

## THROWING CAUTION TO THE WIND: THE GLOBAL BEAR PARTS TRADE

BY  
ADAM M. ROBERTS\*  
& NANCY V. PERRY†

*The exploitation of bears occurs in a myriad of forms. Bear baiting, abuse of bears in entertainment, habitat destruction, and the legal and illegal trade of bear parts all contribute to the decline of the bear. The market demand for bear gallbladders and bile is on the rise and is negatively impacting bear populations worldwide. Mounting evidence points to a systematic pattern of killing bears in the United States and Canada in order to satisfy the demand for bear parts in consuming nations, primarily Asian markets. The bear parts trade is international in scope and difficult to regulate and contain. The current approach of trying to regulate the legal bear parts trade on a state-by-state basis in the United States and on a country-by-country basis globally has failed, and has actually facilitated the illegal trade. It is time to recognize the usefulness, if not the necessity, for national legislation uniformly prohibiting commercialization of bear viscera. In addition, an international moratorium on global trade in bear parts and derivatives is long overdue and much needed.*

### I. INTRODUCTION

*“Those who do not remember the past are condemned to repeat it.”<sup>1</sup>*

The precautionary principle is one of avoidance: act with caution in

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\* Senior Research Associate with the Washington, DC-based Animal Welfare Institute; Chair of the Bear Working Group of the Species Survival Network.

† J.D. 1995, Northwestern School of Law of Lewis & Clark College, Portland, OR; Director of Government Affairs at The Humane Society of the United States.

<sup>1</sup> Quoteland, *Quotes by Author: George Santayana* (visited Feb. 17, 2000) <<http://quoteland.com/quotes/author/410.html>>.

cases of uncertainty to prevent problems from arising in the first place.<sup>2</sup> Where environmental protection or species conservation is concerned, the principle suggests that one should err on the side of wildlife or resource protection in cases of scientific uncertainty. This principle has been incorporated into several international agreements. The Preamble to the Convention on Biological Diversity notes,

it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source . . . [thus] where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.<sup>3</sup>

Similarly, the Preamble to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) recognizes that "international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade."<sup>4</sup>

Human decisions to protect wildlife from over-exploitation, however, historically have come after the time for precaution has passed. Wild populations have been drastically diminished, sometimes past the point of recovery, before appropriate action has been taken to prevent further declines toward extinction. By learning from these conservation mistakes, and applying the precautionary principle appropriately, we can prevent committing new ecological errors and protect species before it is too late—opting for preventative medicine rather than last ditch emergency surgery.

A perfect example illustrating the importance of heeding Santayana's observation is the global conservation of the eight extant bear species.<sup>5</sup> Without precautionary action to protect bears from the rampant trade in their parts and products, each bear species may ultimately suffer irreparable damage. Part II of this Comment addresses current threats to the world's bear population, focusing on traditional Asian uses of bear parts in medicines. Part III discusses the smuggling of bear parts in the Far East, Russia, and the United States, and the related problem of poaching. Part IV analyzes the regulatory system established by the United States to curb the

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<sup>2</sup> Christopher J.B. Rolfe, *The Precautionary Principle, Statistical Power, and Improved Regulation* (visited Jan. 19, 1994) <<http://www.vcn.bc.ca/wcel/prep/6420.html>>.

<sup>3</sup> Convention on Biological Diversity, June 5, 1992, preamble ¶¶ 8-9, S. TREATY DOC. NO. 103-20 (1993).

<sup>4</sup> Convention on Int'l Trade in Endangered Species of Wild Fauna and Flora, March 6, 1973, 27 U.S.T. 1087 [hereinafter CITES]. CITES, first came into force on July 1, 1975. CITES is made up of 151 countries which act by banning commercial international trade in an agreed list of species which are threatened with extinction and which are or may be affected by trade, and by regulating and monitoring trade in other species that might become threatened with extinction unless trade is subject to strict regulation.

<sup>5</sup> See generally JUDY A. MILLS & CHRISTOPHER SERVHEEN, *THE ASIAN TRADE IN BEARS AND BEAR PARTS* (1991). The eight bear species are: American black bear (*Ursus americanus*), Brown bear (*Ursus arctos*), Polar bear (*Ursus maritimus*), Giant panda (*Ailuropoda melanoleuca*), Sloth bear (*Melursus ursinus*), Sun bear (*Helarctos malayanus*), Asiatic black bear (*Selenarctos thibetanus*), and Spectacled bear (*Tremarctos ornatus*).

trade of bear parts; Part V discusses similar international efforts. Finally, Part VI concludes that additional measures are needed in order to afford bears sufficient protection before they become critically imperiled.

## II. THREATS TO THE WORLD'S BEARS AND TRADITIONAL ASIAN MEDICINE

*"Today, a major threat to the American black bear is widespread poaching, or illegal killing, to supply Asian markets with bear gall bladders and paws, considered to have medicinal value in China, Japan, and Korea."*<sup>6</sup>

Bears are subject to myriad forms of exploitation. For instance, in twenty-seven American states and eleven Canadian provinces and territories, American black bears may be legally hunted.<sup>7</sup> Cruel bear baiting continues in Pakistan.<sup>8</sup> Military conflicts also impact bear populations in war-affected areas. About half of the twenty bears killed in Croatian war operations were by landmines. "In fact, a case was recorded where a bear was attracted by a deer carcass killed by a landmine and then the bear got killed himself by stepping on the next mine."<sup>9</sup> In areas where habitat destruction and human encroachment are ongoing, an ever-increasing threat to bear conservation and long-term viability of the species continues. One specific example is in Spain, home of fewer than one hundred brown bears, where "[o]ne of Spain's two populations of brown bears is in danger of extinction . . . because it has been isolated from its compatriots for several decades by a railway, two roads and a ski resort."<sup>10</sup>

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<sup>6</sup> United States Fish and Wildlife Service: Wildlife Species Information, American Black Bear, ¶ 17 (last updated 1994) <[http://species.fws.gov/bio\\_bear.html](http://species.fws.gov/bio_bear.html)>.

<sup>7</sup> 1997 NORTH AMERICAN BLACK BEAR REPORT (Richard A. Burch, ed. 1997) (on file with author).

<sup>8</sup> World Society for the Protection of Animals, *Libearty Campaign: bear baiting* (visited Apr. 8, 2000) <<http://www.wspa.org.uk/libearty/lib2-1.html>>. Bear baiting has been illegal in Pakistan for more than 100 years, but in a 1993 investigation, the World Society for the Protection of Animals (WSPA), found evidence of 80 different contests involving 300 bears. *Id.* Pakistan wildlife expert Inayat Chaudry, uncovered a network of hunters, wildlife dealers, gypsy bear owners, and landowners involved in bear baiting. *Id.* Chaudry revealed how the bears, whose teeth and claws were removed, were virtually defenseless against an onslaught from as many as eight dogs in one day. *Id.* Field investigator, John Joseph, a leading WSPA expert in bear baiting, witnessed first hand the appalling cruelty. *Id.*

At one event a bear's nose had been bitten almost to the bone. The huge scar which had developed was immediately bitten off by the first pair of attacking dogs causing it to bleed profusely. Incredibly, the bear fought off the first two dogs and endured three further bouts before it succumbed.

*Id.*

<sup>9</sup> Letter from Dr. Djuro Huber, Faculty of Veterinary Medicine, University of Zagreb, Republic of Croatia, to Craig Bennett, Environmental Investigation Agency 1 (Mar. 3, 1996) (on file with author).

<sup>10</sup> Luis Miguel Ariza, *Divided They Fall: Bear Face Oblivion Because They Can't Cross the Road*, NEW SCIENTIST, Apr. 18, 1998, at 21.

