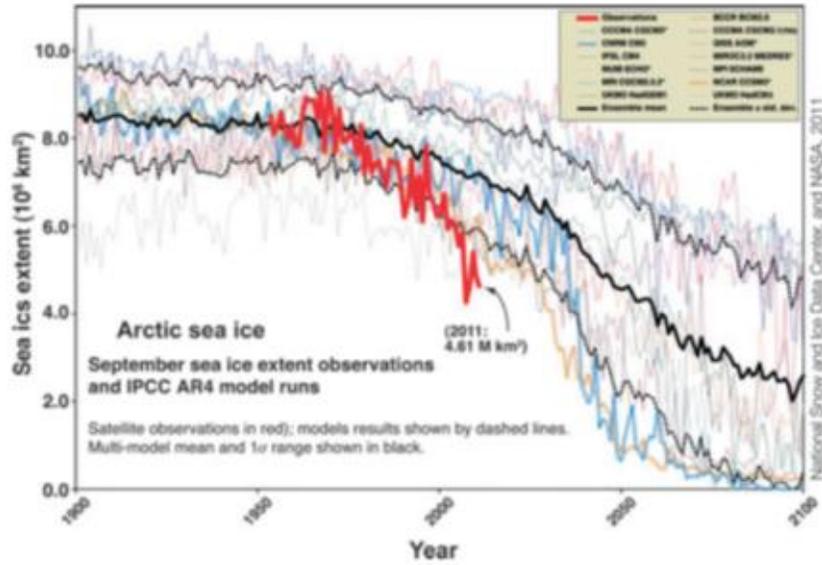


**Figure 1. Polar bear population map. (see Table 1 for key to abbreviations)**

Source: <http://pbsg.npolar.no/en/status/population-map.html>



**Figure 2. Observed arctic sea Ice extent as of 27 August 2012.**  
Source: National Snow and Ice Data Center (2012).



**Figure 3. September Arctic sea ice extent observations and model runs.**

“Projections of the minimum amount of sea ice remaining in September in the Arctic Ocean from 1900 to 2100. The black line is the average of the models and the red line, showing direct observations made from satellite images, shows sea ice is actually being lost more rapidly than currently modeled.”

Source: Stirling and Derocher (2012).

## **2. Importing trophies is inconsistent with conservation**

The polar bear is inherently unsuitable as a target for sport hunting. As noted above, it is a naturally rare species that relies on high adult survival, has a low birth rate and high cub mortality, inhabits a marginal environment, and is extremely vulnerable to the effects of habitat degradation triggered by climate change and pollution. Trophy hunters specifically target the largest bears, which may be the individuals with the most robust genes (see, e.g., Harris et al. 2002; Allendorf and Hard 2009). Such individuals may be the most needed to sustain population numbers as habitat quality declines.

Under ordinary circumstances, barring an accident, large, healthy, vigorous bears of either sex would experience extremely low mortality and would arguably be the most significant breeders in a population. Older (hence larger) males apparently do most of the mating (Ramsay and Stirling 1988). The biased removal of these males from the population due to hunting management that selects for them may have serious consequences for the genetic vigor of the population.

As the situation in M'Clintock Channel, Baffin Bay, and western Hudson Bay attest (see above), trophy hunting may pressure management authorities to increase hunt quotas to accommodate trophy hunters, even in the face of strong scientific evidence that such quotas are unsustainable. Allowing trophy hunts and the import of trophies do not promote conservation, they undermine it.

## **3. Applicable Provisions of Federal Law (MMPA and ESA)**

### **A. MMPA prohibition on shooting and importing polar bears**

Prior to enacting the Marine Mammal Protection Act in 1972 (“MMPA”), 16 U.S.C. § 1361, et seq., there were few restrictions on the take and import of polar bears. Concerned with declining numbers of marine mammals and destruction to their habitats, Congress enacted the MMPA to restore populations of threatened marine mammals and preserve marine ecosystem stability. *Id.* The MMPA established a strict moratorium on the take and import of marine mammals, subject to limited exceptions, e.g. for purposes of bona fide scientific research, public display, photography for educational or commercial purposes, and activities which enhance the survival or recovery of a species or stock. *Id.* §§ 1371(a)(1); 1374(c). There were no exceptions for import of polar bear parts or sport-hunted trophies.

