

AGREEMENT WITH RUSSIAN FEDERATION
CONCERNING POLAR BEAR POPULATION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED
STATES OF AMERICA AND THE GOVERNMENT OF THE RUSSIAN
FEDERATION ON THE CONSERVATION AND MANAGEMENT OF
THE ALASKA-CHUKOTKA POLAR BEAR POPULATION DONE AT
WASHINGTON ON OCTOBER 16, 2000



JULY 11, 2002.—Agreement was read the first time, and together with
the accompanying papers, referred to the Committee on Foreign Rela-
tions and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *July 11, 2002.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Agreement between the Government of the United States of America and the Government of the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population done at Washington on October 16, 2000 (the "U.S.-Russia Agreement"). I also transmit, for the information of the Senate, the report of the Department of State with respect to that Agreement.

The U.S.-Russia Agreement provides legal protections for this population of polar bears in addition to those found in the Agreement on the Conservation of Polar Bears done at Oslo, November 13, 1973 (the "1973 Agreement"), which was a significant, early step in the international conservation of polar bears. The 1973 Agreement is a multilateral treaty to which the United States and Russia are parties. (The other parties are Norway, Canada, and Denmark.) The 1973 Agreement provides authority for the maintenance of a subsistence harvest of polar bears and provides for habitat conservation.

The proposed U.S.-Russia Agreement, which would operate as a free-standing treaty separate from the 1973 Agreement, is the culmination of a 8-year effort. The U.S.-Russia Agreement builds on the 1973 Agreement to establish a common legal, scientific, and administrative frame work for the conservation and management of the Alaska-Chukotka polar bear population, which is shared by the United States and the Russian Federation. For example, the U.S.-Russia Agreement provides a definition of "sustainable harvest" that will help the United States and Russia to implement polar bear conservation measures while safeguarding the interests of native people. In addition, the U.S.-Russia Agreement establishes the U.S.-Russia Polar Bear Commission, which would function as the bilateral managing authority to make scientific determinations, establish taking limits, and carry out other responsibilities under the terms of the U.S.-Russia Agreement. The proposed U.S.-Russia Agreement would strengthen the conservation of our shared polar bear population through a coordinated sustainable harvest management program.

Early ratification of the U.S.-Russia Agreement by the United States will reinforce our leadership role in international conservation of marine mammals and will encourage similar conservation action by other countries. I recommend that the Senate give early

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and favorable consideration to this Agreement and give its advice
and consent to ratification.

GEORGE W. BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, June 5, 2002.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmittal to the Senate for advice and consent to ratification, the Agreement between the Government of the United States of America and the Government of the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population done at Washington on October 16, 2000 (the "U.S.-Russia Agreement").

The U.S.-Russia Agreement is designed to afford protections to this polar bear population in addition to those provided by the multilateral Agreement on the Conservation of Polar Bears done at Oslo, November 15, 1973, (the "1973 Agreement"), an agreement to which the United States and Russia are parties. (The other parties are Norway, Canada and Denmark.) The U.S.-Russia Agreement will establish a common legal, scientific and administrative framework for the conservation and management of the Alaska-Chukotka polar bear population, which is shared by the United States and the Russian Federation. Unified and binding protection is needed to ensure that the taking of polar bears by native people in Alaska and the Chukotka region and other activities do not adversely affect this polar bear population.

The 1973 Agreement allows the taking of polar bears for subsistence purposes by native people, as does our domestic legislation—the Marine Mammal Protection Act (MMPA)—in respect to Alaska natives. The U.S.-Russia Agreement advances the 1973 Agreement in several ways. For example, it provides a definition of "sustainable harvest" that will help the United States and Russia to implement polar bear conservation measures. In addition, the U.S.-Russia Agreement establishes the "U.S.-Russia Polar Bear Commission," which would function as the bilateral managing authority to make scientific determinations, establish harvest limits and carry out other responsibilities under the terms of the bilateral agreement. The Agreement would strengthen the capability of our countries to implement coordinated conservation measures for our shared polar bear population.