The ongoing trade in bear parts and derivatives poses perhaps the most pervasive threat to bears. The bear parts trade affects almost all bear species and could have significant global impacts on bear populations in all parts of the world. The United States Department of the Interior is responsible for issuing export permits for specimens of American black bears. Permits allow the exportation of American black bear claws, feet, skins, and skulls for jewelry, rugs, and trophies.<sup>11</sup> The Agency is also supposed to issue permits for any bear gallbladder leaving the country.<sup>12</sup> Although gallbladders found abroad are claimed to be from American bears, representatives of the United States Fish and Wildlife Service claim "that the U.S. Office of Management Authority has not issued any export permits for commercial export of these galls."<sup>13</sup>

This international trade in bear gallbladders and bile (used in traditional medicines prescribed throughout Asia and in Asian communities around the world) is the real threat to bear survival because of the significant potential demand. Estimates suggest that bear gallbladder was first used as many as three thousand years ago in Asian medicinal pharmacopoeia as a "cold" medicine to treat "hot" ailments such as fevers, burns, swelling, and sprains.<sup>14</sup> In Tibetan medicine, bear's bile is one ingredient in a mixture called "BRAG-KHUNG RIL-BU" which, when consumed with hot water, is used to treat "pain in stomach from inflammation" and "passing of blood in stool."<sup>15</sup> "MIG-SMAN SKYER-KHEN" is distilled in water for eye drops and prescribed for "itching and reddishness of the eyes from inflammation," "pain in the eye," or "watery eyes."<sup>16</sup>

The active ingredient in bear bile is ursodeoxycholic acid (UDCA), "a naturally occurring bile acid found in small quantities in normal human bile and in larger quantities in the biles of certain species of bears."<sup>17</sup> Synthetic UDCA (not of bear origin, but usually from cow bile)<sup>18</sup> has been produced in the United States by the Ciba-Geigy Corporation in a product called

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<sup>11</sup> CONCERNING: ILLEGAL INT'L TRADE IN PARTS AND DERIVATIVES OF CITES-LISTED BEAR SPECIES, U.S. DEP'T OF THE INTERIOR (1997) (U.S. Dep't of Interior's response to CITES Secretariat's Notification 946 Geneva, Nov. 18, 1996). According to United States Department of the Interior figures for CITES, bear permits issued between 1993-1996, over 500 export permits were issued for over 8000 specimens (parts and products) of *Ursus americanus* alone. *Id.*

<sup>12</sup> Summary of U.S. CITES Bear Permits Issued During 1993-1994, 2-8 (compiled by U.S. Fish & Wildlife Serv. using data from the Law Enforcement Management Info. Sys. (LEMIS) on Dec. 17, 1996) (on file with author).

<sup>13</sup> Report from U.S. Delegation to Seoul, Rep. of Korea, Dec. 10-14, 1997, to U.S. Fish & Wildlife Serv. (1997) (on file with author).

<sup>14</sup> INT'L FUND FOR ANIMAL WELFARE & ANIMALS ASIA FOUND., TRADITIONAL ORIENTAL MED. (Aug. 1998).

<sup>15</sup> T. J. TSARONG, TIBETAN MED. PUBLICATIONS, HANDBOOK OF TRADITIONAL TIBETAN DRUGS, THEIR NOMENCLATURE, COMPOSITION, USE AND DOSAGE 16 (1986).

<sup>16</sup> *Id.* at 52.

<sup>17</sup> PHYSICIAN'S DESK REFERENCE 818-19 (51st ed. 1997).

<sup>18</sup> THE HUMANE SOC'Y OF THE UNITED STATES / HUMANE SOC'Y INT'L (HSUS), WORLD SOC'Y FOR THE PROTECTION OF ANIMALS & GLOBAL SURVIVAL NETWORK, KILLED FOR KOREA 1 (1996).

Actigall.<sup>19</sup> The Earth Care Society (Hong Kong) and the Association of Chinese Medicine and Philosophy recognize over fifty herbal alternatives to bear bile,<sup>20</sup> indicating traditional medicine can be practiced without harming animals.

This sentiment is shared by many who practice traditional medicine. Stefan Chmelik, of The Register of Chinese Herbal Medicine in London, writes that:

very few professional practitioners would think of using bear gall . . . Chinese medicine has been practiced successfully in this country for some twenty years or more now, and the omission of bear gall has posed no real restriction of our ability to practice. Therefore, the RCHM is happy to support a total ban on all bear gall products and farming.<sup>21</sup>

Dr. Sun Ji Xian of the Chinese Association of Preventative Medicine contends: "I choose not to use bear bile and go to the trouble of replacing it, because I believe that animals should not suffer." Dr. Ho Ka Cheong, President of the Hong Kong Chinese Herbalist Association, Ltd. Adds that "[h]erbal alternatives have the same effect—so why kill the animals?"<sup>22</sup>

Unfortunately, these sentiments do not necessarily reflect a majority viewpoint. With an ever-increasing population, the potential market demand for wildlife products such as bear gallbladders and bile is incredibly high. The high prices that may be paid for bear gallbladders drives this market, adding financial incentive to acquire galls and bear gall products by any means necessary—legal or illegal. For example, a hunter in Idaho might receive about \$25 for a single bear gallbladder,<sup>23</sup> which is "worth \$5000 to \$8000 in Asian markets."<sup>24</sup> This recognizable economic gain leads to poaching. Paul Weyland, a U.S. Fish and Wildlife Service special agent in Boise, Idaho acknowledged that "bears are being poached just for their gall bladders" and that such "poaching is widespread, there's no question."<sup>25</sup> Although exact figures are extremely difficult to come by, estimates reveal that as many as forty thousand bears are legally killed each year in North America.<sup>26</sup> An equivalent number of bears may also be poached.<sup>27</sup>

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<sup>19</sup> PHYSICIAN'S DESK REFERENCE, *supra* note 17, at 818–19.

<sup>20</sup> INT'L FUND FOR ANIMAL WELFARE, THE HERBAL ALTERNATIVES TO BEAR BILE IN CHINESE MEDICINE (1994).

<sup>21</sup> Letter from Stefan Chmelik, Member of the Register of Traditional Chinese Medicine, to Adam Roberts, Senior Research Assoc., Animal Welfare Inst. 1 (Jan. 15, 1997) (on file with author).

<sup>22</sup> INT'L FUND FOR ANIMAL WELFARE & ANIMALS ASIA FOUND., *supra* note 14.

<sup>23</sup> CATHERINE MCCRAKEN ET AL., TRAFFIC USA & WORLD WILDLIFE FUND U.S. & WORLD WILDLIFE FUND CANADA, STATUS, MANAGEMENT, AND COMMERCIALIZATION OF THE AMERICAN BLACK BEAR (*Ursus americanus*) 122 (1995).

<sup>24</sup> Jonathan Brinckman, *Poachers Kill Bears for Profit*, THE IDAHO STATESMAN, Sept. 17, 1995, at B1.

<sup>25</sup> *Id.*

<sup>26</sup> Kathryn Crawford, *High Prices for Bear Gallbladders Encourage Poaching*, L.A. TIMES, Oct. 9, 1994, at B2.

<sup>27</sup> *Id.*

## III. BEAR POACHING &amp; BEAR PARTS SMUGGLING

*“When poachers steal our wildlife they are stealing from all of us.”*<sup>28</sup>

*A. The Republic of South Korea and the Russian Far East*

Poaching bears to supply the international market with their highly prized organs is a major global threat.<sup>29</sup> Mounting evidence points to a systematic pattern of illicit movement of bear parts and products into the Republic of South Korea. Illegal participation in bear parts trafficking is highlighted in a recent report by the Humane Society of the United States (HSUS), World Society for the Protection of Animals, and Global Survival Network entitled *Killed for Korea*. The report contains evidence that “South Korea plays a key role in this illegal and destructive trade. South Korea and Korean people abroad represent the greatest source of demand for bear parts worldwide.”<sup>30</sup> Another report by HSUS notes:

In Thailand in the late 1980s and early 1990s visiting South Korean nationals frequently dined on bear. In some restaurants, the bears were said to be killed—either bludgeoned to death or boiled alive—in front of salivating patrons. When Seoul hosted the Olympic Games in 1988, thirty sun bears were smuggled into Korea to feed the home team’s athletes.<sup>31</sup>

In a separate case, arrests were made in California of “a group of Korean American businessmen who were found to be illegally hunting and selling bear parts and organs. These were sold not only in the [United States] but Korea as well.”<sup>32</sup> The operation was spearheaded by Mr. William Lee, whose smuggling ring made a reported \$600,000 from the illegal sale of bear parts and products.<sup>33</sup> Numerous additional examples exist.