### **B. 1994 polar bear trophy import amendment**

In 1994, in response to pressure from the trophy hunting lobby, Congress amended the MMPA to add a new exception to the moratorium specifically concerning importation of polar bear trophies legally obtained through Canadian sport hunts. 103 Pub. L. No. 238, § 4, 108 Stat. 532 (1994); 16 U.S.C. § 1374(c)(5). Under this new exception, a permit for import of a sport-hunted polar bear trophy could only be issued if the U.S. Fish and Wildlife Service (“FWS”) determined that the bear was taken from a population for which “Canada has a sport hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level.” *Id.* § 1374(c)(5)(A). Such

populations also could only be “approved” by FWS if the import of the sport-hunted trophy was “consistent with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and other international agreements and conventions,” and “not likely to contribute to illegal trade in bear parts.” *Id.* Presumably still unsatisfied with this newly created opportunity to import polar bear trophies, hunters subsequently convinced Congress to allow import of trophies taken even before the 1994 loophole was enacted, as long as the trophy was hunted legally in Canada. 105 Pub. L. 18, 111 Stat. 158 (1997).

Despite the fact that no populations were “approved” by the FWS until February 1997,<sup>1</sup> trophy hunters chose to hunt polar bears in Canada prior to that time. They did so with the knowledge that the import of trophies from unapproved populations was unlawful under the MMPA. Despite these bad faith actions, in 2003 Congress again amended the MMPA such that the statute, on its face, permitted the import of polar bear trophies taken in sport hunts in Canada before February 1997. 108 Pub. L. 108; 117 Stat. 1241 (2003); 16 U.S.C. § 1374(c)(5)(D). This bailout was made available to trophy hunters regardless of what population the bear was taken from, and as long as the hunter proved that the bear was “legally harvested in Canada.” *Id.*

### **C. ESA listing and consequent depleted listing under the MMPA**

In January 2007, the FWS issued a proposed rule to list the polar bear as a threatened species under the Endangered Species Act (“ESA”). 72 FR 1,064. Pursuant to Section 4 of the ESA, the FWS had a non-discretionary duty to issue a final determination on the listing in January 2008. See 16 U.S.C. § 1533(b)(3)(B). When the FWS failed to issue a final rule at the beginning of 2008, a federal court mandated that the agency publish the rule by May 15, 2008, and that the rule become effective immediately. *Center for Biological Diversity v. Kempthorne*, Civ. No. 08-1339 CW (N.D. Cal., April 28, 2008). The FWS published its final rule listing the polar bear as threatened under the ESA on May 15, 2008. 73 FR 28,212.

Under the MMPA, a marine mammal is automatically designated as “depleted” if it is listed as threatened or endangered under the ESA. 16 U.S.C. §§ 1362(1)(C); 1374(c)(1). Because the polar bear obtained 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. *Id.* § 1371(a)(3)(B). Importation of sport-hunted trophies under Section 1374(c)(5) is not included in the list of allowable exceptions. Thus, as of May 15, 2008—the effective date of the final rule listing polar bears as threatened under the ESA—the 1994

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<sup>1</sup> In February 1997, the FWS published regulations detailing its implementation of the new MMPA polar bear trophy import provision. See 50 C.F.R. § 18.30. Of Canada’s thirteen polar bear populations, the FWS has approved seven for imports. *Id.*; see also USFWS, “Importing Your Polar Bear Sport-Hunted Trophy,” available at [http://library.fws.gov/IA\\_Pubs/polarbear\\_trophy03.pdf](http://library.fws.gov/IA_Pubs/polarbear_trophy03.pdf) (also stating that in order to obtain a permit, the bear “must be from an approved population”). As of the date of the ESA listing, only six populations were approved—Southern Beaufort Sea, Northern Beaufort Sea, Viscount Melville Sound, Western Hudson Bay, Lancaster Sound, and Norwegian Bay—the formerly approved McClintock Channel polar bear population declined so drastically that trophy imports from this population were disallowed after May 31, 2000. 50 C.F.R. § 18.30(i)(1). According to FWS, between 1997 (first approval of populations for import) and 2008 (ESA listing), 969 polar bear trophies were taken in Canada and imported into the U.S. See H.R. 112-308 (Dec. 1, 2011).

amendments to the MMPA allowing imports of polar bear trophies from certain populations was effectively nullified. Indeed, in its final listing rule, the FWS clarified that effective as of the listing date, no additional polar bear trophies were to be imported into the U.S. 73 Fed. Reg. 28,212.

