

POLAR BEAR CONSERVATION AND FAIRNESS ACT

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JUNE 12, 2018.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
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Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 224]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 224) to amend the Marine Mammal Protection Act of 1972 to allow importation of polar bear trophies taken in sport hunts in Canada before the date the polar bear was determined to be a threatened species under the Endangered Species Act of 1973, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 224 is to amend the Marine Mammal Protection Act of 1972 to allow importation of polar bear trophies taken in sport hunts in Canada before the date the polar bear was determined to be a threatened species under the Endangered Species Act of 1973.

BACKGROUND AND NEED FOR LEGISLATION

Under the Marine Mammal Protection Act of 1972 (MMPA, Public Law 92-522), jurisdiction over marine mammals in the wild is split between the U.S. Fish and Wildlife Service (FWS), within the Department of the Interior, and the National Marine Fisheries Service (NMFS), within the Department of Commerce. FWS has ju-

jurisdiction over sea otters, polar bears, manatees, dugongs and walrus, while NMFS has jurisdiction over all other marine mammals.

The MMPA has been amended several times, with the last and most extensive amendments occurring in 1994. The 1994 amendments allowed the importation of polar bear trophies from Canada. The Secretary of the Interior was authorized to issue a permit for the importation of polar bear trophies from Canada, if the following criteria were met:

- (1) the applicant provides documents showing the polar bear was legally harvested in Canada;
- (2) Canada has a monitored and enforced sport hunting program, consistent with the Agreement on the Conservation of Polar Bears;
- (3) Canada's sport program is based on scientifically-sound quotas that ensure a sustainable population; and
- (4) the exportation and importation of the trophy is consistent with the provisions of the Convention on the International Trade in Endangered Species.¹

The Secretary of the Interior was also authorized to charge a permit fee of up to \$1,000 for each trophy import application.² The collected fees were directed into a fund for the conservation of polar bears in the United States and Russia. Since 1994, Canada and FWS have successfully worked together to ensure that imported polar bear trophies have come from hunts conducted in a sustainable manner. Canada has management authority over 13 of the 19 world-wide polar bear populations.³ After reviewing Canada's management actions, FWS created a list of approved polar bear populations in Canada. In 2008, six of the 13 Canadian polar bear populations were considered approved populations and a polar bear trophy from one of these populations could be imported into the U.S. after the hunter paid an importation permit fee. According to FWS, between 1997 and 2008, 969 trophies were taken in Canada and imported into the U.S., raising \$969,000 for the U.S.-Russia Polar Bear Conservation Fund.⁴

On May 15, 2008, the Secretary of the Interior listed the world-wide polar bear population as threatened under the Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 et seq.). Threatened and endangered marine mammals are considered depleted species under the MMPA and the MMPA bans the importation of depleted species. At the time of the polar bear threatened listing, there were 41 hunters with legally hunted polar bear trophies in the permitting process. Legislation is needed to allow for the importation of these legally-taken trophies.

H.R. 224 would amend the MMPA to allow the Secretary of the Interior to issue permits to those eligible hunters with legally taken polar bear trophies from approved populations prior to the May 15, 2008, ESA listing. As a result of this legislation, up to

¹ 16 U.S.C Chapter 31.

² United States Fish and Wildlife Service, Division of Management Authority. *Importing Your Polar Bear Sport-Hunted Trophy*.

³ P. (2016, June 13). *The truth about polar bears*. Retrieved from <https://www.canadiangeographic.ca/article/truth-about-polar-bears>.

⁴ Mimms, S. (2014, February 04). *Why Canada Is Still Stuck With Our Dead Polar Bears*. Retrieved from <https://www.theatlantic.com/politics/archive/2014/02/why-canada-is-still-stuck-with-our-dead-polar-bears/450339/>.

\$41,000 would be collected for polar bear research and conservation.

The language contained in this stand-alone legislation is also included in H.R. 3668, the Sportsmen's Heritage and Recreational Enhancement (SHARE) Act, which was favorably reported by the Committee on September 18, 2017.

