

February 6, 1997

Via Certified Mail, Return Receipt Requested

The Honorable Bruce Babbitt
Secretary of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Re: Petition for Certification of South Korea Pursuant to
22 U.S.C. § 1978, for Trade in Bears and Bear Parts

Dear Secretary Babbitt,

On behalf of the undersigned groups, we submit this petition for certification of the Republic of Korea (South Korea), pursuant to the Pelly Amendment to the Fisherman's Protective Act of 1967,¹ for its citizens' trade in bears and bear parts. Under the Pelly Amendment, a country must be certified if nationals of that country are engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species.² These conditions are clearly met here. First, South Korean nationals are engaging in trade in and taking of bears and bear parts in many parts of the world. Second, this trade in bear parts by South Koreans diminishes the effectiveness of an international program for endangered or threatened species, the United Nations Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Since these conditions are present, this petition seeks certification of South Korea pursuant to the Pelly Amendment and your recommendation to the President to direct the Secretary of the Treasury to prohibit the importation of products into the United States from South Korea, until South Korea has taken sufficient steps to eradicate the country's trade in parts from protected bears.

INTRODUCTION

Increased commercial demand for bear parts for use as medicine and tonics and continued habitat destruction have created intense pressure on the world's bear populations, and virtually decimated Asian bear populations. Rapid development in Asia and Asian communities has led to a dramatic increase in the demand for bear gall bladders and bile during the past two decades. Trade in their gall bladders and bile for use in traditional Chinese medicines is a major threat to the survival of bears, as is trade in paws and other bear meat. Asian communities throughout the world use bear gall bladders and bile to treat a wide variety of illnesses and conditions, and prize other bear parts, particularly paws, as gourmet delicacies. With only a few exceptions, populations of bear species have greatly declined in recent years throughout the world.

The medicinal use of bear gall bladders and bile originated in China, and is practiced today throughout Asia, and in Asian communities worldwide. Traditional Chinese medicine values almost every part of a bear. While bear fat, hair, meat, genitalia and bones are all used to treat various symptoms, the gall bladder is the most desired and valuable bear part. A tiny quantity of bile from the gall bladder of endangered Asiatic black bears can be worth up to eighteen times its weight in gold in the retail markets of Asia. While other bear parts and products tend to be consumed locally, gall bladders are shipped all over the world.³ Historically, bear gall bladder or bile were used to treat serious sicknesses, including fever and chronic illness of the liver, gall bladder, spleen and stomach.

Today, effective synthetic and herbal alternatives to bear gall bladders are available. The Association of Chinese Medicine and Philosophy and the Earth Care Society list fifty-four plant and one animal (pig) alternatives for bear gall bladder.⁴ Although not widely used in South Korea or other Asian consuming nations, these alternatives can even treat serious illnesses. Bears are unique in that they are the only mammal whose gall bladder produces significant amounts of ursodeoxycholic acid (UDCA). Western medicine has recognized the medicinal value of UDCA for some applications, and a synthesized form of UDCA, widely available under the name Actigall,TM is used to dissolve gallstones. Reliance on bear gall bladder and bile is not necessary to treat medical conditions.

While illegal trade in bear parts is carried on to some degree throughout the world, South Korea is widely recognized as the world's primary consumer of bear parts⁵ and the most active in the illegal trade in bear parts in other Asian countries, Canada and the United States.⁶ The demand of some South Koreans for bears and bear parts has had and continues to have a substantial harmful impact on bear populations.⁷ Immediate action must be taken to curb South Koreans' illegal trade in bear parts in order to prevent an impending crisis for the world's bear populations.

I. LEGAL FRAMEWORK

A. The Pelly Amendment

Under the Pelly Amendment, if the Secretary of the Interior determines that nationals of a foreign country, directly or indirectly, are engaging in trade or taking which diminishes the effectiveness of an international program for endangered or threatened species, the Secretary must certify that fact to the President of the United States.⁸ The United States Congress enacted the Pelly Amendment in 1971 in response to concerns about the harmful effect of international salmon fishing on the high seas, and in recognition that international agreements often lack the effective enforcement provisions necessary to conserve species.

The Pelly Amendment phrase "international program for endangered or threatened species" is defined as "any ban, restriction, regulation, or other measure in effect pursuant to a multilateral agreement which is in force with respect to the United States, the purpose of which is to protect endangered or threatened species of wild animals."⁹ This definition embraces the United Nations Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), a multilateral agreement to which the United States has been a party since 1973.¹⁰

CITES is the premier international convention to protect animal and plant species from the deleterious effects of international trade. One hundred and thirty four nations, including South Korea, have voluntarily agreed to implement the requirements of CITES. Because CITES itself contains no enforcement provisions, international cooperation and vigilance are essential to its success, and to the perpetuation of the animal and plant species that it is intended to protect. The United States has recognized the vital role that it can play by using Pelly Amendment certification to address trade that diminishes the effectiveness of international agreements in general, and CITES in particular.

A country's citizens can "diminish[] the effectiveness of any international program for endangered or threatened species" in a variety of ways. Non-ratification of a treaty, non-observance of a treaty's provisions and even actions unrelated to a treaty can be the subject of a Pelly Amendment certification.¹¹ Actual violation of a treaty's provisions is not required to trigger a certification. In 1991, the United States certified Japan for its continuing trade in endangered turtles protected by CITES, despite the fact that Japan had entered reservations on the turtle species. Because of Japan's reservations, its citizens' conduct was not a violation of CITES, but was still sufficient to trigger a Pelly certification. On several occasions, the United States has certified countries that violated provisions and quotas of the International Whaling Commission (IWC).¹² Several of the certified countries were either not members of the IWC, or had entered objections to the provision or quota at issue, thus making them not bound. For example, in 1978 the United States certified South Korea, Peru and Chile for violating IWC quotas, despite the fact that none of the countries were members of the IWC.¹³

B. The United Nations Convention on International Trade in Endangered Species of

Wild Fauna and Flora (CITES)

The United Nations Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) seeks to protect wildlife by banning or regulating international commercial trade in species listed on its Appendices. Species threatened with extinction are listed on CITES Appendix I, which prohibits their international commercial trade. CITES Appendix II includes species that, although not presently threatened with extinction, may become so unless their trade is strictly regulated. Appendix II species may only be traded in accordance with a permit system designed to ensure that the trade will not be detrimental to the survival of the species.

