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## “SERVING THE HUNTER WHO TRAVELS”

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*“Hunting provides the principal incentive and revenue for conservation. Hence it is a force for conservation.”*

### Special To The Hunting Report World Conservation Force Bulletin

by John J. Jackson, III

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#### Polar Bear and Trophy Imports Both In Jeopardy

**T**he US Fish & Wildlife Service (USF&WS) has completed the second stage of the review process and found that a “threatened” listing is warranted for all populations of polar bear in the world. The 12-month finding and proposal to list the bear was published in the Federal Register on January 9, 2007. That initiated a 90-day comment period til April 9, 2007 (72 FR 1064). The service is expected to complete the final listing process by December 27, 2007. After that date, importation of polar bear hunting trophies into the United States will not be permitted from any population found to be “threatened” because of provisions under the Marine Mammal Protection Act.

There are five “factors” considered in determining whether or not a species should be listed as threatened or endangered. All polar bear populations were found to be qualified under two of the five. The first is loss of habitat, i.e., the projected changes in and loss of habitat. The second is the inadequacy of existing regulatory mechanisms to address the reductions in sea ice habitat found in the first factor. The

two factors are interdependent. The underlying basis of both rests upon projections and assumptions about future global warming.

The proposal is based upon the finding that “polar bear populations throughout their distribution in the circumpolar Arctic are threatened by



ongoing and projected changes in their sea ice habitat.” “The primary threat with the greatest severity and magnitude of impact to the species is loss of habitat due to sea ice retreat....” The Service found that “the diminishing extent of sea ice in the Arctic is extensively documented” and that “further

recession of sea ice in the future is predicted and would exacerbate the effects observed to date on polar bears.”

Note the terms “projected” and “predicted” which appear throughout the findings and proposed listing rule. The proposal is to list a species that is projected under hypotheticals, or models, to be at risk in the foreseeable future, not a realized state or fact at this time. Future decline of bears (adults and cubs) is said to be expected in a “medium time frame of 10 to 20 years,” and decline of adult bears is “medium to long term” which is “10 to more than 20 years.” Except in two populations, neither is expected to occur in the “short term” which is “10 years or less.” (Table 1, pg. 1080) The “impact” or “effect” is not quantified.

The Alaska Regional Office of the USF&WS that is processing the review found that “[i]t is predicted that sea ice habitat will be subjected to increased temperatures, earlier melt periods, increased rain on snow events, and positive feedback systems. Productivity, abundance and availability of ice seals, a primary prey base, would (emphasis on word and subsequent

words mine) then be diminished by changes in sea ice. Energetic requirements of polar bears would increase for movement and obtaining food. Access to traditional denning areas would be affected. In turn, these factors will cause declines in the condition of polar bears from nutritional stress and productivity. As already evidenced in the Western Hudson Bay and Southern Beaufort Sea populations, polar bears would experience reductions in survival and recruitment rates. The eventual effect would be that polar bear populations will continue to decline. Populations would be affected differently in the rate, timing, and magnitude of impact, but within the foreseeable future, the species is likely to become endangered throughout all or a significant portion of its range due to changes in habitat. This determination satisfies the definition of a threatened species under the Act.”

Note how often the term “would” is used. This usage continues throughout the document. It is a projection.

The findings mimic the findings of the IUCN Polar Bear Specialists Group that has itself recommended that the polar bear be upgraded to “vulnerable” on the IUCN’s *Red List*. That should be no surprise because the author of the 12-month finding and proposal to list is Scott Schliebe, who is the immediate past chairman of the IUCN Polar Bear Specialists Group. Most of the hundreds of citations and references are to the primary members of that Group, including the new chairman Professor Andrew Derocher.

The proposal expressly cites the Polar Bear Specialists Group’s 2005 reclassification of polar bears as “vulnerable” and states that the “basis for the classification was the projected change in sea ice, effect of climate warming on polar bear distribution and condition, and corresponding effect on reproduction and survival.” (Actually, until recently, the polar bear was always considered “vulnerable” by the group and now it is again.) Though there is no doubt about the sincerity and expertise of the Group’s members, some observers think it unusual to have them in the regulatory driver’s seat

judging their own beliefs and findings in the ultimate decision-making and regulatory process.

The ESA requires that the listing be based upon the “best scientific and commercial” information, and members of the Group are no doubt most of the foremost scientific authorities on the polar bear. Nevertheless, they are not climate experts and climate change projections are the underlying reason the bear is thought to be at risk. The group itself upgraded the bear as “vulnerable” on the basis of prospective climate change even though there is no such criteria or listed risk under the Red List. One might say the Group’s own listing was improvised. Of course, loss of habitat from other causes is a risk criteria. One thing is certain: The group has long been of the opinion that global warming is impacting arctic species and their studies all reflected that long before the petition to list the polar bear was filed. The studies of the immediate past Chair and current Chair of the group have been focused on the two populations thought to be currently experiencing the most climate related trouble.

The second factor that qualifies the polar bear for listing is the “inadequate regulatory mechanisms to address sea ice recession...” Repeatedly, the finding states “[w]e conclude that inadequate regulatory mechanisms to address sea ice recession are a factor that threatens the species throughout all or a significant portion of its range.” Nowhere do the findings and proposal state that the “projected” meltdown can be adequately addressed in a quantifiable way by regulation.

The Service examined all other alleged threats to the species but found that as singular factors none threatened the species throughout all or a significant portion of the bear’s range. That includes allegations of overharvest, disease, predation such as cannibalism, contaminants, ecotourism, shipping and oil and gas production. Though they do not have “population level effects,” they are additive and will all have to be more closely monitored to see that regulatory action is not necessary in any particular instance. They



**JOHN J. JACKSON, III**  
*Conservation Force*



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**Editor/Writer**

John J. Jackson, III

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Conservation Force  
3240 S I-10 W Serv Road  
Metairie, LA 70001

Tel. 504-837-1233. Fax 504-837-1145.

[www.ConservationForce.org](http://www.ConservationForce.org)

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are also already adequately being monitored and corrected for.

The 12-month review finding and listing proposal are based upon a status assessment entitled *Range-Wide Status Review of the Polar Bear*, also completed out of the USF&WS’s Alaska office. That analysis must be seen to fully appreciate the factual basis of the proposal. The 262-page document can be found at: [http://alaska.fws.gov/fisheries/mmm/polarbear/pdf/Polar\\_Bear\\_%20Status\\_Assessment.pdf](http://alaska.fws.gov/fisheries/mmm/polarbear/pdf/Polar_Bear_%20Status_Assessment.pdf). The findings are all from this.

At the most, only two of the 19 polar bear populations in the world have realized a decline due to the two ESA listing factors. The first is the Western Hudson Bay population that is said to have experienced a 20 percent decline, which is said to be “significant.” The actual reason for the decline is not known but all the indicators are that it is ice melt and the related reduction of available seals as prey. The Western Hudson Bay is on the southernmost limit of polar bear range and its events are seen as an early warning. Conservation Force’s information is that the characteristics of that population that are said to indicate that global warming is the cause of the decline such as loss of body weight, reproduction and cub survival actually began earlier during a record cold period. One thing is certain, correlation is not necessarily proof of causation. Actually, the decline of 1,194 bear in 1987 to 935 bear in 2004 is a loss of 259 bear in 17 years. It is not as significant when one considers the bears were at a record high in the middle 80’s. Today’s numbers may be more closely related to the long term average than stated. Nevertheless, it is the opinion of experts that the Western Hudson Bay decline and characteristics of the population suggest the cause. Although it is only 20 percent, the core population is now “projected” to fall precipitously. From our point of view, a northward repositioning of those bear in their own region and out of the survey area can explain much of the apparent decline.

The other population is the Southern Beaufort Sea population. That

population’s decline is not yet confirmed and may not be real at all, but a survey is expected to be completed in June, 2007. The characteristics and behavior of that population is following that of the Western Hudson Bay population. Indicators such as body size, reproduction and cub survival are decreasing.

The proposal to list is due to the expert opinion that the trend in those two populations foretells the future of all populations because the cause of the habitat loss for bear and bear prey is forecasted to both continue and worsen. Of course, the extent or measure of the impact is speculation. The bears have survived warming in pre-historic times, but under the ESA only a “significant part of the species range” need be at risk to warrant listing.

A “threatened” species is one that



is likely to become “endangered” within the foreseeable future throughout all or a significant portion of its range. The USF&WS determined that the “foreseeable future” is 45 years for the polar bear. That is explained to be three generations, 15 years each, which is the IUCN’s *Red List* criteria. That is not defined by the ESA. In short, the predicted declines will occur within no more than 45 years and all populations are “projected” to be impacted sufficiently to be “threatened” today.

The USF&WS did receive the peer review of 10 independent experts in related fields of science, which have just been made available at <http://alaska.fws.gov/fisheries/mmm/polarbear/issues.htm>. One of those suggests that the bears will move north to the upper Arctic Basin region that is now too cold for bears and prey. In fact,

even the decrease in the Western Hudson Bay population may be explained by those bears moving northward and above the usual survey area. There is evidence they are still in the area, just displaced.

We are shocked by the conjectural nature of the proposal. The idea of listing all the polar bears in the world because one population may be down 259 bears in 17 years, itself an exaggerated figure, is hard to swallow. The overall polar bear population of the world is near an all-time high.

#### **Hunting & Trophy Imports**

■ The USF&WS found that hunting was not a stand-alone threat to the bear. In fact, it held that Canada’s sporthunting program “is based on scientifically sound quotas that ensure a sustainable population.” Though some populations are down, more populations are up and at record levels. The hunted bears of Canada and Nunavut were found to be the best managed bears in the world.

The Baffin Bay population shared with Greenland is believed to have been significantly overharvested, but that problem is resolved by Greenland’s recent adoption of more up-to-date management and regulations.

