

## Comments

Persons unable to attend the meeting or who wish to comment in writing may submit written comments by May 4, 1998, to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590-0001. Comments should identify the docket number of this notice (RSPA-98-3347). Persons should submit the original document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard. Alternatively, comments may be submitted via e-mail to 'OPS.COMMENTS@RSPA.DOT.GOV'. The Dockets Facility is located on the plaza level of the Nassif Building in Room Number 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

### FOR FURTHER INFORMATION CONTACT:

Gopala K. Vinjamuri, (202) 366-4503, U.S. Department of Transportation, RSPA, 400 Seventh Street, SW, Washington, D.C. 20590, or by e-mail at 'GOPALA.VINJAMURI@RSPA.DOT.GOV', regarding the subject matter of this notice.

**SUPPLEMENTARY INFORMATION:** To further the goals of the President's National Performance Review (NPR) and Regulatory Reinvention Initiative (RRI), RSPA is reviewing the gas pipeline regulations that address plastic pipe systems design, installation, and operations in transmission, distribution, and service line applications. This review seeks to eliminate or revise those regulations that are outdated, ambiguous, or in need of reform. In conducting this review, OPS will endeavor to increase its use of standards developed by voluntary consensus standards bodies. See Pub. L. 104-113 "The National Technology Transfer and Advancement Act of 1995," and "Office of Management and Budget (OMB) Circular A119."

OPS has organized this public meeting to coincide with the AGA Plastics Materials Committee meetings to encourage attendance by technical experts, pipeline operators, state pipeline safety officials, and other interested parties. OPS believes this forum is a good opportunity for the public to discuss plastic pipeline regulatory issues and suggest ways to enhance pipeline safety.

Natural gas utilities in the United States have been using plastic piping in underground gas distribution systems for over three decades. Presently, over

85 percent of the gas distribution and service lines, constituting over 500,000 miles, are installed using polyethylene pipe. Apart from occasional failures, mostly caused by third-party excavation damage, the safety performance of plastic pipe systems has been excellent, and the Federal pipeline safety regulations have been sufficient to ensure public safety. However, as plastic pipeline technology continues to improve, and the gas distribution infrastructure incorporates advanced plastics materials, installation methods, and operational techniques, there is a need to reexamine industry standards and the Federal regulations. Further, other critical issues, such as the long-term performance of the plastic piping installed in 1960s and 1970s, need to be addressed.

OPS is conducting this public meeting to elicit a free exchange of concerns, ideas, and technical knowledge among the attendees and the federal regulators. OPS seeks input on any concerns and comments the public has with the pipeline safety regulations on plastic pipe, and components in gas transmission, distribution, and service applications. In particular, OPS would like to know:

(1) Should the plastic pipe regulations accommodate different standards for new plastic materials, higher operating pressures, higher operating temperatures, and modern installation, and maintenance technologies?

(2) Are the current plastic pipeline regulations too general, too performance oriented, or too prescriptive? Should the regulations address design safety, testing of valves and fittings, and the use of joints with metal transition fittings? Do the regulations need an added level of safety for large-diameter pipe and fittings?

(3) Should OPS be concerned about the performance of large-diameter coiled plastic pipe? Is trenchless installation for large-diameter pipe an appropriate procedure?

(4) Should the pipeline safety regulations include procedures that address fusion welding of thick-walled pipe?

(5) Should there be specific requirements for natural gas plastic distribution and service lines and components in earthquake and other natural disaster-prone regions?

(6) Should the federal pipeline safety regulations address requirements for leak detection, leak surveying, and leak detection equipment?

(7) Are there other national standards that OPS should consider referencing?

(8) Should OPS consider adopting into the regulations the principles expressed in past waivers?

OPS welcomes comments on the above questions, and other issues regarding the regulation of plastic pipe in transmission, distribution, and service line applications. Because OPS's goal is to receive input from all interested parties attending the meeting, it will not prepare a formal agenda.

Issued in Washington, D.C., on January 27, 1998.

**Richard B. Felder,**

*Associate Administrator for Pipeline Safety.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 18

RIN 1018-AE26

#### Importation of Polar Bear Trophies From Canada: Addition of Populations to the List of Areas Approved for Import

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule announces proposed findings on the import of polar bears (*Ursus maritimus*) taken in sport hunts in the areas formerly known as Parry Channel-Baffin Bay and Queen Elizabeth Islands, Northwest Territories (NWT), Canada, under the Marine Mammal Protection Act (MMPA). The U.S. Fish and Wildlife Service summarizes the new research data used by Canada to redefine these areas into five populations: Queen Elizabeth Islands, Norwegian Bay, Kane Basin, Lancaster Sound, and Baffin Bay, and provides a summary of the Nunavut Land Claim and the new Flexible Quota Option. The Service proposes to find that Lancaster Sound and Norwegian Bay meet the requirements of the MMPA and to add them to the list of approved populations in the regulations. Further, the Service proposes to defer the decision on the remaining three populations, Queen Elizabeth Islands, Baffin Bay, and Kane Basin.

**DATES:** The Service will consider comments and information received by March 4, 1998 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 700, Arlington, VA 22203. Materials received will be available for public inspection by appointment from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of Management Authority, Room 700. The Service prepared an Environmental Assessment (EA) for the final rule published February 18, 1997 (62 FR 7302), and finds the EA applicable to this proposed rule. A copy of the EA may be obtained by writing to this address or by telephoning the contact listed below. If substantial new information is received on the EA's alternatives and analysis of impacts as a result of the public review, a supplemental EA will be prepared.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Stansell, Office of Management Authority, telephone (703) 358-2093; fax (703) 358-2281.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 18, 1997, the Service published in the **Federal Register** (62 FR 7302) the final rule for the import of trophies of personal sport-hunted polar bears taken in Canada. The rule established the application requirements, permit procedures, issuance criteria, permit conditions, and issuance fee for such permits and made legal and scientific findings required by the MMPA. Prior to issuing a permit for the import of a polar bear trophy, the Service must make a finding that the polar bear was legally taken by the applicant, and in consultation with the Marine Mammal Commission (MMC) and after opportunity for public comment, must make the findings listed in section 104(c)(5)(A) of the MMPA. The Service made these findings on an aggregate basis to be applicable for multiple harvest seasons as follows: (a) the Government of the Northwest Territories (GNWT) has a sport-hunting program that allows the Service to determine prior to import that each polar bear was legally taken; (b) the GNWT has a monitored and enforced program that is consistent with the purposes of the 1973 International Agreement on the Conservation of Polar Bears (International Agreement); (c) the GNWT has a sport-hunting program that is based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level for certain populations; and (d) the export of sport-hunted trophies from Canada and their subsequent import into the United States would be consistent with CITES, and would not likely contribute to illegal trade of bear parts. In addition, the Service found that