The Republic of Korea’s Forestry Administration contends that within

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<sup>28</sup> Va. Dep’t of Game and Inland Fisheries, Press Release, *SOUP Delivers Federal Indictments; U.S. Attorney Ready to Prosecute* (visited Mar. 17, 1999) <<http://www.dgif.state.va.us/pr-031699-SOUP.html>> (Press Release, Mar. 16, 1999)(quoting Director William Woodfin, Jr.).

<sup>29</sup> American Zoo & Aquarium Association Bear Advisory Group, *Species by Species Information Pages* (visited Mar. 4, 2000) <<http://www.bearden.org>>.

While the [American] black bear is currently listed as safe through most of its current range, the very real threat exists of loss due to illegal poaching for the Asian medicinal market . . . . Sloth bears face severe habitat loss and heavy poaching mainly for the medicinal market . . . . Though the hunting of spectacled bears is illegal, it continues [sic] to be poached.

*Id.*

<sup>30</sup> HSUS, *supra* note 18.

<sup>31</sup> KEITH HIGHLEY, HSUS, *THE AMERICAN BEAR PARTS TRADE: A STATE-BY-STATE ANALYSIS* 4 (1996).

<sup>32</sup> *Hunting Bears*, KOREA ANIMAL PROTECTION SOC’Y NEWSL. NO. 5 (Korea Animal Protection Soc’y, Seoul, Korea), 1994, at 1.

<sup>33</sup> *Id.*

the country, "poaching is a serious problem, and very difficult to control in the mountains."<sup>34</sup> Mr. Sang Do Lee, Director and Senior Prosecutor for the country's Environmental Crime Division explains that "there are three routes through which illegal bear galls enter the Republic of Korea: Russia, China, and the U.S."<sup>35</sup> Particularly striking is his statement of the gravity of the problem. Mr. Lee states that he "knows of no other species where there is an illegal trade problem comparable to that of bear gall; bear gall is small, profitable, and easy to smuggle."<sup>36</sup>

The trade is widespread, international in scope, and difficult to control. Rather than bears being killed and their parts consumed in the same country, the gallbladders or vials of bile are exported to other nations and potentially re-exported from there. The trade continues to expand, especially in the past few decades, north and westward across the Asian continent and into Europe. This greatly affects not only Asian bear species such as the black bear, but also European brown bears. In the "zapovedniks" (protected areas of Russia), for instance, bear poaching appears to be common.

There is evidence to suggest that some trade in bear parts from the Russian Far East has been via traders and markets in Moscow. This has greatly increased the number of international markets that can be reached by the trade, including North America and Europe. It has also stimulated a degree of bear poaching and trade in European Russia, where adverts offering to buy or sell galls have appeared in daily newspapers.<sup>37</sup>

In the Primorsky Kray region, brown bears are regularly poached for their galls. Bear populations in this region are reportedly declining drastically and "about once a month, middle-men visit villages to purchase brown bear body parts from poachers."<sup>38</sup> The bear gallbladder trade traverses the globe in various patterns. The galls are exported from the United States to Asia, throughout Asia and Eastern Europe, and finally from Asia and Eastern Europe into the United States. In a 1995 incident,<sup>39</sup> sixty dried bear gallbladders were smuggled into Alaska from Russia in a shipment, which also included reindeer antlers.<sup>40</sup>

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<sup>34</sup> Report from U.S. Delegation to Seoul, *supra* note 13, at 3.

<sup>35</sup> *Id.* at 8.

<sup>36</sup> *Id.*

<sup>37</sup> Craig Bennett, *Westward Expansion of the Bear Trade From Southeast and East Asia Into the Asiatic and European Range of the Brown Bear*, PROCEEDING 2D INT'L SYMP. ON TRADE BEAR PARTS, at 78 (1997).

<sup>38</sup> *The Impact of Trade in the Brown Bear (Ursus arctos) Populations of the Russian Federation*, Bear Working Group: Species Survival Network Bear Working Group Briefing Document for the 10th Conference of the Parties to CITES 1997 (1997) (citing Valdir Aramilev, bear ecologist at the Olga Bay Research Station in Primorsky Kray) (photocopy on file with author).

<sup>39</sup> Yereth Rosen, *U.S. Seizes Bear Gallbladders from Russia*, REUTERS LTD., Sept. 26, 1995 (on file with author).

<sup>40</sup> *Id.* An additional disturbing trend in the illegal bear parts trade is that bear gallbladders and bile are smuggled with other wildlife contraband, particularly for trade in traditional Asian medicinals. *Id.* This includes bear galls smuggled with musk deer testicles, rhinoceros horn

*B. The United States*

If demand for a given product is maintained, while the supply for that product diminishes, it is a natural and reasonable expectation that profiteers will seek out means by which that demand may be met. Since the demand for bear gallbladders in Asian markets appears to remain strong, but Asian bear populations are diminishing, poachers and smugglers have turned to North America's currently stable American black bear population.<sup>41</sup> This fits the blueprint laid out by Christopher Servheen of the IUCN/SSC Bear Specialist Group who declared, "[a]s the Asian bear populations continue to decline, there will be increasing pressure on bear populations in other areas of the world to meet this trade demand."<sup>42</sup>

There can be little doubt that bear poaching and bear parts smuggling throughout the United States is on the rise. Bear carcasses have been found across America with the gallbladders and paws removed. Captain Ron Swatfigure of the Washington Department of Fish and Wildlife stated: "Ten years ago, I think it was a relatively minor problem . . . Today, I think it's a very large problem."<sup>43</sup> In 1991, a *National Geographic* exposé on America's role in the illegal wildlife trade revealed that one New York wildlife investigator saw two thousand galls at one time in Chinatown.<sup>44</sup> This represents just under half of New York's estimated statewide black bear population of 4500 to 4700.<sup>45</sup>

A brief examination of recent poaching incidents moving westward across the United States demonstrates the prevalence of bear poaching in the 1990s and the threat it will likely pose, if left unchecked, on the future of some statewide bear populations. Given the inability of law enforcement to detect every incident, to apprehend each violator, and ultimately prevail in prosecuting poachers and traders, reported cases represent a mere fraction of the illegal bear killings likely taking place. The following state examples provide insight into the problems of the current legal and regulatory regime governing the domestic bear parts trade, and the need for a significantly more comprehensive strategy to control the commercialization of these wildlife parts.

*1. New Jersey Enforcement Efforts*

In a recent case, an undercover investigation by the New Jersey Division of Fish, Game and Wildlife's Bureau of Law Enforcement led to the arrests of the owners of twenty-one restaurants, several fishermen, a hunter,

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pills, tiger bone plasters, and whole rhino horn and tiger penis. *Id.*

<sup>41</sup> NORTH AMERICAN BLACK BEAR REPORT, *supra* note 7, at 73, 90. Currently there are 330,000 black bears in the United States and 440,000 in Canada. *Id.*

<sup>42</sup> Christopher Servheen, *The Global Status of Bears*, PROCEEDING 2D INT'L SYMP. ON TRADE BEAR PARTS, 4 (1997).

<sup>43</sup> Evelyn Iritani, *Wildlife Trafficking Fuels Poaching Rise/Folk Medicine Interest Drives Demand*, HOUSTON CHRON., Sept. 5, 1994, at A16.

<sup>44</sup> Constance J. Poten & José Azel, *A Shameful Harvest*, NAT'L GEOGRAPHIC, Sept. 1991, at 112.