The United States would implement habitat components of the proposed U.S.-Russia Agreement through existing provisions of the Marine Mammal Protection Act and other Federal statutes. Although the U.S.-Russia Agreement is consistent with current practice, some legislative amendments and new authorities will be necessary to ensure its implementation. We are working with other in-

interested federal agencies to identify appropriate legislation that will be submitted separately to Congress.

The proposed U.S.-Russia Agreement will enter into force 30 days after the date on which the United States and Russia have exchanged written notification through diplomatic channels that they have completed their respective domestic legal procedures necessary to bring the U.S.-Russia Agreement into force. The United States will present the U.S. instrument of ratification, but will do so only after the necessary legislation is in place.

Enclosed for the information of the Senate is an article-by-article analysis of the U.S.-Russia Agreement.

The Department of Interior concurs in my recommendation that the U.S.-Russia Agreement be submitted to the Senate for advice and consent to its ratification.

I recommend that the U.S.-Russia Agreement be transmitted to the Senate for its early and favorable consideration, and for advice and consent to its ratification.

Respectfully submitted,

COLIN L. POWELL.

Enclosure: As stated.

ARTICLE-BY-ARTICLE ANALYSIS

Article 1

This article sets forth definitions.

"Sustainable harvest level," a term used in setting take levels of polar bears, is defined to mean a harvest level which does not exceed net annual recruitment to the population and maintains the polar bear population at or near its current level. The term takes into account all forms of removal, and considers the status and trend of the population, based on reliable scientific information. This definition is designed to be compatible with Article II of the 1973 Agreement, which provides that each Party thereto "shall manage polar bear populations in accordance with sound conservation practices based on the best available scientific data."

"Reliable" scientific information satisfies the "best available" information requirement because "reliable" data expresses an even higher standard than "best available" data (which could include data that is less than reliable). The Commission will not take management decisions in the absence of "reliable" data. Therefore, the use of the "reliable" scientific information standard in the U.S.-Russia Agreement is consistent with the 1973 Agreement.

The article also defines "taking" and "native people." "Taking" means hunting, killing or capturing. "Native people" are defined as the native residents of Alaska and Chukotka as represented by the Alaska Nanuq Commission and the corresponding Union of Marine Mammal Hunters, or their successor organizations recognized as such by the Parties.

Article 2

This article requires that the Parties cooperate with the goal of conserving the shared polar bear population and its habitat, and in the regulation of its use for subsistence purposes by native people.

Article 3

This article defines the geographic boundaries of the Agreement, which correspond to the areas within the jurisdictions

of the United States and Russia, respectively, in which the joint polar bear population can be found. To take into account the possibility that polar bear migratory patterns may change, the Agreement allows for modification of these geographic boundaries by mutual agreement of the Parties. It is expected that such modifications would be concluded on behalf of the United States by the Department of State through an exchange of diplomatic notes.

Article 4

This article requires, *inter alia*, that the Parties make all efforts necessary to conserve polar bear habitats. For the United States, the commitments in Article 4 are already implemented through existing provisions of the Marine Mammal Protection Act and other federal statutes.

Article 5

This Article provides that any taking of polar bears from the Alaska-Chukotka population inconsistent with the terms of the Agreement or the 1973 Agreement is prohibited. Thus, the Parties would continue to apply the 1973 Agreement, and any take of polar bears from the Alaska-Chukotka population must be consistent with both agreements.

Article 6

Paragraph 1 of this article provides for taking of polar bears by native persons for subsistence purposes, but lists a number of conditions (e.g., prohibiting the taking of certain females, cubs and polar bears in dens; prohibiting the use of poisons, traps, or snares to take polar bears). Paragraph 2 provides for permissible takings of polar bears for scientific research and other purposes such as rescue and rehabilitation, and sets forth the conditions under which polar bears may be placed on public display.

Article 7

Paragraph 1 of this Article provides that nothing in the Agreement is intended to authorize the taking of polar bears for commercial purposes. However, the article provides further that nothing in the Agreement limits the ability of native people, consistent with domestic law, to create, sell, and use traditional articles associated with native harvest of polar bears. Paragraph 2 provides that the Parties must undertake, in accordance with

domestic law, measures necessary for the prevention of illegal trade in polar bears, including their parts and derivatives.