the prohibition on the import of pregnant and nursing marine mammals in section 102(b) of the MMPA would be met under the application requirements, issuance criteria, and permit conditions in the regulation.

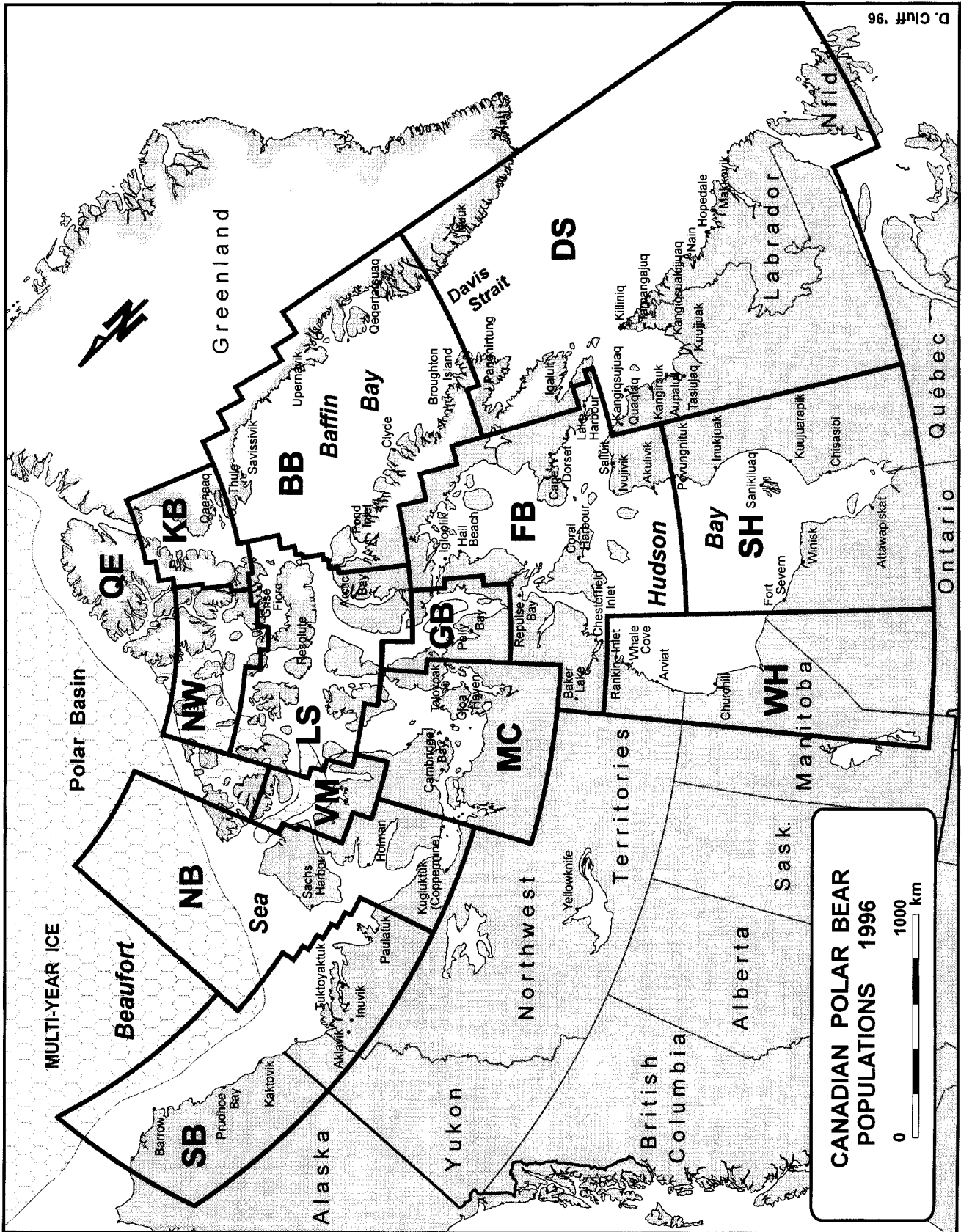
The Service provided information in the final rule to show that the following polar bear populations met the criteria specified in the MMPA: Southern Beaufort Sea, Northern Beaufort Sea, Viscount Melville, M'Clintock Channel, and Western Hudson Bay. The Service deferred making a decision for other populations: Parry Channel-Baffin Bay, Queen Elizabeth Islands, Foxe Basin, Gulf of Boothia, Southern Hudson Bay, and Davis Strait. At the same time, the Service announced that upon receipt of substantial new scientific and management data, the Service would publish a proposal for public comment and consult with the MMC. Any population found to meet the criteria would be added to the list of approved populations in the regulation at § 18.30(i)(1).