Trophy hunters were given repeated warnings from hunting organizations and government agencies that trophy imports would likely not be allowed as of the listing date, and that they were hunting at their own risk. By example, Conservation Force, a trophy-hunting group that is campaigning to allow the importation of additional sport-hunted polar bear trophies, repeatedly issued stern and 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 listing—Conservation Force 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;” “[t]he bottom line is, no American hunter should be putting hard, non-returnable money down on a polar bear hunt at this point.” See Conservation Force, “The Hunting Report,” Vol. 27, No. 12, p. 9 (Dec. 2007). Conservation Force also warned hunters 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.” Conservation Force, “The Hunting Report,” Extra Bulletin (Jan. 2008). Members were also told that the ESA-listing “will stop all imports . . . *immediately*.” Conservation Force, “The Hunting Report,” Extra Bulletin (Apr. 2008) (emphasis added).

Similarly, Safari Club International members were informed about the potential listing in no less than eight different newsletters sent from the organization, beginning no later than September 2007. See, e.g., Safari Club International, “SCI Action Alert” E-mail (Sept. 21, 2007). One of these newsletters stated that, “[i]f 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*.” Safari Club International, “In the Crosshairs” E-mail bulletin (Apr. 29, 2008) (emphasis added). The U.S. Sportsmen's Alliance also informed its members in at least one of its newsletters. U.S. Sportsmen's Alliance. “On Target” e-mail newsletter (Oct 31, 2007). Despite these warnings, and despite having notice of the impending prohibition on import of polar bear trophies for sixteen months (between January 2007 and May 2008), a number of trophy hunters went forward with hunts anyway and failed to get their imports approved before the ESA listing was finalized.

Of the 41 hunters that are now seeking yet another legislative bailout from Congress, all but one waited until at least March 2008, and some as late as May 2008, to conduct their hunts;<sup>2</sup> more than one year after the threatened listing was proposed, and clearly leaving insufficient time for import into the U.S. As a result, these hunters have since filed multiple appeals to government agencies and courts to circumvent the deadline and MMPA. As described elsewhere in the report, these appeals ask for special treatment under the law that would amount to a dangerous precedent—encouraging the killing of wildlife species that are candidates for MMPA, ESA or other federal protections—and they have been consistently rejected.

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<sup>2</sup> In other words, all but one of the hunters at issue waited until after the final ESA-listing was required to be published (January 2008) to even kill a polar bear.

#### **4. FWS and Judicial Rejection of Further Trophy Imports**

##### **A. FWS and judicial rejection of hunters' requests to extend the effective date of ESA listing**

During the litigation over FWS's delay in issuing the final ESA listing rule, trophy hunters asked the court to delay the effective date of the listing in order to force the FWS to process all pending applications for trophy import permits. *CBD, et al. v. Kempthorne*, Civ. No. 08-1339 CW (N.D.Cal. July 11, 2008). The FWS opposed this demand, noting that the MMPA specifically addresses the act of import of trophies, separate from the act of take:

“Except pursuant to a permit for scientific research, or for enhancing the survival or recovery of a species or stock..., it is unlawful to import into the United States any marine mammal if such mammal was...

(3) taken from a species or population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock;....”

16 U.S.C. § 1372(b) (emphasis added). The court agreed and denied the trophy hunters' demands for a delayed effective date and that any pending import applications be processed. Indeed, Judge Wilken specifically stated that the hunters “assumed the risk . . . they would be unable to import their trophies” by conducting last-minute sport hunts despite significant advanced notice that importing would be restricted.

##### **B. FWS rejection of hunters' request for special exemption permits**

After being rejected in federal court, several trophy hunters attempted to import their trophies by means of a special “enhancement of survival” permit under the MMPA in October 2008.<sup>3</sup> The hunters claimed that the money they paid to local communities in Canada for the right to kill polar bear qualified as “enhancement of survival of the species” under Section 104(c)(4) of the MMPA. However, under the MMPA, “enhancement of survival” is defined as requiring that the taking or importation is “likely to contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species or stock.” 16 U.S.C. § 1374(c)(4)(1) (emphasis added). Noting that trophy hunting does not increase the “distribution or numbers” of polar bears, the Marine Mammal Commission (an expert body statutorily created to provide advice on the implementation of the MMPA) concluded that the enhancement permits should not be granted in a comment letter sent to the FWS on December 16, 2008. See MMC, Denial for Polar Bear Enhancement Exception Permit, available at [http://mmc.gov/letters/pdf/2008/polarbear\\_121608.pdf](http://mmc.gov/letters/pdf/2008/polarbear_121608.pdf) (Dec. 16, 2008). Reaching the same conclusion—

