

## On Thin Ice

The 'threatened' label helps, but polar bears face a difficult future.

*By Daniel Stone | Newsweek Web Exclusive*

Polar bears (and their advocates) got some good news yesterday: the federal government will list the creatures as a threatened species, protected against encroachment on their habitat. But protecting the bears' habitat puts the issue into a larger, more contentious debate, since the species relies primarily on Arctic sea ice that's currently melting. On deadline to make a decision about the bears' status, Interior Secretary Dirk Kempthorne announced that his department's research indicates that the bear is at risk but not yet in danger of becoming extinct, the main qualification for endangered status. "Today's decision is based on three findings," Kempthorne told reporters. "First, sea ice is vital to polar bear survival. Second, the polar bear's sea ice habitat has dramatically melted in recent decades. Third, computer models suggest sea ice is likely to further recede in the future."

Environmentalists welcomed the decision, which they saw as an admission by the Bush administration of the existence of global warming. But the listing as "threatened" falls short of what wildlife protection groups had hoped for; the designation "endangered" would have brought more substantial protection measures. Plus, since a "threatened" listing doesn't require the federal government to actively patrol people or industries harming Arctic territories, all challenges contesting how, or even if, the polar bear is being protected will have to navigate the legal system.



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Brendan Cummings, oceans program director for the Center for Biological Diversity, spoke with NEWSWEEK's Daniel Stone about the polar bear's new status and what comes next. Excerpts:

### **Is this good news?**

It's mixed. The most important thing is that the polar bear is now listed [as threatened]. That will have legal effect, and regardless of what disclaimers and caveats Kempthorne might have added, the Endangered Species Act now applies to the polar bear and a lot of people will now vigorously enforce it.

### **In terms of protection, what are the differences between a threatened and an endangered listing?**

There are two main provisions of the ESA that are relevant. One requires that all federal agencies in all actions they carry out do not jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. That applies equally to threatened and endangered species, and that's the provision where an activity like oil drilling in habitat has to go through a process to determine whether it will destroy the species. If so, it cannot occur. A threatened species doesn't have that. If it were endangered, any given project, including off-shore drilling in bear habitats, would have to go through an Endangered Species Act process, which would either stop that activity or at

least provide mitigations and measures to reduce the harm to the bear.

**What comes next? The department seems to plan only for more research and monitoring.**

Exactly. It's almost like necrophilia. They'll devote all their energy to studying [the bear's] extinction but won't do much about it. But still, the actions that threaten it are constantly occurring, and we will challenge them as they come. Some of them have already been approved, and we will go back to address them with the new listing of the bear. That will all be teased out in the agencies, in the courts and perhaps even Congress.

**It's hard to tell: is this a win for the wildlife protection community?**

It's a huge win. The administration tried to diminish it by saying it doesn't mean anything, but the law is the law. The courts will have to implement the law, even if Kempthorne says he's not willing to. It still has problems, and there are parts we'll be fighting over the following weeks and months, but I don't want to diminish the importance of this decision.

**What will you contest?**

There's another provision of the ESA called the "prohibition of the take," meaning harming, harassing, killing and shooting of usually individual animals. That's the part where they've passed a regulation that will be effective immediately, which says that because the Marine Mammal Protection Act provides adequate protections for the bear, there's no need for the take prohibitions of the ESA to apply. So now they're saying that if you're permitted under the MMPA, that's good enough under the ESA. That's the key part for threatened species. They cannot issue that kind of take prohibition for endangered species, which would be the next step.

**Do you accept Kempthorne's argument that the bear is not yet in danger of becoming extinct?**

No. Three years ago, before the ice started melting as rapidly as it has, one could make that argument. When

we petitioned it we suggested it be listed as either threatened or endangered. But in the three years since, there has been nothing but doom and gloom for the bear, and projections for the amount of ice melting we'll see in 2008 are frightening. The bear should be listed as endangered, and the Marine Mammal Commission, which is an independent federal agency that provides Congress with scientific expertise on marine mammal decisions, advised [the Department of the Interior] to list the bears, at least in Alaska, as endangered and not just threatened. But really, all the bears in the world, and not just the United States, should be listed as endangered.

**Is Kempthorne correct in saying the polar bear is being used to affect all global warming policy?**

This decision is about the polar bear. But as goes the bear, as goes the ice, so goes the planet. So if we can save the bear, we can save ourselves from the worst impacts of global warming. So yes, if we can direct society's energies and the power of our legal system toward saving the polar bear, that will have profound effects for the rest of us.

**What real effect will this decision have on polar bears? What's in the bears' future?**

Things for the bear are going to get worse before they get better. We know that with the amount of extra energy in the climate system, it's going to get hotter, more ice will melt, and more polar bears are going to be incredibly stressed. In Alaska polar bears are going to be stranded on land, hungry and wandering around. If they will have any hope of surviving, we need to protect that habitat, which means not auctioning it off to oil companies. Ultimately, if we don't save the polar bear, we don't save ourselves, unless we as a nation, Congress and the president take seriously global warming and start doing something about it. Of course, that goes much further than the Endangered Species Act and the polar bear. But to protect the bear right now, it needs the specific protections the ESA can and should provide to protect its habitat to help it through the very bumpy decades ahead of it.