When the Service proposed the polar bear rulemaking in July 1995 (60 FR 36382), the Department of Renewable Resources (DRR), GNWT, had begun an intensive population inventory of the Parry Channel-Baffin Bay area. The Service treated the Parry Channel-Baffin Bay area as a single population based on the best available scientific data at that time and current management practices by the GNWT. However, the Service recognized that forthcoming information would likely show the area to be composed of multiple populations. The final rule reflected the Service's response to the numerous comments received on the treatment of the Parry Channel-Baffin Bay area as a single unit, rather than the new data resulting from Canada's ongoing research and management changes. To avoid further delay in completing the final rule, the Service chose to complete the rulemaking on the proposed rule and to publish the new data in a subsequent proposed rule. Thus, the Service deferred making a decision for the Parry Channel-Baffin Bay population in the final rule. The Service also deferred making a decision on the Queen Elizabeth Islands population in the final rule. Although the status of the population was stable, the reliability of the data was poor. In addition, at that time the NWT shared this population with Greenland although the movement of polar bears between the NWT and Greenland was thought to be small. It was suggested that Canada would

eventually manage this area as a sanctuary for polar bears.

Canada provided information to the Service as their research in the Parry Channel-Baffin Bay areas progressed. In August 1995, Environment Canada stated in a letter to the Service that current status information on the Parry Channel and Baffin Bay areas "would disqualify these populations", but new additional information could be available for review in early 1996. At the 1996 Polar Bear Technical Committee (PBTC) meeting the GNWT presented preliminary information that four polar bear populations were identified within an area that included the former Parry Channel-Baffin Bay and portions of the Queen Elizabeth Islands polar bear populations. Based on the preliminary data, the GNWT recommended boundary changes and renaming of the Parry Channel population as Lancaster Sound, boundary changes for the Baffin Bay population, and identification of the new Norwegian Bay and Kane Basin populations out of areas of Queen Elizabeth Islands. In July 1996, the Service received additional information on these areas and that research and inventory studies in the areas were ongoing. In January 1997 additional information on these areas was obtained at the PBTC meeting, including information on new population boundaries (Map 1) and population estimates, implementation of the Flexible Quota Option, and management changes as a result of further implementation of the Nunavut Land Claim. Although analysis of the data is ongoing, the Service believes there is enough information to reconsider whether these populations now meet the MMPA criteria that Canada has a sport-hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level.

Map 1. Boundaries of polar bear populations in Canada. Southern Beaufort Sea (SB), Northern Beaufort Sea (NB), Viscount Melville (VM), Queen Elizabeth Islands (QE), Norwegian Bay (NW), Kane Basin (KB), Lancaster Sound (LS), Baffin Bay (BB), Gulf of Boothia (GB), M'Clintock Channel (MC), Foxe Basin (FB), Davis Strait (DS), Western Hudson Bay (WH), and Southern Hudson Bay (SH).



The Service has reviewed the new information produced by ongoing research and other management actions for the populations now known as Lancaster Sound, Norwegian Bay, and Kane Basin, the revised Queen Elizabeth Islands, and Baffin Bay. This proposed rule provides new information on polar bear boundaries and estimated population size and new management considerations resulting from implementation of the Flexible Quota Option and the Nunavut Land Claim. Copies of this information have been provided to the MMC. The Service intends to announce its decision on the proposed findings for these five populations after consultation with the MMC and the opportunity for public comment. Once made, the findings will be applicable to polar bears taken on or after April 30, 1994, and into future sport-hunting seasons. These findings would not apply to polar bears sport hunted from these populations prior to April 30, 1994 for the following reason.

On June 12, 1997, Congress amended the MMPA to ease the criteria that need to be met before a permit can be issued to import polar bear trophies taken before April 30, 1994 (*i.e.*, pre-Amendment bears). Under the new language, the Service can issue an import permit for such trophies after: (a) The applicant has provided proof to show that the polar bear was legally hunted in Canada and (b) the Service has published a notice of the application in the **Federal Register** for a 30-day public comment period and collected the permit issuance fee, which has been set by regulation at \$1,000. These pre-Amendment trophies are subject to the inspection, clearance, and tagging procedures previously described in the final rule published February 18, 1997 (62 FR 7302). Based on the June 12, 1997, amendment, the Service is currently accepting and processing applications for permits to import polar bear trophies sport hunted prior to April 30, 1994. In the near future, the Service plans to propose revision of the regulations in the February 18, 1997, final rule to clarify that those regulations now apply only to polar bear trophies sport hunted on or after April 30, 1994.

### Scientific Findings and Summary of Information

#### Findings

The Service proposes to find that the Norwegian Bay and Lancaster Sound populations have sport-hunting programs based on scientifically sound quotas ensuring the maintenance of the affected population stock at a

sustainable level. The Service proposes to continue to defer making a finding for the Kane Basin and Baffin Bay populations pending the outcome of ongoing management actions between Canada and Greenland for the cooperative management of these shared populations. The Service also proposes to defer making a finding on the Queen Elizabeth Islands population that now contains land only in the far northern part of the Canadian Arctic Archipelago. Hunting is not allowed in this area, and the population size is unknown at this time.

#### Summary of Information

The Service considered the new information in reassessing whether the five populations now meet the required finding that there be a sport-hunting program based on scientifically sound quotas that ensure the maintenance of the affected population stock at a sustainable level. The Service considered the overall sport-hunting program for each population, including such factors as whether the sport-hunting program includes: (a) Reasonable measures to make sure the population is managed for sustainability (*i.e.*, monitoring to identify problems, ways of correcting problems, etc.); (b) harvest quotas calculated and based on scientific principles; (c) a management agreement between the representatives of communities that share the population; and (d) compliance with quotas and other aspects of the program as agreed to in the management agreements or other international agreements.

#### A. Population Management

The rationale of the GNWT polar bear management program is that the human-caused kill (*e.g.*, harvest, defense, or incidental kill) must remain within the sustainable yield, with the anticipation of slow growth for any population. This program has several components including: (a) Use of scientific studies to determine and monitor changes in population size and establish population boundaries; (b) involvement of the resource users and incorporation of traditional knowledge to enrich and complement scientific studies; (c) harvest data collection and a license tracking system; and (d) enforcement measures through regulations and management agreements.