Article 8

Article 8 establishes the U.S.-Russia Polar Bear Commission (the "Commission"). The Commission is composed of two national sections, each consisting of two members appointed by the respective Party in order to provide for inclusion in each section of a representative of its native people in addition to a representative of the Party. The Article further describes the duties and procedures of the Commission. Each section will have one vote in the Commission and all decisions or recommendations are made only with the approval of both sections.

Among other duties, the Commission will promote cooperation among the Parties and the native people; facilitate scientific research on polar bears; establish a scientific working group to assist it in its tasks; collect and distribute data; develop quotas for annual sustainable harvest levels of polar bears; and participate in the examination of disagreements between native people of Alaska and Chukotka regarding subsistence use of polar bears.

Article 9

This Article provides that each Party has the right to harvest one-half of the annual taking limit of polar bears determined by the Commission. It also allows a Party to transfer part of its share of the annual limit to the other Party with the agreement of the Commission.

Article 10

This article provides that each Party shall take the steps necessary to ensure implementation of the Agreement. Each Party is also to monitor polar bear harvests, and report to the Commission on steps taken with respect to such implementation and monitoring.

Article 11

Article 11 provides that the Agreement does not limit the right of either Party to take additional measures to protect polar bears in areas under its jurisdiction.

Article 12

Under Article 12 the Parties shall consult in the event of any disagreements regarding the interpretation or application of the provisions of the Agreement. The Commission may be asked by either Party to examine any point of disagreement, and any recommendations of the Commission are to be presented to the Parties, although they would not be binding on the Parties.

Article 13

Article 13 provides that the Agreement will enter into force 30 days after the Parties have exchanged written notification that they have completed their respective domestic legal procedures necessary to bring the Agreement into force. For the United States, this will mean ratification by the President, with the advice and consent of the Senate, but the U.S. will present its instrument of ratification only after implementing legislation is in place. Either Party may terminate the Agreement by notifying the other Party in writing, provided that a Party shall make any such notification not later than June 30 of any calendar year for termination to become effective on January 1 of the following year. Notifications made later than June 30 shall become effective on January 1 of the year after the following year. The Parties chose this method of notification in order to take hunting seasons into account.

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE RUSSIAN FEDERATION
ON THE CONSERVATION AND MANAGEMENT
OF THE ALASKA-CHUKOTKA POLAR BEAR POPULATION**

The Government of the United States of America and the Government of the Russian Federation, (hereinafter referred to as the "Contracting Parties");

DESIRING to further the goals of the 1973 Agreement on the Conservation of Polar Bears (hereinafter referred to as the "1973 Agreement");

AFFIRMING that the United States of America and the Russian Federation have a mutual interest in and responsibility for the conservation of the Alaska-Chukotka polar bear population;

ACKNOWLEDGING the vital interest of the State of Alaska and the Autonomous Region of Chukotka in the conservation and management of the Alaska-Chukotka population of polar bears;

RECOGNIZING that reliable biological information, including scientific data and traditional knowledge of native people, serves as the basis for development of an effective strategy for the conservation and management of this population;

RECOGNIZING that polar bears represent a valuable subsistence harvest species for the native people of Alaska and Chukotka;

AFFIRMING the authorization of the native people of Alaska and Chukotka, in accordance with each Contracting Party's domestic laws, to hunt polar bears to satisfy their traditional subsistence needs, and to manufacture and sell handicrafts and clothing;

DESIRING to meet the subsistence needs of native people while affording further protection to polar bears;

RECOGNIZING that illegal taking, habitat loss or degradation, pollution, and other human-caused threats could compromise the continued viability of the Alaska-Chukotka polar bear population;

RECOGNIZING the important ecological role and aesthetic value of the polar bear and the need to maintain broad public support for the conservation of polar bears;

AFFIRMING the essential role of the native people of Alaska and Chukotka in the conservation of the Alaska-Chukotka population of polar bears, welcoming the steps taken by those people with the goal of cooperation in the conservation and management of this population, and desiring to ensure their full involvement in the implementation and enforcement of this Agreement.