All of the world's bear species are listed on CITES Appendices. As a result of their scarcity due to commercial trade and habitat loss, the Asiatic black bear (*Selenarctos thibetanus*), the sun bear (*Helarctos malayanus*), the spectacled bear (*Tremarctos ornatus*), the sloth bear (*Melursus ursinus*) and some populations of the brown bear (*Ursus arctos*) have been listed on Appendix I.¹⁴ The polar bear (*Ursus maritimus*), American black bear (*Ursus americanus*), and populations of brown bears not included in Appendix I are listed on Appendix II. The International Union for Conservation of Nature and Natural Resources/Species Survival Commission Bear Specialist Group cites trade in bears, bear parts and bear products as a significant threat to the survival of the Asiatic black bear, the sloth bear, certain brown bear populations, and to a lesser degree, the sun bear and the American black bear.¹⁵

American black bears were listed on Appendix II in 1992 because of a similarity of appearance. Once removed, it is impossible to visually differentiate between gall bladders from protected species and gall bladders from bears whose parts can be traded legally. Hunting of American black bears is legal throughout parts of its range, and some state, provincial and territorial governments permit the possession and sale of parts from legally hunted bears. Because gall bladders cannot be visually distinguished once removed, the legal trade in Appendix II bear species has created an international enforcement problem by enabling smugglers and traders to launder gall bladders from protected bears into trade by claiming that they are from a legally obtained Appendix II species. Although the gallbladders from Appendix II bear species are known to be widely traded, little of this trade has been conducted with proper CITES permits.¹⁶

C. Pelly Amendment Certification of Taiwan for Diminishing the Effectiveness of CITES

Certification pursuant to the Pelly Amendment has proven to be an effective way to bolster protections for species provided for in international agreements, such as CITES.¹⁷ In a recent example of Pelly Amendment certification, the United States certified Taiwan and China for international trade by its citizens in rhinoceros and tiger parts and products, in violation of CITES. After an initial period of certification, President Clinton exercised his discretion under the Pelly Amendment and imposed trade restrictions on Taiwan's imports into the United States.

Following certification, Taiwan made great efforts to improve enforcement and implementation of its wildlife legislation. In addition to focusing on imports and points of sale, Taiwanese officials waged public education campaigns to educate consumers, wildlife enforcement officials and travelers. Taiwan also amended its wildlife conservation law to strengthen its provisions, and officials met with a United States interagency delegation to discuss and assess Taiwan's progress.¹⁸

The Secretary of the Interior recently determined that, after approximately three years, the reasons which prompted certification of Taiwan no longer prevailed, and so terminated the certification. In doing so, the United States described the successful steps taken by Taiwan and the cooperative programs instituted as a result of the certification,¹⁹ and recognized that "properly designed trade measures can be an effective tool in enforcing international environmental agreements."²⁰ The United States confirmed its leadership role in protecting species threatened by international trade by calling the de-certification "the end of an historic first chapter in the protection of globally important endangered species,"²¹ and emphasized the value of the Pelly Amendment's provisions in that quest.²² When considering the dangers faced by the world's bear populations, the United States should be mindful of the invaluable role this successful Pelly Amendment certification played in significantly reducing the international illegal trade in and consumption of endangered rhino and tiger populations. Because of the United States's status in the global community, it is incumbent on the United States to take up the issue of trade in bear parts and exercise its influence to prevent the continued decline of bear species.

II. THE SOUTH KOREAN BEAR TRADE

After years of international pressure, South Korea acceded to CITES in 1993. Due to the country's extensive use of and trade in bear parts, South Korea entered a three year reservation on Appendix II bears at the time of accession. Until South Korea withdraws the reservation, it is treated as a non-party to CITES with respect to trade in Appendix II bear species.²³ Before its accession to CITES, South Koreans engaged in extensive international trade in bear parts. Even after its accession, South Korea's widespread involvement in the illegal international trade in bear parts continues.

The Asiatic black bear is the only bear species native to South Korea.²⁴ As such, South Korean practitioners prefer its gall bladder and bile to that of other bear species.²⁵ As a result of habitat loss and the demand for bear gall bladders in South Korea, the domestic population of Asiatic black bears is very close to, or in fact may be, extinct. In 1982, the Korean Society for the Protection of Wild Animals estimated that only fifty-seven individuals remained of the South Korean Asiatic black bear population, separated into five populations.²⁶ A 1991 estimate suggested that only ten to twenty bears remained in South Korea,²⁷ while recent news articles report that wild bears are now extinct in South Korea.²⁸

The only remaining Asiatic black bears in South Korea may be those in captivity. The South Korean National Forestry Administration estimates that approximately 1,350

Asiatic black bears live in captivity in South Korea. There are reports that the captive bears are secretly killed and sold for up to US\$62,000 each.²⁹

The decimation of Asiatic black bear populations has driven South Korean prices for bear parts higher than anywhere else in the world.³⁰ In September 1995, wildlife investigators were offered a gall bladder alleged to have been poached from a wild South Korean Asiatic black bear. The cost was hundreds of dollars per gram.³¹

The medicinal use of bear gall bladders is pervasive throughout South Korea.³² The country is home to more than 3,600 *hanyak*, or traditional medicine, clinics. ³³ Thousands of these clinics sell bear gall bladders and bile,³⁴ as do countless herb dealers.³⁵ Today, the use of bear gall bladders in South Korea has broadened beyond the more limited traditional applications. Some South Koreans believe that bear gall bladder is a cure for virtually anything,³⁶ and it is often self-administered as a tonic.³⁷ Consumers regularly use bear gall bladder as a general health tonic or even as a hangover cure.³⁸

Expansion of the use of bear gall bladder beyond traditional medicinal applications, combined with increasing disposable incomes, has fueled the demand for bear gall bladders in South Korea. Even the Association for South Korean Oriental Medicine (AKOM) has expressed concern about the expanded use of these products, stating that the South Korean government needs to control the illicit trade in bear gall bladders for frivolous uses, such as health tonics, so that the use of gall bladders for treating serious illnesses is protected. AKOM would like to see the trade in bear gall bladders limited to legitimate medical use.³⁹

Despite the elusive nature of the bear gall bladder trade, investigators have been able to collect a wealth of information about the illicit trade in bear parts in South Korea. The trade occurs, for the most part, in small transactions between individuals and within families or friends.⁴⁰ Only a small number of the gall bladders traded actually reach retail markets, and only a fraction of those are confirmed by investigators' surveys of *hanyak* shops. Reported incidents of trade in bear gall bladders and other parts represents but a fraction of the total South Korean trade.

A. South Korea's Failure to Implement CITES

CITES is implemented in South Korea by three laws: the Law Concerning the Protection of Wildlife and Game (administered by the Forestry Administration), the Pharmaceutical Affairs Law (administered by the Ministry of Health and Welfare), and the Natural Environment Preservation Law (administered by the Ministry of Environment). These laws and their implementation have not proved adequate to address South Korea's role in the illegal trade in bears and bear parts.

South Korea's domestic legislation implementing CITES is inadequate and has not been bolstered by the creation or training of wildlife enforcement authorities, crackdowns on illegal trade, or public education campaigns.⁴¹ While South Koreans are

known worldwide as the most significant consumers of bear parts, the South Korean media has focused little attention on the issue, and the government and people seem to know little of their national role in the international decline in bear species.⁴² A search of a decade's worth of South Korean newspapers reveals only about a dozen brief articles about the issue.⁴³ There have never been any seizures or prosecutions of bear gall bladder smuggling in South Korea.⁴⁴ In this vacuum of official acknowledgment and action, South Koreans continue to consume bears at an alarming pace.

Even the relatively few gall bladders that pass through official channels in South Korea are not traded in accordance with CITES. In 1993, South Korea's customs statistics reported that forty-seven kilograms of bear gall bladders were imported from China (43.2kg), Nepal (2.2kg) and Russia (1.8kg). It is possible that some of these imported gall bladders were from Appendix II brown bears. However, the only bears in Nepal are Appendix I Sloth and Asiatic black bears, and all of China's bears are listed on Appendix I.⁴⁵ Thus, the majority of these bear gall bladders were from species whose trade is prohibited and imported contrary to CITES. Assuming an average weight of sixty grams for each gall bladder, the gall bladders imported from China and Nepal through South Korean customs represent approximately 760 dead bears in one year's time. These reported imports represent only a fragment of the total bear parts trade.

B. South Korean Trade in Appendix I Bear Species is Diminishing the Effectiveness of CITES

South Koreans are well known in Asian range states for their desire for bear parts.⁴⁶ This devotion to bear parts is illustrated by the smuggling out of Thailand of thirty bears for consumption by South Korean athletes for the 1988 Olympic Games.⁴⁷ This appetite for bear parts has not waned, despite South Korea's accession to CITES in 1993. Citizens of South Korea engage in extensive trading in Appendix I bears in direct violation of the protective provisions of CITES. South Korea agreed to abide by Appendix I trade restrictions when it acceded to CITES, and has a duty to honor its international commitments and obligations. Bear species are listed on Appendix I because their continued existence is in jeopardy. South Korea continues to flout the CITES trade prohibitions, driving Appendix I bears closer and closer to extinction and frustrating other nations' efforts to protect the species. South Korea, absent international pressure, is likely to continue this destructive trade.

Illegally imported bear gall bladder is widely available in South Korea.⁴⁸ In-person surveys of Korean traditional medicine practitioners conducted in 1991 by Korean graduate students confirmed that Korean practitioners favor the use of Appendix I Asiatic black bears above all other bear species for medicinal purposes.⁴⁹ Sixty-seven percent of the practitioners surveyed preferred gall bladders from bears from China, home of the Asiatic black bear and other Appendix I bear species. Further, sixty-three percent said that all of their bear bile came from Asian bears, which are all listed on Appendix I.⁵⁰ In 1995, two years after South Korea's accession to CITES, a third of the traditional medicine shops surveyed in South Korea still identified China as their source of bear gall

bladders.⁵¹

Since South Korea's bear population has been all but destroyed, South Koreans regularly travel to China,⁵² Sri Lanka,⁵³ Ecuador,⁵⁴ Viet Nam,⁵⁵ Thailand,⁵⁶ Russia, Canada and the United States⁵⁷ to buy bear gall bladders. With the exception of bear populations in Russia, Canada and the United States, the bear populations of those countries are listed on CITES Appendix I. Pharmacies and traditional medicine stores in South Korea continue to obtain and openly offer bear gall bladder from other nations' Appendix I bear species, in direct violation of CITES trade restrictions.

Reported trade episodes represent only a fraction of the vast underground trade in Appendix I bear species by South Koreans, which continues virtually unabated. Chinese who sell traditional medicines in Hong Kong and Malaysia say that South Koreans are some of their best customers.⁵⁸ South Koreans have been smuggling bear parts out of China for years, some even using custom belts to conceal gall bladders.⁵⁹ China is home to thousands of ethnic Koreans who return to South Korea with traditional medicines, including bear gall bladders, bile and paws, to sell.⁶⁰ When surveyed about this trade, South Korean customs officials were most concerned that a dollar limit on imports was being exceeded, not that bear parts were being imported.⁶¹

South Koreans are known to travel to China to purchase bear bile products from bear farms and export them to South Korea in violation of CITES.⁶² Some Chinese bear bile products are even labeled in South Korean.

It also has been alleged that South Korean officials charged with policing the trade are instead benefiting from its continuation. An employee of Korean Airlines who concealed and transported bear gall bladders and even whole bear carcasses into South Korea stated that he was able to get the bear parts into the country by bribing customs officials.⁶³

In a recently publicized incident, Thai police arrested five South Koreans for their involvement in illegal bear parts trafficking. Thai authorities found the carcasses of six black bears, with their paws severed and their gall bladders removed, in the Koreans' vehicle. (Thailand is home to the Asiatic black bear, an Appendix I species.) According to Police Lt. Col. Kittipong Tamsawat, his province is a transit and purchase point for South Koreans who want to buy bears. The arrested Koreans admitted that smuggling bears is good business in Korea. The Police Lt. Col. also described South Korean travel agencies that arrange package tours to Thailand for South Koreans who want to eat bear meat and partake of other bear part remedies.⁶⁴

Thai authorities recently discovered three hundred illegally held Asiatic black and sun bears, hidden in remote villages, which are believed to have been smuggled mainly from Myanmar. The bears were to be brought into towns on order by South Korean tourists.⁶⁵

In August 1996, a Trade Records Analysis of Flora and Fauna in Commerce

(TRAFFIC) investigator interviewed a tour guide based in Bangkok who provided services for South Korean tourists visiting Thailand. According to the tour guide, of the 360,000 South Koreans who traveled to Thailand in 1995, approximately 30,000 consumed bears and/or bear parts while in the country. The tour guide reported that South Korean tourists pay from US\$7,500 to US\$9,000 for a live bear. The bear is then drowned, its gall bladder removed, and its meat and paws consumed. The guide also reported that South Koreans illegally hunt bears near the Myanmar and China borders. According to the guide, many of the Koreans are aware that their poaching is illegal, so to avoid detection when re-entering South Korea they take the gall bladders to Korean traditional medicine shops in Bangkok. These shops grind the gall bladders into powder, mix the powder with other ingredients, and put the mixture into capsules, which are easier to smuggle into South Korea.⁶⁶ TRAFFIC East Asia notes that while South Korean Customs has discovered and confiscated fifty-five kilograms of bear gall bladders from those entering or returning home to South Korea, "it is almost certain that a significant amount of smuggled bear gall bladder remains undetected."⁶⁷

South Koreans are known to travel to Viet Nam, home of the Appendix I Asiatic black bear and sun bear species, to personally witness bear kills to authenticate the source of the gall bladder. South Koreans dine on the bear meat and paws while in Viet Nam, and return home with the gall bladders.⁶⁸ It has been reported that the killing and consumption of bears by South Koreans is now common in Viet Nam and Cambodia, home to Appendix I sun bears and Asiatic black bears.⁶⁹ In August 1996, investigators were shown the parts from over three dozen Appendix I bears in Ho Chi Minh City. South Koreans were said to be the best customers for the bear parts. Investigators were told that South Koreans smuggled the gall bladders home hidden on their bodies or in their baggage.⁷⁰

In addition to the Asiatic black bear, South Koreans are extending their efforts beyond Asia and pursuing the spectacled bear, another Appendix I species. Recent reports describe South Korean traders hiring locals in Ecuador to supply them with spectacled bear gall bladders.⁷¹

South Koreans also consume bear paws. Bear paw soup has long been a cherished dish in Asian cuisine. Those who eat the soup believe that it has beneficial tonifying and invigorating properties.⁷² The demand for bear paws remains high and unmasked. Until recently, hotels in Seoul, including the Hilton Hotel, offered bear paw soup on their menus.⁷³ As recently as 1995, "Bear Palm Dish" appeared on the menu of a hotel restaurant in South Korea.⁷⁴ Due to the local scarcity and exorbitant price, South Koreans often go to Viet Nam and other countries to purchase and consume more reasonably-priced bear paws.⁷⁵ In 1994, a bowl of bear paw soup in Seoul cost US\$1,000,⁷⁶ whereas a whole bear could be purchased for US\$1,000 in Ho Chi Minh City.⁷⁷

In 1991, law enforcement personnel in Thailand raided a farm that catered to South Korean tourists. The farm's manager was a South Korean, as were a number of those dining on bear meat at the time of the raid. Several live bears were on the site or

hidden in a nearby village. Law enforcement personnel also found several recently killed bears, forty-eight bear paws in a refrigerator and documentation of bear gall bladder sales and banquets featuring bear meat.⁷⁸ The farm had been advertised in South Korea,⁷⁹ and tour companies had been arranging visits to the farm for groups from South Korea and other countries.⁸⁰ In addition to serving visiting tourists, the farm also supplied bear meat to South Korean restaurants in Bangkok.⁸¹ The officers involved in the case said that the bears were killed to order by drowning, strangulation, or stabbing with a spear, after having been harassed with a metal pole to stimulate their adrenaline and other fluids.⁸²

South Koreans' extensive trade in Appendix I bear species diminishes the effectiveness of CITES. The trade is in direct violation of this international agreement, and compromises the long term viability and effectiveness of its structure and programs and its ability to protect imperiled bear species.

C. South Korean Trade in Appendix II Bear Species is Diminishing the Effectiveness of CITES

In addition to the widespread illegal trade in Appendix I bear species, South Koreans also engage in a high volume of illegal trade in Appendix II species. South Korea has been identified by many conservation groups, wildlife researchers and investigators as playing the most significant role in the international trade in bear parts.⁸³ In violation of domestic laws of range countries, South Koreans continue to buy, sell and smuggle large numbers of Appendix II bear parts, and have been involved in the majority of cases of illegal bear gall trade in North America.⁸⁴ Some South Korean travel agencies even offer tourists money to smuggle bear parts from North America into South Korea.⁸⁵ Evidence of South Koreans' illicit trade in Appendix II bear species in North America is voluminous.

South Koreans travel to the United States for the specific purpose of purchasing bear gall bladders. The president of Seoyung Trading Company, based in South Korea, has stated, "When I am sick, I go the USA for bear and watch it killed myself."⁸⁶ South Korean gall bladder dealers are also known to canvass sporting good shows across the United States to solicit gall bladder suppliers.⁸⁷ Other Asian traders purchase gall bladders and paws in the United States to smuggle into South Korea. One such trader met undercover wildlife agents at a deer antler auction and purchased 164 bear gall bladders.⁸⁸ According to an officer involved in the case, "He wanted to buy hundreds of galls and tons of bear paws."⁸⁹ Another officer said, "When I explained to him that it would take 400 bears to fill an order that large, he said, 'Good, then you'll be able to get me 400 galls as well.'⁹⁰ The gall bladders were to be sold in South Korea, among other countries.

Most South Korean traders who smuggle gall bladders lack the appropriate permits, while others manipulate the paperwork required by various states. For example, a state investigator reported that a South Korean trader requested only one bear license, stating it could be used "many, many, many, many times" and adding "American laws

are stupid! Stay with me and I will teach you."⁹¹ In addition to large scale smuggling organizations, many individuals have been caught attempting to bring smaller numbers of bear gall bladders back to South Korea.⁹²

Recent law enforcement efforts in California uncovered an international bear poaching and parts smuggling ring which featured Korean hunters.⁹³ California wildlife officers began an undercover operation after a state game warden encountered a hunting party of Koreans, none of whom could speak English, leading him to wonder how they could have passed the required hunting safety exam. Upon investigation, state officials learned that a Korean American advertised illegal guided bear hunting trips in South Korean newspapers, arranged the hunts, and sold and trafficked in bear parts. For US\$1,500, South Korean hunters would receive illegal licenses and bear hunting tags.⁹⁴ By the time arrests were made, at least thirty black bears had been killed.⁹⁵ According to California enforcement personnel, this "is the first time we have solid evidence that people are being solicited from outside this country to come to California and kill bears illegally. We suspected it in the past, and now we have evidence."⁹⁶ Undercover agents believe that, without their intervention, the poaching ring would have expanded to Washington, Oregon, Idaho, Montana, Alaska and British Columbia.⁹⁷ Earlier investigations in California had revealed a significant percentage of guides contacted sold bear parts.⁹⁸

Law enforcement authorities have experienced similar instances of illegal activity by South Koreans in Alaska,⁹⁹ Pennsylvania,¹⁰⁰ Tennessee, North Carolina and Georgia,¹⁰¹ as well as Alberta,¹⁰² Quebec,¹⁰³ and Russia,¹⁰⁴ among others. In a survey of the American bear parts trade, many of the United States wildlife trade investigators commented that individuals of Korean descent are the biggest trade threat to bears.¹⁰⁵

There are reports of South Koreans requesting bear gall bladders in remote Alaskan towns.¹⁰⁶ Travel agencies that serve Korean nationals recruit people to carry gall bladders out of the United States. One such agency posted a sign in Korean that encouraged customers to ask about ways to save money on their travel expenses. Customers would be paid for transporting gall bladders into Seoul's Kimpo International Airport.¹⁰⁷ Alaska law enforcement personnel affirm that most instances of trafficking in bear gall bladders by non-citizens involve South Koreans.¹⁰⁸ In 1991, law enforcement intercepted eight boxes of bear parts at the Anchorage Airport in Alaska, containing forty-three bear gall bladders and 283 bear paws. The bear parts were from Idaho and en route to a Korean in Alaska who intended to sell some of the parts and export the others.¹⁰⁹

In the same year, a South Korean was fined US\$7,500 and given two months probation for buying a polar bear gall bladder. The following year, another South Korean was fined US\$500 for trying to purchase a polar bear gall bladder. Wildlife agents report that significant numbers of polar bear gall bladders are being illegally exported to South Korea.¹¹⁰ In April of 1991, 173 bear gall bladders were seized at the Anchorage Airport. The package was addressed to two Koreans living in Alaska. Law enforcement officials

believe the gall bladders were to be smuggled out of the United States.¹¹¹

In 1991, Pennsylvania Game Commission enforcement officers received reports of South Koreans requesting bear gall bladders at hunting weigh stations, where all legally hunted bears must be tagged. The South Koreans tried to buy gall bladders from the hunters, and photographed each other next to dead bears to prove the gall bladders' authenticity.¹¹²

A 1986 undercover operation that took place in Tennessee, North Carolina and Georgia confirmed the role of South Korea in the illegal bear parts trade in North American bears. According to Captain Ben Wade of North Carolina, "It's like a dope ring. The bear parts go from North Carolina to Detroit to San Francisco to South Korea, where they're worth twenty times what they're worth here."¹¹³

Officials in Alberta and other Canadian provinces have also had experience with illegal trading by South Koreans. In 1992, law enforcement authorities discovered a South Korean attempting to smuggle four bear paws and seven American black bear gall bladders to South Korea. The gall bladders were dipped in chocolate and stored in a candy box to avoid detection.¹¹⁴ In Quebec, dealers covertly interviewed by investigators identified Korean buyers in Toronto as one of their primary markets.¹¹⁵ Two South Koreans were arrested in 1991 for smuggling 168 bear gall bladders from Quebec into the United States.¹¹⁶ One bear gall bladder dealer in South Korea has described to an investigator how a South Korean traditional practitioner living in Canada smuggled gall bladders into South Korea several times a year.¹¹⁷

Russian law enforcement authorities have caught South Koreans attempting to smuggle bear gall bladders through the Khabarovsk airport.¹¹⁸ Surveys in South Korea confirm that Russia is a source of bear parts for South Koreans. Investigators were told that bear gall bladders were smuggled into South Korea from Russia by tourists, clothes dealers, sailors, Mafia operatives and South Koreans.¹¹⁹

When South Korea acceded to CITES in 1993, it entered a reservation on Appendix II bear species. South Korea's reservation relieved it only of obligations imposed by CITES; it did not relieve South Koreans of their duty to comply with the domestic laws of range nations. The reservation also does not immunize South Korea from Pelly Amendment certification based in part or in whole on trade in Appendix II bear species. As discussed earlier, Pelly Amendment certifications have been based on a country's failure to accede to an international agreement. Japan's 1991 certification was based on its trade in turtles protected by CITES, despite Japan's reservation on the turtle species.

South Korea's trade in Appendix II bear species diminishes the effectiveness of CITES. The pervasiveness of the trade undermines CITES's ability to protect species listed on its Appendices. The reservation on Appendix II bear species is emblematic of South Korea's general devotion to the use of bear products and the government's unwillingness to address in an effective and timely manner the role of its citizenry in the

decline of the world's bear species. The reservation has created nearly insurmountable enforcement problems due to the difficulty of determining the species from which the gall bladder was removed, enabling smugglers and illegal traders to claim that Appendix I gall bladders came from Appendix II species. This undermines the permit system, the very core of CITES's protective provisions. The volume of trade in Appendix I species demonstrates that withdrawing the reservation on Appendix II species will not be sufficient to stop the trade.