<sup>45</sup> NORTH AMERICAN BLACK BEAR REPORT, *supra* note 7, at 56.

and Mr. Won Ping Jong of New York.<sup>46</sup> Mr. Jong was charged with three counts of illegally purchasing black bear gallbladders and paws, five counts of illegal possession of black bear parts, and two counts of unlawfully purchasing white-tailed deer parts.<sup>47</sup>

As part of the investigation, undercover police and conservation authorities posing as restaurant patrons were served the illegal wildlife meat, mostly in Chinese restaurants. Fish and Game Director, Bob McDowell, said of the case, "New Jersey's deer, bear and striped bass are reserved for the enjoyment of its residents and visitors—not for the black market profit of a few."<sup>48</sup> *Reuters* reported on June 29 that settlements had been reached in the case with nineteen defendants, although the details of the settlement were not yet revealed.<sup>49</sup>

### 2. Pennsylvania Enforcement Efforts

In 1998, a Maryland couple was charged with attempting to purchase bear gallbladders illegally in Pennsylvania.<sup>50</sup> According to Pennsylvania Game Commission Law Enforcement Director, J. R. Fagan, "[t]rade in bear parts continues to be a serious problem in Pennsylvania and elsewhere."<sup>51</sup> Although Maryland's bear population is very small, somewhere around three hundred animals, Pennsylvania has an estimated nine thousand to ten thousand bears.<sup>52</sup> This illustrates how people from one state will travel to another state to purchase galls where they are readily available. Just as the decline of Asian bear populations leads buyers to North America, limited bear populations in one state lead buyers to another state. Commenting on the illegal bear parts trade, Bruce Whitman, spokesman for the Pennsylvania Game Commission admits, "[p]robably over the last decade, more than half the folks involved in these cases have been from out of state."<sup>53</sup>

### 3. Virginia Enforcement Efforts

A three-year undercover operation by the Virginia Department of Game and Inland Fisheries (VDGIF) and the U.S. Fish and Wildlife Service into illegal bear hunting and commercialization of black bear parts in the region of Shenandoah National Park was also successfully completed in 1999.

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<sup>46</sup> Datefactory.com, *Settlement With Accused Animal Parts Dealers* (visited Apr. 25, 2000) <<http://www.datefactory.com/news/39.shtml>> (Press Release, June 29, 1999).

<sup>47</sup> *Id.*

<sup>48</sup> N.J. Div. of Fish, Game & Wildlife, *News: Statewide Investigation Uncovers Illegal Sale of Deer, Bear and Striped Bass* (last modified June 21, 1999) <<http://www.state.nj.us/dep/fgw/news/invstsal.htm>>.

<sup>49</sup> *Settlement With Accused Animal Parts Dealers*, *supra* note 46.

<sup>50</sup> Pa. Game Comm'n, *Two Charged in Illegal Bear Gall Trading* (last modified Dec. 10, 1998) <[http://www.state.pa.us/PA\\_Exec/PGC/newsroom/1998news/nr59-98.htm](http://www.state.pa.us/PA_Exec/PGC/newsroom/1998news/nr59-98.htm)>.

<sup>51</sup> *Id.*

<sup>52</sup> NORTH AMERICAN BLACK BEAR REPORT, *supra* note 7, at 45, 61.

<sup>53</sup> Lisa Respers, *Couple Charged With Trying to Buy Bear Gallbladders*, BALTIMORE SUN, Dec. 15, 1998, at 2B.

“Operation SOUP” (Special Operation to Uncover Poaching) resulted in the arrests of over two dozen individuals for more than fifty wildlife violations.<sup>54</sup> According to the VDGIF, the investigation “is expected to yield one of the largest prosecutions in the nation’s history relating to bear poaching and illegal trade in bear parts.”<sup>55</sup> The Department not only investigated the sale of bear claws and teeth used in the jewelry trade, but also the trafficking in bear gallbladders and frozen paws. VDGIF concluded that,

[s]trong evidence indicates that bear gallbladders and paws originating in Virginia are being trafficked to the Washington, DC and Maryland area. Evidence also points to trafficking to other states and overseas. The investigation has revealed information that some dealers arrested have engaged in the commercial trade of bear parts for over 10 years involving perhaps thousands of gallbladders.<sup>56</sup>

#### 4. Minnesota Enforcement Efforts

In Minnesota, one Canadian and six Minnesota residents were indicted in 1990 for their participation in the commercial bear gallbladder trade.<sup>57</sup> News reports of the indictment quote one buyer telling an undercover agent that “one bear gallbladder could bring \$2000 in Korea.”<sup>58</sup> As many as eighty-two gallbladders were involved in this case.<sup>59</sup> Five years later, in a smaller case, an individual Minnesota hunter was fined \$350 for selling a bear gallbladder to an undercover agent. A local newspaper covering the story noted:

Selling bear gallbladders, even from legally hunted bears, is illegal in Minnesota, because wildlife officials fear that commercialization would lead to poaching, endangering the state’s black bear population, estimated at a healthy 15,000 animals. ‘It is supposed to be the sport of hunting, not commercialization of resources. As soon as you commercialize anything, they disappear,’ said Brad Burgraff, assistant director of the Department of Natural Resources’ enforcement division.<sup>60</sup>

#### 5. Utah Enforcement Efforts

In 1994, Utah joined Colorado and California in establishing an undercover sting operation to target the poaching of wildlife and the sale of

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<sup>54</sup> Va. Dept. of Game & Inland Fisheries, *Joint Efforts Tackles Poachers, Illegal Bear Trade* (Press Release) (visited Jan. 19, 1999) <[http://www.dgif.state.va.us/pr~p1/899-bear\\_poaching.html](http://www.dgif.state.va.us/pr~p1/899-bear_poaching.html)>.

<sup>55</sup> *Id.*

<sup>56</sup> Va. Dept. of Game & Inland Fisheries, *supra* note 28.

<sup>57</sup> Donna Halvorsen, *Seven Charged With Buying Bear Gallbladders / Parts Apparently Used in Folk Remedies*, STAR TRIBUNE, June 1, 1990, at 7B.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Hunter is Fined \$350 For Selling Gallbladder of Legally Taken Bear*, STAR TRIBUNE (Minneapolis–St. Paul, Minn.), Apr. 15, 1995, at 2B.

wildlife parts.<sup>61</sup> Five people were initially arrested under the investigation.<sup>62</sup> According to Robert Elswood, law enforcement coordinator for the Utah Division of Wildlife Resources, poaching and smuggling of animal parts, such as bear gallbladders, represent “a concerted criminal effort that threatens the wildlife of the world . . . . If we don’t do something now, future generations will hold us remiss . . . . It’s a problem of tremendous demand in another part of the world that’s influencing poaching here.”<sup>63</sup>

Four years later, a Salt Lake City man was arrested for buying bear gallbladders.<sup>64</sup> According to an investigator, the gallbladders were likely destined for sale in South Korea.<sup>65</sup> The seller allegedly placed an advertisement in *The Salt Lake Tribune*, which read: “Bear hunters wanted, intact bear gall.”<sup>66</sup> State wildlife investigator William Woody claimed, “[h]e was moving them to South Korea;” the accused man allegedly told the undercover agents, “In my mind, I won’t get caught.”<sup>67</sup>

#### 6. Arizona Enforcement Efforts

Arrests for trading in bear parts does not guarantee conviction. In Arizona, two men were indicted in 1995 for the illegal killing, transportation, and sale of wildlife parts,<sup>68</sup> including endangered species, in violation of the Lacey Act<sup>69</sup> and Endangered Species Act.<sup>70</sup> Products included bear gallbladders, a mounted jaguar, a mounted ocelot, an ocelot hide, and a jaguar hide.<sup>71</sup> Although both men were ultimately convicted on several misdemeanor and felony charges involving wildlife commercialization and transport,<sup>72</sup> Federal District Court Judge Frank Zapata dismissed the charges involving the bear gallbladders, “because the total market value of the galls did not exceed \$350, which is required for the felony charge.”<sup>73</sup> This is a startling contention since a single gallbladder could be sold for that amount or much more. Defense attorneys also argued that “it is not known whether the black bear was taken legally or illegally, so they could not be charged with any crime concerning that animal.”<sup>74</sup> This argument becomes

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<sup>61</sup> Jennifer Hatch, *Sting Targets Sale of Bear Bladders*, DESERT NEWS, (Salt Lake City, Utah), June 27, 1994, at 5.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Vince Horiuchi, *Man May Be Charged With Buying Bear Gallbladders*, THE SALT LAKE TRIBUNE, Jan. 28, 1998, at B1.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Ainslee S. Wittig, *Trial Set in Poaching, Illegal Sale of Rare Animal Hides Case* (visited May 7, 1999) <<http://206.27.179.158/news/stories/98111103n.html>>.