In Canada, management of polar bears has been delegated to the Provinces and Territories. However, the Federal Department of Environment Canada (Canadian Wildlife Service) maintains an active research program and is involved in management of populations

that are shared between jurisdictions, particularly between Canada and other nations. In addition, Native Land Claims have resulted in Co-Management Boards for most of Canada's polar bear populations. The PBTC and Federal/Provincial Polar Bear Administrative Committee (PBAC) meet annually to ensure a coordinated management process between these parties (Government of the Northwest Territories (GNWT) unpublished documents on file with the Service). Study of the Parry Channel-Baffin Bay area highlights the cooperative and shared management that has come to characterize Canada's polar bear program. The GNWT conducted the study of this area in cooperation with the Hunters and Trappers Associations of several communities, Parks Canada, the University of Saskatchewan, and the Greenland Fisheries Institute. Participation by the Institute is of relevance since polar bears of the Baffin Bay and Kane Basin populations are shared with Greenland and harvested by residents of both countries. The results of these studies have been shared among participants, representatives of the Wildlife Management Boards, and Provincial and Federal polar bear managers at the annual PBTC and PBAC meetings as well as at the World Conservation Union (IUCN) Polar Bear Specialist Group (PBSG) meetings which bring together specialists from all countries that have polar bears (GNWT).

The Service noted in the final rule that Canada has established an effective management program for polar bear. Independent reviewers have echoed these conclusions. In a recent report solicited by the MMC, biometrician Dr. J. Ward Testa independently reviewed Canada's polar bear management program. He concluded that the GNWT management program for polar bears is based upon sound principles of adaptive resource management as previously described in the scientific literature, uses the best available data and analyses, and implements the adaptive formula for sustainable harvest (Testa 1997). The Service's February 18, 1997, final rule provided additional information on the GNWT management program for polar bear including the use of inventory studies, population modeling, and peer review.

#### B. Calculation of Harvest Quotas Based on Population Inventories

The DRR calculates harvest quotas based upon population boundaries delineated from inventories and mark-recapture studies. The methods have been described in the February 18, 1997, final rule and the scientific literature

(Bethke *et al.* 1996). Using satellite telemetry technology, researchers place collars on female polar bears and track the movements of the collared animals. The data collected is then used to define the population boundaries. Collars, either for satellite telemetry or radio tracking, cannot be reliably used for adult male polar bears since their necks are approximately the same size as the head and collars are easily lost. Polar bear researchers are still seeking alternative tracking technology suitable for male bears.

Inventory of the Parry Channel-Baffin Bay area and bordering islands of the Queen Elizabeth Islands area was begun in 1991 with the use of satellite collars. Additional collars were used in successive years through 1995. The number of collars, the areas in which they were used, and the methods of analyzing the data is provided in detail in the 1997 NWT submission to the PBTC (GNWT 1997).

As described above, analysis of the data collected from this research supports the conclusion that there are five polar bear populations in these areas. The GNWT's use of data and management considerations to identify population boundaries is consistent with the definition of "population stock" as used in the MMPA and as described in the Service's February 18, 1997, final rule. The GNWT recognizes that the boundaries of the polar bear populations are partly determined by land mass, sea ice, and open water barriers that bar polar bear movement and partly by management considerations. One such management consideration has led to a recent change to the Northwest Territory Big Game Hunting Regulations. In the past, the take of a bear was counted against the quota of the population from which it was removed. In recognition of the sometimes overlapping nature of populations which are not separated by some physical barrier, current regulations establish a 30-km zone on either side of a contiguous boundary between two polar bear populations. Practically speaking, what this means for hunters is that they can continue to track a polar bear across the population boundary and up to 30 km within the adjoining population. The take of that bear is then counted against the quota

of the population from which the hunter's tag was provided. This regulation change reflects the description of population units as functional management units where immigration and emigration are negligible relative to the effects of harvest or defense kills (GNWT 1997).

A more recent investigative tool for defining population boundaries is the study of genetic variation among polar bears. Data obtained from such studies suggest that there is a genetic basis to the population boundaries (Paetkau *et al.* 1995). Further work is needed to better understand how genetic variability should be interpreted and its relation to defining populations.

The second phase of each population inventory is to estimate population numbers using mark-recapture techniques. The DRR mark-recapture studies are based on the following: (a) Marking of 15 to 30 percent of the bears in the population; (b) sampling the entire range of the population to determine the fraction that are marked and the fraction that are unmarked; and (c) aiming for a target 15 percent coefficient of variation on the population estimates (GNWT 1997). For small populations, such as Kane Basin and Norwegian Bay, the DRR recognizes that it can be difficult to obtain a large enough sample size needed for the estimates. The alternative for these small populations would be to sample in areas where bears are known to concentrate. However, this would introduce bias. Instead, priority is given to reducing bias by using the same protocol in small as well as large areas which requires sampling throughout the entire range of the population. Since there are absolute limits to the precision of information from small populations that no sampling protocol can overcome, a full risk assessment will be done on these populations. A new computer program for this purpose has been developed and will be made available for peer review at the 1998 Biennial Conference on the Biology of Marine Mammals (M.Taylor, personal communication). This is an international forum attended by marine mammal researchers from many countries.

As described in the Service's February 18, 1997, final rule (62 FR 7302), three

key characteristics of the GNWT calculation of sustainable harvest from the population estimates are: (a) Assumption of no density effects; (b) emphasis on conservation of female bears through hunting at a ratio of two males to one female; and (c) use of pooled best estimates for vital rates (*e.g.*, rates of birth and death) for all Canadian polar bear populations with the exception of Viscount Melville. In his review and evaluation of the procedures used by the GNWT to estimate sustainable harvests, Testa (1997) reported that the 3 percent harvest of the female segment of the polar bear population is sustainable and probably conservative, and that the assumptions made for calculation of the sustainable harvest are reasonable. Further information on the allocation of the sustainable harvest as community quotas can be obtained from the Service's February 18, 1997, final rule.

