



## Polar bear listing is big win for area group

Decision favoring center called key advance on climate change

By Tony Davis  
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This month's listing of the polar bear as a threatened species was the biggest victory in the 19-year history of Tucson's Center for Biological Diversity.

It was also the single biggest step to advance the cause of global warming on the worldwide stage of public opinion, according to the environmental group's friends and foes alike.

One legal observer, University of Denver law professor Fred Cheever, likened it to the effect of the endangered-species listings of the bald eagle and peregrine falcon, which led the U.S. to ban the pesticide DDT a quarter-century ago.

"If you had to rank them, what single thing has brought the most attention in the U.S. to the climate-change issue?" asked Oliver Houck, a Tulane University law professor who specializes in environmental law.

"Would it be Al Gore winning the Nobel Prize, the movie 'Inconvenient Truth,' or a picture of a polar bear on shrinking ice? I say maybe the picture would win.



Apart from its status now as a threatened species, the polar bear has come to symbolize the effects of global climate change. Legal action by the Tucson-based Center for Biological Diversity prompted the U.S. government to list it as a threatened species, spotlighting the warming issue.

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"That image is so much in the public mind that the Bush administration didn't want to list it but had to. Not listing it would be like killing Flipper or Smokey Bear," Houck said.

But like scores of other species-protection cases won by the Center for Biological Diversity in the past, this is but the first step in a long, arduous process to translate the listing into action.

The center petitioned for the polar bear's listing back in 2005. It later sued along with Greenpeace and the Natural Resources Defense Council to force the U.S. Fish and Wildlife Service to list it.

The center's blueprint for saving the polar bear is ambitious and complex. It includes:

- Challenging offshore oil and gas leasing in Alaska within six months.

● Launching a large-scale challenge to the licensing of coal-fired power plants around the country sometime after that.

● Finally, challenging large-scale, local government development plans in major cities.

These efforts would be in the name of reducing greenhouse gases that many scientists are now linked to the breakup of the Arctic-area sea ice on which polar bears live.

“We are trying to change national and international policy,” said Tucsonan Kieran Suckling, the center’s director.

But the listing has already spurred legal opposition. Last week, the state of Alaska sued to overturn it out of concern that a listing will cripple oil and gas development in prime polar-bear habitat off the state’s northern and northwestern coasts.

In addition, some opponents warn that the listing will cut deeply into daily American practices such as charging cell phones and driving SUVs — charges denied by the Center for Biological Diversity.

Alaska Gov. Sarah Palin argued that there is not enough evidence to support a listing. Polar bears are well-managed, and their population has dramatically increased over 30 years as a result of conservation, she said.

Interior Secretary Dirk Kempthorne responded that he had considered and rejected these arguments before deciding to list the bear on May 15.

Many scientists who supported the listing say there is urgency to

curbing greenhouse emissions for the sake of the Arctic sea ice where the bears live and which they rely on as they hunt ringed seals.

Summer sea ice shrank last year to a record low, about 1.65 million square miles, nearly 40 percent less than the long-term average between 1979 and 2000.

If temperatures continue warming at their current pace, in five or six years there might be so little sea ice frozen during the winter that there would be none left in the Arctic at the end of summer, scientists say.

If global warming continues as expected, two-thirds of the polar bear population would be gone by 2050, the U.S. Geological Survey has said.

Many legal experts said the listing could be a political boost for those fighting global warming, by prodding Congress to pass a law limiting carbon dioxide emissions.

The listing’s symbolic importance is very real, said a Vermont Law School professor.

“Seize the symbol; win the debate. Images of bears on shrinking ice floes hits people at a gut level,” Pat Parenteau said.

“Some will dismiss it as silly environmentalist propaganda, but for a lot of people it provides a vivid reminder that the natural world is under assault and humans are not immune from the consequences.”

First, the Tucson center wants formal federal habitat protection for the bear and wants to get the listing upgraded from threatened to endangered. That offers the bear more protection.

The center and other groups will work to overturn several procedural roadblocks that Kempthorne added at the time of listing to stop it from blocking oil leasing or reducing greenhouse gases.

Then will come more filings and lawsuits to get action on the ground. Environmentalists will push the Fish and Wildlife Service and other federal agencies to consider the effects on sea ice and the bear when they review proposals for power plants, major construction work and other projects needing a federal permit.

Based on what longtime federal climate scientist James Hansen has said about global warming, there is a compelling case to be made for not allowing any more coal-fired plants, said Suckling, the biological diversity group’s executive director.

Hansen, of the National Oceanic and Atmospheric Administration, recently wrote that the world must cut atmospheric CO2 concentrations by nearly 10 percent, “if humanity wishes to preserve a planet similar to that on which civilization developed and to which life on Earth is adapted.”

Hansen has also argued against construction of new coal-fired plants that don’t capture and store CO2 instead of releasing it into the atmosphere.

Most legal experts interviewed about the issue said the Tucson center would probably have a good chance at overturning Interior’s procedural roadblocks and would also fare well in slowing or stopping oil and gas leasing off the Alaskan coast.

Where the center might run into problems will be in the lengthy process of federal environmental reviews of individual power plants and other projects, experts said.

There, the Fish and Wildlife Service decides what effect a given power plant or series of plants will have on the polar bear and whether to order cuts in greenhouse gases to protect it. Through court action, the center could probably force federal agencies to consider the polar bear, experts said.

“That might manage to gum up some federal highway funding, or maybe U.S. Department of Agriculture loans for rural power-plant construction,” said law professor Holly Doremus of the University of California-Davis.

But if the Fish and Wildlife Service decides that a project won’t jeopardize the bear’s existence, overturning that ruling may be difficult. “Who wants to be the judge who says all new federal highway funding is prohibited by the ESA?” Doremus asked.

The Center for Biological Diversity has won some legal cases involving warming. In northern New Mexico, it successfully pushed the Fish and Wildlife Service to consider effects on greenhouse gases from a proposed power plant.

In San Bernardino, Calif., its lawsuit prompted local officials to add requirements for alternative energy

and public transit to approved development plans.

“We’re going out on a cutting edge, making this law happen,” Suckling said. “We’re way out in front of the law clinics and law schools on this. When it comes to climate, the real action is in the courts, not the classroom.”

But critics warn that the polar bear protection will bring unprecedented bureaucratic interference into humans’ daily lives.

Political columnist George Will wrote that this listing gives the Endangered Species Act unlimited application.

“Want to build a power plant in Arizona? A building in Florida? Do you want to drive an SUV? Or leave your cellphone charger plugged in overnight? Some judge might construe federal policy as proscribing these activities,” Will wrote in The Washington Post.

Law professor, radio broadcaster and blogger Hugh Hewitt of Southern California wrote that any activity in the Lower 48 states that requires a federal permit could be delayed or have costs added.

That’s because the Endangered Species Act requires that a federal permit be judged to see if it could affect the bear.

Coastal building programs requiring federal flood insurance, federally financed highways, flood-control

permits for new developments and joint NASA-private industry initiatives could be affected, wrote Hewitt, of Chapman University Law School.

That’s fear-mongering, counters Suckling, who said he has seen critics’ similar claims fail to materialize after other species-protection debates.

This time, the biological diversity center will go mainly after large-scale greenhouse gas emitters, to get the biggest bang for the buck, he said.

“The Endangered Species Act has never on its own completely solved any environmental problem,” Suckling said.

“What they’re imagining is that every aspect of global warming will be regulated by ESA and people will be ordered out of their homes. That is wrong, duplicitous and stupid.”

● The Associated Press contributed to this report. ●