HAVE AGREED AS FOLLOWS:

Article 1

In this Agreement the following definitions shall apply:

“sustainable harvest level” means a harvest level which does not exceed net annual recruitment to the population and maintains the population at or near its current level, taking into account all forms of removal, and considers the status and trend of the population, based on reliable scientific information.

“taking” means hunting, killing or capturing.

“native people” means the native residents of Alaska and Chukotka as represented by the Alaska Nanuq Commission and the corresponding Union of Marine Mammal Hunters, or their successor organizations recognized as such by the Contracting Parties.

Article 2

The Contracting Parties shall cooperate with the goal of ensuring the conservation of the Alaska-Chukotka polar bear population, the conservation of its habitat, and the regulation of its use for subsistence purposes by native people.

Article 3

This Agreement applies to the waters and adjacent coastal areas subject to the national jurisdiction of the Contracting Parties in that area of the Chukchi, East Siberian and Bering Seas bounded on the west by a line extending north from the mouth of the Kolyma River; on the east by a line extending north from Point Barrow; and on the south by a line describing the southernmost annual formation of drift ice. The Contracting Parties may, by mutual agreement, modify the area to which the Agreement applies.

Article 4

The Contracting Parties shall undertake all efforts necessary to conserve polar bear habitats, with particular attention to denning areas and areas of concentration of polar bears during feeding and migration. To this end, they shall take steps necessary to prevent loss or degradation of such habitats that results in, or is likely to result in, mortality to polar bears or reduced productivity or long-term decline in the Alaska-Chukotka polar bear population.

Article 5

Any taking of polar bears from the Alaska-Chukotka population inconsistent with the terms of this Agreement or the 1973 Agreement is prohibited.

Article 6

1. Native people may take polar bears of the Alaska-Chukotka population for subsistence purposes, provided that:

- (a) the take is consistent with Article III(1)(d) of the 1973 Agreement;

- (b) the taking of females with cubs, cubs less than one year of age, and bears in dens, including bears preparing to enter dens or who have just left dens, is prohibited;
- (c) the use of aircraft, large motorized vessels and large motorized vehicles for the purpose of taking polar bears is prohibited; and
- (d) the use of poisons, traps or snares for the purpose of taking polar bears is prohibited.

2. Consistent with the 1973 Agreement, polar bears from the Alaska-Chukotka population may be taken for the conduct of scientific research, for the purpose of rescuing or rehabilitating orphaned, sick, or injured animals, or when human life is threatened. Animals being maintained in captivity for purposes of rehabilitation or which are determined by either Contracting Party not to be releasable to the wild may be placed on public display.

Article 7

1. Nothing in this Agreement is intended to authorize the taking of polar bears for commercial purposes, or to limit the ability of native people, consistent with the domestic law of the Contracting Parties, to create, sell, and use traditional articles associated with native harvest of polar bears.
2. The Contracting Parties shall undertake, in accordance with domestic law, measures necessary for the prevention of illegal trade in polar bears, including their parts and derivatives.

Article 8

1. To coordinate measures for the conservation and study of the Alaska-Chukotka population of polar bears, the Contracting Parties hereby establish the U.S.-Russia Polar Bear Commission, hereinafter referred to as "the Commission," to be composed of two national sections, a United States Section and a Russian Section.
2. Each national section shall consist of two members appointed by the respective Contracting Party in order to provide for inclusion in each section of a representative of its native people, in addition to a representative of the Contracting Party.
3. Each section shall have one vote in the Commission. A decision or recommendation of the Commission shall be made only with the approval of both sections.
4. The Contracting Parties shall be responsible for organizing and supporting the activities of their respective national sections as well as the joint activities of the Commission.
5. The Commission, at its first meeting, shall adopt rules of procedure, including provisions for accreditation of observers who can attend Commission meetings as representatives of interested organizations who can contribute to the Commission's work.
6. The Commission shall hold an annual meeting and may hold other meetings at the request of either Contracting Party, or on such a schedule as the Commission may determine. Annual meetings shall alternate between the United States and Russia.
7. The Commission shall carry out the following tasks:
 - (a) promoting cooperation between the Contracting Parties, between the native people, and between the Contracting Parties and the native people;

