



- Summit Daily File Photo

#### More info

Get more information on the Polar bear listing at

<http://alaska.fws.gov/fisheries/mmm/polarbear/issues.htm>

Learn more about threats to pikas (native to Summit County) at

[http://www.biologicaldiversity.org/species/mammals/American\\_pika/](http://www.biologicaldiversity.org/species/mammals/American_pika/)

The Denver law firm Hollan & Hart maintains a blog on climate change law at <http://www.hhclimatechange.com/>.

An international "red list" of endangered species is online at

<http://www.iucnredlist.org/static/introduction>.

## Pikas, penguins and polar bears

BY [BOB BERWYN](#)  
SUMMIT DAILY NEWS,

KEystone — Pikas in Summit County's alpine zone, penguins in Antarctica and polar bears don't have much in common at first glance, but all three animals are losing ground to a changing climate.

As a result, the federal government will have to consider how agency actions affect those species when they permit power plants or set new standards for automobile fuel efficiency, panelists at a Keystone environmental law conference said Friday.

The challenge for officials is how to quantify the impacts of local actions in a global context, said Federico Cheever, director of the environmental and natural resources law program at the University of Denver.

And the Endangered Species Act might not be the best tool for addressing climate change impacts to threatened plants and animals, according to Michael Bogert, former counsel to Secretary of Interior Dirk Kempthorne under the Bush administration.

"This is the real deal. It's a change in the nature of biological diversity itself," Cheever said, explaining how scientists have measured a doubling in the rate of forest mortality in the Rocky Mountains in the past few decades.

Cheever singled out the pika, a small rabbit-like mammal living high on the rocky slopes of local peaks, as a poster child for applying existing environmental laws on a global scale. The critters die when exposed to temperatures above 80 degrees. They are rapidly losing habitat due to climbing temperatures and could become the first terrestrial animal outside Alaska to be listed as an endangered species due to global warming.

#### Already listed

Polar bears and two species of coral have already been listed because of climate change impacts, and more than 150 additional species in the U.S. are under consideration. The panelists at the American Bar Association's 38th annual environmental law conference were trying to determine how existing federal laws figure into the regulatory equation.

Under most traditional interpretations of the Endangered Species Act, an agency like the Bureau of Indian Affairs would have to determine how much of an impact a new coal-fired power plant in New Mexico or Colorado has on polar bears near the North Pole and penguins in Antarctica.

The vexing question is how to measure the site-specific impacts of such a project on a global scale. Top conservation leaders like Kieran Suckling, director of the Center for Biological Diversity, said the federal government is legally obligated to do just that.

But Jeff Leppo, a Seattle-based attorney for the oil and gas industry, said it's not so easy. Polar bears are first species to be listed before biologists actually have been able to determine a decline in the abundance or distribution of a species. Leppo said the industry acknowledges that global warming is drastically reducing polar bear habitat, but questioned whether the Endangered Species Act is the appropriate tool for regulating greenhouse gas emissions.

"Is this an appropriate use of the Endangered Species Act. Is it a good policy approach?" Leppo asked. "The truth is, the U.S. Fish and Wildlife Service (which administers the act) does not have the expertise to have a broad-based discussion about emission policy and regulation," Leppo said.

"It's a random, issue-by-issue, case-by-case approach. Business operates best in a predictable regulatory climate," Leppo said, adding that, in today's shaky economy, it's more important than ever to maintain a level playing field for industry.

"The Endangered Species Act is the least predictable way to establish emissions and climate change policy," he said.

#### New rules

"We're playing under very different rules than we have in past decades. But even the Bush administration accepted that climate change is a reason for listing species under ... the Endangered Species Act," Cheever said.

The ESA is designed to save species ... "It's not a statute to save the world," said Bogert. "It's clear that polar bear habitat is declining," he said, referring to the dramatic retreat in Arctic sea ice that led the Bush administration to list polar bears as threatened. "How do you account for it? How do you hold the Bureau of Indian Affairs accountable for the impacts of the Desert Rock project?"

Bogert was referring to the act's requirement that federal agencies determine whether their actions will further endanger a listed species — no easy task when trying to measure the effects of emissions from a single power plant against the background of all the other sources of greenhouse gases.

Suckling said that, even if the impacts are small on a global scale, the Endangered Species Act still requires federal agencies to make that determination. He said the impacts are quantifiable, and that decision makers must take them into account.

"The Endangered Species Act doesn't say, 'Only if the impacts are not on a global scale.' It says the impacts must be reduced," Suckling said, adding that up to 40 percent of the world's animals could face the threat of extinction because of rising temperatures.

All the panelists acknowledged that new rules and laws are needed to address the environmental impacts of climate change. Suckling said that using existing laws like the Endangered Species Act will establish case that will shape new rules.

Bogert and Leppo suggested that new rules should be drawn up from scratch based on emerging science and the global nature of the threat.

Suckling said the immediate goal should be to do everything possible to try and stop or slow the impending global wave of extinction from climate change impacts.

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