The GNWT expects that 1997 will be the final year of mark-recapture work needed to estimate population numbers in the Norwegian Bay, Lancaster Sound, Kane Basin, and Baffin Bay populations. The last field season for the Norwegian Bay, Lancaster Sound, and Kane Basin populations was conducted in Spring 1997 while the last Baffin Bay field season will be completed in the fall during the open water season when polar bears are onshore. Preliminary estimates for these populations have been calculated based on the data obtained by the GNWT through the Fall 1996 field season. The Service anticipates it will receive data from the GNWT on the 1997 Spring and Fall field seasons at the 1998 Polar Bear Technical Committee meeting. Table 1 provides information based on the GNWT reporting format for each of these populations including the population estimate, the total kill (excluding natural deaths), percentage of females killed, and the calculated sustainable harvest. Based on this information the status is expressed as increasing, stable or decreasing represented by the symbols "+", "0", and "-". The symbol "0\*" refers to the recent implementation of the Flexible Quota Option in the management program as described below.

Pop.	Pop. est.	Reliability	5-Year average 91/92-95/96		3-Year average 93/94-95/96		Season 95/96		Season 96/97		Pop.1, 2 Trend
			Kill (% ♀)	Sustainable harvest	Kill (% ♀)	Sustainable harvest	Kill (% ♀)	Sustainable harvest	Kill (% ♀)	Sustainable harvest	
NW	100	FAIR .....	4.0(30.0)	4.5	4.7(42.9)	3.5	7(57.1)	2.6	2(0.0)	4.5	0/0/0*/+
LS	1700	GOOD .....	81.2(24.9)	76.5	81.7(26.0)	76.5	80(26.9)	76.5	77(22.1)	76.5	0*/0*/0*/0
KB	200	FAIR .....	6.2(37.1)	8.1	6.3(38.1)	7.9	6(35.0)	8.6	5(60.0)	5.0	0/0/0/0*

Pop.	Pop. est.	Reliability	5-Year average 91/92-95/96		3-Year average 93/94-95/96		Season 95/96		Season 96/97		Pop.1,2 Trend
			Kill (% ♀)	Sustainable harvest	Kill (% ♀)	Sustainable harvest	Kill (% ♀)	Sustainable harvest	Kill (% ♀)	Sustainable harvest	
BB	2200	GOOD .....	122.2(35.4)	93.2	120.3(35.0)	94.3	117(34.2)	96.5	57(35.7)	92.4	-/-/-/0
QE	200	NONE .....	0.0(-)	0.0	0.0(-)	0.0	0(-)	0.0	0(-)	0.0	0/0/0/0

1 - Overharvest.  
 + Underharvest.  
 0 No change, a difference of 3 or less between the kill and the sustainable harvest.  
 0\* Population stable because of management changes.  
 2 - Population Trend expressed for 5 yr. avg./ 3 yr. avg./ 95-96 season/ 96-97 season.

As described in the Service's February 18, 1997, final rule, the Service considers the use of qualitative terms to report the reliability of population estimates to be acceptable. The Service also recognizes the use of these population estimates within the present context to be valid since they were determined through research using scientific methodology.

*C. Management Agreements and the Nunavut Land Claim*

Polar bear management in Canada is a shared responsibility involving Federal, Territorial, Provincial, and land claim participants. Coordination of these parties is the result, in part, of PBTC and PBAC meetings as well as management agreements between the resource users and the GNWT. These management agreements are an intrinsic part of cooperative polar bear management in Canada. In § 18.30(i)(1)(iii) the Service recognized management agreements as an essential part of making the finding that there is a sport-hunting program to ensure the sustainability of the affected polar bear population.

The settlement of native land claims in Canada served as an impetus for the development of the management agreements. The Norwegian Bay, Lancaster Sound, Kane Basin, and Baffin Bay populations, among others, fall within the Nunavut Land Claim signed in 1993. Both this claim and the Inuvialuit Land Claim signed in 1984 establish co-management boards for cooperative management of wildlife resources, including polar bear (GNWT). The respective roles of the GNWT and the Nunavut Wildlife Management Board and the Inuvialuit Wildlife Management Advisory Council are defined in law. The wildlife management advisory boards are regarded as the main instrument of wildlife management action in the NWT, although the Minister of the Department of Renewable Resources is the ultimate management authority (GNWT). The current approach to polar bear management begins with community meetings and concludes

with Population Management Agreements that are signed by the communities that share a population and the Minister of Renewable Resources, reviewed by the Native Land Claim Boards, and finally transmitted to the Minister of the Department of Renewable Resources as recommendations for regulation changes to implement the agreements (GNWT).

One effect of the Nunavut Land Claim is the division in 1999 of the NWT into the Nunavut Territory and some presently unnamed western territory. The transition for this change has already begun with restructuring of departments including amalgamation of the DRR and others into the Department of Resources, Wildlife and Economic Development (M. Taylor, personal communication). The NWT polar bear project has been transferred from Yellowknife, NWT, to Iqaluit, the future capital of the Nunavut Territory. The Service views these changes as a continuation of a process begun with settlement of the Nunavut Land Claim in 1993. Management actions taken to date, including development of the management agreements, have been with an eye toward establishment of the Nunavut Territory and are a further example of Canada's commitment to a responsive management program for polar bear.

The success of the Canadian management agreements and others, such as the Inupiat-Inuvialuit Agreement for the Southern Beaufort Sea polar bear population, has led to the acceptance of such agreements as an important tool for interjurisdictional polar bear management. At the 1997 IUCN meeting for polar bear, the PBSG reiterated the need for cooperative management of shared populations both as a benefit to polar bears and as a requirement of the International Agreement. Specifically, the contribution of management agreements was recognized and the need for additional agreements called for in a new resolution to the International Agreement which concluded that "the development of sound conservation practices for shared populations

requires systematic cooperation, including use of jointly collected research and management information to develop cooperative management agreements" (PBSG 1997).

The Canadian Government is actively pursuing development of a management agreement for polar bear populations shared between Canada and Greenland. These shared populations include the Kane Basin, Baffin Bay, and Davis Strait polar bear populations. A meeting was held in January 1997 to identify management needs and to discuss the potential development of a management agreement for these shared populations. The following areas were identified as necessary elements of a co-management agreement: (a) Agreement on the boundaries, population, and sustained yield of the three populations; (b) acceptable division of the sustained yield; (c) harvest monitoring; (d) a management system to ensure the sustained yield is not exceeded; and (e) agreement on other harvest practices, such as family groups, protection of dens, etc.