(b) determining on the basis of reliable scientific data, including traditional knowledge of the native people, the polar bear population's annual sustainable harvest level;

(c) determining the annual taking limits not to exceed the sustainable harvest level;

(d) adopting measures to restrict the take of polar bears for subsistence purposes within the framework of the established annual taking limits, including seasons and restrictions on sex and age additional to those in Article VI(1) of this Agreement;

(e) working to identify polar bear habitats and developing recommendations for habitat conservation measures;

(f) considering scientific research programs, including jointly conducted programs, for the study, conservation, and monitoring of polar bears, and preparing recommendations for implementing such programs, and determining criteria for reporting on and verification of polar bears taken;

(g) participating in the examination of disagreements between the native people of Alaska and Chukotka on questions regarding subsistence use of polar bears and their conservation and facilitating their resolution;

(h) issuing recommendations concerning the maintenance in captivity of orphaned and rehabilitated polar bears;

(i) examining information and scientific data about polar bears, including information on harvested polar bears and those taken in cases where human life is threatened;

(j) preparing and distributing conservation materials and reports of each Commission meeting; and

(k) performing such functions as are necessary and appropriate for the implementation of this Agreement.

8. The Commission shall establish a scientific working group and other working groups as it deems necessary to assist in carrying out its tasks.

9. The Commission shall bring to the attention of the competent authorities of the Contracting Parties and of native people its determinations with respect to the matters covered in this Article.

Article 9

Each Contracting Party shall have the right to harvest one-half of the annual taking limit of polar bears determined by the Commission. If a Contracting Party does not intend to harvest one-half of the annual taking limit it may, subject to the agreement of the Commission, transfer to the other Contracting Party part of its remaining share of the annual taking limit and shall so notify the other Contracting Party through diplomatic channels.

Article 10

1. Each Contracting Party shall take such steps as are necessary to ensure implementation of this Agreement.

2. Each Contracting Party shall monitor the harvest of polar bears in those areas subject to its national jurisdiction.

3. Each Contracting Party shall report to the Commission annually on:

(a) steps taken in accordance with Paragraphs 1 and 2 above, including the adoption of laws and regulations, and measures to enforce them;

(b) steps taken to involve native people in the implementation and enforcement of this Agreement; and

(c) scientific data and information on the Alaska-Chukotka polar bear population, including harvest information provided by native people.

Article 11

Nothing in this Agreement shall be interpreted as limiting the right of each Contracting Party to take additional measures, including designation of specially protected natural areas, to protect polar bears in areas under its national jurisdiction.

Article 12

In the event of any disagreement with regard to the interpretation or application of the provisions of this Agreement, the Contracting Parties shall consult with a view to resolving the disagreement through negotiation. At the request of either Contracting Party, the Commission shall examine any point of disagreement. The recommendations of the Commission in such matters shall be presented to the Contracting Parties.

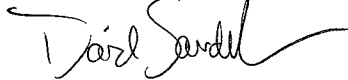
Article 13

1. This Agreement shall enter into force 30 days after the date on which the Contracting Parties have exchanged written notification through diplomatic channels that they have completed their respective domestic legal procedures necessary to bring the Agreement into force, and shall remain in force unless terminated in accordance with paragraph 2 of this Article.

2. Either Contracting Party may terminate this Agreement upon written notification to the other through diplomatic channels. Any such notification shall be made not later than June 30 of any calendar year for termination to become effective on January 1 of the following year. Notifications made later than June 30 shall become effective on January 1 of the year after the following year.

DONE at Washington, this sixteenth day of October 2000, in duplicate in the English and Russian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF THE
RUSSIAN FEDERATION:

