

²This note recognizes that typical good track will increase in total gage by as much as 1/4 inch due to outward rail rotation under GRMS loading conditions. For Class 2 & 3 track, the GRMS LTG values are also increased by 1/4 inch to a maximum of 58 inches. However, for any Class of track, GRMS LTG values in excess of 58 inches are considered First Level exceptions and the appropriate remedial actions must be taken by the track owner. This 1/4-inch increase in allowable gage applies only to GRMS LTG. For gage measured by traditional methods, or with the use of the PTLF, the table in § 213.53(b) will apply.

(m) Between GRMS inspections, the PTLF shall be used as an additional analytical tool to assist fully qualified § 213.7 individuals in determining compliance with the crosstie and fastener requirements of §§ 213.109 and 213.127 subject to the following criteria—

(1) At any location along the track that the PTLF is applied, that location will be deemed in compliance with the crosstie and fastener requirements specified in §§ 213.109 and 213.127 provided that—

(i) The total gage widening at that location does not exceed 5/8 inch when increasing the applied force from 0 to 4,000 pounds; and

(ii) The gage of the track under 4,000 pounds of applied force does not exceed the allowable gage prescribed in § 213.53(b) for the class of track.

(2) Gage widening in excess of 5/8 inch shall constitute a deviation from Class 1 standards.

(3) A person designated as fully qualified under § 213.7 retains the discretionary authority to prescribe additional remedial actions for those locations which comply with the requirements of paragraph (m)(1)(i) and (ii) of this section.

(4) When a functional PTLF is not available to a fully qualified person designated under § 213.7, the criteria for determining crosstie and fastener compliance shall be based solely on the requirements specified in §§ 213.109 and 213.127.

(5) If the PTLF becomes non-functional or is missing, the track owner will replace or repair it before the next inspection required under § 213.233.

(6) Where vertical loading of the track is necessary for contact with the lateral rail restraint components, a PTLF test will not be considered valid until contact with these components is restored under static loading conditions.

(n) The track owner shall maintain a record of the two most recent GRMS inspections at locations which meet the requirements specified in § 213.241(b). At a minimum, records shall indicate the following—

(1) Location and nature of each First Level exception; and

(2) Nature and date of remedial action, if any, for each exception identified in paragraph (n)(1) of this section.

(o) The inspection interval for designated GRMS line segments shall be such that—

(1) On line segments where the annual tonnage exceeds two million gross tons, or where the maximum operating speeds for passenger trains exceeds 30 mph, GRMS inspections must be performed annually at an interval not to exceed 14 months; or

(2) On line segments where the annual tonnage is two million gross tons or less and the maximum operating speed for passenger trains does not exceed 30 mph, the interval between GRMS inspections must not exceed 24 months.

(p) As used in this section—

(1) *Gage Restraint Measurement System (GRMS)* means a track loading vehicle meeting the minimum design requirements specified in this section.

(2) *Gage Widening Ratio (GWR)* means the measured difference between loaded and unloaded gage measurements, linearly normalized to 16,000 pounds of applied lateral load.

(3) *L/V ratio* means the numerical ratio of lateral load applied at a point on the rail to the vertical load applied at that same point. GRMS design requirements specify an L/V ratio of between 0.5 and 1.25. GRMS vehicles using load combinations developing L/V ratios which exceed 0.8 must be operated with caution to protect against the risk of wheel climb by the test wheelset.

(4) *Load severity* means the amount of lateral load applied to the fastener system after friction between rail and tie is overcome by any applied gage-widening lateral load.

(5) *Loaded Track Gage (LTG)* means the gage measured by the GRMS vehicle at a point no more than 12 inches from the lateral load application point.

(6) *Portable Track Loading Fixture (PTLF)* means a portable track loading device capable of applying an increasing lateral force from 0 to 4,000 pounds on the web/base fillet of each rail simultaneously.

(7) *Projected Loaded Gage (PLG)* means an extrapolated value for loaded gage calculated from actual measured loads and deflections. PLG 24 means the extrapolated value for loaded gage under a 24,000 pound lateral load and a 33,000 pound vertical load.

(8) *Unloaded Track Gage (UTG)* means the gage measured by the GRMS

vehicle at a point no less than 10 feet from any lateral or vertical load.

Issued in Washington, D.C. on January 4, 2001.

John V. Wells,

Acting Federal Railroad Administrator.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018-AH72

Import of Polar Bear Trophies From Canada: Change in the Finding for the M'Clintock Channel Population and Revision of Regulations in 50 CFR 18.30

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency interim rule with request for comments.

SUMMARY: We, the Fish and Wildlife Service, are amending our regulations, under the Marine Mammal Protection Act (MMPA), on the import of polar bears (*Ursus maritimus*) taken by U.S. hunters in sport hunts from M'Clintock Channel, Nunavut Territory, Canada. We have reviewed new information submitted by the Department of Environment Canada (Canadian Wildlife Service) which indicates that this population is severely depleted and current harvest quotas are unsustainable. We find that the M'Clintock Channel population no longer meets the import requirements of the MMPA and are amending our regulations to reflect that bears sport hunted in this population after the 1999/2000 Canadian hunting season will no longer be eligible for import under the 1997 finding which approved this population for multiple harvest seasons. Due to the dramatic change in population status, we are using this emergency interim rule to make the changes to our regulations effective immediately. In addition, we are updating our regulations to reflect the new territory of Nunavut and to notify the public on the lifting by Canada of the harvest moratorium in the Viscount Melville Sound polar bear population.

We invite your comments on this interim rule.

DATES: This rule is effective on January 10, 2001. We will accept comments on this rule until March 12, 2001.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Ms. Teiko Saito, Chief, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. You may also comment via the Internet to: fw9ia_dma@fws.gov. Please include "Attn: Part 18 Comments (RIN 1018-AH72)" and include your name and return address in your e-mail message. 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 above address.

FOR FURTHER INFORMATION CONTACT: Ms. Teiko Saito, at the above address, telephone (703) 358-2093, fax (703) 358-2280.

SUPPLEMENTARY INFORMATION:

Background

The 1994 Amendments to the MMPA (section 104(c)(5)(A)) allow for the issuance of permits to import sport-hunted polar bear trophies from Canada when we can make certain legal and biological findings. On February 18, 1997, we published regulations in the **Federal Register** (62 FR 7302) that established standards for the issuance of permits to allow the import of sport-hunted polar bear trophies (50 CFR Part 18.30). It made aggregate findings applicable for multiple harvest seasons for five populations, including M'Clintock Channel, as follows: (a) Canada has a sport-hunting program that allows us to determine before import that each polar bear was legally taken; (b) Canada has a monitored and enforced program that is consistent with the purposes of the 1973 International Agreement on the Conservation of Polar Bears; (c) Canada 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. A subsequent final rule on January 11, 1999 (64 FR 1529), made aggregate findings that approved two additional populations.

In Canada, management of polar bears has been delegated to the Provinces and Territories. However, the Canadian

Wildlife Service, Canada's national wildlife agency, maintains an active research program and is involved in the 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 Federal/Provincial/Territorial Polar Bear Technical Committee (PBTC) and Polar Bear Administrative Committee meet annually to ensure a coordinated management process between these parties.

The basis of the Government of Northwest Territories (GNWT) and Government of Nunavut (GNUN) polar bear management program is that the human-caused killing of polar bears (e.g., harvest, defense, or incidental) must remain within the sustainable yield, with the anticipation of slow growth for any population. The 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.

Regulations and management agreements between the GNWT, GNUN, and Native land claim beneficiaries provide the rules for polar bear harvest in the Northwest Territories (NWT) and Nunavut. Sport hunting of polar bears is presently legal only in NWT and Nunavut and includes additional requirements. All sport hunts must be conducted under Canadian jurisdiction and guided by a Native hunter. In addition, transportation during the hunt must be by dog sled, the tags must come from the community quota, and quota tags from unsuccessful sport hunts may not be used again. All bears taken by sport hunters must be accounted for within existing quota tags. Not all communities participate in sport hunting as it reduces hunting opportunities for local hunters. You should refer to the February 18, 1997 (62 FR 7302), and January 11, 1999 (64 FR 1529), rules for more extensive information on Canada's polar bear management program.

What Is the Status of the M'Clintock Channel Polar Bear Population?

As described in our February 18, 1997 (62 FR 7302) final rule, in the mid-1970s, Canada estimated the M'Clintock

Channel population to be 900 polar bears based on a 6-year mark-recapture population study. Subsequently, local hunters advised that 700 might be a more accurate estimate. However, we note that new information submitted to us by Canada indicates the 1978 population inventory estimate was 350 bears and that it was revised upward to 700 based on the belief that the initial estimate was too low. Under a Local Management Agreement between Inuit communities that share this population, the harvest quota for this area was revised to levels expected to achieve slow growth based on the population estimate of 700 polar bears. Although Canada considered the population estimate information as poor, we approved this population since Canada, in conjunction with the local communities, agreed to the reduction (from 900 to 700) in the population estimate, hunting had been at a 2 male to 1 female sex ratio for several years, and there was a management agreement in place.

Canada initiated a new study of the polar bear population in M'Clintock Channel in 1998 to assess the population size currently being used to calculate harvest quotas. At the 2000 PBTC meeting, the GNUN presented preliminary results of the mark-recapture analysis based on data collected during 1998 and 1999. Although cautioning that the results were incomplete, the polar bear managers estimated that the newly revised population size for the M'Clintock Channel population was between 360 and 390 bears, considerably lower than the previous estimate of 700. The GNUN considered the reliability of the new estimate "poor;" and noted that a more accurate estimate was to be calculated following the end of the 3-year mark-recapture study.

Following the end of the study in 2000, the GNUN provided us with preliminary results based on data collected in 1998, 1999, and 2000. The recalculated population estimate of polar bears in M'Clintock Channel is between 238 and 399 bears, with 288 as the best estimate. Based on this updated estimate, the GNUN recalculated the maximum sustainable harvest that would sustain the population at its current level, with no population growth, at 8 bears per year (4 males and 4 females). The current quota is 32 bears (22 males and 10 females). The GNUN is currently reconstructing age data from polar bear teeth that will be used to calculate survival estimates which is expected to result in a more accurate population estimate. The analyses are

expected to be completed by the beginning of 2001 and presented at the PBTC Meeting in February 2001.

The GNUN indicates that at the current rate of harvest, the population is declining and would be reduced to zero in 10 years. With no harvest, the population would increase at only 4 percent annually. Thus, recovery of this population will be slow and each year of over-harvest will delay recovery time by a minimum of 2 years. The GNUN will be evaluating future management goals for this population such as identifying a target population recovery level.

Canada has made no adjustment to quotas to reflect the new population information since polar bears are co-managed with local communities through agreements and any modification requires community consultation. Discussions with local

communities to develop the best plan of action were recently completed.

Community consultation is expected to result in a change in quotas. The GNUN anticipates that conservation measures will be implemented before further significant harvest in the population occurs. Although the hunting season in M'Clintock Channel opened August 1, 2000, except for defense kills, no harvest is expected to occur before February 2001. Sport hunts are typically conducted in the spring, between March and May. The hunting season is limited by factors such as the lack of sea ice, the number of daylight hours, and winter weather conditions.

Table 1 summarizes the polar bear harvest in the M'Clintock Channel population during the 1989/1990 to 1998/1999 harvest seasons. Sport harvest in M'Clintock Channel began in 1991 with no sport hunts conducted

from 1992 through 1994. A total of 266 bears were harvested over the past ten years, ranging from an annual harvest of 17 to 37 bears. Of these bears, 52 (47 male, 4 female, 1 unknown) were sport hunted. As of December 31, 1999, a total of 48 import permits, including 3 pre-Amendment bears, had been issued for bears sport hunted from this population by U.S. citizens. Since the MMPA was amended in 1994 to allow for the import of certain sport-hunted trophies, the number of bears taken in sport hunts in M'Clintock Channel as a percentage of the total annual harvest has ranged from a low of 29 percent (1994/1995) to a high of 57 percent (1996/1997), and decreased to 41 percent in 1998/1999. The total harvest of polar bears for all purposes did not exceed the annual quota nor did sport hunting increase the number of bears taken annually over the past 10 years.

