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## Environmentalists sue to broaden polar bear decision

**Bush must consider greenhouse gas effects, they say.**

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*The Associated Press*

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Conservation groups announced Tuesday they are challenging Interior Secretary Dirk Kempthorne's attempt to limit collateral economic damage from listing polar bears as a threatened species.

The Center for Biological Diversity/, Greenpeace and the Natural Resources Defense Council will seek court intervention to address what they say in the No. 1 threat to polar bears: greenhouse gas emissions that cause global warming and melt Arctic sea ice.

Kempthorne, echoing President Bush, said last week the Endangered Species Act was the wrong tool to reduce greenhouse gas emissions. Kempthorne said he would propose "common sense modifications" to make sure the polar bear listing would not set backdoor climate policy outside the normal system of political accountability.

The conservation groups said Kempthorne acted improperly.

"On the one hand, he's acknowledging that global warming is impacting polar bears," said Melanie Duchin of Greenpeace in Alaska. "On the other hand, he's not willing to do



Subhankar Banerjee / Associated Press

Interior Secretary Dirk Kempthorne announced polar bears would be listed as "threatened," but said he would not allow the Endangered Species Act to be "misused" to regulate global climate change.

anything about it. We're asking the administration to uphold the spirit and intent of the Endangered Species Act."

In court filings Friday that amended their original lawsuit, the conservation groups asked U.S. District Court Judge Claudia Wilken of Oakland, Calif., to reject Kempthorne's administrative actions.

Interior spokesman Shane Wolfe said the department generally does not comment on pending litigation.

"The simple fact is that the Endangered Species Act is not a means to address

the global challenges of climate change, which call for a global solution," he said.

Rep. Don Young, R-Alaska, warned that the court action could threaten domestic energy security and development, from offshore leasing to new coal-fired power plants and oil shale development.

"I can guarantee you this is the beginning of an endless series of court challenges and appeals that the national environmental organizations have been planning in their goal of using the polar bear issue for much larger purposes and goals," he said.

Kempthorne, calling the Endangered Species Act one of the most inflexible laws Congress ever passed, said last week he had no choice but to list polar bears as threatened because of overwhelming evidence that the bears' sea ice habitat had dramatically melted and that computer models indicate the trend was likely to continue.

However, Kempthorne said, the listing decision would be accompanied by a rule preventing "unintended harm to the society and economy of the United States."

The law did not allow interventions on greenhouse gas emissions, he said, because no "causal connection" had been demonstrated on individual polar bears from specific power plants, resource projects, government permits or activities in the lower 48 states.

Kassie Siegel, an attorney with the Center for Biological Diversity, called that reasoning "completely ridiculous."

"It's a classic ploy of answering the wrong question," she said. The issue, she said, is that greenhouse gas emissions cause global warming, and therefore harm polar bears.

"The notion that you need to tie the death of any polar bear to any particular carbon dioxide molecule is ridiculous," she said. "They're just making that up."

The law contains two key provisions for protecting listed animals.

One, Section 7, requires all federal agencies to ensure that their regulatory actions do not jeopardize the continued existence of a listed species or "result in the destruction or adverse modification" of their critical habitat.

The other, Section 9, applies to anyone from individuals to corporations. It prohibits them from the "taking" of an endangered species. Siegel said courts have routinely interpreted harm to include significant habitat degradation, and that the measure should be applied to proposed offshore oil and gas drilling in planned for polar bear habitat in the Chukchi and Beaufort seas off Alaska's coasts.

Duchin, of Greenpeace, said most other industrial countries address emissions.

"There are ways to combat global warming and have a strong economy. That's been proven in Europe. It's not one or the other," Duchin said.

Polar bears use sea ice for hunting their primary prey, ringed seals. Advocates for additional protections say they have little chance of adapting to hunting on land. Polar bears also use ice for mating and reaching denning areas.

Kempthorne said federal agencies had made no link between polar bear deaths and oil and gas operations in Alaska, leading him to propose a rule allowing petroleum development to be regulated by the Marine Mammal Protection Act rather than the

Endangered Species Act. That also was challenged.

Andrew Wetzler, an attorney with the Natural Resources Defense Council, said Kempthorne's rules would be challenged on procedure because they were implemented without proper public notice, a comment period or environmental review. Wetzler also said the MMPA does not contain requirements for protection of critical habitat, a recovery plan or agency consultation.

"We are confident the rules won't survive court review and that the polar bear will be given the full protection of the Endangered Species Act that it so badly needs," he said.

The groups also claim Kempthorne should have immediately listed polar bears as endangered rather than threatened based on the scientific evidence collected in the listing process. A species is "endangered" if it "is in danger of extinction throughout all or a significant portion of its range." "Threatened" means it's likely to become endangered within the foreseeable future.

A U.S. Geological Survey study generated in response to the listing petition predicted polar bears in Alaska could be wiped out by 2050.