



# NEWS

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## U.S. Department of the Interior

Office of the Secretary

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### **Secretary Kempthorne Announces Decision to Protect Polar Bears under Endangered Species Act**

*Rule will allow continuation of vital energy production in Alaska*

WASHINGTON, D.C. – Secretary of the Interior Dirk Kempthorne today announced that he is accepting the recommendation of U.S. Fish and Wildlife Service Director Dale Hall to list the polar bear as a threatened species under the Endangered Species Act (ESA).

The listing is based on the best available science, which shows that loss of sea ice threatens and will likely continue to threaten polar bear habitat. This loss of habitat puts polar bears at risk of becoming endangered in the foreseeable future, the standard established by the ESA for designating a threatened species.

In making the announcement, Kempthorne said, “I am also announcing that this listing decision will be accompanied by administrative guidance and a rule that defines the scope of impact my decision will have, in order to protect the polar bear while limiting the unintended harm to the society and economy of the United States.”

Kemphorne further stated, “While the legal standards under the ESA compel me to list the polar bear as threatened, I want to make clear that this listing will not stop global climate change or prevent any sea ice from melting. Any real solution requires action by all major economies for it to be effective. That is why I am taking administrative and regulatory action to make certain the ESA isn’t abused to make global warming policies.”

In January 2007, the Fish and Wildlife Service proposed listing the polar bear as threatened throughout its range based on receding sea ice. At that time, Secretary Kemphorne directed the Fish and Wildlife Service and the USGS to aggressively work with the public and the scientific community to broaden understanding of what is happening with the species. In September 2007, the USGS delivered to the Fish and Wildlife Service nine studies related to the future condition of the polar bear and its habitat.

#### Declines in Sea Ice Documented

Kemphorne illustrated the listing decision with charts depicting satellite images of the differences in sea ice from the fall of 1979 to the fall of 2007. (Studies and models at [http://www.doi.gov/issues/polar\\_bears.html](http://www.doi.gov/issues/polar_bears.html)). Last year, Arctic sea ice fell to the lowest level ever recorded by satellite, 39 percent below the long-term average from 1979 to 2000. The amount of sea ice loss in years 2002-2007 exceeded all previous record lows.

In developing the nine studies it delivered to the Fish and Wildlife Service, the USGS relied upon 10 peer-reviewed climate models, all of which project a decline in Arctic sea ice in the future. In particular, the models project declines in September sea ice of more than 30 percent by the middle of the 21<sup>st</sup> century. Four of the 10 models project declines in September sea ice in excess of 80 percent by the mid -21<sup>st</sup> century. Seven of the 10 models show a 97 percent loss in September sea ice by the end of the 21<sup>st</sup> century.

Based on actual observations of trends in sea ice over the past three decades, these models may actually understate the extent and change rate of projected sea ice loss.

Under the ESA, five factors determine whether a species is to be listed. One of those factors is whether there is present or threatened destruction, modification, or curtailment of habitat.

According to the ESA, a species is listed as “threatened” when it is at risk of becoming “endangered” within the foreseeable future throughout all or a significant portion of its range. In contrast, a species is “endangered” when it is currently in danger of extinction throughout all or a significant portion of its range.

U.S. Fish and Wildlife Service Director H. Dale Hall recommended the listing decision. U.S. Geological Survey Director Mark Myers concurs with the scientific findings that support the decision.

The U.S. Fish and Wildlife Service drew upon biological information on the bear, careful consideration of whether the bear can adapt to new habitat conditions, over 30 years of actual sea ice observations, and dozens of studies and models on sea ice.

#### 4(d) Rule and Marine Mammal Protection Act

In making the decision to list the polar bear as a threatened species, Kempthorne also announced he was using the authority provided in Section 4(d) of the ESA to develop a rule that states that if an activity is permissible under the stricter standards imposed by the marine Mammal Protection Act, it is also permissible under the Endangered Species Act with respect to the polar bear. This rule, effective immediately, will ensure the protection of the bear while allowing us to continue to develop our natural resources in the arctic region in an environmentally sound way.

The conservation measures provide that the production, interstate sale, and export of native handicrafts by Alaska natives may continue and that the subsistence harvest of polar bears is not affected.

#### ESA Not Intended to Regulate Global Climate Change

In making the announcement today, Secretary Kempthorne reiterated President Bush's statement last month that the ESA was never intended to regulate global climate change. "Listing the polar bear as threatened can reduce avoidable losses of polar bears. But it should not open the door to use of the ESA to regulate greenhouse gas emissions from

automobiles, power plants, and other sources,” said Kempthorne. “That would be a wholly inappropriate use of the ESA law. The ESA is not the right tool to set U.S. climate policy.”

Last month President Bush said, “The Clean Air Act, the Endangered Species Act and the National Environmental Policy Act were never meant to regulate global climate change.” He said, “There is a right way and wrong way to approach reducing greenhouse gas emissions. The American people deserve an honest assessment of the costs, benefits and feasibility of any proposed solution. Discussions with such far-reaching impact should not be left to unelected regulators and judges but should be debated openly and made by the elected representatives of the people they affect.” Kempthorne said, “This Administration has taken real action to deal with the challenges of climate change.”

Our incentives for power production from wind and solar energy have helped to more than quadruple its use. The President explained we have worked with Congress to make available more than \$40 billion in loan guarantees to support investments that will avoid, reduce, or sequester greenhouse gas emissions or air pollutants. In remarks on April 16, the President said that the Administration and the private sector plan to dedicate nearly a billion dollars to clean coal research and development.

Memorandum of Understanding with Canada

Kempthorne acknowledged Canada has not listed polar bears as threatened even though they have two-thirds of the world's population of the species. "Last week, I went to Canada and explored this issue. The Canadian law is different from U.S. law with respect to endangered species, both in its criteria for listing and administrative process for making listing determinations."

While in Canada, Kempthorne signed a Memorandum of Understanding with his Canadian counterpart, John Baird, the minister of environment, for the conservation and management of polar bear populations shared by the U.S. and Canada.

### Next Steps

To make sure the ESA is not misused to regulate global climate change, Kempthorne promised the following actions:

- The U.S. Fish and Wildlife Service is proposing a 4(d) rule that states that if an activity is permissible under the stricter standards of the Marine Mammal Protection Act, it is also permissible under the ESA with respect to the polar bear. This rule, effective immediately, will ensure the protection of the bear while allowing us to continue to develop our natural resources in the arctic region in an environmentally sound way.
- Director Hall will issue guidance to staff that the best scientific data available today cannot make a causal connection between harm to listed species or their habitats and greenhouse gas emissions from a specific facility, or resource development project or government action.

- The Department will issue a Solicitor's Opinion further clarifying these points.
- The Department will propose common sense modifications to the existing ESA regulatory language to prevent abuse of this listing to erect a back-door climate policy outside our normal system of political accountability.

Additionally, the Department will continue to:

- monitor polar bear populations and trends,
- study polar bear feeding ecology,
- work cooperatively with the Alaska Nanuuq Commission and the North Slope Borough for co-management of the polar bears in Alaska,
- provide technical assistance to the participants of the 1988 North Slope Borough Inuvialuit Game Council Agreement for the conservation of polar bears in the Southern Beaufort Sea region and monitor the effects of oil and gas operations in the Beaufort Sea region.

**The proposed ESA special 4(d) rule is available at**

**[http://www.doi.gov/issues/polar\\_bears.html](http://www.doi.gov/issues/polar_bears.html) for a 60 day public comment period.**

**-- www.doi.gov --**