

accommodate the public hearing. In response to the new information received on the distribution of the taxon and public requests, the Service reopens the public comment period.

The San Diego fairy shrimp a member of the Branchinectidae, a freshwater crustacean family in the Order Anostraca (fairy shrimp). It is a small and delicate animal with large stalked compound eyes, no carapace, and 11 pairs of swimming legs. The San Diego fairy shrimp is restricted to vernal pools in San Diego County from San Marcos and Ramona south to Otay Mesa and at Valle de Palmas in northwestern Baja California, Mexico. This species is threatened by one or more of the following factors: grazing, habitat destruction and fragmentation from agricultural and urban development, alteration of wetlands, recreational activities, human disturbances, and the inadequacy of existing regulatory mechanisms.

The Service reopens the comment period to allow all interested parties to submit additional written comments on the proposal. All comments received on the San Diego fairy shrimp will be summarized in the final decision document and will be included in the administrative record of the final decision.

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: December 20, 1994.

**Thomas Dwyer,**

*Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.*

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#### 50 CFR Part 18

RIN 1018-AD04

#### Importation of Polar Bear Trophies From Canada; Proposed Rule to Implement Section 104(c)(5)(A) of the 1994 Amendments to the Marine Mammal Protection Act

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** On April 30, 1994, the Marine Mammal Protection Act (Act) was amended to allow for the issuance of

permits to import sport-hunted trophies of polar bears (*Ursus maritimus*) (excluding internal organs) legally taken by the applicant while hunting in Canada. These permits may also authorize the importation of trophies of polar bears taken, but not imported, prior to the enactment of the Amendments. Prior to issuing a permit, the Fish and Wildlife Service (Service) must make legal and scientific findings required under section 104(c)(5)(A) of the Act in consultation with the Marine Mammal Commission and after notice and opportunity for public comment. This proposed rule would establish application requirements, permit procedures, issuance criteria and permit conditions. This notice also proposes a special issuance fee for each permit as required by law. Such fees will be used in developing and implementing cooperative research and management programs for the conservation of polar bears in Alaska and Russia.

This proposed rule does not discuss the legal and scientific findings required by the 1994 Amendments that need to be made prior to issuing an import permit. The Service is currently working with the Canadian wildlife authorities to obtain the needed information to make these findings. A separate **Federal Register** notice will be published in early 1995 to review the findings.

**DATES:** The Service will consider comments and information received by March 6, 1995 in formulating its decision on this proposed rule.

**ADDRESSES:** Comments and information should be sent to: Director, Fish and Wildlife Service, c/o Office of Management Authority, 4401 N. Fairfax Drive, Room 420C, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Margaret Tieger, Office of Management Authority, at the above address, telephone (703) 358-2104, extension 5507.

**SUPPLEMENTARY INFORMATION:** This rule proposes regulations implementing provisions of the 1994 Amendments to the Act that allow for the issuance of permits to import sport-hunted trophies of polar bears legally taken by the applicant while hunting in Canada. At this time, Canada is the only country that allows polar bears to be harvested by non-residents through a regulated sport-hunting program. These amendments were signed into law on April 30, 1994. Prior to that time, those seeking authority to import polar bear trophies from Canada were required to first obtain a waiver of the Act's moratorium on importing marine mammals.

The 1994 Amendments include a streamlined procedure for authorizing the importation of these sport-hunted trophies by permit. This proposed rule would establish the application requirements, permit procedures, issuance criteria, permit conditions and issuance fee for this type of permit. The notice discusses each paragraph of the proposed rule in the section below titled, "Section Analysis by Paragraph".

Prior to issuing a permit for the importation of a polar bear trophy, the Service must make findings consistent with section 104(c)(5)(A) of the Act, in consultation with the Marine Mammal Commission, after publishing notice in the **Federal Register** for public comment. These findings are to ensure that the trophy was legally taken; that Canada has a monitored and enforced hunting program that is consistent with the 1973 International Agreement on the Conservation of Polar Bears and is based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level; and that the export and subsequent import meet the requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and other international agreements and conventions and are not likely to contribute to illegal trade in bear parts.

