

**Proposed Special Rule for the Polar Bear
and Draft Environmental Assessment
Under Section 4(d) of the Endangered Species Act
Questions & Answers**

What action is being taken by the U.S. Fish and Wildlife Service?

The U.S. Fish and Wildlife Service (Service) is publishing in the *Federal Register* a proposed special rule for the polar bear under section 4(d) of the ESA and making available a draft Environmental Assessment (EA) prepared under the requirements of the National Environmental Policy Act (NEPA) analyzing the proposed rule and three alternatives. The agency is initiating a 60-day public comment period on both the proposed special rule and the draft EA.

Why is the Service taking this action?

Polar bears in the U.S. are managed under three federal laws: the Endangered Species Act (ESA) of 1973, as amended, the Marine Mammal Protection Act (MMPA) of 1972 (as amended), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) signed in 1973. The polar bear was listed as threatened under the ESA on May 15, 2008.

Also on May 15, 2008, the Service issued an interim special rule for the polar bear, which was refined and finalized as a final special rule on December 16, 2008. On November 18, 2011, the District Court for the District of Columbia ordered reinstatement of an interim final special rule governing management of polar bears under the ESA. In its ruling, the Court stated that the Service was required to review potential environmental impacts of its December 16, 2008, final special rule for the polar bear under NEPA, and that the May 15, 2008, interim final special rule will be in effect until this is done. The Service is taking steps to meet this Court order through the actions taken today.

The draft Environmental Assessment proposes four alternatives. What are they?

- **Alternative 1:** Under the no action alternative, no 4(d) special rule would be promulgated for polar bear conservation under the ESA.
- **Alternative 2 – Proposed Alternative:** Rule is the final 4(d) special rule published in the *Federal Register* on December 16, 2008. This 4(d) rule, in most instances, adopts the existing conservation regulatory requirements under the MMPA and CITES as the appropriate regulatory provisions for the polar bear. In addition, this special rule provides that any incidental take of polar bears resulting from an activity that occurs outside the current range of the polar bear is not a prohibited act under the ESA. This special rule does not affect any existing requirements under the MMPA, including incidental take restrictions, or CITES, regardless of whether the activity occurs inside or outside the range of the polar bear.
- **Alternative 3:** Rule is the interim 4(d) special rule published in the *Federal Register* on May 15, 2008. There is only one substantive difference between Alternative 2 and Alternative 3. Alternative 3 provides that any incidental take of polar bears resulting from activities that occur outside Alaska is not a prohibited act under the ESA. Thus, the geographic range of incidental take exemption under the ESA differs between “outside Alaska” (Alternative 3) and “outside the current range of the polar bear” (Alternative 2).

- **Alternative 4:** Rule is the same as the final 4(d) special rule, but without the provisions of Paragraph 4. Alternative 4 does not contain a provision to expressly exempt any geographic areas from the prohibitions in §17.31 of the ESA regarding incidental taking of polar bears. All three versions of the special rule (i.e., alternatives 2, 3 and 4) adopt the existing conservation regulatory requirements under the MMPA and CITES as the appropriate regulatory provisions for the polar bear.

Will the proposed special rule affect subsistence harvest?

The proposed special rule does not affect the continued subsistence harvest or the production and sale of polar bear handicrafts by Alaska Natives. The proposed special rule, if finalized, does allow the continued noncommercial export of Native handicrafts made from polar bear parts.

Will the proposed special rule affect oil and gas exploration?

Onshore and offshore oil and gas exploration, development, and production activities in Alaska have been effectively governed for decades under the more stringent MMPA provisions. Under the proposed special rule, the Department of the Interior will continue to primarily rely on the more stringent provisions of the MMPA to control such activities. However, the overlay of provisions of the ESA, such as the consultation requirements of section 7 of the ESA, will still apply.

Section 7 of the ESA requires federal agencies to ensure that the activities they authorize, fund or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a federal action may affect a listed species or its critical habitat, the permitting or action agency must enter into consultation with the Service. This requirement remains unchanged with the interim Special Rule now in effect, and would not be changed by the proposed Special Rule.

How can comments be submitted?

Written comments and information concerning the proposed special rule and associated draft EA by one of the following methods can be submitted by one of the following methods:

- U.S. mail or hand-delivery: Public Comments Processing, Attn: Docket No. [FWS-R7-ES-2012-0009]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203; or
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. [FWS-R7-ES-2012-0009].

Comments must be received within 60 days of publication of the Special Rule in the Federal Register. Please indicate to which document any comments apply. The Service will post all comments on <http://www.regulations.gov>. This generally means the agency will post any personal information provided through the process. The Service is not able to accept email or faxes.

The Service particularly seeks comments on the proposed special rule concerning:

- Suitability of the proposed rule for the conservation, recovery, and management of the polar bear; and
- Additional provisions the Service may wish to consider to conserve, recover and manage the polar bear.

Where can copies of the documents be obtained?

The proposed rule as well as the draft EA may be found by visiting the Federal eRulemaking Portal: <http://www.regulations.gov>; search for Docket No. [FWS-R7-ES-2012-0009].

For more information about the proposed special rule, draft EA and other issues on polar bear conservation, please visit <http://alaska.fws.gov/fisheries/mmm/polarbear/esa.htm>.

What will happen after the comment period closes?

After the comments period closes, the Service will analyze all the comments on the proposed special rule and draft EA and respond to all substantive comments received.

While the Service is currently proposing a particular version of a 4(d) special rule, the agency retains flexibility to select among the four alternatives analyzed in the draft Environmental Assessment when it finalizes the 4(d) special rule. The final special rule will be published in the *Federal Register*.