Representatives of Greenland have clarified that, unlike the Inuvialuit-Inupiat agreement for the Southern Beaufort Sea population, any management agreement for populations shared with that country would need to be government to government rather than user group to user group. At this point it was uncertain how Canada would be represented given the complex sharing of management responsibilities for polar bear within Canada. A committee was formed to examine the options of Canadian representation. The options are expected to be discussed at future meetings on development of management agreements between Canada and Greenland (GNWT).

*D. Compliance With Quotas and the Sport-Hunting Program*

As discussed in the February 18, 1997, final rule, the community quotas are based on harvest of polar bears at a ratio of two males:one female. While this allows for the harvest to be 50 percent higher than if polar bears were harvested at a 1:1 ratio, implementation

of the sex selective harvest has posed problems. For some communities where the sex ratio was set as a target of management agreements there was ineffective enforcement when the harvest of females exceeded the target in some years. For those communities where the sex-selective harvest was implemented through regulation, difficulty distinguishing between male and female polar bears led to mistakes and inconsistent law enforcement action for those mistakes. To respond to these problems, the Flexible Quota Option was developed. All communities within the four populations of Norwegian Bay, Lancaster Sound, Kane Basin, and Baffin Bay have agreed to follow the Flexible Quota Option. This change has been incorporated into the respective management agreements and, subsequently, into the regulations which implement those agreements.

The premise behind the Flexible Quota Option is that it will allow for mistakes in sex identification and for community preferences in sex-selective harvesting while keeping the harvest within sustainable yield. There are two parts to this system. The first part is a harvest tracking system that monitors the number of males and females killed in the past 5 years. If the sustained yield was not taken in any one of the past 5 years, then the difference between the sustained yield and the actual kill is counted as a positive credit. These accrued credits can then be used to compensate for an overharvest in a future harvest season within a 5-year timespan. If no credits are available (*i.e.*, the full sustained yield was taken over the past 5 years or any available credits have already been used), then an overharvest can be mitigated by quota reductions in future years. Once the overharvest has been corrected by a quota reduction, the quota returns to its original level. Since community quotas are a shared allocation of the overall population quota, a community without positive credits can receive credits from one of the other communities hunting from that same polar bear population. If there are no credits available or if a community chooses not to provide credits to another, then the overharvest is mitigated by a quota reduction to the community which experienced the overharvest.

The second part of the Flexible Quota Option is the calculation of the quota based on sustainable sex-selective harvesting of one female bear for every two males. The GNWT summarizes the system as follows. The number of quota tags allocated to a community depends on the community's allocation of the sustainable yield of female bears (F)

from any one population as established through a management agreement, the number of female bears killed in the previous year ( $K_{t-1}$ ), and the proportion of female bears in the previous year's harvest ( $P_{t-1}$ ). The quota for the current year ( $Q_t$ ) is then calculated as:

$$Q_t = (2F - K_{t-1}) / P_{t-1}.$$

The value of  $(2F - K_{t-1})$  cannot exceed F, and the value of  $P_{t-1}$  cannot exceed 0.33. If the value of  $(2F - K_{t-1})$  is less than zero, the quota is zero and the subsequent year's quota is calculated by designating  $K_t$  as the value of  $-(2F - K_{t-1})$  (GNWT 1996). Testa (1997) concluded that "This is simply a way to average the quota over two years when a village inadvertently exceeds its quota in a given year." In this way the average take of female polar bears cannot exceed the sustainable rate.

Because of the emphasis on conservation of female bears, the sex ratio of the overharvest must be taken into consideration when a quota reduction is necessary. As a result, the reduction is handled differently for male versus female bears. Reductions to the quota as a result of an overharvest of males occur only when the maximum number of females has also been taken or exceeded. The correction for such an overharvest is one male for each male overharvested. A correction is not made for an overharvest of male bears if the number of females taken is less than their sustained yield. The rationale for this decision is that although males were overharvested, females were not. As a result, those females not harvested will reproduce and compensate for the additional males removed from the population. In contrast, when an overharvest of females has occurred, the quota reduction is not simply one quota tag for each female overharvested. Instead, the sex ratio of the harvest must be considered in determining the necessary quota reduction for the following year or subsequent years, if necessary (GNWT 1996).

The management agreements identify the steps to be taken to implement the flexible quota system. The DRR reviews the harvest data of the previous season and identifies any overharvest. Then the community HTO's, Regional Wildlife Boards, Wildlife Officers, and Regional Managers develop sustainable alternatives to quota reductions, if possible. These could include use of credits from that community that experienced the overharvest or the borrowing of credits from another community that hunts from the same polar bear population. By July 1 of each year the DRR must report the harvest data and quota recommendations to the

Nunavut Wildlife Management Board (NWMB). The NWMB can accept these recommendations or vary them depending on the input of the Board and consultation with the communities. They submit final recommendations to the Department Minister who must make a final decision, taking into consideration the DRR harvest report and NWMB recommendations, by August 1 (GNWT).

The 1996/97 polar bear harvest season was the first in which the communities used the Flexible Quota Option. In the first year of implementation, all populations were hunted within sustained yield for both males and females. Some corrections were made for communities that were unable to meet their harvest targets. These corrections included use of credits from another community and quota reductions. In developing the Flexible Quota Option, the GNWT believed that it would be able to accommodate differences in hunting preferences, differences in hunting opportunities as a result of weather effects, and will keep each population's harvest within sustainable yield (GNWT 1996). Although this system of regulating and monitoring the quota is considered less conservative than the past method, it has already shown itself to be an effective option. These early results suggest the system is working as planned.