This proposed rule does not discuss the legal and scientific findings required by the 1994 Amendments that need to be made prior to issuing an import permit as the Service does not presently have all the information it needs to make such findings. A group of biologists from the Service and the National Biological Survey are consulting with the Canadian wildlife authorities in December 1994 to gather information and discuss Canada's program. The Service will also be addressing several questions that have been raised. A contract report prepared for the Marine Mammal Commission in 1993 has raised questions about Canada's sport-hunting program and its consistency with the 1973 International Agreement on the Conservation of Polar Bears. In addition, the 1994 Amendments require the Service to determine whether for a particular population stock, Canada manages its hunting program through scientifically-based quotas that ensure the maintenance of a sustainable population. Canada manages polar bears at the subpopulation level, that appears to be consistent with this amendment and the discussion in the legislative history on Canada's management program in the Northwest Territories (140 Cong. Rec. H2725, April 26, 1994).

The Service is gathering the specific information needed to resolve these and other related questions concerning the required findings. In early 1995, the Service anticipates publishing a summary of information on polar bear subpopulations in Canada, Canada's management program, and the legal and scientific findings in the **Federal Register** for public comment. At the same time, the Service will need to evaluate its actions under the National Environmental Policy Act, as appropriate. Once the questions have been resolved and the Service has made the findings outlined above, it will be able to act on specific permit applications.

### Section Analysis by Paragraph

#### *Section 18.30 Polar bear sport-hunted trophy import permits*

This section would establish application requirements, permit procedures, issuance criteria, permit conditions and fees to allow for the importation of trophies of polar bears legally taken by the applicant while sport hunting in Canada. The requirements in 50 CFR parts 13 (General permit procedures), 14 (Importation, exportation, and transportation of wildlife) and 23 (species listed in the Appendices to CITES) must also be met. Thus, for example, the polar bear is listed in Appendix II of CITES, and the export requires a permit issued by the Canadian Wildlife Service under CITES in addition to the import permit under the Act.

#### *Paragraph (a) Application Procedure*

Persons desiring to import trophies of polar bear taken during a sport hunt in Canada must submit an application to the Service's Office of Management Authority. In addition to completing the basic information on the official application form, the applicant must provide information as prescribed in this section, including: the purpose of the taking and proposed use upon import; names and addresses of the persons exporting and importing the polar bear trophy; if the applicant is not the person who took the specimen proposed for import, documentation that the importer is the heir to the estate of a hunter who died prior to importation of the trophy; proof that the polar bear was legally harvested in Canada by the applicant or by a decedent from whom the applicant inherited the trophy, including the tag number and date, location and manner of taking; and a description of the polar bear parts to be imported, including the

number of specimens or parts and the age, size and sex of the polar bear. This information is necessary to allow the Service to determine that the polar bear trophy in question meets the new provisions of the law and provides the specific details the Service needs to evaluate the application.

#### *Paragraph (b) Definitions*

The term "sport-hunted trophy" has been defined to clarify what parts of the polar bear are included in the term and that the item has to be for personal, noncommercial use. There was concern that internal organs, such as the gall bladder, might enter into trade and possibly contribute to illegal trade in bear parts. The Committee Report (H.R. Rep. No. 439, 103d Cong., 2d Sess. (1994)) states that "Trophies normally constitute the hide, hair, skull, teeth, and claws of the animal, which can be used by a taxidermist to create a mount of the animal for display or tanned for use as a rug. This provision does not allow the importation of any internal organ of the animal, including the gall bladder." The definitions in Parts 10, 18 and 23 of 50 CFR also apply.

#### *Paragraph (c) Review by the Marine Mammal Commission*

The law requires that the Service consult with the Marine Mammal Commission in making the specific findings required in section 104(c)(5)(A). The Marine Mammal Commission is an independent Federal agency with statutory authority to make recommendations pursuant to Title II of the Act. Since this procedure for polar bear trophy import applications is substantially similar to that required for other applications considered under the Act, the proposed regulations refer the reader to the current provisions in section 18.31(c).