TABLE 1.—POLAR BEAR HARVEST IN M'CLINTOCK CHANNEL

Season	Regular			Sport			Problem		Other		Total			
	M	F	U	M	F	U	M	F	M	F	M	F	U	T
1989/90	20	17									20	17	0	37
1990/91	12	15	1		1	1	2				14	16	2	32
1991/92	24	14									24	14	0	38
1992/93	11	8					1				12	8	0	20
1993/94	15	6						1			15	7	0	22
1994/95	5	3		5					1	3	11	6	0	17
1995/96	11	7		8							19	7	0	26
1996/97	6	6		15	1						21	7	0	28
1997/98	6	6		11	1						17	7	0	24
1998/99	9	4		8	1						17	5	0	22
Total	119	86	1	47	4	1	3	1	1	3	170	94	2	266

Regular = Community subsistence hunt

Sport = Must be guided by Native hunter, part of community quota

M = male; F = female; U = unsexed; T = total

The GNUN estimates that females comprise 65 percent of the current sex ratio of the adult (age 3+) population in M'Clintock Channel. This suggests that the number of adult males has been reduced, so that any continuing harvest will likely be increasingly composed of adult females. Protection of the female component of the population was an important consideration in developing sustainable harvest limits. Any additional take of females will further prolong the recovery time for this population.

How Does the Change in the Finding for the M'Clintock Channel Population Affect me?

We are amending our import regulations to reflect that bears sport hunted in the M'Clintock Channel population after May 31, 2000, the close of the 1999/2000 Canadian hunting season, will no longer be eligible for

import under the 1997 finding which approved this population for multiple harvest seasons. Any person who hunts in the M'Clintock Channel population after this date is taking a risk that he or she may never be able to legally import the polar bear trophy into the United States.

Why Are We Using an Emergency Interim Rule to Amend our Regulations for the M'Clintock Channel Polar Bear Population?

The Canadian Wildlife Service has provided us with new information for the M'Clintock Channel polar bear population which indicates that the population is severely depleted and current harvest quotas are unsustainable. The MMPA requires us to review the best scientific information available; if we receive substantial new information on a population, we must review it and make a new finding as to

whether to continue to approve the population. The new information for the M'Clintock Channel population reveals that scientifically sound quotas ensuring the maintenance of the population at a sustainable level are not in place and that terms of the 1973 International Agreement on the Conservation of Polar Bears, that requires the Parties to "manage polar bear populations in accordance with sound conservation practices based on the best available scientific data" are not being met. The report also indicates that, even with remedial steps, the population will not likely recover for some time. Due to the dramatic change in population status, we are using an emergency interim rule to make the changes to our regulations effective immediately.

Under the Administrative Procedure Act (5 U.S.C. 551–553), our normal practice is to publish regulations with a 30-day delay in effective date. But in

this case, we are using the "good cause" exemption under 5 U.S.C. 553(b) and (d)(3) to issue this rule without first invoking the usual notice and public comment procedure and to make this rule effective upon publication for the following reasons: (1) Official information submitted by the government of Canada shows that the M'Clintock Channel population no longer meets the import requirements of the MMPA, (2) as a matter of fairness to the regulated community it is necessary to put the public on notice immediately that bears sport hunted in the M'Clintock Channel population after May 31, 2000, the end of the 1999/2000 Canadian hunting season, will no longer be eligible for import under the finding which approved this population for multiple harvest seasons, and (3) it would be contrary to the public interest to maintain regulatory findings that purport to allow the importation of these polar bear trophies when those findings are no longer consistent with the MMPA.

What Happens Next?

After the 60-day comment period closes, we will consider all comments received, determine whether the emergency interim rule should be modified, and publish a final rule in the **Federal Register**. The final rule will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Why Are we Revising our Regulations To Include Nunavut Territory?

