

## **Polar Bear 4(d) rule – Q's and A's**

### **Q: What is a special 4(d) rule?**

A: In some circumstances, the standard regulatory provisions under the Endangered Species Act (ESA) for a threatened species may not be the necessary and appropriate provisions for the conservation of that species. In those situations, the Secretary has the discretion under section 4(d) of the ESA to determine in a special rule those measures and prohibitions that are necessary and advisable for the conservation of that particular species. When the polar bear was determined to be a threatened species under the ESA on May 15, 2008, then Secretary of Interior Dirk Kempthorne exercised his discretion under section 4(d) of the ESA to determine in a special rule those measures and prohibitions necessary and advisable for the conservation the polar bear.

### **Q: What is the polar bear 4 (d) rule and what does this allow people to do?**

A: For the polar bear, the special rule: (a) in most instances, adopts the conservation regulatory requirements of the Marine Mammal Protection Act (MMPA) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) for the polar bear as the appropriate regulatory provisions for the polar bear; (b) provides that incidental take of polar bears resulting from activities outside the bear's current range is not prohibited under the ESA; (c) clarifies that the Special Rule does not alter the Section 7 consultation requirements of the ESA; and (d) maintains the standard ESA protections for threatened species when and activity is not covered by an MMPA or CITES authorization or exemption.

### **Q: Why didn't the Secretary rescind the polar bear 4(d) rule?**

A: The Administration is fully committed to the protection and recovery of the polar bear. Secretary Salazar reviewed the current rule, received the recommendations of the Fish and Wildlife Service, and concluded that the best course of action for protecting the polar bear under the Endangered Species Act is to wisely implement the current rule, monitor its effectiveness, and evaluate our options for improving the recovery of the species.

Using the best science available, Interior will closely monitor the success of the polar bear rule in helping the species recover, to determine if it needs to be adjusted or if there ways we can improve management practices to better protect the polar bear's habitat.

In addition, the Secretary made this determination because even if the rule were withdrawn, by law a nearly identical interim special rule that was put in place when the polar bear was first listed as threatened would take effect. The final special rule is essentially identical to the interim special rule, except the incidental take exemption for activities within the United States was expanded from activities outside of Alaska to activities outside the range of the polar bear.

As a result, there would be no meaningful change in the management of the species if the rule were withdrawn. The Interior Department is also concerned that the withdrawal of the special rule and reinstatement of the interim special rule will lead to unnecessary confusion among the people of Alaska and regulated industries.

**Q: What will the Department do now?**

A: The Department will leave the Final Special Rule in place and monitor the effectiveness of the special rule to determine whether any subsequent revisions are appropriate.

**Q: How will you determine success or failure?**

A: As we continue to monitor these factors that are of relevance to the polar bear and its habitat we should be able to monitor the impacts, if any, of implementing the special rule on polar bear populations. Should significant population level impacts be quantified through monitoring implementation of the special rule we would then determine which special rule provision(s) have resulted in the observed population impacts and take immediate steps to review and revise as appropriate the special rule.

**Q: What is the impact to polar bears?**

A: The current special rule allows the continuation of appropriate, nonlethal polar bear deterrence techniques near Alaska communities and oil and gas production areas that prevent dangerous, and potentially lethal, situations that would otherwise arise due to the proximity of polar bears and people. These measures are authorized under the strict protection standards of the MMPA and have shown through their application over many years that they further the conservation of the species.

**Q: Do you believe the current rule provides adequate protection to the polar bear?**

A: Yes, but we do recognize the need to monitor the polar bear closely and ensure that it is adequately protected.

**Q. Does the 4(d) rule mean that federal agencies don't have to consult on the impact of greenhouse gases on polar bears?**

A. It is currently not possible to directly link the emission of greenhouse gases from a specific power plant, etc. to effects on specific bears or bear populations. This direct "connect the dots" standard is required under the Act and court rulings. Therefore, the Fish and Wildlife Service's policy guidance to its field staff is not to require such consultations.

As a more general matter, the Department recognizes that climate change impacts associated with global emissions of greenhouse gases are impacting the polar bear and other species.

Pending further review and analysis, the Department does not believe that a project-by-project ESA review of proposed actions that have the potential to increase greenhouse gas emissions, regardless of where they occur or how much they contribute to global greenhouse gas emissions, is the appropriate tool for addressing climate change impacts. A comprehensive approach is needed in order to protect the polar bear and other species that are impacted by climate change. The Administration is actively working with Congress to pursue such a comprehensive strategy.