COMMITTEE ACTION

H.R. 224 was introduced on January 3, 2017, by Congressman Don Young (R-AK). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Federal Lands and the Subcommittee on Water, Power and Oceans. On May 16, 2018, the Natural Resources Committee met to consider the bill. The Subcommittees were discharged by unanimous consent. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 6, 2018.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 224, the Polar Bear Conservation and Fairness Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 224—Polar Bear Conservation and Fairness Act

H.R. 224 would require the Secretary of the Interior to issue permits to certain hunters seeking to import polar bear remains from Canada. Under the bill, only hunters who submit applications for permits to import remains that were acquired prior to May 15,

2008, the date the polar bear was listed as a threatened species under the Endangered Species Act, would be eligible to receive a permit.

Using information provided by the U.S. Fish and Wildlife Service, CBO estimates that processing and issuing the roughly 40 permits that would be affected by the bill would have an insignificant effect on the federal budget. Enacting H.R. 224 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 224 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 224 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Marine Mammal Protection Act of 1972 to allow importation of polar bear trophies taken in sport hunts in Canada before the date the polar bear was determined to be a threatened species under the Endangered Species Act of 1973.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill contains no directed rulemakings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic,

and existing law in which no change is proposed is shown in roman):

MARINE MAMMAL PROTECTION ACT OF 1972

* * * * *

**TITLE I—CONSERVATION AND PROTECTION OF MARINE
MAMMALS**

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PERMITS

SEC. 104. (a) The Secretary may issue permits which authorize the taking or importation of any marine mammal. Permits for the incidental taking of marine mammals in the course of commercial fishing operations may only be issued as specifically provided for in sections 101(a)(5) or 306, or subsection (h) of this section.

(b) Any permit issued under this section shall—

(1) be consistent with any applicable regulation established by the Secretary under section 103 of this title, and

(2) specify

(A) the number and kind of animals which are authorized to be taken or imported,

(B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported,

(C) the period during which the permit is valid, and

(D) any other terms or conditions which the Secretary deems appropriate.

In any case in which an application for a permit cites as a reason for the proposed taking the overpopulation of a particular species or population stock, the Secretary shall first consider whether or not it would be more desirable to transplant a number of animals (but not to exceed the number requested for taking in the application) of that species or stock to a location not then inhabited by such species or stock but previously inhabited by such species or stock.

(c)(1) Any permit issued by the Secretary which authorizes the taking or importation of a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall specify, in addition to the conditions required by subsection (b) of this section, the methods of capture, supervision, care, and transportation which must be observed pursuant to such taking or importation. Any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall furnish to the Secretary a report on all activities carried out by him pursuant to that authority.

(2)(A) A permit may be issued to take or import a marine mammal for the purpose of public display only to a person which the Secretary determines—

(i) offers a program for education or conservation purposes that is based on professionally recognized standards of the public display community;

- (ii) is registered or holds a license issued under 7 U.S.C. 2131 et seq.; and
 - (iii) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging of an admission fee.
- (B) A permit under this paragraph shall grant to the person to which it is issued the right, without obtaining any additional permit or authorization under this Act, to—
- (i) take, import, purchase, offer to purchase, possess, or transport the marine mammal that is the subject of the permit; and
 - (ii) sell, export, or otherwise transfer possession of the marine mammal, or offer to sell, export, or otherwise transfer possession of the marine mammal—
 - (I) for the purpose of public display, to a person that meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A);
 - (II) for the purpose of scientific research, to a person that meets the requirements of paragraph (3); or
 - (III) for the purpose of enhancing the survival or recovery of a species or stock, to a person that meets the requirements of paragraph (4).
- (C) A person to which a marine mammal is sold or exported or to which possession of a marine mammal is otherwise transferred under the authority of subparagraph (B) shall have the rights and responsibilities described in subparagraph (B) with respect to the marine mammal without obtaining any additional permit or authorization under this Act. Such responsibilities shall be limited to—
- (i) for the purpose of public display, the responsibility to meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A),
 - (ii) for the purpose of scientific research, the responsibility to meet the requirements of paragraph (3), and
 - (iii) for the purpose of enhancing the survival or recovery of a species or stock, the responsibility to meet the requirements of paragraph (4).
- (D) If the Secretary—
- (i) finds in concurrence with the Secretary of Agriculture, that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(ii) and is not reasonably likely to meet those requirements in the near future, or
 - (ii) finds that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A) (i) or (iii) and is not reasonably likely to meet those requirements in the near future,
- the Secretary may revoke the permit in accordance with section 104(e), seize the marine mammal, or cooperate with other persons authorized to hold marine mammals under this Act for disposition of the marine mammal. The Secretary may recover

from the person expenses incurred by the Secretary for that seizure.