As referred to above, there are some less conservative elements to the Flexible Quota Option. The first element is the manner in which the DRR assigned the initial credit balance. All communities that agreed to use the new system entered it with a zero balance of negative credits but were allowed to retain their positive credits. These positive credits can be used to offset future overharvests. The DRR recognizes the inconsistency of this approach but believes that it will not have a long term negative effect on the populations and that such an approach was necessary to win support for the system. The second element is the Flexible Quota Option feature that allows unused quota tags to essentially be "rolled over" to the following year as a positive credit. In the past, unused quota tags were not retained into the following year. Although this change could theoretically slow the growth of Canadian polar bear populations, the Service believes that the flexible quota system is a reasonable alternative for those communities that have had difficulty consistently hunting at a 2:1 ratio. Testa (1997) similarly recognized that the flexible quota system was conceptually sound and needed to be



given a chance to have its wrinkles worked out.

### Status of Populations the Service Proposes to Approve

The Service proposes to approve the Norwegian Bay and Lancaster Sound populations as meeting the required findings of section 104(c)(5)(A)(ii) of the MMPA based on currently available information and to add them to the list of approved populations in § 18.30(i).

#### Norwegian Bay (NW)

The preliminary population estimate for this new area is 100 with fair reliability based on the analysis of data collected to date from the inventory and mark-recapture studies. This population was identified as being separate from the Queen Elizabeth Islands population previously described in the final rule. A harvest quota of four bears has been calculated for this population. The quota is allocated to the community of Grise Fiord. The community residents of Grise Fiord have agreed to the terms of a revised management agreement which includes use of the Flexible Quota Option to ensure that future harvests are sustainable and all family groups are protected. Although the sustainable harvest was decreased over successive seasons due to harvest of females in excess of the prescribed 2:1 ratio, no females were taken in the 1996/97 season during the first year of the Flexible Quota Option.

#### Lancaster Sound (LS)

The GNWT reports a preliminary population estimate of 1,700 with good reliability. Based on the population estimate, a harvest quota of 76.5 has been calculated. Three communities, Grise Fiord, Resolute, and Arctic Bay, harvest bears from the Lancaster Sound area. All family groups are protected in this population. Based on the 1993/94 harvest data and the 3- and 5-year averages, the Service pointed out in the final rule that the kill in this population exceeded the quota by more than 70 percent. The GNWT recalculated previous harvests in the Lancaster Sound population based on the separation of the data for the former Parry Channel-Baffin Bay area and the new population estimates for Lancaster Sound and Baffin Bay. These data do not reveal the extent of overharvest previously reported in the final rule. Although this may appear somewhat confusing, it does help to show that while there was a substantial harvest in excess of the quota in the larger geographic area, the Lancaster Sound population was not overharvested and is being managed on a sustainable basis.

Beginning with the 1994/95 season, harvest data for the Lancaster Sound and Baffin Bay populations were presented separately. The communities are working to avoid overharvests and have signed a new management agreement which includes the use of the Flexible Quota Option to help ensure compliance with quotas and correct for overharvests if they do occur in the future. Data for this population averaged over several seasons and for the 1995/96 and 1996/97 seasons demonstrates that females are being conserved (Table 1).

As described above, under the Flexible Quota Option an overharvest of male bears results in a quota reduction only when the harvest of female bears has met or exceeded the maximum allowed. The 5-year harvest history for the Flexible Quota Option shows the Lancaster Sound area had 30 credits for female bears. In contrast, the harvest history shows an accumulated debit of 38.5 male bears for the population. The Service notes that one of the communities in this population predominately harvested male bears, a practice that could become a problem. It is unclear whether the predominance of males in the harvest was due to hunter preference or to a greater availability of male bears in this area. This emphasis on harvesting male bears from this population by one community was relieved, however, to a limited extent by the predominance of harvesting females by another community.

### Status for Populations for Which Scientific and Management Data Are Not Presently Available for Making a Decision

After reviewing the best available scientific and management data on the populations addressed below, the Service proposes not to make a final decision on whether populations of Kane Basin, Baffin Bay, or Queen Elizabeth Islands satisfy the statutory criteria of section 104(c)(5)(A) of the MMPA. As future scientific and management data become available on these populations, the Service will evaluate such data to determine whether a proposed rule should be published that would add such populations to the approved list in § 18.30(i)(1).

The NWT shares the Kane Basin, Baffin Bay, and Davis Strait populations with Greenland. Greenland does not have an agreement with NWT or communities as to how they will manage their portion of the populations. The management of polar bears in Greenland rests with the Greenland Home Rule Government. There is no limit on the number of polar bears

taken. Although females with cubs-of-the-year are protected, older family groups are harvested. In 1993 Greenland started to systematically collect harvest data. In 1994, a harvest questionnaire was developed for all species, including polar bears. Greenland has experienced difficulties in obtaining complete and accurate harvest records, but the collection of data is expected to improve as the harvest reporting system becomes better known (GNWT).

As mentioned above, Greenland and the GNWT have conducted cooperative population inventory studies for the past 4 years. The brief summary of the January 26, 1997, meeting for the co-management of polar bear stocks shared between Greenland and Canada reported that the status of polar bears in the shared populations is disturbing. "It appears that the Davis Strait and Baffin Bay populations are being depleted by over-harvesting. Additionally, Grise Fiord has identified a quota for the Canadian portion of Kane Basin which, if taken, will cause this population to decline as well" (GNWT).

The Service also proposes to defer making a finding on the Queen Elizabeth Islands population. This revised population now contains land only in the far northern part of the Canadian Arctic Archipelago. No hunting is allowed in this area and the population size is unknown. Canada's plans for this area are unclear at this time.

#### Kane Basin (KB)

Like Norwegian Bay this new population was identified as occupying an area formerly considered to be part of the Queen Elizabeth Islands population. Unlike the Norwegian Bay population, the Kane Basin population is shared with Greenland. The population estimate for this area is 200. Management agreements for the NWT portion of Kane Basin and Baffin Bay populations are in place that include protection of all family groups and use of the Flexible Quota Option. During the 1996/97 harvest season more than 50% of the quota was taken as female bears. As a result, under the Flexible Quota Option the quota for this population will be reduced to one for the 1997/98 harvest season. As long as the 1997/98 quota of one bear is not exceeded and no females are taken, the overharvest of females in the 1996/97 season will have been compensated for and the quota will return to five (M. Taylor, personal communication).