D. The Pelly Amendment Requirements Have Been Met

This petition has demonstrated that South Koreans are engaging in taking of and trade in Appendix I and II bear species that diminishes the effectiveness of CITES. South Korea's trade in Appendix I bear species in contravention of the CITES trade prohibitions diminishes the effectiveness of CITES and contributes significantly to the potential extirpation of declining species, the protection of which is CITES's fundamental purpose. Trade in Appendix II bear species in the absence of required permits similarly diminishes the effectiveness of CITES by impairing effective enforcement, undermining the permit system and threatening the viability of bear populations. Upon a finding that South Korean nationals are engaging in trade in bear parts that diminishes the effectiveness of CITES, certification is mandatory.

III. THE PELLY AMENDMENT PERMITS IMPOSITION OF TRADE RESTRICTIONS ON SOUTH KOREA

Once the Secretary of the Interior has made a Pelly Amendment certification to the President, the President may direct the Secretary of the Treasury to prohibit the bringing or importation into the United States of any products from the offending country for any duration, provided that the prohibition is sanctioned by the General Agreement on Tariffs and Trade (GATT).¹²⁰ Such prohibitions on South Korean imports are permissible under the GATT, and are warranted given the scope and harm of the South Korean trade in bear parts.

The GATT generally attempts to eliminate discrimination in trade between parties to the GATT, but includes exceptions which allow disparate treatment. These exceptions include the protection of "human, animal or plant life or health"¹²¹ and the "conservation of exhaustible natural resources."¹²² Moreover, according to the U.S. Fish and Wildlife Service, CITES has primacy over the GATT.¹²³ As such, trade restrictions imposed on South Korea pursuant to the Pelly Amendment are not only permissible but entirely appropriate in light of the harm being done to bear species.

Previous experience has demonstrated how effective international attention and pressure, combined with prohibitions on imports can be. The recent certification and imposition of trade restriction on Taiwanese imports has proven the value that trade restrictions can have in enforcing international environmental agreements. On the occasion of Taiwan's de-certification, the United States reflected on the contribution of the Pelly Amendment's provisions in protecting endangered species, recognizing the

value of having "mutually supportive" environmental and trade policies.¹²⁴ The Secretary of the Interior emphasized the effectiveness of the trade restrictions against Taiwan,¹²⁵ stating " . . . I am pleased to report that we now know trade sanctions imposed on behalf of endangered species work."¹²⁶

In other documents discussing the gains made by Taiwan in stemming the illegal rhinoceros and tiger trade, engendered by the Clinton Administration's use of the Pelly Amendment provisions, the U.S. Fish and Wildlife Service's Office of Management Authority affirmed that the illegal trade in parts of endangered Asian bears is a major concern, and that the Korean trade in endangered bears may be an even greater concern than rhino and tiger trade was in South Korea.¹²⁷

IV. INTERNATIONAL CONCERN ABOUT THE BEAR PARTS TRADE

At its most recent meeting (December 2-6, 1996), the CITES Standing Committee endorsed a decision by the CITES Animals Committee addressing the illegal international trade in parts from CITES - listed bears. That decision recognized that, without action by all parties to CITES, Appendix I bear species may be extirpated by the illegal trade in their parts. The decision also stated that the continued illegal trade in bear parts "undermines the effectiveness of the Convention." The Standing Committee endorsed a previous recommendation by the Animals Committee which strongly urged all parties to CITES to eliminate the illegal trade in bear parts and products. As a founding party to the Convention and an international leader in species conservation, the United States must endeavor to fulfill the charge made to it by the CITES Animals and Standing Committees.

CONCLUSION

The international trade in bear parts, combined with habitat loss, poses a serious threat to the survival of Asian bear populations, and to the future of bear populations worldwide. Bears reproduce very slowly. Every individual taken from a population, especially one that is already struggling, reduces the ability of that population to sustain itself. As human populations and incomes grow, so does the threat to remaining populations of bears.

The trade in bear gall bladders is a lucrative one which exhibits many of the same characteristics as the destructive rhinoceros and tiger trade. However, unlike the trade in rhinoceroses and tigers, the trade in bear gall bladders and bile has legal channels which severely complicate and hinder enforcement of domestic and international bear protection measures. As a result, the illegal trade in bear gall bladders, bile and other parts has contributed to the endangerment of bear species.

South Korea is the primary consumer in this destructive trade. Rapid economic development during the past two decades has dramatically increased the demand for bear gall bladders and bile. South Korean nationals are willing to pay the most for gall

bladders and go to the greatest lengths to ensure that the ones they obtain are authentic. The South Korean government seems reluctant to address the country's demand for these products, and lacks adequate legislation and enforcement mechanisms to implement CITES. Though authorities claim that they are working to stop illegal trade in bears and bear parts, no convictions for illegal trafficking in bear parts have been reported.¹²⁸

The United States played a pivotal role in stemming the illegal international trade in rhinoceros and tiger parts and products by applying the Pelly Amendment's provisions. The United States must now exercise the same leadership to ensure that bear populations are not extirpated due to illegal trade in bear gall bladders, bile and other bear parts. In light of the serious consequences of inaction to bear populations, we urge you to expedite an investigation of South Korea's trade in Appendix I and II bear species, promptly certify South Korea and recommend to the President that he impose appropriate trade prohibitions.