Besides restricting the importation of polar bears from the M'Clintock Channel population, we are updating our regulations at 50 CFR 18.30 to reflect that sport hunting of polar bears is legal in both the NWT and Nunavut Territory and that approved populations may now fall under either the GNWT and/or GNUN jurisdiction. Since the publication of the February 18, 1997 (62 FR 7302), and January 11, 1999 (64 FR 1529), final rules, the Nunavut Territory, formerly part of the NWT, officially joined the Federation of Canada on April 1, 1999. Prior to this, legal sport hunting of polar bears in Canada took place only in the NWT; now the majority of polar bear populations lie within or are shared with Nunavut. All GNWT legislative laws and agreements (including the polar bear management agreements) in place still stand in Nunavut. Inter-jurisdictional management agreements are being drafted or revised to reflect the change in government. Management agreements between participating

communities and the GNWT and/or the GNUN (formerly part of GNWT), are still in effect for the approved polar bear populations as described in the February 18, 1997, and January 11, 1999, rulemakings. Management of polar bear populations now fall under the Department of Resources, Wildlife, and Economic Development (formerly the Department of Renewable Resources), GNWT, and/or the Department of Sustainable Development, GNUN.

What Recent Management Changes Has Canada Made for the Viscount Melville Sound Population?

Canada lifted its five-year harvest moratorium in the Viscount Melville Sound population effective August 1, 1999. This population was added to the list of populations approved for the import of sport-hunted polar bear trophies in our February 18, 1997 (62 FR 7302), rulemaking, subject to the lifting of the harvest moratorium. The GNUN/GNWT set the 1999/2000 annual harvest quota at four bears, with one female take allowed. We have received preliminary data on this population and will continue to coordinate with Canada on monitoring its status.

Public Comments Invited

We invite comments on this interim rule from affected or concerned government agencies, the public, the scientific community, industry, environmental organizations, and any other interested party. We will consider all comments submitted to us by the deadline indicated above in **DATES**.

Our practice is to make comments, including names and home addresses of respondents, available for public review during normal business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Required Determinations

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The economic effects of this rule will impact a relatively small number of U.S. sport hunters. 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, or to any small entity. Some incidental economic benefits received by the sports-hunting travel/airline, taxidermist, and sport-hunting industries are expected to remain unchanged by this interim rule. If an estimated 10 U.S. citizens hunted a polar bear in M'Clintock Channel, Canada each year at a total cost of \$21,000 (US) for each hunt, then \$210,000 would be expected to be spent, mostly in Canada. Because the small number of U.S. hunters that hunt for polar bears in M'Clintock Channel, Canada, are the only group affected by this rule, the fact that no commercial activity in bear products is involved, and the effect of such hunts for U.S. outfitters and transportation services is likely to be small, this interim rule is not expected to be a major rule and will not have a significant economic effect.

Although we are amending our import regulations to reflect that bears sport hunted in the M'Clintock Channel population after the close of the 1999/2000 Canadian hunting season will no longer be eligible for import under the 1997 finding which approved this population for multiple harvest seasons, there are 6 other populations, including Viscount Melville Sound, from which U.S. sport hunters will continue to be able to import legally hunted bears. Thus, we expect there will be no substantial loss to U.S. hunters. The revision of our regulations at 50 CFR 18.30 to include the new territory of Nunavut will have no economic effect as we are simply updating our regulations to reflect that populations approved for the import of sport-hunted polar bear trophies may now fall under either GNWT and/or GNUN jurisdiction.

b. This rule will not create inconsistencies with other agencies' actions. Since 1972, responsibility for implementing the MMPA has been split between two federal agencies. Acting on behalf of the Secretary, Department of the Interior, we have been delegated the MMPA authority for several species of marine mammals, including the polar bear. The National Marine Fisheries Service (NMFS) implements the MMPA authority of the Secretary, Department

of Commerce for whales, dolphins, and most pinnipeds (*i.e.*, seals and sea lions). Currently, there are no special provisions in the MMPA for import of sport-hunted marine mammal species other than polar bear. Since the only federal agencies with authority for marine mammals are the NMFS and us, and the NMFS has not been delegated MMPA authority for this species and does not have any comparable action for other marine mammal species, this rule will not create inconsistencies with that agency's actions.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The groups most affected by this rule are the relatively small number of U.S. sport hunters who would have chosen to hunt polar bear in the M'Clintock Channel population in Canada, and a comparatively small number of U.S. outfitters, taxidermists, and personnel who provide transportation services for travel from the United States to Canada. The revision of our regulations at 50 CFR 18.30 to include the new territory of Nunavut will have no effect as we are merely updating our regulations to reflect that populations approved for the import of sport-hunted polar bear trophies may now fall under either Government of Northwest Territories and/or Government of Nunavut jurisdiction. Similarly, the announcement of the lifting by Canada of a harvest moratorium in the Viscount Melville Sound population will also have no effect as this population was previously added to the list of populations approved for the import of sport-hunted polar bear trophies in our February 18, 1997 (62 FR 7302), rulemaking, subject to the lifting of the harvest moratorium.

d. This rule will not raise novel legal or policy issues. This interim rule is limited to the Service's review of new information obtained from Canada on one polar bear population previously approved for issuance of permits to import polar bear trophies personally sport hunted by U.S. residents. Under section 104(c)(5)(A) of the MMPA, before issuing a permit for the import of a polar bear trophy, we must make certain legal and scientific findings. In a previous rule published in 1997 [62 FR 7302], we put the public on notice that if we receive substantial new information on a population, we would review it and make a new finding, if necessary, after consideration of public comment. After reviewing the new information, we find that the M'Clintock Channel population no longer meets the import requirements of the MMPA. Due

to the dramatic change in population status, we are using an emergency interim rule to make the changes to our regulations effective immediately. At the same time, we are soliciting comments and will consider those comments in issuing a final rule. The revision of our regulations at 50 CFR 18.30 to include the new territory of Nunavut will also not raise novel legal or policy issues as we are merely updating our regulations to reflect that populations approved for the import of sport-hunted polar bear trophies may now fall under either GNWT and/or GNUN jurisdiction. Similarly, we are merely announcing Canada's lifting of the harvest moratorium in the Viscount Melville Sound population, a population we previously added to the list of populations approved for the import of sport-hunted polar bear trophies in our February 18, 1997 (62 FR 7302), rulemaking, subject to the lifting of the harvest moratorium.

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. Based upon its analysis of the factors identified above, we have determined that no individual industries within the United States will be significantly affected and no changes in the demography of populations are anticipated. This rule involves the importation of polar bear trophies for personal, non-commercial use only, and therefore will have no effect on the commercial fur trade market. Polar bear sport hunting is not allowed within the United States. Therefore, sport hunting of polar bears in Canada can have no effect on polar bear sport hunts in the United States since such hunts are currently prohibited. For these reasons, and those described under the EO 12866 required determination above, we have, therefore, determined that the rule will not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and have determined that a small entity flexibility analysis study is not necessary.

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more. The economic effects of this rule will impact a relatively small number of U.S. sport hunters. A total of 50 polar bears

have been taken in sport hunts from the M'Clintock Channel between 1995 and 1999 with a range of 5 to 16 bears taken per year; approximately 74% of sport hunters are U.S. citizens. The announcement of the lifting by Canada of a harvest moratorium in the Viscount Melville Sound population will have no economic effect as this population was previously added to the list of populations approved for the import of sport-hunted polar bear trophies in our February 18, 1997 (62 FR 7302), rulemaking, subject to the lifting of the harvest moratorium. 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, or to any small entity. The revision of our regulations to include the new territory of Nunavut will have no economic effect as we are merely updating our regulations to reflect the change in government jurisdiction for populations approved for the import of sport-hunted polar bear trophies.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The importation of polar bear trophies is for personal, non-commercial use only. The small benefits gained by U.S. outfitters and transportation services as U.S. hunters travel to Canada will most likely remain unchanged as most sport hunters will simply redirect their hunting efforts from the M'Clintock Channel to one of the 6 other approved populations. The revision of our regulations to include the new territory of Nunavut will have no effect as we are merely updating our regulations to reflect a change in government jurisdiction.

This rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The groups most affected by this rule are the extremely small number of U.S. sport hunters who would have chosen to hunt polar bear in M'Clintock Channel, Canada, and a small number of U.S. outfitters, taxidermists, and personnel who provide transportation services for travel from the United States to Canada. The importation of legally taken sport trophies is still approved for 6 other populations from

Canada, including Viscount Melville Sound, and it is anticipated that most sport hunters will simply redirect their hunting efforts to one of the 6 other populations. The revision of our regulations to include the new territory of Nunavut will have no effect as we are merely updating our regulations to reflect a change in government jurisdiction.

