

Anchorage Daily News

May 14, 2008

Listing disappoints state political, industry leaders

By **TOM KIZZIA**
Anchorage Daily News

Alaska industry and political leaders reacted with disappointment, even vehemence, to the decision Wednesday to protect the polar bear as “threatened,” despite assurances from the Bush administration that the listing would mean no new regulation in Alaska.

Industry officials worried that the listing decision would give environmentalists a new tool for opposing development in the Arctic, especially new offshore oil exploration and development. Politicians attacked the science behind the decision as speculative.

“Reinterpreting the Endangered Species Act in this way is an unequivocal victory for extreme environmentalists who want to block all development in our state,” said Sen. Ted Stevens, R-Alaska.

National conservative groups are already promising to sue over the decision, predicting that Interior Secretary Dirk Kempthorne’s effort to rule out regulation of greenhouse gas emissions would be overturned in court. One group, the Competitive Enterprise Institute, said the barriers erected by Kempthorne “have all the strength of tissue paper.”

For their part, environmental groups responded more positively to the “threatened species” listing, a goal they have sought for three years. They, too,

were talking about lawsuits, predicting Interior would be forced to yield on the logic of regulating emissions.

“This is a huge victory for the polar bears. They’re now protected,” said Kassie Siegel, climate program director at the Center for Biological Diversity, and lead author of the 2005 petition. “The administration’s attempts to make an exception for greenhouse gases won’t stand up in court. The law says what it says, not what the administration wishes it says. The oil industry is probably smart enough to know that.”

Kempthorne, announcing his decision Wednesday, said no new regulation of industry or subsistence hunting in Alaska would be necessary under the Endangered Species Act. He said protections already given to the polar bear under the Marine Mammal Protection Act are “more stringent” than those under the ESA and would continue in place.

In an interview, Kempthorne said his approach “gave predictability to the oil and gas industry.”

Interior officials cited only one change: polar bear trophies could no longer be imported from guided sport hunts in Canada.

Under the ESA, the federal government is required to develop a plan for protecting critical habitat, write a recovery plan for the bears, and consult about bear protection before approving

federal permits. All now appear to be sources of potential litigation, especially on the issue of excluding greenhouse gas emissions.

The marine mammal act has governed industry activities in northern Alaska for three decades, and the result has been only “negligible” impacts on polar bears, federal biologists say.

But it’s probably oversimplifying to say there will be no different regulation of industry in Alaska as a result of Wednesday’s decision, said Scott Schliebe, a polar bear specialist with the U.S. Fish and Wildlife Service in Alaska.

“It draws a brighter light of scrutiny to our management activities in Alaska,” said Schliebe. “We will take a closer look at the activities, particularly the offshore activities.”

Industry is not as worried about government scrutiny as it is about environmental lawsuits and resulting costly delays, said Marilyn Crockett, executive director of the Alaska Oil and Gas Association.

“The activities taking place in polar bear habitat are the ones that will become targets,” she said. The administration’s effort to keep the marine mammals act as the law affecting oil and gas is “very helpful,” she said, but the decision to list at all is disappointing.

Sen. Lisa Murkowski, R-Alaska, made the point more strongly, calling

the decision “grossly premature” because climate change models vary so much. She said the decision “opens a Pandora’s Box that the administration will now be unable to close.”

Environmentalists were considering Wednesday how to approach future legal challenges to the law, Siegel said.

She said to expect a challenge of the so-called 4(d) rule declaring the marine mammal act would still govern human-bear interactions, effective immediately. The ESA allows for such flexibility if the threatened species is not harmed as a result. But the marine mammal act has shortcomings, environmentalists say, including that it fails to protect habitat.

“If the MMPA were adequate to protect the polar bear, we wouldn’t be in this situation,” she said.

Siegel said she was glad she could move beyond the basic effort of suing the government over science and listing the bear under the ESA. In his statement, Kempthorne said he accepted the science behind the decision as sound.

That job now falls to Reed Hopper, a lawyer with the conservative property-rights firm Pacific Legal Foundation. Hopper said Wednesday he would file a notice to sue over the decision, testing the scientific arguments. He said polar bear numbers have increased in the past few decades and they are already adequately protected under the marine

mammals act, as Kempthorne himself argued.

He dismissed Kempthorne’s contention that the polar bear could be listed for protection due to melting ice, but in a way that would have no effect on oil and gas activity or distant emission sources.

“In our view, that’s just wishful thinking,” Hopper said.