

# The New York Times

APRIL 30, 2008

## Judge Gives Agency Deadline for Decision on Polar Bears

By FELICITY BARRINGER

A federal judge on Monday gave the Interior Department until May 15 to come to a decision on whether to give polar bears protection under the Endangered Species Act. The ruling, coming after nearly four months of departmental delays, rejected the government's contention that the case was too complicated to decide before June 30.

"Defendants have been in violation of the law requiring them to publish" their decision on the bear's status "for nearly 120 days," Judge Claudia Wilken of Federal District Court in Oakland, Calif., wrote. In addition to setting a May 15 deadline, Judge Wilken ordered that the decision take effect immediately, setting aside the usual 30-day grace period.

In January 2007, the federal Fish and Wildlife Service issued a proposal to list the polar bear as threatened because warming global temperatures were melting the sea ice the animals use as a platform to hunt seals, breed and make dens.

The retreating ice covers an area of Arctic seas that is also the latest frontier for offshore oil and gas development — an activity that

could be curtailed if the federal government gives polar bears protection under the Endangered Species Act.

Shortly after the Interior Department missed its original January deadline for a final rule, the agency held a \$2.6 billion oil lease sale covering a 46,000-square-mile area of the Chukchi Sea off northwestern Alaska. Senator Barbara Boxer, Democrat of California and chairwoman of the Environment and Public Works Committee, earlier this month accused the department of delaying the listing to ensure it did not affect the lease sale, an accusation Interior Secretary Dirk Kempthorne has denied.

At a news conference earlier this month, the White House spokeswoman, Dana Perino, said environmentalists were inappropriately trying to use existing environmental laws, like the Endangered Species Act and the Clean Air Act, to address climate change. The result, Ms. Perino said, would be a "regulatory train wreck."

A draft of a final rule was prepared by the Alaska office of the Fish and Wildlife Service in December, Interior Department lawyers told

the court in a brief filed earlier this month. This was reviewed by agency lawyers, who produced another draft on Feb. 22. The department said that the February draft was being reviewed by the Assistant Secretary for Fish, Wildlife and Parks and that the issues involved were complex.

The environmental groups that had sued to force the Interior Department to act on the bear's status were elated by the ruling. "Today's decision is a huge victory for the polar bear," said Kassie Siegel, climate program director at the Center for Biological Diversity, one of the groups involved.

"By May 15th the polar bear should receive the protections it deserves under the Endangered Species Act," Ms. Siegel said, "which is the first step toward saving the polar bear and the entire Arctic ecosystem from global warming."

Shane Wolfe, Mr. Kempthorne's press secretary, issued a brief statement on Tuesday saying: "We have received the court's decision and are reviewing it. We will evaluate the legal options and will decide the appropriate course of action."