The Kane Basin population is currently considered stable but a single NWT community, Grise Fiord, has a quota for harvesting from the Kane



Basin population. If this occurs, the population is expected to decline since Greenland hunters also harvest from this population. Discussions of a co-management agreement between Canada and Greenland are expected to be conducted concurrently for the Kane Basin, Baffin Bay, and Davis Strait populations.

#### Baffin Bay (BB)

The preliminary population estimate for this area is 2,200. The combined Parry Channel-Baffin Bay population estimate of 2,470 reported in the final rule was derived from the 2,000 estimated for Parry Channel (now Lancaster Sound) and 470 from northeastern Baffin Bay. In spring the polar bears in the Baffin Bay area are distributed throughout Baffin Bay and much of the population is unavailable for mark-recapture, leading to underestimates of the population size. For this reason the mark-recapture work of the most recent inventory study has been conducted in the fall, open water season when Baffin Bay polar bears are on shore in Canada (GNWT 1997). Fall 1997 is expected to be the last field season required to complete the inventory study. The harvest data for this population is presented in Table 1 but should be considered preliminary pending harvest information from Greenland. The communities of Broughton Island, Clyde River, and Pond Inlet that harvest from this population have agreed to a revised management agreement which includes protection of all family groups and use of the Flexible Quota Option.

As explained above for the Lancaster Sound population, the GNWT has re-examined the population status of past years based on the new population estimate. Overharvesting is a problem for this shared population. Data from Canadian hunts conducted in the 1996/97 harvest season show a total kill substantially below the sustainable harvest level, and a harvest sex ratio of nearly 2:1. However, as previously described, there is currently no management agreement between Canada and Greenland for this shared population and there are concerns that the population may be declining.

#### Queen Elizabeth Islands (QE)

Recent research data led the GNWT to redefine the boundaries of this population. The area was divided into three populations: Kane Basin, Norwegian Bay, and Queen Elizabeth Islands. The revised Queen Elizabeth Islands population is comprised now of land only in the far northern part of the Canadian Arctic Archipelago. The

population size is unknown but it is believed that there are few polar bears in this remote area. No hunting is allowed in the area.

#### Public Comments Solicited

The Service invites comments on this proposal. The Service will take into consideration the comments and any additional information received in making a decision on this proposal, and such consideration may lead to final findings that differ from this proposal.

#### Required Determinations

The Service prepared an EA on the final rule published in the **Federal Register** (62 FR 7302) on February 18, 1997, in accordance with the National Environmental Policy Act (NEPA). The Service anticipates this EA is still current but will decide after the close of the comment period whether it needs to supplement the EA or use the existing EA. A determination will be made at the time of the final decision as to whether the proposed rule is a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA.

This proposed rule was not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866. A review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has revealed that this rulemaking would not have a significant economic effect on a substantial number of small entities, which include businesses, organizations, and governmental jurisdictions. The proposal will affect a relatively small number of U.S. hunters who have hunted, or intend to hunt, polar bear in Canada. Allowing the import of legally taken sport trophies, while maintaining the restriction on the sale of trophies and related products, will provide direct benefits to individual sport hunters and a probable small beneficial effect for U.S. outfitters and transportation services as U.S. hunters travel to Canada. If each year an estimated 50 U.S. citizens hunted a polar bear in Canada at an approximate cost of \$21,000, then \$1,050,000 would be expected to be spent, mostly in Canada. It is expected that the majority of taxidermy services will be provided in Canada. Since the trophies are for personal use and may not be sold in the United States, there are no expected market, price, or competitive effects adverse to U.S. business interests.

The Department of the Interior (Department) has determined that these regulations meet the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988. The Service has determined and certified

pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities.

The Service has submitted a request for approval to the Office of Management and Budget for the collection of information as required by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The collection of information will not be required until it has been approved by OMB and the proposal is adopted. The Service will collect information through the use of the Service's form 3-200, which was modified pursuant to 50 CFR 18.30. The Service is collecting the information to evaluate permit applications. The likely respondents to this collection will be sport hunters who wish to import sport-hunted trophies of polar bears legally taken while hunting in Canada. The Service will use the information 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 applicant must respond to obtain or retain a permit. A single response is required to obtain a benefit. The Service estimates the public reporting burden for this collection of information to vary from 15 minutes to 1.5 hours per response, with an average of 30 minutes 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. The estimated number of likely respondents is less than 150, yielding a total annual reporting burden of 75 hours or less.

#### References Cited

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- GNWT, Department of Renewable Resources. 1996. Report prepared for the Polar Bear Technical Committee Meet., no. 25, 12 pp.
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- Paetkau, D., W. Calvert, I. Stirling, and C. Strobeck. 1995. Microsatellite analysis of population structure in Canadian polar bears. *Mol. Ecol.* 4:347-354.
- PBSG, The World Conservation Union. 1997. Resolutions from the Twelfth

Working Meet. IUCN/SSC PBSG Feb. 3-7, 1997.

Testa, J.W. 1997. Importation of Polar Bear Trophies from Canada under the 1994 Amendments to the Marine Mammal Protection Act. Report prepared for the Marine Mammal Commission, Washington, D.C. 9 pp.

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

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, 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 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. Amend § 18.30 by revising paragraph (i)(1) introductory text to read as follows:

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

\* \* \* \* \*

(i) *Findings.* \* \* \*

(1) We have determined that the Northwest Territories, Canada, has a monitored and enforced sport-hunting program that meets issuance criteria of

paragraphs (d)(4) and (5) of this section for the following populations: Southern Beaufort Sea, Northern Beaufort Sea, Viscount Melville Sound (subject to the lifting of the moratorium in this population), Western Hudson Bay, M'Clintock Channel, Lancaster Sound, and Norwegian Bay, and that:

\* \* \* \* \*

Dated: January 21, 1998.

**Donald Barry,**

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

[FR Doc. 98-2442 Filed 1-28-98; 4:11 pm]

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