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<sup>3</sup> As noted above, once a species is listed as “depleted” under the MMPA, that 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*. *Id.* § 1371(a)(3)(B).

that further killing and importation of polar bears does not enhance the survival of the species as required under the MMPA—the FWS denied the permit requests on February 2, 2009. *In re Polar Bear Endangered Species Act Listing & 4(d) Rule Litigation*, 818 F. Supp. 2d 240, 243, 259 (D.D.C. 2011).

### **C. Judicial rejection of hunters’ claims that FWS improperly barred importations**

Shortly after the FWS’s denial of their special enhancement permit requests, trophy hunters filed a lawsuit to challenge this decision—the lawsuit was transferred to the District Court for the District of Columbia and consolidated with all other polar bear litigation. *Id.* at 244-45. The hunters claimed that they were entitled to receive the special enhancement permits and that the FWS failed to apply the MMPA correctly in denying their permit requests. *Id.* at 257-58. The court disagreed, and held that the FWS rationally concluded that trophy hunts do not warrant enhancement permits, granting summary judgment for the FWS. *Id.* at 260. Having had several efforts at avoiding the ordinary application of the MMPA and ESA turned aside by multiple federal courts and government agencies, Congress should similarly decline trophy hunters’ request for yet another legislative bailout.

The prohibitions on import of animals under the MMPA and ESA are purposefully separate from the prohibitions on take of animals in these statutes, and are designed to protect species outside our borders by establishing a disincentive for U.S. citizens to engage in deleterious practices abroad. Thus, Congress should decline to amend the MMPA for the benefit of a few hunters who—unlike the hunters who complied with the law—waited until there was too little time remaining to successfully import a trophy before undertaking to hunt a species about to be listed as depleted under the MMPA and threatened with extinction under the ESA. Allowing trophy hunters to repeatedly ignore impending restrictions on imports of which these individuals were well aware simply encourages hunters to disregard conservation restrictions in the hope Congress will—yet again—allow more exceptions. Certainly it is inconsistent with both the letter and that purpose of the MMPA and ESA to facilitate a rush to kill species after they have been identified as warranting federal protection from, among other threats, overexploitation.

## **5. Economic Impact of Polar Bear Hunting**

### **A. Polar bear hunts have no substantial economic or incentive benefits**

Trophy hunts provide income for arctic communities, and when measured against their limited opportunities to bring commercial earnings into the community the income may be nontrivial; however, that is a misleading comparison. For various historical, political, and socio-economic reasons, these are communities whose revenues from outside come almost entirely from assistance payments and other funds from Canada’s national government rather than from commerce. The total income from polar bear hunting, even ignoring the costs incurred to provide the hunts, is only in the order of 1% of the cash assistance payments. When the income is properly compared to either the government social support budget or total expenditures for wildlife preservation, rather than to the very low levels of commercial

exports from these communities, it is extremely small, and largely inflated by the rhetoric of polar bear trophy hunting advocates. Moreover, much of the income may not even reach the impoverished communities; the Nunavut newspaper, *Nunatsiaq News*, concluded in 2005 that “most of the [financial benefits from sport hunts] never reach Inuit hands.”

***i. Polar bear hunts do not generate substantial economic benefits***

If trophy hunting was the type of commercial activity that created a sustainable foundation for economic growth, it might be argued that a comparison to the size of the local commercial economy was appropriate. But unlike, say, manufacturing or agriculture, hunting functions as resource extraction, like mining gold or receiving royalties for oil: It provides neither education nor infrastructure that helps generate further economic activity. It only brings in cash, most of it going to commercial guides and outfitters. This cash merely fills the same niche as assistance payments, offering no long-term benefits to the community.

***ii. Polar bear hunts do not create an incentive for conservation***

It is sometimes argued that these hunts, as with other commercial hunts of endangered or threatened species elsewhere in the world, create the incentive for the local population to better protect the species and ensure its long-term viability. But none of the income goes into conservation programs and at the local level there is a “commons problem”. Even though the net income for the region is trivial or even zero (after accounting for reduced assistance payments), the extra income for an individual hunt guide operation is quite substantial, and they have little incentive to forgo immediate personal income to protect some future income that is shared across the region. This is likely to be especially true if they perceive that climate change and a general lack of protection mean the species is doomed anyway. In addition, when there are commercial incentives for species preservation in other contexts (such as ecotourism), they depend heavily on local populations choosing to reverse habitat destruction and encourage reproduction, neither of which is possible for local people to do for polar bears. Thus, only regional or national policies, not individual profits, are likely to provide protection for the bear populations.