- 1 22 U.S.C. § 1978, as amended by Pub. L. No. 95-376, 92 Stat. 714 (Sept. 18, 1978).
- 2 22 U.S.C. § 1978 (a)(2).
- 3 Peter Knights and Sue Fisher, *From Forest to Pharmacy: Canada's Underground Trade in Bear Parts* at 2 (1995) [hereinafter *Canada's Underground Trade*].
- 4 Keith Highley and S. Chang Highley, *Bear Farming and Trade in China and Taiwan* at 52 (HSUS/HSI 1994) [hereinafter *Bear Farming*].
- 5 Keith Highley, *Of Ten Thousand Bears*, *Bears Magazine*, Summer 1996, at 36 [hereinafter *Ten Thousand Bears*]; Peter Knights, *From Forest to Pharmacy: The Global Underground Trade in Bear Parts* at 2 (1996) [hereinafter *Global Underground Trade*]; Environmental Investigation Agency, *Why the World Must Kill the Trade to Save the Bears*, at 8 [hereinafter *Save the Bears*]; Keith Highley, *The American Bear Parts Trade: A State by State Analysis*, at 4 [hereinafter *American Bear Parts Trade*].
- 6 *Save the Bears*, *id.* at 8.
- 7 Christopher Servheen, *The Status and Conservation of Bears of the World*, *International Conference on Bear Research and Management Monograph Series No. 2*, at 10, 1990 [hereinafter *Status and Conservation*].
- 8 22 U.S.C. § 1978 (a) (2).
- 9 22 U.S.C. § 1978 (h) (4).
- 10 Congress intended that the definition of "international program for endangered or threatened species" include CITES. See H.R. Rep. No. 1029, 95th Cong., 2d Sess. 16 (1978), reprinted in 1978 U.S.C.C.A.N. 1768, 1780.
- 11 See Steve Charnovitz, *Environmental Trade Sanctions and the GATT: An Analysis of the Pelly Amendment on Foreign Environmental Practices*, 9 *Am. U. J. Int'l L. & Pol'y* 751, 760 (1994) [hereinafter *Analysis of the Pelly Amendment*].
- 12 Certifications relating to the IWC are under section 1978 (a)(1) of the Pelly Amendment, which permits certifications for diminishing the effectiveness of an international fishery conservation program. While these certifications fall under a different provision of the Pelly Amendment, the standard for certification, "diminish the effectiveness," is the same. Compare 22 U.S.C. § 1978 (a)(1) and (a)(2).
- 13 *Analysis of the Pelly Amendment*, *supra* note 11, at 764.
- 14 27 U.S.T. 1087, March 3, 1973.

15 J. A. Mills, Simba Chan and Akiko Ishihara, *The Bear Facts: The East Asian Market for Bear Gall Bladder* at 3 (1995) [hereinafter *The Bear Facts*]. The International Union for Conservation of Nature and Natural Resources is now the World Conservation Union.

16 *Global Underground Trade*, supra note 5, at 37.

17 See *Analysis of the Pelly Amendment*, supra note 11.

18 Taiwan: CITES Implementation Status Report Pursuant to Pelly Certification for the Period June 30, 1995 to June 30, 1996, at 1 [hereinafter *CITES Implementation Status Report*].

19 *Id.* at 2-8; U.S. Fish and Wildlife Service News Release, *Taiwan Helps Protect Endangered Species: Interior Secretary Removes Certification* at 3, (September 11, 1996) [hereinafter *USFWS News Release*].

20 See *USFWS News Release*, *id.* at 1, statement of Eileen Claussen, Assistant Secretary of State for Oceans and International, Environmental and Scientific Affairs.

21 *Id.*

22 See U.S. Fish and Wildlife Service Fact Sheet, *Ongoing Clinton Administration Efforts to Protect Rhinos and Tigers* [hereinafter *USFWS Fact Sheet*]; *USFWS News Release*, supra note 17; "Taiwan Helps Protect Endangered Species: Interior Secretary Removes Certification," *CITES Implementation Status Report*, supra note 18.

23 CITES, article XXIII, (3). It has been reported that South Korea has withdrawn its reservation, but the Secretariat has not yet issued a formal notification of such.

24 *Status and Conservation*, supra note 7, at 10.

25 *Id.*

26 *Id.* at 9-10.

27 Judy A. Mills and Christopher Servheen, *The Asian Trade in Bears and Bear Parts* at 31 (1991) [hereinafter *The Asian Trade*].

28 Sang-Hun Choe, *Eating Wildlife*, The Associated Press, August 12, 1996.

29 *Id.*

30 *Global Underground Trade*, supra note 5, at 38; *The Asian Trade* supra note 27, at 33.

- 31 Canada's Underground Trade, *supra* note 3, at 2, citing IN/HSUS/HSI investigation, South Korea, September 1995.
- 32 The Asian Trade, *supra* note 27, at 32.
- 33 Status and Conservation, *supra* note 7, at 10.
- 34 *Id.*
- 35 The Asian Trade, *supra* note 27, at 33.
- 36 *Id.*
- 37 Canada's Underground Trade, *supra* note 3, at 3, citing personal communication with the former head of South Korea Pharmacy Association, September 1995.
- 38 Global Underground Trade, *supra* note 5, at 3, 38; Canada's Underground Trade, *supra* note 3, at 3.
- 39 A TRAFFIC Network Report to the CITES Animals Committee on the East Asian Market for Bear Gall Bladder, TRAFFIC East Asia, 1996 Update, at 5, citing K.S. Kim, Association of South Korean Oriental Medicine, personal communication, July 1995.
- 40 Canada's Underground Trade, *supra* note 3, at 14.
- 41 Global Underground Trade, *supra* note 5, at 40.
- 42 *Id.* at 38; Save the Bears, *supra* note 5, at 8.
- 43 Global Underground Trade, *supra* note 5, at 38.
- 44 Personal Communication with Peter Knights, December 1996.
- 45 The Bear Facts, *supra* note 15, at 33.
- 46 The Asian Trade, *supra* note 27, at 33.
- 47 *Id.*
- 48 Global Underground Trade, *supra* note 5, at 3.
- 49 The Bear Facts, *supra* note 15, at 21.
- 50 *Id.*

51 *Id.* at 26.

52 Canada's Underground Trade, *supra* note 3, at 15, citing IN/HSUS/HSI investigation, South Korea, September 1995.

53 *Id.* at 15, citing personal communication with Dr. Moon, September 1995.

54 *Id.*, citing The Bear Facts, *supra* note 15.

55 *Id.*, citing Peter Knights, Wildlife Trade in Vietnam, EIA, unpublished 1994.

56 *Id.*, citing Bear Farming, *supra* note 4.

57 *Id.*, citing IN/HSUS/HSI investigation, South Korea, September 1995.

58 The Asian Trade, *supra* note 27, at 33, citing anonymous personal communication, June 1991.

59 *Id.* at 14-15, 33.