“At the present (2006), the service is considering removing the WH (Western Hudson Bay population) from the list” of approved populations for trophy import according to the *Status Review*, page 119. This is alarming to us at Conservation Force, as Canada is perfectly capable of managing its own bears and it was never intended that the USF&WS be so judgmental when the trophy import provision to the MMPA (Marine Mammal Protection Act) was passed, Section 104 in 1994. The service is acting on the basis of language added in 1994 by Senator John Kerry, who was lobbied by the Humane Society of the United States (HSUS).

Everything in the finding suggests that the Gulf of Boothia population is well-managed and increasing, but that population, like all those in the world, is proposed for listing because of projections over the next 45 years, “foreseeable future.” It has been years since

Conservation Force petitioned the USF&WS to approve that population but the listing petition seems to be in limbo while the listing process continues. (That population is up from 900 in the 1990's to 1,523 in 2000.)

We are shocked at the cavalier reliance upon and acceptance of weather predictions (global warming) and projections. We are alarmed at the misleading press releases and media reports that the listing that is proposed would initiate a “recovery” effort worldwide. The ESA does not provide for recovery programs, critical habitat designations, cooperative arrangements or funding of species in foreign lands. Listing may provide one or all of those benefits to Alaska, but it is misleading to suggest benefits to foreign species from listing. To the contrary, listing will immediately prohibit the import of bear hunting trophies into the United States, effective the day of the listing. The Nunavut communities will lose more than \$3 million per year in income and Russia will lose \$1,000 per US import, its share of a permit fee all US hunters have to pay to bring a polar bear in from Canada.

There is a provision in the ESA that provides that the USF&WS should not regulate the importation of hunting trophies of species listed as “threatened” when they are already protected on Appendix II of CITES, as is the polar bear. Consequently, the published proposal to list the polar bear states that special rules are “not applicable.” (Page 1,099) Unfortunately, the Marine Mammal Protection Act has an express provision that importation of trophies of marine mammals are prohibited if it is listed as “threatened.” Specifically, the MMPA prohibits the import of marine mammals from “depleted” populations (Section 102).

“[T]he term ‘depletion’ or ‘depleted’ means any case in which...a species or population stock is listed as...a threatened species under the Endangered Species Act of 1973,” Section 103(1)(c): 16 USC 1362(1)(c).

The USF&WS states in the finding and proposal that “we anticipate conducting an evaluation of the merits of continuing the presently authorized...

importation of polar bear trophies taken from approved populations in Canada into the United States.” This is independent of the listing of the species, so it may see fit to disapprove some areas even if they are not ultimately listed. This is a warning that they are considering closing some imports regardless.

The Service mentions a longstanding exception to the general prohibition against importation of depleted/threatened species under the MMPA. It suggests a permit under the MPMA may be available even for a listed polar bear if one can prove that it is “enhancing the survival or recovery of a species or stock,” citing 104(c) of the MMPA. That means some few may be importable but we can assure you that would be an arduous undertaking. That general exception existed before the sport hunting exception of 1994, yet no bear was importable. Moreover, the Service has never even seen fit to adopt related regulations though they have such for research and museum purposes (50 CFR 18.31). In fact, the longstanding regulations require “proof of enhancement” for research or museum permits. It has never been understood or interpreted to apply to hunting trophies being imported for personal use. It appears to be misleading, like

the suggestion of a worldwide recovery effort when the ESA has no such provision and bears are already at or near a historical high.

Our view is that the findings and assessment are both conspicuous for what is not said or contained in them. It is not balanced. Rather, it reads like a one-sided argument in support of the proposal. The information on the effects and impacts are not as certain and solid as made out. For example, just two years ago the second population thought to have declined, the Southern Beaufort Sea population, was thought to have increased from 1,800 to 2,500, up 700 bears, by the same scientists. A lot of the comparisons are to the 1980's when bears were uncommonly fat and populations were unusually high. It is a misleading reference point, not the best science. Somebody has to say so.

The Service admits “the scientific data used in this (their) analysis and projections based upon these data are subject to constant change,” but to reduce costs and as an expediency, “we have determined that proceeding with the listing of the polar bear at this time is a responsible use of our fiscal and other resources and is justified given the nature of the scientific data involved and the significant decline in polar bear habitat.” (Page 1,096) Nowhere is there an analysis or consideration of the benefits of tourist sport hunting in the sense of the ESA provisions that range nation's programs should be considered in the listing process. The Service contradictorily states that, “we do not believe the species is presently in danger of extinction throughout all or a significant portion of its range. Nor do we believe...that threats facing the polar bear present an emergency posing a significant risk to the well-being of the species.”

We urgently need contributions for our efforts to counter this move. Otherwise, your children and their prodigy will never be able to import a polar bear. Send tax-deductible contributions to: Conservation Force, 3240 S I-10 W Serv Road, Metairie, LA 70001.  
– John J. Jackson, III.

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