**B. There will be negative incentive effects from allowing an import amnesty**

Allowing importation of currently stored trophies, even if it is declared to be a one-time amnesty, will dramatically increase the incentive for U.S. hunters to collect and store more trophies and start lobbying for the next "one-time" amnesty.

***i. The prospect of importing trophies increases the incentive for hunting polar bears***

During the period in which American hunters anticipated that an exception to the law would allow them to bring home trophies from hunts of particular local Canadian populations of polar bears (the three hunting seasons from 1994-5 through 1996-7), there was a substantial surge in Americans hunting in these particular locations. This surge was a sharp increase above the historic trend of increasing commercial polar bear hunts, and it disappeared just as suddenly when the legal import from these populations was again prohibited. This demonstrates that the hope of bringing home trophies dramatically increases the interest of American hunters to engage in these hunts. The fact that hunters

have been paying to store these trophies, solely because they hope to be able to import them, rather than selling or otherwise disposing of them as they could have done at any time, further demonstrates the important incentive effect from allowing importation of the trophies.

*ii. The promise of “one-time” amnesties increases the incentive for trophy hunting*

The gathering and storing of trophies also demonstrates a willingness to gamble on being able to import them eventually. Should there be an import amnesty for those hunters who have been storing their trophies, the prediction of the likelihood of another amnesty would increase dramatically. This would increase the incentive for trophy hunting compared to its current level.

It is not possible to precisely quantify the incentive effects, which would require an estimate of both the incentive effect of simply allowing trophy imports and the change in the belief that a future import amnesty will be granted. But there is no doubt that there would be an increase in trophy hunting by Americans after the amnesty. In addition to the economic logic of the situation, there is ample empirical evidence from similar amnesties which are granted for everything from international debt obligations, to library fines and unpaid parking tickets (Easterly 2001; Carrasco 2007; Leonard and Zeckhauser 1997). In all of those cases, a one-time amnesty itself seems to have minimal short-run costs, but the incentives that are created by a signaling that there will be future amnesties often has great costs in the long run.

It is safe to conclude that granting an amnesty would substantially increase the incentive to hunt and store trophies compared to the present incentive to do so. That is, allowing 41 stored trophies to be imported would cause Americans to conduct new hunts and store the trophies in anticipation of the next amnesty. Given that there is no reason to anticipate a lifting of polar bears’ protected status, the expectations of being able to import trophies must be fairly low. Previous hunters are storing their trophies based on what they assess as, say, a 25% chance of eventual permission to import them. An amnesty would raise the perception that a future amnesty would occur to perhaps 75%, creating a much greater incentive to prepare for that eventuality by conducting new trophy hunts.

Finally, it is important to consider the deeper implications of Americans intentionally harvesting and storing trophies for purposes of future importation, in spite of the existence of a law (that has no sunset provision) which forbids such importation. Put another way, these actors were placing bets that they would be allowed to violate the law someday, and so pursued the activity that the law is designed to prevent. This suggests that the incentive effects of an amnesty for polar bear trophy imports would extend to encourage any such activity – both the taking of trophies from other threatened or endangered species elsewhere in the world, and perhaps also other activities whose payoff depends on rich and influential people being granted personal exceptions to U.S. conservation laws. Granting the exception would not just reward people who violated the spirit of U.S. law, counting on the U.S. government to eventually grant them an exception to the letter of the law, but also encourage others to start doing so. Moreover, it would increase the demands on the Congress, which – having demonstrated a willingness to make this exception – would be lobbied more often and aggressively to offer similar exceptions in the future for private inurement.

## **6. The 41 trophy hunters and their trophies**

The 41 polar bear hunters who were denied a permit by the U.S. Fish and Wildlife Service (FWS) to import their trophies into the U.S. are seeking an undeserved bailout from the federal government. Despite warnings from hunting groups and FWS, these individuals rushed to Canada to kill polar bears in an attempt to outrace the imminent ESA listing. They were fully informed of the risk that they would not be able to import their trophies and they failed to beat the clock. Certain commonalities among the 41 individuals seeking to import polar bear trophies give insight as to why these wealthy trophy hunters believe the law should not apply to them.