60 *Id.* at 34-35.

61 *Id.* at 35.

62 Bear Farming, *supra* note 4, at 32.

63 Global Underground Trade, *supra*. note 5, at 22, citing M. Clifton, "Bear-ly There," Animals Agenda, September 1989.

64 Koreans Arrested for Bear Trafficking, United Press International, July 12, 1996.

65 Peter Knights, personal communication with the Chief of the Thailand Management Authority, December 3, 1996.

66 A TRAFFIC Network Report to the CITES Animals Committee on the East Asian Market for Bear Gall Bladder, TRAFFIC East Asia, 1996 Update, at 4.

67 *Id.* at 5.

68 Global Underground Trade, *supra* note 5, at 38, citing personal communication, confidential informant in Taiwan, February 1995.

69 Ten Thousand Bears, *supra* note 5, at 36.

70 Investigative Network/World Society for the Protection of Animals Internal Report, 1996; Global Underground Trade, *supra* note 5, at 11.

- 71 The Bear Facts, *supra* note 15, at 3.
- 72 Global Underground Trade, *supra* note 5, at 12.
- 73 *Id.* at 12, citing Peter Knights, Investigation in South Korea, EIA, 1994, unpublished.
- 74 *Id.*; Save the Bears, *supra* note 5, at 8.
- 75 Global Underground Trade, *supra* note 5, at 12.
- 76 *Id.*, citing Peter Knights, Investigation in South Korea (EIA, 1994, unpublished).
- 77 *Id.*, citing Peter Knights, Wildlife Trade in Vietnam (EIA, 1994, unpublished).
- 78 The Asian Trade, *supra* note 27, at 33.
- 79 Global Underground Trade, *supra* note 5, at 12.
- 80 The Asian Trade, *supra* note 27, at 72.
- 81 *Id.* at 73.
- 82 *Id.*
- 83 Global Underground Trade, *supra* note 5, at 3, 38.
- 84 *Id.* at 3.
- 85 *Id.* at 38, citing personal communication with Alaska state trooper Joe Campbell, July 1995.
- 86 Canada's Underground Trade, *supra* note 3, at 15, citing The Asian Trade.
- 87 Global Underground Trade, *supra* note 5 at 10, citing Bear Farming, *supra* note 4.
- 88 Global Underground Trade, *supra* note 5, at 18.
- 89 *Id.* at 18, citing B. Kelly, "Black Market Beasts," Colorado Outdoors, July-August 1995.
- 90 *Id.* at 18, American Bear Parts Trade, *supra* note 5.
- 91 American Bear Parts Trade, *supra* note 5 at 16-17.

92 Global Underground Trade, *supra* note 5, at 11.

93 *Id.* at 18, citing T. Steinstra, Authorities Hunt Down Poachers, *San Francisco Examiner*, April 2, 1995.

94 TRAFFIC USA Newsletter, Vol. 13, No. 2 (August 1994), at 4.

95 Marla Cone, Illegal Black Bear Hunting Ring Broken, Officials Say, *Los Angeles Times*, January 29, 1994, at B18.

96 *Id.*, statement of Greg Laret, deputy chief of wildlife protection, California Department of Fish and Game.

97 Catherine McCracken, Debra A. Rose and Kurt A. Johnson, Status, Management and Commercialization of the American Black Bear at 11 (1995); *Global Underground Trade*, *supra* note 5, at 19.

98 American Bear Parts Trade, *supra* note 5, at 8; *Global Underground Trade*, *supra* note 5, at 18.

99 *Global Underground Trade*, *supra* note 5, at 21, citing personal communication with USFWS special agent Mark Webb, March 7, 1996.

100 *Id.* at 21-22, citing personal communication with Jim Beard, Pennsylvania Game Commission, November 1994.

101 *Id.* at 22.

102 Canada's Underground Trade, *supra* note 3.

103 *Global Underground Trade*, *supra* note 5, at 30.

104 *Id.*, at 36, citing S. Galster, S. LaBudde, and J. Kelly, *Crime Against Nature* (San Francisco: Endangered Species Project, 1995).

105 American Bear Parts Trade, *supra* note 5, at 4.

106 *Global Underground Trade*, *supra* note 5, at 20, citing personal communication with United States Fish and Wildlife Service Special Agent, Mark Webb, May 1995.

107 Bear Farming, *supra* note 4, at 13.

108 *Id.*, citing Joe Campbell, Alaska State Division of Fish and Wildlife Protection Commander.

109 Global Underground Trade, *supra* note 5, at 21.

110 *Id.*, citing personal communication with United States Fish and Wildlife Service Special Agent, Mark Webb, March 7, 1996.

111 The Asian Trade, *supra* note 27, at 33.

112 Global Underground Trade, *supra* note 5, at 21-22, citing personal communication with Jim Beard, Pennsylvania Game Commission, November 1994.

113 *Id.* at 22, citing G. Nobbe, *Somebody's Killing Our Bears*, Wildlife Conservation, 1995.

114 Canada's Underground Trade, *supra* note 3, at 9.

115 Global Underground Trade, *supra* note 5, at 30.

116 Bear Farming, *supra* note 4, at 12.

117 Canada's Underground Trade, *supra* note 3, at 15.

118 Global Underground Trade, *supra* note 5, at 36, citing S. Galster, S. LaBudde, and J. Kelly, *Crime Against Nature* (San Francisco: Endangered Species Project, 1995).

119 *Id.* at 36.

120 22 U.S.C. § 1978(a) (4).

121 GATT art. XX (b).

122 GATT art. XX (g).

123 "One organization submitted comments recommending that the United States submit a resolution establishing the primacy of CITES over the GATT and WTO rules. The Service believes that this is already the case, and therefore a draft resolution is unnecessary." 61 Federal Register 44,324, 44,341 (Aug. 28, 1996).

124 USFWS News Release, *supra* note 19, at 1, statement of Charlene Barshefsky, Acting U.S. Trade Representative.

125 *Id.*

126 *Id.* at 2.

127 USFWS Fact Sheet, *supra* note 22, at 2-3.

128 Global Underground Trade, *supra* note 5, at 40.