(E) No marine mammal held pursuant to a permit issued under subparagraph (A), or by a person exercising rights under subparagraph (C), may be sold, purchased, exported, or transported unless the Secretary is notified of such action no later than 15 days before such action, and such action is for purposes of public display, scientific research, or enhancing the survival or recovery of a species or stock. The Secretary may only require the notification to include the information required for the inventory established under paragraph (10).

(3)(A) The Secretary may issue a permit under this paragraph for scientific research purposes to an applicant which submits with its permit application information indicating that the taking is required to further a bona fide scientific purpose. The Secretary may issue a permit under this paragraph before the end of the public review and comment period required under subsection (d)(2) if delaying issuance of the permit could result in injury to a species, stock, or individual, or in loss of unique research opportunities.

(B) No permit issued for purposes of scientific research shall authorize the lethal taking of a marine mammal unless the applicant demonstrates that a nonlethal method of conducting the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock that is depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.

(C) Not later than 120 days after the date of enactment of the Marine Mammal Protection Act Amendments of 1994, the Secretary shall issue a general authorization and implementing regulations allowing bona fide scientific research that may result only in taking by Level B harassment of a marine mammal. Such authorization shall apply to persons which submit, by 60 days before commencement of such research, a letter of intent via certified mail to the Secretary containing the following:

- (i) The species or stocks of marine mammals which may be harassed.
- (ii) The geographic location of the research.
- (iii) The period of time over which the research will be conducted.
- (iv) The purpose of the research, including a description of how the definition of bona fide research as established under this Act would apply.
- (v) Methods to be used to conduct the research.

Not later than 30 days after receipt of a letter of intent to conduct scientific research under the general authorization, the Secretary shall issue a letter to the applicant confirming that the general authorization applies, or, if the proposed research is likely to result in the taking (including Level A harassment) of a marine mammal, shall notify the applicant that subparagraph (A) applies.

(4)(A) A permit may be issued for enhancing the survival or recovery of a species or stock only with respect to a species or stock for which the Secretary, after consultation with the Marine Mammal Commission and after notice and opportunity for public comment, has first determined that—

(i) 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; and

(ii) taking or importation is consistent (I) with any conservation plan adopted by the Secretary under section 115(b) of this title or any recovery plan developed under section 4(f) of the Endangered Species Act of 1973 for the species or stock, or (II) if there is no conservation or recovery plan in place, with the Secretary's evaluation of actions required to enhance the survival or recovery of the species or stock in light to the factors that would be addressed in a conservation plan or a recovery plan.

(B) A permit issued in accordance with this paragraph may allow the captive maintenance of a marine mammal from a depleted species or stock only if the Secretary—

(i) determines that captive maintenance is likely to contribute to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing biological information, or establishing animal reserves;

(ii) determines that the expected benefit to the affected species or stock outweighs the expected benefit of alternatives which do not require removal of animals from the wild; and

(iii) requires that the marine mammal or its progeny be returned to the natural habitat of the species or stock as soon as feasible, consistent with the objectives of any applicable conservation plan or recovery plan, or of any evaluation by the Secretary under subparagraph (A).

The Secretary may allow the public display of such a marine mammal only if the Secretary determines that such display is incidental to the authorized maintenance and will not interfere with the attainment of the survival or recovery objectives.

(5)(A) The Secretary may issue a permit for the importation of polar bear parts (other than internal organs) taken in sport hunts in Canada to an applicant which submits with its permit application proof that the polar bear was legally harvested in Canada by the applicant. Such a permit shall be issued if the Secretary, in consultation with the Marine Mammal Commission and after notice and opportunity for public comment, finds that—

(i) Canada has a monitored and enforced sport hunting program consistent with the purposes of the Agreement on the Conservation of Polar Bears;

(ii) Canada has a sport hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level;

(iii) the export and subsequent import are 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

(iv) the export and subsequent import are not likely to contribute to illegal trade in bear parts.