<sup>69</sup> 16 U.S.C. §§ 3371-78 (1994).

<sup>70</sup> 16 U.S.C. §§ 1531-44 (1994).

<sup>71</sup> Wittig, *supra* note 68.

<sup>72</sup> Ainslee S. Wittig, *2 Area Residents Found Guilty of Illegal Sales of Endangered Wildlife* (visited May 7, 1999) <<http://206.27.179.158/news/stories/98120201n.html>>.

<sup>73</sup> Ainslee S. Wittig, *Verdict Near for Two Locals in Illegal Wildlife Possession Charges* (visited Mar. 8, 1999) <<http://www.willcoxranenews.com/news/stories/98112502n.html>>.

<sup>74</sup> *Id.*

even more important later when the patchwork of state laws governing the bear parts trade in the United States is discussed.

### 7. Oregon Enforcement Efforts

Sometimes, a little creativity helps secure conviction. In Oregon, Raymond Hillsman was convicted on June 17, 1999 under a state racketeering law for his role in organizing a bear poaching ring.<sup>75</sup> Hillsman and thirteen others were charged with wildlife violations as a result of a two-year investigation, which uncovered “that black bears were killed and left to waste. The bear’s gallbladder was removed and sold, including some which were shipped overseas.”<sup>76</sup> In Eugene, Oregon, “one longtime gallbladder buyer reportedly shipped gallbladders to Korea inside bottles of alcohol.”<sup>77</sup>

Oregon Attorney General Hardy Myers stated, “[t]he magnitude of the waste, the complete indifference toward Oregon’s hunting laws and the ruthlessness of the methods used all merited seeking the racketeering conviction.”<sup>78</sup> Bob Hamilton, the Assistant Attorney General in Oregon who prosecuted the case added, “It also signals a new day in Oregon for people who go into the countryside and prey upon our natural resources.”<sup>79</sup> During the year long investigation, Hillsman oversaw the killing of at least eleven black bears, whose gallbladders were removed and the bear carcasses left to rot. Hillsman, released on bail and prohibited from hunting or possessing firearms, was ultimately sentenced to eighteen months in prison.<sup>80</sup> Although the final outcome is unclear, Hillsman’s wife reported she “didn’t like the practice of hunting bears for their gallbladders and threatened to divorce him when she found gallbladders in their freezer.”<sup>81</sup>

### 8. California Enforcement Efforts

California, with its large statewide bear population (between eighteen thousand and twenty-three thousand),<sup>82</sup> internal gallbladder markets within the state, and coastal proximity to the Asian market, is replete with bear poaching and gallbladder smuggling. In a 1994 case, a Korean-American businessman was charged with four felony counts involving an illegal bear poaching operation in Northern California in which at least thirty black

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<sup>75</sup> Oregon State Police News Release, *Significant Arrests Follow Two Year Illegal Hunting Investigation*, Sept. 11, 1998 (on file with author).

<sup>76</sup> *Id.*

<sup>77</sup> Cheryl Martinis, *12 More Arrested for Poaching Bears* (visited Dec. 29, 1998) <<http://www.oregonlive.com/todaysnews/9809/st091210.html>>.

<sup>78</sup> The Oregonian, *Black-bear Poacher Convicted on Felony Count for Racketeering* (visited Sept. 30, 1999) <<http://www.oregonlive.com/news/99/06/st061906.html>>.

<sup>79</sup> *Id.*

<sup>80</sup> The Oregonian, *Leader of Bear-poaching Ring Given an 18-month Sentence* (visited Mar. 16, 2000) <<http://www.oregonlive.com/news/99/09/st093018.html>>.

<sup>81</sup> Martinis, *supra* note 77.

<sup>82</sup> NORTH AMERICAN BLACK BEAR REPORT, *supra* note 7, at 73.

bears were killed.<sup>83</sup> William Jin Taek Lee reportedly established illegal bear hunts for foreigners and used that opportunity to smuggle bear parts to South Korea.<sup>84</sup> Greg Laret, deputy chief of wildlife protection for the California Department of Fish and Game highlighted the significance of this case, recognizing it as “the first time we have solid evidence that people are being solicited from outside this country to come to California and kill bears illegally.”<sup>85</sup>

One year later, a ten count indictment was handed down charging four Chinese nationals, Zhongri Gao, Yongzhe Jin, Xianglu Jin, and Songyue Li, with conspiring to smuggle two million dollars worth of bear gall bile into the United States, as well as other wildlife products such as rhino horn and tiger bone.<sup>86</sup> This is an interesting case because the bear bile was imported into the United States, rather than coming from a domestically killed bear. This indicates the apparent value of Asian bear products over that of American bear products. The value discrepancy is due to the fact that bears from Asia are more endangered and therefore harder to obtain, which leads to a higher price. For those who can afford it, Asian bear bile is the most valuable. Otherwise, the bile of American bears is substituted. Since a buyer cannot tell the difference, the bile may be fraudulently sold as the bile of an Asiatic black bear. According to the United States Attorney’s press release, “[t]he bear gall bile came from defendant Gao’s farm . . . where Gao keeps . . . bears chained in . . . cages in order to extract fresh bile from their gallbladders.”<sup>87</sup>

In 1998, two men were arrested on thirty-one felony and fifteen misdemeanor counts relating to the killing of black bears and sale of their

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<sup>83</sup> *Illegal Bear [sic] Hunt Ring Broken*, CHINA POST, Jan. 31, 1994 (on file with author).

<sup>84</sup> HIGHLEY, *supra* note 31, at 8.

<sup>85</sup> *Illegal Bear [sic] Hunt Ring Broken*, *supra* note 83.

<sup>86</sup> U.S. Attorney, Cent. Dist. of Cal., News Release, *Bear Gall Bile Smugglers Sentenced*, Sept. 20, 1995 (on file with author).

<sup>87</sup> *Id.* For example, around 1984, bear “farming” started in earnest in China, in a misguided attempt to relieve pressure on wild bears. Zhiyong Fan & Yanling Song, *Bears Present Status and Conservation, and Bear Farms of China*, PROC. 2ND INT’L SYMP. ON TRADE OF BEAR PARTS 5 (1997). According to Mr. Fan of the CITES Management Authority of China, in 1996 there were 7462 bears on 481 “farms” in China. *Id.* at 9. In the subsequent five years, these bear farms were widely supplied with wild bears. The ostensible goal of bear farming in China and other Asian countries, which have experimented with the practice, is to meet the demand for bear bile without taking wild bears. *Id.* at 12. Unfortunately, this premise is flawed for the following reasons: 1) wild bears have been used historically to stock the farming facilities, 2) products from wild bears are easily laundered in with products from farmed bears, 3) wild bear parts are more valuable than their farmed counterparts, thus increasing the incentive to poach in the wild and, 4) availability and acceptance of farmed products increases the consumer base, and thus demand, for these unacceptably risky products. PETER KNIGHTS, THE HUMANE SOC’Y OF THE UNITED STATES & HUMANE SOC’Y INT’L, FROM FOREST TO PHARMACY: THE GLOBAL UNDERGROUND TRADE IN BEAR PARTS 45 (1996). These general considerations, of course, ignore the extreme cruelty that intensive bear farms inflict on the individual animals. *Id.* Steel catheters are surgically implanted into the bears’ gallbladders, enabling handlers to regularly “milk” the singly housed animals for their bile. *Id.* Mr. Fan notes that before 1993, 89 deaths were recorded as a result of “postoperative infection of bile drainage operations.” Fan & Song, *supra*, at 9. Furthermore, since 1991, excluding last year, over 25% of cubs born in bear farms have died. *Id.*

gallbladders.<sup>88</sup> State game officials believe that “the galls were marketed for hundreds of dollars apiece in the Los Angeles area and Asian countries . . . . In many cases, the animals were killed and tagged with legal bear tags belonging to someone who was either not present or didn’t actually shoot the animal.”<sup>89</sup>