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. This rule is limited to our review of new information obtained from Canada on one polar bear population that we previously approved for issuance of permits to import polar bear trophies personally sport hunted by U.S. residents. We are revising our regulations to include the new territory of Nunavut merely to reflect a change in government jurisdiction.

b. This rule will not produce a Federal mandate of \$100 million or greater in any year, i.e., it is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. We have determined that the rule has no potential takings of private property implications as defined by Executive Order 12630, for the reasons described under the EO 12866 required determination above.

This rule will place the hunting community on immediate notice that our 1997 finding that approved the M’Clintock Channel population for multiple harvest seasons is no longer in effect after May 31, 2000, the end of the 1999/2000 Canadian hunting season. If hunters nonetheless proceed to take polar bears from this population after the emergency rule is published, they do so with full notice that the M’Clintock Channel population no longer meets the eligibility criteria set out in the MMPA for the issuance of import permits.

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required since the rule is limited to the importation of personal sport-hunted polar bear trophies for personal (non-commercial) use, only by the person who sport hunted the trophy.

This rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and

responsibilities among the various levels of government.

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This interim rule is limited to our review of new information obtained from Canada on one polar bear population previously approved for issuance of permits to import polar bear trophies personally sport hunted by U.S. residents. Under section 104(c)(5)(A) of the MMPA, before issuing a permit for the import of a polar bear trophy, the Service must make certain legal and scientific findings. In a previous rule published in 1997 [62 FR 7302], the Service told the public that the findings that approved populations as published in the CFR are aggregate findings applicable in subsequent years. However, it also put the public on notice that if we receive substantial new information on a population, we would review it and make a new finding after consideration of public comment. After reviewing the new information, we find that M’Clintock Channel no longer meets the import requirements of the MMPA and are amending our regulations to reflect that bears sport hunted in this population after May 31, 2000, the close of the 1999/2000 Canadian hunting season, will no longer be eligible for import under the 1997 finding which approved this population for multiple harvest seasons. Due to the dramatic change in population status, we are using an emergency interim rule to make the changes to our regulations effective immediately. At the same time, we are soliciting comments and will consider those comments in issuing a final rule.

This regulation does not contain new or revised information for which OMB approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The information collection associated with Federal Fish and Wildlife permits is covered by an existing OMB approval, and is assigned clearance number 1018–0093, Form 3–200–45, with an expiration date of February 28, 2001. Details of the information collection requirements for the import of sport-hunted polar bear trophies appear at Title 50 of the Code of Federal Regulations, Section 18.30(a). We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

We have analyzed this rule in accordance with the criteria of the

National Environmental Policy Act. The Department of the Interior has determined that the issuance of this action is categorically excluded under the Department’s NEPA procedures in Part 516 of the Department Manual, Chapter 2, Appendix 1.10.

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The rule is limited to our review of new information obtained from Canada on the M’Clintock Channel polar bear population. Polar bear sport hunting is not allowed within the United States. Therefore, sport hunting of polar bears in Canada can have no effect on polar bear sport hunts in the United States since such hunts are currently prohibited.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the “Supplementary Information” section of the preamble helpful in understanding the rule? What else could we do to make this rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, D.C. 20240. You may also email comments to: Exsec@ios.doi.gov

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.

Regulation Promulgation

Accordingly, we hereby amend Part 18, Subchapter B of chapter I, Title 50 of the Code of Federal Regulations to read as follows:

PART 18—[AMENDED]

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 paragraphs (a)(4)(i), (a)(4)(iii), (a)(4)(iv), and (i)(1) introductory text to read as follows:

§ 18.30 Polar Bear sport-hunted trophy import permits.

(a) * * *

(4) * * *

(i) A copy of the Northwest Territories (NWT) or Nunavut Territory hunting license and tag number;

* * * * *

(iii) A copy of the NWT or Nunavut Territory export permit; or

(iv) A certification from the Department of Resources, Northwest Territories, or the Department of Sustainable Development, Nunavut Territory,

* * * * *

(i) * * *

(1) We have determined that the Northwest Territories and Nunavut Territory, Canada, have 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 (only for polar bears lawfully taken on or before May 31, 2000), Lancaster Sound, and Norwegian Bay, and that:

* * * * *

Dated: January 4, 2001.

Kenneth L. Smith,

Assistant Secretary Fish and Wildlife and Parks.