These individuals are not representative of the average American hunter. They are wealthy trophy hunters who have \$30,000-\$50,000 to spend on a single hunt. These are hunters who travel the world killing animals, including captive and federally or internationally protected species, in order to add trophies to their collections. Their motivation is often pure bragging rights, the ability to boast having the most or the largest trophies, a practice perpetuated by groups such as Safari Club International (SCI).

Several of the 41 polar bear hunters are active with SCI, some are life members and others have official roles in their local SCI chapter. Hunters who wish to acquire the “North American 29” bragging right must kill a minimum of 29 species and subspecies of animals, including the polar bear, in North American habitat (SCI North American 29).

Thomas A. Kooistra of Wyoming, Michigan, one of the polar bear hunters denied an import permit, has traveled far and wide, from Louisiana to bag an American alligator, to Mongolia, Turkey and Kyrgyzstan to kill various exotic species, all for entry into SCI’s record book (SCI. Online Record Book: Kooistra).

Interestingly, according to SCI, it is their policy not to accept animals into the record book which could not have lawfully been brought into the U.S. (SCI. Trophy Records & World Hunting Awards). However, Thomas Kooistra’s polar bear, killed by rifle April 2008 in Nunavut, and denied an import permit into the U.S. by the FWS, already appears in SCI’s trophy record book and Kooistra also received a silver medallion for his polar bear trophy (SCI. Online Record Book: Kooistra). This seems to indicate that SCI does not even adhere to its own policy with regards to protected animals like the polar bear - the entry of trophies into the record book takes precedence above any federal protection status granted to a species threatened with extinction. In other words, SCI provides an incentive for its members to kill polar bears, regardless of whether they are threatened with extinction or whether imports are legal.



Trophy hunter Jimmie R. Ryan of Alabaster, Alabama (left), has killed at least one of every North American big game species, more than 30 exotic African big game species, including a rhino and the Siberian bear (Bass Pro Shops. Pro Hunting Staff). Ryan has an entry in the SCI record book for a Southern white rhinoceros he killed in South Africa and more than 100 animals he has killed qualify for the Pope & Young record book (SCI. Online Record Book: Ryan). This insatiable desire for more and more trophies and endless record book entries by Ryan has resulted in the killing of no fewer than four polar bears (OutdoorLife. Polar Bear Bowhunt).

The 41 trophy hunters seeking permits to import their dead polar bears have little regard for the true conservation of a threatened species whose habitat is rapidly declining. Rather they pay exorbitant prices for the personal ownership and accompanying bragging rights of a trophy. This is hardly a group of individuals who should be receiving federal bailouts or exemptions from laws protecting species threatened with extinction. The millions of rank-and-file sportsmen and sportswomen in the U.S. would never dream of killing a polar bear, and do not benefit from a bailout for 41 wealthy polar bear hunters.

## **CONCLUSION**

The Marine Mammal Protection Act prohibits the sport hunting of polar bears in the U.S. (Alaska), and generally prohibits the import of parts from other marine mammal species, such as whales, dolphins, seals, sea lions, and walruses. It's inconsistent and undermines the purpose of the MMPA to have a special carve-out that encourages U.S. trophy hunters to kill polar bears in Canada and import their trophies. It's also inconsistent and undermines the purpose of the Endangered Species Act which is to protect threatened species, by encouraging trophy hunters to kill rare species that are proposed for listing and then just store the trophies in a warehouse until their congressional allies can eventually get them an import allowance. The ESA was designed to slow the mortality of declining species, not accelerate it.

Congress passed legislation in 1994 and again in 2003 to carve out loopholes in the MMPA for polar bear trophy hunters. They relied in the past on personal anecdotes from individual hunters, and made the argument that it was a "one-time" allowance for trophies from animals that were already dead and in storage. If they do so yet again, in 2012, what's to stop hunters from believing that these "one-time" allowances will continue to occur anytime they ask for them? And what's to stop the same behavior from occurring related to other imperiled species around the world proposed for listing under the ESA? At some point, the imports have to stop, and species must truly be protected under federal law.

Congress should oppose S. 3525 and H.R. 4089, which harm polar bear conservation efforts, set a dangerous precedent for undermining U.S. conservation laws, and encourage the reckless killing of declining species proposed for listing or listed as threatened with extinction around the world.

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