Environmental crime is such a severe a problem in California that Humboldt County has hired a special prosecutor to work on relevant cases. Although the primary impetus for the establishment of the post was to work on cases related to pollution, “these days, the state’s most common type of environmental case involves bear poaching in northern Central Valley.”<sup>90</sup>

### 9. Alaska Enforcement Efforts

The last stop in the westward bear parts trade is Alaska, the state with the greatest single population of black bears in America, close to one-third the nationwide total.<sup>91</sup> In 1991, Alaska resident Grace Woo Chun agreed to buy bear parts from Jerry Taylor of Idaho for \$1500.<sup>92</sup> The purchase of bear parts is illegal in Alaska.<sup>93</sup> According to the State of Alaska’s Petition for Hearing, Chun was apprehended at the Anchorage International Airport by state fish and game officials who were “tipped off about the shipment of bear parts.”<sup>94</sup> “In total, eight boxes of frozen bear parts were seized by officials and inspection revealed 283 black bear paws and 43 bear gall bladders.”<sup>95</sup> The case was ultimately dismissed because the legal “site” of the purchase remained unclear (it is legal to commercialize bear parts in Idaho).<sup>96</sup> State Assistant Attorney General, Jeffrey T. Killip argued, unsuccessfully, that the decision “will lead to the inevitable result of encouraging individuals to unlawfully take bears in Alaska, take them outside to places like Idaho where sale of bear parts is still legal, and sell them to purchasers in Alaska through out-of-state strawmen.” In addition,

[i]f a ‘legal’ market for purchasing bear parts from outside is established in Alaska, it would be extremely difficult for Alaska officials to determine whether the bear parts actually came from outside or whether Alaska bear parts were substituted. This would make effective enforcement of 5 AAC 92.200<sup>97</sup> impossible and result in an increased threat to the Alaskan bear

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<sup>88</sup> *Bear Hunting Investigation Leads to Arrests*, INDIAN VALLEY RECORD, Feb. 11, 1998 (on file with author).

<sup>89</sup> *Id.*

<sup>90</sup> Susan Wood, *Humboldt County Gets Environmental Prosecutor* (last modified Jan. 21, 1999) <<http://northcoastjournal.com/012199/news0121>>.

<sup>91</sup> NORTH AMERICAN BLACK BEAR REPORT, *supra* note 7, at 73.

<sup>92</sup> Petition for Hearing at 2, *State of Alaska v. Grace Woo Chun* (Alaska 1992) (No. A-4283/A-4323) (on file with author).

<sup>93</sup> *Id.* at 11.

<sup>94</sup> *Id.* at 2.

<sup>95</sup> *Id.* at 2.

<sup>96</sup> *Id.* at 8.

<sup>97</sup> “Purchase and Sale of Game . . . (b) a person may not purchase, sell or barter the following . . . (2) any part of any bear . . . .” ALASKA ADMIN. CODE tit. 5, § 92.200 (1999).

resource.<sup>98</sup>

Killip concluded that this decision will have a “chilling effect” on State enforcement efforts to protect Alaska’s bears.<sup>99</sup>

#### IV. AMERICAN REGULATION OF THE BEAR PARTS TRADE

*“The poaching of bears is a national problem that is destined to become worse, and I believe that we have a real opportunity, if we act now, to protect the bear populations in this country from individuals seeking to profit from the slaughter and sale of the organs of these magnificent animals.”<sup>100</sup>*

##### A. The Lacey Act

The Lacey Act<sup>101</sup> was passed in 1900 to prohibit the interstate transport of wildlife, whether alive or dead, in violation of state law.<sup>102</sup> In 1908, the law was amended to include wildlife from other countries. It is illegal under the Lacey Act “to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported or sold in violation of any law, treaty, or regulation of the United States.”<sup>103</sup> A 1980 report of the Senate Committee on Environment and Public Works on the Lacey Act Amendments acknowledges that federal efforts intended to protect wildlife were “viewed then, and should be viewed now, not as increasing the Federal role in managing wildlife, but as a federal tool to aid the States in enforcing their own laws concerning wildlife.”<sup>104</sup>

Unfortunately, the Lacey Act alone cannot adequately prevent or penalize violations of state laws already enacted to protect American bears because of the lack of legal uniformity among the states. If a prosecutor cannot prove that a bear gallbladder in trade was illegally taken in another state, then the state will be equally incapable of prosecuting such commercialization under the Lacey Act. In addition, according to some enforcement officials, the Lacey Act is difficult to employ:

If somebody kills a bear in the state of Washington [where trade is prohibited] all they have to do is get it to Idaho. Technically . . . it’s against the law but all it does is make it more difficult to prove that bear was taken and traded

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<sup>98</sup> Petition for Hearing at 11-12, *Grace Woo Chun* (No. A-4283/A-4323).

<sup>99</sup> *Id.* at 15.

<sup>100</sup> U.S. Senator Mitch McConnell, *Protecting America’s Bears*, ANIMAL GUARDIAN, Spring 1999, at 7.

<sup>101</sup> 16 U.S.C. §§ 3371-78 (1994).

<sup>102</sup> S. REP. NO. 96-739, at 1 (1980).

<sup>103</sup> 16 U.S.C. § 3372 (1994).

<sup>104</sup> S. REP. NO. 96-739, at 2 (1980).

illegally in interstate commerce. That's where the Lacey Act has problems.<sup>105</sup>

While it would be illegal to transport the bear to a state where commerce in bear parts is allowed, this is virtually impossible for law enforcement officials to prove. Thus, the Lacey Act's loopholes become open invitations to those tempted by the lucrative poaching business.

### *B. State by State*

For the American black bear, not protected under the Endangered Species Act,<sup>106</sup> regulation of hunting is done at the state level. Individual state legislatures decide whether resident bears can be legally hunted, how long the hunt season will last, what the bag limit per hunter will be, what methods may be used for the hunt, and whether the bears' parts, such as the gallbladder, may be sold legally.<sup>107</sup> In the United States, a patchwork of state laws exists. Currently, a majority of states prohibit commercialization of bear gallbladders, a small minority of states allow unfettered trade, and the remainder allow selling or buying galls if they come from bears killed in another state.<sup>108</sup>

In Minnesota, "a person may not buy or sell bear paws, unless attached to the hide, or bear gallbladders."<sup>109</sup> Washington regulations state that "It is unlawful to offer for sale, sell, purchase, or trade . . . the gallbladder, claws and teeth of a bear, except those claws and teeth permanently attached to a full bear skin or mounted bear," unless such sale is authorized by the Director of the Department of Fish and Wildlife.<sup>110</sup> In California, not only is it "unlawful to sell or purchase, or possess for sale, the meat, skin, hide, teeth, claws, or other parts of a bear," but "the possession of more than one bear gall bladder is prima facie evidence that the bear gall bladders are possessed for sale."<sup>111</sup>

As discussed above, a tremendous complication for genuine enforcement of such laws is the impossibility of distinguishing the dissociated gall of a California black bear from an Idaho black bear, or any other state's bear population. This enables smugglers to acquire gallbladders illegally in one state, transport them to a state where commercialization of bear parts is legal, and sell the gallbladders under false pretenses. Even wildlife enforcement officials in states which allow trade of bear parts (such as Idaho) recognize the deleterious impact such legal trade may have on other states' law enforcement efforts and bear populations. Ray Lyon,

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<sup>105</sup> HIGHLEY, *supra* note 31, at 18.