[FR Doc. 01-656 Filed 1-8-01; 11:37 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 635**

[I.D. 110800A]

RIN 0648-AJ67

Atlantic Highly Migratory Species; Pelagic Longline Fishery Vessel Monitoring Systems

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; stay of effectiveness; request for comments.

SUMMARY: As ordered by the U.S. District Court for the District of Columbia on September 25, 2000, NMFS is undertaking further consideration of the scope of vessel monitoring system (VMS) requirements in the Atlantic pelagic longline fishery in light of any relevant conservation requirements. NMFS previously provided notice of the Court's ruling by distribution on the Highly Migratory Species Fax Network and in a mailing to permit holders. NMFS requests comments on options for implementing VMS requirements in the Atlantic pelagic longline fishery. As a result of the Court's order, NMFS delays the effective date of regulations regarding application of VMS requirements to the Atlantic pelagic longline fishery adopted as part of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), pending further ruling of the Court on the agency's reconsideration of this matter.

DATES: Effective October 1, 2000, 50 CFR 635.69 is stayed indefinitely. Written comments must be received on or before February 8, 2001.

ADDRESSES: Copies of the HMS FMP, accompanying regulations and supporting documents, and the Hawaii VMS Pilot Project Report can be obtained from Othel Freeman, 301-713-2347; fax: 301-713-1917. Written comments should be addressed to Jill Stevenson, Highly Migratory Species Division, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702 or by fax. Comments submitted via e-mail or on the Internet will not be accepted. **FOR FURTHER INFORMATION CONTACT:** Jill Stevenson or Buck Sutter, 727-570-5447; fax: 727-570-5656; or e-mail at jill.stevenson@noaa.gov or buck.sutter@noaa.gov.

SUPPLEMENTARY INFORMATION:**Background**

NMFS published final regulations implementing the HMS FMP on May 28, 1999 (64 FR 29090). Those regulations require all pelagic longline fishermen to report hourly using a NOAA-approved VMS. In June 1999, after the final regulations were published, a coalition of commercial pelagic longline fishermen and dealers sued the Secretary of Commerce, challenging, among other measures, the VMS requirements of the final rule. On September 25, 2000, Judge Richard W. Roberts, U.S. District Court for the District of Columbia, issued an order that found that there was inadequate

evidence in the record to support fleet-wide application of the VMS requirements under national standards 7 and 8 of the Magnuson-Stevens Fishery Conservation and Management Act. The Judge indicated that "the Secretary failed to set forth a rational connection between the factual record and the choice to impose a blanket VMS requirement on all pelagic longline fishers, regardless of whether they are geographically located near a time/area closure...." Judge Roberts ordered that the agency further consider the scope of the VMS requirements in light of potential conservation benefits compared to costs.

In the biological and economic analyses of the HMS FMP that accompanied publication of the regulations, NMFS included information concerning fishery conservation benefits and the potential enforcement and communication benefits of VMS to both fishery managers and fishermen. Those benefits include increased communications for fishermen and real-time monitoring, which significantly improves enforcement of large offshore closed areas. For example, NMFS and the U.S. Coast Guard would be able to detect and to document unlawful incursions into closed areas. Without the VMS, such violations could only be detected with costly at-sea monitoring efforts. Monitoring the Atlantic pelagic longline fleet through the use of VMS would require only a small percentage of the cost of traditional surveillance methods.

Reconsideration of VMS Program

NMFS did not include in its original analyses supporting the rulemaking all of the background information that has been used by NMFS and fishery managers and enforcement agencies world-wide as a standard for application of VMS requirements. Pursuant to Judge Roberts' order, NMFS is now reviewing that background information and the results of VMS programs implemented in other fisheries around the world.

In addition, new circumstances that may influence NMFS's consideration of the scope of VMS requirements have arisen since the final regulations were published in 1999. Specifically, on August 1, 2000, NMFS published regulations establishing three new closed areas to reduce bycatch and incidental catch in the pelagic longline fishery in the Gulf of Mexico and the Southeast Atlantic Ocean off the coasts of South Carolina, Georgia, and Florida. Also, on October 13, 2000 (65 FR 60889), NMFS established one more closed area in the North Atlantic Ocean