

POLAR BEAR CONSERVATION AND FAIRNESS ACT
OF 2011

DECEMBER 1, 2011.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural
Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 991]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 991) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Polar Bear Conservation and Fairness Act of 2011”.

SEC. 2. PERMITS FOR IMPORTATION OF POLAR BEAR TROPHIES TAKEN IN SPORT HUNTS IN CANADA.

Section 104(c)(5)(D) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)(5)(D)) is amended to read as follows:

“(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 of 2011.”

PURPOSE OF THE BILL

The purpose of H.R. 991, as ordered reported, 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

The Marine Mammal Protection Act (MMPA) was enacted in 1972 to ensure that marine mammals are maintained at, or in some cases restored to, healthy population levels. The original Act established a moratorium on the taking or importing of marine mammals and marine mammal products except for certain activities which are regulated by permit. The MMPA defines “take” as “to harass, hunt, capture, or kill or attempt to harass, hunt capture, or kill any marine mammal.”

Under the MMPA, jurisdiction over marine mammals in the wild is split between two agencies: 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 jurisdiction over sea otters, polar bears, manatees, dugongs and walrus, while NMFS has jurisdiction over all other marine mammals.

The MMPA has been amended a number of times, with the last and most extensive amendments occurring in 1994. The 1994 MMPA amendments amended section 104 of the Act to allow for 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 taken 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. The Secretary of the Interior was also authorized to charge a permit fee of up to \$1,000 for each trophy import application. The collected permitting fees were authorized to be 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 worldwide polar bear populations. The governments in Canada that manage polar bear hunts issue hunting quotas or “tags” to its Native villages based on science-driven assessments. These villages can use a portion of the tags for sport hunts. Hunters can pay anywhere from \$30,000 to \$50,000 to the Native village for the sport hunt privilege. After reviewing Canada’s management actions, FWS has created a list of approved polar bear populations in Canada. At the time of the listing, six out of the 13 Canadian polar bear populations were considered approved populations. This approved population list guided U.S. hunters to those populations that could sustain hunting. A hunter with a polar bear trophy from one of these approved populations had been able to import his or her trophy into the U.S. after paying the importation fee. According to FWS, between 1997 and 2008, 969 trophies had been taken in Canada and imported into the U.S., raising \$969,000 for the U.S.-Russia Polar Bear Conservation Fund.

On May 15, 2008, the Secretary of the Interior listed the worldwide polar bear population as threatened under the Endangered Species Act. Threatened and endangered marine mammals are considered depleted species under the MMPA and the Act bans the importation of depleted species. At the time of the polar bear threatened listing, there were roughly 41 hunters, with legally hunted polar bear trophies, in the permitting process. Under existing laws, these hunters have no way to import the legally taken trophies into the U.S. and the roughly \$40,000 in permit fees cannot be collected for conservation activities for the shared U.S.-Russia polar bear population.

H.R. 991 would amend section 104(c)(5)(D) of 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, approximately \$40,000 would be available for the U.S.-Russia Polar Bear Conservation Fund to support conservation activities for the shared U.S.-Russia polar bear population.

COMMITTEE ACTION

H.R. 991 was introduced on March 9, 2011, by Congressman Don Young (R-AK). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs. On May 12, 2011, the Subcommittee held a hearing on the bill. On October 5, 2011, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs was discharged by unanimous consent. Congressman Don Young (R-AK) offered amendment designated .001. Congressman John Garamendi (D-CA) offered an amendment to the Young amendment; the amendment was ruled non-germane. The amendment offered by Mr. Young was adopted by voice vote. The bill, as amended, was then 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

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 991—Polar Bear Conservation and Fairness Act of 2011

H.R. 991 would require the Secretary of the Interior to issue permits to hunters seeking to import polar bear remains from Canada that were acquired during hunts that took place prior to the polar bear being listed as a threatened species under the Endangered Species Act (ESA). Thus, only hunters who submitted applications for permits to import such remains prior to May 15, 2008, the date the polar bear was listed under ESA, would be eligible to receive a permit under the bill.

Based on information from the U.S. Fish and Wildlife Service, CBO estimates that processing and issuing the roughly 40 permits that would be affected by the legislation would have a negligible impact on the federal budget. Enacting H.R. 991 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 991 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. Based on information from the U.S. Fish and Wildlife Service, CBO estimates that processing and issuing the roughly 40 permits that would be affected by the legislation would have a negligible impact on the federal budget.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill, as ordered reported, 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.

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

MARINE MAMMAL PROTECTION ACT OF 1972

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TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

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PERMITS

SEC. 104. (a) * * *

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(c)(1) * * *

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(5)(A) * * *

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[(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.

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DISSENTING VIEWS

H.R. 991, as amended, would direct the Secretary of the Interior to issue permits to allow forty-one hunters, who both applied for a permit and completed their hunt of a polar bear prior to the Endangered Species Act (ESA) listing, to import their polar bear trophies from Canada into the United States.

On May 15, 2008, polar bears were listed as threatened under the Endangered Species Act, and therefore defined as depleted under the Marine Mammal Protection Act (MMPA), which prohibited the further importation of these trophies into the United States. There are 41 hunters who had killed a polar bear and had pending permit applications when the polar bear became listed. These hunters were warned by extensive outreach by the Fish and Wildlife Service that a prohibition would be placed on polar bear trophy imports if a listing occurred. Hunters also gave warnings to each other. The Hunting Report, with over 5000 subscribers, told its readers in 2007, “The bottom line is, no American hunter should be putting hard, non-returnable money down on a polar bear hunt at this point.”

On October 17, 2011, the U.S. District Court of the District of Columbia issued a decision in favor of the Fish and Wildlife Service’s ruling, under Section 4(d) of the ESA, that sport-hunted polar bear trophies could no longer be imported following the date of ESA listing. Under Section 4(d), the Fish and Wildlife Service ruled that importation of polar bear trophies taken in sport hunts in Canada does not qualify for an exception to restrictions on depleted species under the MMPA. According to the court, hunters “assumed the risk that they would be unable to import their trophies.” H.R. 991 would change the laws of the nation to provide special treatment to forty-one individuals.

We oppose H.R. 991 because it would weaken the ESA and the MMPA, cherished laws for stewardship of our natural resources. It would undermine the MMPA prohibition on importing depleted species. It would provide an incentive for other trophy hunters to ask Congress for exemptions for their own hunts on marine mammals, which are listed or proposed for listing. H.R. 991 would encourage an increase of last-minute hunts on other species proposed for listing, before a final rule is issued. For these reasons, we oppose H.R. 991 as reported.

EDWARD J. MARKEY.
RUSH HOLT.
DALE E. KILDEE.
RAÚL M. GRIJALVA.
JOHN GARAMENDI.
NIKI TSONGAS.
GRACE F. NAPOLITANO.

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