<sup>106</sup> If a bear is listed as threatened or endangered under the ESA, it is illegal to engage in any activity that results in a "take" of the bear. 16 U.S.C. § 1538 (1994).

<sup>107</sup> *Id.* at 13.

<sup>108</sup> *Id.* at 42. Since 1996, two states, New Jersey (which allowed out of state sales) and West Virginia (which allowed complete trade) have amended their state wildlife codes to ban bear gallbladder commercialization completely. N.J. STAT. ANN. § 23:4–27 (West 1998); W. VA. CODE § 20–2–11 (1999).

<sup>109</sup> MINN. STAT. ANN. § 97A.512 (West 1997).

<sup>110</sup> WASH. ADMIN. CODE § 232–12–071 (2000).

<sup>111</sup> CAL. FISH & GAME CODE § 4758(a)–(b) (West 1999).

Enforcement Assistant Chief for Special Operations in Idaho's Fish and Game department, acknowledges that "Idaho is one of the states that still allows the sale of bear and other animal parts. We realize that there is some illegal killing of bears promoted by our laws."<sup>112</sup>

### C. The Bear Protection Act

To close this wildlife law enforcement loophole and uniformly protect bears from poaching for their internal organs, members of the United States Congress have introduced legislation to end America's role in this unsustainable and unacceptable trade. Senator Mitch McConnell (R-KY) and Representative John Porter (R-IL) are the lead sponsors in their respective legislative chambers of the Bear Protection Act. Both bills enjoy widespread bipartisan support in Congress: the Senate bill, S. 1109, had sixty-four co-sponsors as of August 2000,<sup>113</sup> and the House bill, H.R. 2166, had ninety-five.<sup>114</sup> Senator McConnell's bill was not voted on in the previous Congress when it had a majority of the United States Senate as cosponsors (fifty-five). However, the current Senate bill enjoys similar support and has already been cosponsored by a majority of the Committee on Environment and Public Works to which it has been referred. These identical bills mandate that a person shall not:

(1) import into, or export from, the United States bear viscera or any product, item, or substance containing, or labeled or advertised as containing, bear viscera; or (2) sell or barter, offer to sell or barter, purchase, possess, transport, deliver, or receive, in interstate or foreign commerce, bear viscera or any product, item, or substance containing, or labeled or advertised as containing, bear viscera.<sup>115</sup>

In Representative Porter's words:

The U.S. must close the existing enforcement loophole created by disparate state laws and uniformly prohibit the import, export and interstate commerce of bear gallbladders and bile. By doing this, we will facilitate wildlife law enforcement at the state and federal level and tackle head on the supply side of the enormously profitable global market for bear parts . . . . The Bear Protection Act simply ensures that America will not contribute to the potentially disastrous trade in bear parts and products.<sup>116</sup>

Senator McConnell adds that,

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<sup>112</sup> Letter from Ray Lyon, Enforcement Assistant Chief, Special Operations, Idaho Fish & Game Dep't, to Clifford J. Wood, Environmental Investigation Agency (June 7, 1995) (on file with author).

<sup>113</sup> Bill Summary & Status for the 106th Congress, S. 1109 (visited Aug. 17, 2000) <<http://thomas.loc.gov/cgi-bin/bdquery/z?d106:SN01109:@@P>>.

<sup>114</sup> Bill Summary & Status for the 106th Congress, H.R. 2116 (visited Aug. 17, 2000) <<http://thomas.loc.gov/cgi-bin/bdquery/z?d106:HR02166:@@P>>.

<sup>115</sup> S. 1109, 106th Cong. § 5 (1999); H.R. 2166, 106th Cong. § 5 (1999).

<sup>116</sup> "Dear Colleague" letter by Congressman John Edward Porter, 10th District of Illinois, Apr. 21, 1999 1 (on file with author).

[t]he main reason behind this lucrative trade is greed. In South Korea, bear gallbladders are worth far more than their weight in gold, and an average bear gall bladder can bring as high as \$10,000 on the black market. This makes bears more valuable dead than alive, and we must put a stop to this trading.<sup>117</sup>

There is not only widespread support for these bills in Congress, but state wildlife agencies have voiced their support for additional enforcement assistance in managing their resident bear populations. J.R. Fagan, the Director of the Pennsylvania Game Commission Bureau of Law Enforcement, asserts:

We do not subscribe to the commercialization of wildlife because it eventually leads to an unlawful activity. The drain on wildlife resources because of all the various markets and demands for either wildlife or parts is tremendous. We would support a law banning the commercialization of black bear parts and any other law that addresses the unlawful traffic in wildlife.<sup>118</sup>

In addition, California “would be supportive of a uniform prohibition on the sale of gallbladders.” As Boyd Gibbons, Director of the California Department of Fish and Game concluded,

[a] federal law prohibiting the commercial sale, import, and export of a bear gallbladder would be very valuable in protecting bear populations on the North American continent. In California you cannot sell any part of a bear even if the bear came from out of state. We believe that California bear are taken to other states and sold.<sup>119</sup>

William Woody, Enforcement Investigator in Utah’s Department of Natural Resources adds: “When you have got such a disparity in laws in the states, it’s so hard to enforce when you are working on the trade in bear parts . . . A federal prohibition on bear gall commerce is going to help us immensely.”<sup>120</sup>

Bear hunters and sportsmen also support additional regulation to restrict the ability of individuals to profit illegally by commercializing wildlife parts such as bear gallbladders. *Outdoor Life* is the self-described “Sportsmen’s Authority” magazine, bringing to its readers “guidance and information to help you sharpen your skills as a hunter and angler.”<sup>121</sup> From February 17-23, 1999, the *Outdoor Life* internet site conducted an online poll inquiring whether its readers agreed that the most effective way to stop bear poachers was by legalizing the sale of bear parts.<sup>122</sup> Fewer than twenty

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<sup>117</sup> “Dear Colleague” letter by Senator Mitch McConnell, Feb. 22, 1999 1 (on file with author).

<sup>118</sup> Letter from J.R. Fagan, Director of the Pennsylvania Game Comm’n Bureau of Law Enforcement, to Clifford J. Wood, Environmental Investigation Agency 1 (Sept. 1, 1995) (on file with author).

<sup>119</sup> Letter from Boyd Gibbons, Director of the California Department of Fish & Game, to Clifford J. Wood, Environmental Investigation Agency (June 16, 1995) (on file with author).

<sup>120</sup> HIGHLEY, *supra* note 31, at 36.

<sup>121</sup> OUTDOOR LIFE (visited March 30, 1999) <<http://www.outdoorlife.com/subscribe/olsubscribe/subscribe.html>>.

<sup>122</sup> Field & Stream and Outdoor Life Online, *Previous Poll Results: February 17-23* (visited

percent of those who responded agreed with the contention that a legal bear parts trade will reduce bear poaching.<sup>123</sup> This is most remarkable considering the magazine's audience and because the wording of the question seemed fairly leading in favor of a positive response.

Similarly, the *North American Bear Hunter* reprinted an article from the *Bear Tracker* in which the author recognized that a Federal Bear Protection Act

has the effect of forcing the good guys to pay for the sins of the bad guys but that may be a necessary concession if hunters wish to have bears to pursue in the future. Clearly, if we do not want to see North American bear populations decimated as they have been in other parts of the world, action is essential.<sup>124</sup>

Notably, the Bear Protection Act is crafted narrowly enough to address America's involvement in the bear parts trade, without restricting a lawful hunter's ability to engage in such activity. The legislation also leaves all fundamental decisions regarding statewide bear management to the states.

#### V. THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES)

*"The majority of Parties use CITES based legislation in an attempt to control the import and export of specimens of bears. Unfortunately, the fact that the domestic legislation of a significant number of Parties does not provide for the full implementation and enforcement of the Convention inevitably influences the effectiveness of those measures."*<sup>125</sup>

All bear species are listed under CITES's Appendices,<sup>126</sup> either on

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Mar. 30, 1999) <<http://www.outdoorlife.com/poll/previouspolls.html>>.