#### *Paragraph (d) Procedures for issuance of permits and modification, suspension or revocation thereof*

Again, since general procedures to be followed for issuance of permits and modification, suspension or revocation of permits are currently in the regulations, the reader is referred to the current provisions in section 18.33. These regulations are based on the application procedures outlined in section 104(d) of the Act, which was not changed during the recent amendments. When Congress added section 104(c)(5) to the Act to allow for issuance of permits to import polar bear trophies, polar bear import applications were not exempted from these procedures that include the requirement that the Service will publish a notice of each permit

application in the **Federal Register** for a 30-day public comment period.

#### *Paragraph (e) Issuance Criteria*

Before a permit can be issued, the Service proposes to consider the issuance criteria in this section in addition to the general criteria in 50 CFR 13.21. The floor debate in the House of Representatives (140 Cong. Rec. H2725, April 26, 1994) emphasized that the intent of Congress was to limit importation of polar bear trophies to the hunter who actually took the polar bear and who desires to import the trophy. If an individual who has legally taken a polar bear dies prior to the importation, however, the heirs of that person's estate could apply for an import permit. The import permit requests for polar bear trophies can also be made for animals taken prior to enactment of the 1994 Amendments (April 30, 1994) if the issuance criteria are met. However, this does not apply to polar bear parts that have been seized by the Federal government or have already been imported into the United States. The first three issuance criteria address these concerns, as follows: the trophy has not already been imported, it meets the definition of a sport-hunted trophy and it was legally harvested in Canada by the applicant (or by a decedent from whom the applicant inherited the trophy). The next issuance criteria are directly taken from the language of the law at section 104(c)(5)(A)(i)-(iv). Findings to be made include determinations that (1) Canada has a monitored and enforced hunting program consistent with the purposes of the 1973 International Agreement on the Conservation of Polar Bears; (2) Canada has a sport-hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level; and (3) and (4) the export and subsequent import are consistent with the provisions of CITES and other international agreements and conventions and are not likely to contribute to illegal trade in bear parts. These factors will be addressed in greater detail when the Service publishes its proposed findings in early 1995.

#### *Paragraph (f) Additional Permit Conditions*

Every permit issued under this section would be subject to the conditions currently in the regulations for marine mammal permits at section 18.31(d). This paragraph would require all permits to be subject to the general permit conditions set forth in Part 13 of this subchapter and to certain specific conditions. These specific conditions

would require that the original permit be in the possession of the person to whom it is issued, or his agent, at the time of importation and that a duplicate copy of the issued permit be physically attached to the container in which the polar bear specimen is placed while in storage or transit.

#### *Paragraph (g) Duration of Permits*

The duration of a permit is designated on the face of the permit. The permit will be valid for no longer than one year, a timeframe that should allow for the importation to occur.

#### *Paragraph (h) Fees*

The Act requires the Director to establish and charge a reasonable fee for polar bear trophy import permits that are issued. This issuance fee is over and above the standard permit processing fee of \$25.00 that is required at the time of application in accordance with 50 CFR 13.11(d). The permit issuance fee is to be paid after notice that the application has been approved but before the permit is issued. The Committee Report outlined that the Committee considered a reasonable fee to range from \$250 to \$1,000 for each permit depending on the administrative work involved. The 1994 Amendments require all of the issuance fee be made available for polar bear conservation programs being conducted in Alaska and Russia pursuant to section 113(d) of the Act. Based on the amount of information that needs to be collected and evaluated and the need for periodic review of information, the Service is proposing to charge a fee of \$1,000 for each import permit issued. The Service believes setting the fee at this level is appropriate given the level of administrative work involved and as the monies generated will be used for polar bear conservation.