(B) The Secretary shall establish and charge a reasonable fee for permits issued under this paragraph. All fees collected under this paragraph shall be available to the Secretary until expended for use in developing and implementing cooperative research and management programs for the conservation of polar bears in Alaska and Russia pursuant to section 113(d).

(C)(i) The Secretary shall undertake a scientific review of the impact of permits issued under this paragraph on the polar bear population stocks in Canada within 2 years after the date of enactment of this paragraph. The Secretary shall provide an opportunity for public comment during the course of such review, and shall include a response to such public comment in the final report on such review.

(ii) The Secretary shall not issue permits under this paragraph after September 30, 1996, if the Secretary determines, based on the scientific review, that the issuance of permits under this paragraph is having a significant adverse impact on the polar bear population stocks in Canada. The Secretary may review such determination annually thereafter, in light of the best scientific information available, and shall complete the review not later than January 31 in any year a review is undertaken. The Secretary may issue permits under this paragraph whenever the Secretary determines, on the basis of such annual review, that the issuance of permits under this paragraph is not having a significant adverse impact on the polar bear population stocks in Canada.

[(D) The Secretary of the Interior shall, expeditiously after the expiration of the applicable 30 day period under subsection (d)(2), issue a permit for the importation of polar bear parts (other than internal organs) from polar bears taken in sport hunts in Canada before the date of enactment of the Marine Mammal Protection Act Amendments of 1994, to each applicant who submits, with the permit application, proof that the polar bear was legally harvested in Canada by the applicant. The Secretary shall issue such permits without regard to the provisions of subparagraphs (A) and (C)(ii) of this paragraph, subsection (d)(3) of this section, and sections 101 and 102. This subparagraph shall not apply to polar bear parts that were imported before the effective date of this subparagraph.]

(D)(i) The Secretary of the Interior shall, expeditiously after the expiration of the applicable 30-day period under subsection (d)(2), issue a permit for the importation of any polar bear part (other than an internal organ) from a polar bear taken in a sport hunt in Canada to any person—

(I) who submits, with the permit application, proof that the polar bear was legally harvested by the person before February 18, 1997; or

(II) who has submitted, in support of a permit application submitted before May 15, 2008, proof that the polar bear was legally harvested by the person before May 15, 2008, from a polar bear population from which a sport-hunted trophy could be imported before that date in accordance with section 18.30(i) of title 50, Code of Federal Regulations.

(ii) *The Secretary shall issue permits under clause (i)(I) without regard to subparagraphs (A) and (C)(ii) of this paragraph, subsection (d)(3), and sections 101 and 102. Sections 101(a)(3)(B) and 102(b)(3) shall not apply to the importation of any polar bear part authorized by a permit issued under clause (i)(I). This clause shall not apply to polar bear parts that were imported before June 12, 1997.*

(iii) *The Secretary shall issue permits under clause (i)(II) without regard to subparagraph (C)(ii) of this paragraph or subsection (d)(3). Sections 101(a)(3)(B) and 102(b)(3) shall not apply to the importation of any polar bear part authorized by a permit issued under clause (i)(II). This clause shall not apply to polar bear parts that were imported before the date of enactment of the Polar Bear Conservation and Fairness Act.*

(6) A permit may be issued for photography for educational or commercial purposes involving marine mammals in the wild only to an applicant which submits with its permit application information indicating that the taking will be limited to Level B harassment, and the manner in which the products of such activities will be made available to the public.

(7) Upon request by a person for a permit under paragraph (2), (3), or (4) for a marine mammal which is in the possession of any person authorized to possess it under this Act and which is determined under guidance under section 402(a) not to be releasable to the wild, the Secretary shall issue the permit to the person requesting the permit if that person—

(A) meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A), in the case of a request for a permit under paragraph (2);

(B) meets the requirements of paragraph (3), in the case of a request for a permit under that paragraph; or

(C) meets the requirements of paragraph (4), in the case of a request for a permit under that paragraph.

(8)(A) No additional permit or authorization shall be required to possess, sell, purchase, transport, export, or offer to sell or purchase the progeny of marine mammals taken or imported under this subsection, if such possession, sale, purchase, transport, export, or offer to sell or purchase is—

(i) for the purpose of public display, and by or to, respectively, a person which meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A);

(ii) for the purpose of scientific research, and by or to, respectively, a person which meets the requirements of paragraph (3); or

(iii) for the purpose of enhancing the survival or recovery of a species or stock, and by or to, respectively, a person which meets the requirements of paragraph (4).

(B)(i) A person which has a permit under paragraph (2), or a person exercising rights under paragraph (2)(C), which has possession of a marine mammal that gives birth to progeny shall—

(I) notify the Secretary of the birth of such progeny within 30 days after the date of birth; and

- (II) notify the Secretary of the sale, purchase, or transport of such progeny no later than 15 days before such action.
- (ii) The Secretary may only require notification under clause (i) to include the information required for the inventory established under paragraph (10).
- (C) Any progeny of a marine mammal born in captivity before the date of the enactment of the Marine Mammal Protection Act Amendments of 1994 and held in captivity for the purpose of public display shall be treated as though born after that date of enactment.
- (9) No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose.
- (10) The Secretary shall establish and maintain an inventory of all marine mammals possessed pursuant to permits issued under paragraph (2)(A), by persons exercising rights under paragraph (2)(C), and all progeny of such marine mammals. The inventory shall contain, for each marine mammal, only the following information which shall be provided by a person holding a marine mammal under this Act:
- (A) The name of the marine mammal or other identification.
 - (B) The sex of the marine mammal.
 - (C) The estimated or actual birth date of the marine mammal.
 - (D) The date of acquisition or disposition of the marine mammal by the permit holder.
 - (E) The source from whom the marine mammal was acquired including the location of the take from the wild, if applicable.
 - (F) If the marine mammal is transferred, the name of the recipient.
 - (G) A notation if the animal was acquired as the result of a stranding.
 - (H) The date of death of the marine mammal and the cause of death when determined.
- (d)(1) The Secretary shall prescribe such procedures as are necessary to carry out this section, including the form and manner in which application for permits may be made.
- (2) The Secretary shall publish notice in the Federal Register of each application made for a permit under this section. Such notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data or views, with respect to the taking or importation proposed in such application.
- (3) The applicant for any permit under this section must demonstrate to the Secretary that the taking or importation of any marine mammal under such permit will be consistent with the purposes of this Act and the applicable regulations established under section 103 of this title.
- (4) If within thirty days after the date of publication of notice pursuant to paragraph (2) of this subsection with respect to any ap-

plication for a permit any interested party or parties request a hearing in connection therewith, the Secretary may, within sixty days following such date of publication, afford to such party or parties an opportunity for such a hearing.

(5) As soon as practicable (but not later than thirty days) after the close of the hearing or, if no hearing is held, after the last day on which data, or views, may be submitted pursuant to paragraph (2) of this subsection, the Secretary shall (A) issue a permit containing such terms and conditions as he deems appropriate, or (B) shall deny issuance of a permit. Notice of the decision of the Secretary to issue or to deny any permit under this paragraph must be published in the Federal Register within ten days after the date of issuance or denial.

(6) Any applicant for a permit, or any party opposed to such permit, may obtain judicial review of the terms and conditions of any permit issued by the Secretary under this section or of his refusal to issue such a permit. Such review, which shall be pursuant to chapter 7 of Title 5, United States Code, may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides, or has his principal place of business, or in the United States District Court for the District of Columbia, within sixty days after the date on which such permit is issued or denied.

(e)(1) The Secretary may modify, suspend, or revoke in whole or part any permit issued by him under this section—

(A) in order to make any such permit consistent with any change made after the date of issuance of such permit with respect to any applicable regulation prescribed under section 103 of this title,

(B) in any case in which a violation of the terms and conditions of the permit is found, or

(C) if, in the case of a permit under subsection (c)(5) authorizing importation of polar bear parts, the Secretary, in consultation with the appropriate authority in Canada, determines that the sustainability of Canada's polar bear population stocks are being adversely affected or that sport hunting may be having a detrimental effect on maintaining polar bear population stocks throughout their range.

(2) Whenever the Secretary shall propose any modification, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Secretary with respect to such proposed modification, suspension, or revocation. Such proposed action by the Secretary shall not take effect until a decision is issued by him after such hearing. Any action taken by the Secretary after such a hearing is subject to judicial review on the same basis as is any action taken by him with respect to a permit application under paragraph (5) of subsection (d) of this section.

(3) Notice of the modification, suspension, or revocation of any permit by the Secretary shall be published in the Federal Register within ten days from the date of the Secretary's decision.

(f) Any permit issued under this section must be in the possession of the person to whom it is issued (or an agent of such person) during—

(1) the time of the authorized or taking importation;

(2) the period of any transit of such person or agent which is incident to such taking or importation; and

(3) any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent.

A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

(g) The Secretary shall establish and charge a reasonable fee for permits issued under this section.

(h) GENERAL PERMITS.—

(1) Consistent with the regulations prescribed pursuant to section 103 of this title and to the requirements of section 101 of this title, the Secretary may issue an annual permit to a United States purse seine fishing vessel for the taking of such marine mammals, and shall issue regulations to cover the use of any such annual permits.

(2) Such annual permits for the incidental taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 306 of this Act, subject to the regulations issued pursuant to section 303 of this Act.

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DISSENTING VIEWS

H.R. 224 directs the Department of Interior to issue permits for the importation of a polar bear part from a bear taken in a sport hunt in Canada to any permit applicant who has submitted proof that the polar bear was legally harvested by the applicant before the polar bear was listed as a threatened species under the Endangered Species Act (ESA).

Prior to the polar bear being listed under the ESA, Congress amended the Marine Mammal Protection Act (MMPA) to allow polar bear parts taken in sport hunts in Canada to be imported into the United States under certain circumstances. However, once the species was listed as threatened under the ESA in 2008, the species automatically obtained a “depleted” status under the MMPA. This designation allowed for increased protections, meaning the species can no longer be imported into the United States, unless the importation is likely to enhance the species’ survival. The Marine Mammal Commissions determined that enhancement permits are not warranted for the polar bear.

There were approximately 40 polar bears that were killed immediately prior to the ESA listing in 2008. The individuals that killed these bears submitted their permit applications but had not received approval before the listing went into effect in 2008. These individuals believe that they complied with all the requirements of the law for importing trophies, and therefore should not be penalized. However, the trophy hunting community was aware that the ESA listing would take place for more than 16 months prior to its effective date, and trophy hunters were repeatedly warned by federal agencies and hunting associations that the final listing would cut off imports immediately.

In addition, H.R. 224 would allow trophy hunters who submit a new permit application and proof that a polar bear was legally harvested by the person before February 18, 1997 to import polar bears into the United States. It is unclear how many polar bear trophies could be imported into the United States under this exemption. In 2003, Congress amended the MMPA to expand the period for allowing grandfathered polar bear trophy imports and allow the U.S. Fish and Wildlife Service to accept applications from hunters for permits to import polar bear trophies legally taken prior to February 18, 1997 from Nunavut or Northwest Territories, Canada. Prior to the 2003 amendment, polar bear trophies from deferred populations could only be imported if taken prior to April 30, 1994. All polar bear trophy imports taken after February 18, 1997 were required to come from approved populations.

We are concerned that H.R. 224 would undermine the general application of the prohibition on importation of any “depleted” animal under the MMPA and would establish a precedent and provide an incentive for other trophy hunters to seek similar exemptions

for other prospective hunts. Furthermore, on June 18, 2013, the U.S. Court of Appeals for the D.C. Circuit ruled against allowing hunters to import animals from the Canadian Arctic that were killed prior to the ESA designation, saying that the Marine Mammal Protection Act protects animals that were killed before additional protections were granted. For these reasons, we cannot support the bill.

RAÚL M. GRIJALVA,
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House Committee on Natural
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NYDIA M. VELÁZQUEZ.