<sup>123</sup> *Id.* The results of the survey were that: 69% said no, 19% said yes, and 12% were unsure. *Id.*

<sup>124</sup> *Stealing Our Future – Underground Trade in Bear Parts*, N. AM. BEAR HUNTER, Spring 1997 (on file with author).

<sup>125</sup> *Issues relating to Species, Bears*, CITES Doc. SC.41.8 (Feb. 1999) (Secretariat report for the forty-first meeting of the Standing Committee, Geneva). CITES currently has a membership of 151 countries. About CITES, *List of Parties* (last updated Mar. 24, 2000) <<http://www.cites.org/CITES/eng/index.shtml>>.

<sup>126</sup> Appendices I, II, and III to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, 50 C.F.R. § 23.23 (1998).

American black bear (*Ursus americanus*) Appendix II  
 Brown bear (*Ursus arctos*) Appendix I & II  
 Polar bear (*Ursus maritimus*) Appendix II  
 Giant panda (*Ailuropoda melanoleuca*) Appendix I  
 Sloth bear (*Melursus ursinus*) Appendix I  
 Sun bear (*Helarctos malayanus*) Appendix I  
 Asiatic black bear (*Selenarctos thibetanus*) Appendix I  
 Spectacled bear (*Tremarctos ornatus*) Appendix I

Appendix I (no commercial trade is allowed) or Appendix II (regulated commercial trade is allowed with proper permits). Differing international legal status for bear parts in trade and the fact that these parts are indistinguishable, make strict enforcement of various nations' bear protection legislation specifically, and CITES generally, difficult.<sup>127</sup> Republic of Korea Environmental Prosecutor Lee, for one, "wishes the U.S. Government [sic] would put tougher controls on smuggling *out* of the United States."<sup>128</sup>

The parties to CITES attempted to address some of the complicating factors in the current bear parts trade when they met for the Tenth Conference of the parties in Harare, Zimbabwe in 1997.<sup>129</sup> The parties unanimously resolved

that the continued illegal trade in parts and derivatives of bear species undermines the effectiveness of the Convention and that if CITES Parties and States not-Party do not take action to eliminate such trade, poaching may cause declines of wild bears that could lead to the extirpation of certain populations or even species.<sup>130</sup>

To prevent this outcome, the Resolution urges "all Parties . . . to take immediate action in order to demonstrably reduce the illegal trade in bear parts and derivatives" by, among other actions, "confirming, adopting or improving their national legislation to control the import and export of bear parts and derivatives."<sup>131</sup> Passage of the Bear Protection Act in the United States would be a significant step toward American compliance with this resolution. Further, it would send a strong message to the world conservation community about the depth of the United States' commitment to bear conservation.

At the Meeting of the Conference of the Parties where this resolution was adopted, numerous conservation and animal protection organizations, including the Animal Welfare Institute and The Humane Society of The United States, strongly advocated including language calling for a voluntary moratorium on all trade in bear gallbladders and bile.<sup>132</sup> The parties, however, were unwilling to take what they seemed to consider too far-reaching of a step. The CITES Secretariat, at the February 1999 Meeting of the Standing Committee to CITES in Geneva, Switzerland, acknowledged that "demand for bear bile and gall bladders remains strong."<sup>133</sup> In a useful

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*Id.*

<sup>127</sup> CITES Doc. SC.41.8, *supra* note 125, at 3.

<sup>128</sup> Report from U.S. Delegation to Seoul, *supra* note 13, at 8 (emphasis in original).

<sup>129</sup> About CITES, *supra* note 125.

<sup>130</sup> *Conservation of and Trade in Bears*, CITES Res. Conf. 10.8 (1997) (from the Tenth Meeting of the Conference of the Parties, Zimbabwe).

<sup>131</sup> *Id.*

<sup>132</sup> ANIMAL WELFARE INST. & THE HUMANE SOC'Y OF THE UNITED STATES, PROPOSED AMENDMENT TO DOCUMENT 10.41.1, DRAFT RESOLUTION OF THE CONFERENCE OF PARTIES, INTERPRETATION AND IMPLEMENTATION OF THE CONVENTION, CONSERVATION OF AND TRADE IN BEARS (1999) (on file with author).

<sup>133</sup> CITES Doc. SC.41.8, *supra* note 125, at 3.

admission supporting the adoption of federal legislation such as the Bear Protection Act, the Secretariat stated that

[it] believes that opportunities exist for confusion by some Parties where internal trade controls are weaker than import or export controls. In a similar manner, differences in national, federal, state or provincial laws allow for confusion and enforcement difficulties; for example, where bear gall bladders trade is permitted on a domestic market but import or export is banned. Although this is essentially a domestic issue for Parties, it undoubtedly contributes to the availability of specimens that can subsequently reach international trade.<sup>134</sup>

The Bear Protection Act's uniform prohibition on the import, export, and internal interstate commerce of bear parts will help all countries avoid this enforcement confusion.<sup>135</sup>

Another possible action in the CITES forum includes annotating the listing of all bear species on Appendix II to restrict the international legal bear parts trade to parts of the bear excluding the gallbladder and bile. Since all bear species do not meet the biological criteria for listing in CITES Appendix I, but all bears potentially face threats from the trade in their gallbladders and bile, an annotated listing would be a sensible way to uniformly shut down the trade in bear viscera and help bear conservation efforts. Although the Animal Welfare Institute formally proposed that the United States offer such an annotation at the Eleventh meeting of the Conference of the Parties to CITES in April 2000 in Kenya,<sup>136</sup> the United States Fish and Wildlife has resisted such a suggestion—not on the merits of the request, but because the use of annotations under CITES had not yet been clearly defined.<sup>137</sup>

## VI. CONCLUSION

There is a consistent demand for bear parts across the globe; however, there is a finite and insufficient supply of bear parts. Thus, to state that bear parts should be made more readily available to a wider audience is absurd. Although some states, nations, and international agreements have attempted

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<sup>134</sup> *Id.*

<sup>135</sup> 145 CONG. REC. S5859 (daily ed. May 24, 1999) (statement of Sen. McConnell).

<sup>136</sup> Letter from Adam Roberts, Senior Research Assoc., Animal Welfare Inst., to Dr. Lieberman, Chief, Office of Scientific Auth., U.S. Fish & Wildlife Serv. (Mar. 31, 1998) (on file with author).

<sup>137</sup> U.S. Fish & Wildlife Service, Meeting Notice, 64 Fed. Reg. 36,893, 36,913 (1999). Section 30 (All Bears) states:

The Animal Welfare Institute has recommended that the CITES listing for Appendix-II bear species be annotated to allow trade only in sport-hunted trophies, meat, hides, paws, and live animals to appropriate and acceptable destinations. We do not believe that such an annotation is appropriate at this time, especially given our concern over the use of annotations in the Appendices and our desire to focus on adoption of the draft resolution related to the use of annotations . . . . Therefore, the United States does not intend to submit this proposal at COP11.

*Id.*

to prevent bear poaching for trade in gallbladders and bile, legal and regulatory inconsistencies makes enforcement of such paper protection extremely difficult. Additional action is needed before it is too late.

There is no basis to resist additional protection. Passage of legislation such as the Bear Protection Act would not conflict with individuals' legal hunting rights or states' ability to manage their wildlife. In fact, both interests would ultimately benefit from such legislation. A global moratorium on the international trade in bear viscera would similarly not conflict with traditional Asian medicinal practices, which can employ herbal alternatives and still conform to their traditional pharmacopoeia. Inaction, however, may have grave consequences for both bear species already endangered, and those species of comparably stable populations that face an increased risk of over-exploitation as a result of the worldwide trade. Humans watched for years as elephants were killed for their ivory, tigers for their bones and skin, and rhinoceros for their horns. Society only chooses to act when imperiled species reach their breaking points. With bears we have an opportunity to heed Santayana's advice and learn from our historical conservation mistakes, thus affording bears sufficient protection before there are no bears left to save.