

ENDANGERED SPECIES: Interior proposes massive habitat protections for polar bear (10/22/2009)

Allison Winter, E&E reporter

The Obama administration today proposed protecting more than 200,000 square miles in Alaska as critical habitat for the polar bear -- an area the administration said would be the largest the government has ever put forward in a bid to protect an imperiled species.

The Interior Department's sweeping proposal, which includes coastal barrier islands, terrestrial denning areas and sea ice off of Alaska's coast, is nearly one-third the size of Alaska and larger than the states of Washington and Oregon combined. Most of the habitat protections would go to offshore sea ice.

The critical habitat designation would add another layer of protection for the bear, which Interior listed as a threatened species last year because of its melting ice habitat. Environmental and industry groups both praised aspects of the proposal today, while questioning what it could mean for oil and gas drilling in the Arctic.

"Polar bears have seen a range-wide decline in sea ice," said Interior Assistant Secretary Thomas Strickland. "Polar bears will benefit from this, since critical habitat receives an additional level of protection."

Before the proposed habitat protections are finalized, the department will gather public comment and undergo an economic review.

The Endangered Species Act requires protection of "critical habitat" for listed species. Federal agencies must consult with wildlife officials on any proposed activities in the area and make sure they pose no threat. The habitat designation does not alter ownership of the land or affect private activities in the area.

But how the critical habitat will affect future oil and gas drilling in the Arctic garnered varied interpretations today.

Environmentalists said the habitat protections would bolster their case against oil and gas drilling in the area, which they think could harm polar bears. But Interior officials insisted that the protections would not significantly alter operations in the Arctic.

"This provides added emphasis to the plight of the bear, but the functional effect is the activities going on both onshore and offshore were already subject to regulatory review as it might affect the bear prior to today," said Strickland. "We believe it will not be a significant additional burden on the industry for that reason."

Because of protections in place under the ESA and the Marine Mammal Protection Act for the polar bear, oil and gas companies already must consult with wildlife officials on how their activities in the Arctic could affect bears. Strickland said the new habitat protections would highlight the importance of protecting habitat for the bear but not add to the consultation process already in place.

Based on their first glimpses of the proposed rule, oil and gas industry officials agreed with Strickland that it should not affect their operations. "We are encouraged by the fact that the notice and the habitat designation ... appear

written so as to allow safely conditioned oil and gas exploration in the Arctic," said Richard Ranger, a senior policy adviser with the American Petroleum Institute.

Earlier this week, Interior approved plans by Shell Offshore Inc. to drill on two leases in Alaska's Beaufort Sea, prime habitat for polar bears. Strickland said those leases already "made it through the wicket" of regulatory review and would not change because of the habitat protections.

But environmental groups, which have challenged the administration at every turn with lawsuits pressing for more stringent protections for the bear, contend the new habitat protections beef up their case against oil and gas drilling.

Once critical habitat is in place, the government is charged to prevent "adverse modification" of the habitat and decline permits for any activity that would interfere with the recovery of the species.

"All the disclaimers that Interior could put on it in terms of how it won't affect oil and gas drilling or greenhouse gas emissions does not change the plain language of the ESA," said Brendan Cummings of the Center for Biological Diversity, the group that first sued to protect the bear. "No matter how many different ways they try to spin it, we don't see any way they can rationally say industrializing the Chukchi Sea is not adversely modifying that habitat."

Cummings said the group would consider further lawsuits to challenge the oil and gas leases.

The initial decision to protect the polar bear sparked a rush of conflicting lawsuits from environmentalists, hunting groups, industry groups and the state of Alaska -- some arguing for more stringent protections for the bear and others to remove protections. The plaintiffs filed their first set of legal briefs on the consolidated lawsuit yesterday, and a federal judge in Washington, D.C., is expected to hear arguments next summer.