#### *Paragraph (i) Scientific Review*

The language of the law requires that a scientific review of the impact of permits issued on the polar bear population stocks be undertaken within 2 years after enactment, that is by April 30, 1996. This review is to provide an opportunity for public comment and the final report shall include a response to such public comment. The Director shall not issue permits to allow for the import of polar bears taken in Canada after September 30, 1996, if the Service determines that the issuance of permits is having a significant adverse impact on the polar bear population stocks in Canada. The Director is further authorized to conduct an annual review of this determination. The review provides for the monitoring of the

effects of permit issuance on Canada's polar bear population stocks and a means to guarantee the cessation of imports should there be an indication of an adverse impact on the sustainability of the Canadian population stocks. These reviews are to be based on the best scientific information available. If the Director does undertake a review, the Act requires that the review be completed by January 31 of the year in which the review was undertaken. The Director may not, however, refuse to issue permits solely on the basis that the review has not been completed by January 31.

Congressman Jack Fields, during the House of Representatives floor debate on the 1994 Amendments stated, "A significant adverse impact means more than a simple decrease, ordinary fluctuation, or normal change in the population cycle. A decline should not be considered significant if the decline is of short duration, affects a minuscule percentage of the population, or does not jeopardize the sustainability of the species in the long term. The decrease must be proven to be directly related to the trophy imports by sport hunters and of such a magnitude as to warrant suspension of those imports. Even so, the issuance of permits should not be suspended unless Canada does not reduce the harvest quota in response to this decline." (140 Cong. Rec. H2725, April 26, 1994)

#### **Public Comments Solicited**

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific or conservation communities, trade organizations or any other interested party concerning any aspect of this proposal are hereby solicited.

#### **Required Determinations**

This proposed rule was not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866. The Department of the Interior (Department) has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposal will affect only those in the United States who have hunted polar bear in Canada. This action is not expected to have significant taking implications, as per Executive Order 12630.

The information collection requirement contained in this section has been approved by OMB as required

by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1018-0022. Since the proposed rule would apply to importation of polar bear trophies into the United States, it does not contain any Federalism impacts as described in Executive Order 12612.

The Service has determined that this proposed rule is categorically excluded under Departmental procedures from complying with the National Environmental Policy Act (NEPA) (516 Departmental Manual, Ch. 2, Appx. 1, Para. 1.10) An Environmental Action Memorandum is on file at the Service's Office of Management Authority in Arlington, Virginia. The permits authorized under the Act and regulations, as well as the scientific findings required by the Act, may be subject to NEPA documentation requirements, on a case-by-case basis.

The Department has certified to OMB that these regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

#### **List of Subjects in 50 CFR Part 18**

Administrative practice and procedures, Imports, Indians, Marine mammals, Transportation.

#### **Proposed Regulation Promulgation**

Accordingly, the Service hereby proposes to amend part 18 of chapter I of title 50 of the Code of Federal Regulations by adding sections 18.4 and 18.30 to read as follows:

#### **PART 18—MARINE MAMMALS**

1. The authority citation for part 18 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

2. A new § 18.4 is added to subpart A of part 18 to read as follows:

#### **§ 18.4 Information collection requirements.**

(a) The information collection requirements contained in subpart D has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018-0022. The information is being collected because it is necessary for the evaluation of permit applications. The information will be used to review permit applications and make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(b) Public reporting burden for this collection of information is estimated to vary from 15 minutes to 4 hours per

response, with an average of 1.028 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden or any other aspect of this collection of information, including suggestions for reducing the burden, to the Service Information Collection Clearance Office, Fish and Wildlife Service Office of Management and Budget, Mail Stop 224, Arlington Square, U.S. Department of the Interior, 1849 C Street, N.W., Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1018-0022), Washington, DC 20503.

3. A new § 18.30 is added to subpart D of part 18 to read as follows:

**§ 18.30 Polar bear sport-hunted trophy import permits.**

(a) *Application procedure.*

Applications for permits to import polar bear trophies shall be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420C, Arlington, Virginia 22203. Each application must be submitted on an official application (Form 3-200) provided by the Service and must include as an attachment, all of the following additional information:

- (1) A statement of the purpose of the taking and proposed use upon import;
- (2) Name and address of the person from whom the polar bear trophy is to be exported;
- (3) Name and address of the person in the United States to whom the polar bear trophy is to be imported;
- (4) If the person who took the polar bear in Canada died prior to submittal of the import permit application, documentation that the importer is the heir of that person's estate;
- (5) Proof that the polar bear was legally harvested in Canada by the applicant (or by a decedent from whom the applicant inherited the trophy), including the tag number and date, location, and manner of taking; and
- (6) A description of the polar bear parts to be imported, including the number of specimens or parts and the age, size, and sex of the polar bear.

(b) *Definitions.* (1) The definitions in 50 CFR 10.12, 18.3, and 23.3 apply to this paragraph.

(2) *Sport-hunted trophy* means the hide, hair, skull, teeth, and claws of the specimen, which can be used by a taxidermist to create a mount of the animal for display or tanned for use as a rug, taken by the applicant during a sport hunt for personal, noncommercial

use. It does not include any internal organ of the animal, including the gall bladder.

(c) *Review by Marine Mammal Commission.* Upon receipt of an application the Director shall forward it to the Marine Mammal Commission as described in § 18.31(b).

(d) *Procedures for issuance of permits and modification, suspension or revocation thereof.* Permits applied for under this section shall be issued, suspended, modified or revoked pursuant to regulations contained in § 18.33.

(e) *Issuance criteria.* In determining whether to issue an import permit for a sport-hunted trophy, the Director shall consider, in addition to the general criteria in Part 13 of this subchapter, the following factors:

- (1) The specimen has not been imported into the United States;
- (2) The specimen to be imported meets the definition of a sport-hunted trophy in paragraph (b) of this section;
- (3) The polar bear was legally harvested in Canada by the applicant (or by a decedent from whom the applicant inherited the trophy);
- (4) Canada has a monitored and enforced sport-hunting program consistent with the purposes of the 1973 International Agreement on the Conservation of Polar Bears;
- (5) Canada has a sport-hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level; and
- (6) The export and subsequent import:
  - (i) 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
  - (ii) Are not likely to contribute to illegal trade in bear parts.

(f) *Additional permit conditions.* Permits to import a sport-hunted trophy are subject to the conditions outlined in § 18.31(d).

(g) *Duration of permits.* The duration of permits issued under this section shall be designated on the face of the permit, but in no case will the permit be valid for more than one year from the date of issuance.

(h) *Fees.* (1) The applicant must pay the required standard permit processing fee at the time of application as given in 50 CFR 13.11(4).

(2) The Service will promptly notify an applicant of its decision on the import permit application. If the decision is to approve the application, the applicant must remit the issuance fee of \$1,000 before receiving an import permit. The issuance fee will be used in

developing and implementing cooperative research and management programs for the conservation of polar bears in Alaska and Russia pursuant to section 113(d) of the Marine Mammal Protection Act.

(i) *Scientific review.* (1) The Director shall undertake a scientific review of the impact of permits issued under this section on the polar bear population stocks in Canada by April 30, 1996.

(i) The review shall provide an opportunity for public comment, and shall include a response to such public comment in the final report.

(ii) The Director shall not issue permits under this section after September 30, 1996, if it is determined that the issuance of permits under this section is having a significant adverse impact on the polar bear population stocks in Canada.

(2) After the initial review, the Director may review whether the issuance of permits under this section is having a significant adverse impact on the polar bear population stocks in Canada annually in light of the best scientific information available. The review must be completed no later than January 31 in any year a review is undertaken.

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Dated: December 15, 1994.

**George T. Frampton, Jr.,**

*Assistant Secretary for Fish, and Wildlife and Parks.*

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**50 CFR Part 23**

RIN 1018-AD07

**Changes in List of Species in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed Rule.

**SUMMARY:** The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animals and plants. Species for which such trade is controlled are listed in Appendices I, II, and III to CITES.

This document announces decisions by the Conference of the Parties to CITES on amendments to Appendices I and II, and repeats a previous opportunity (59 FR 55617) to comment on whether the United States should enter reservations on any of the amendments. The effect of a reservation would be to exempt this country from