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New polar bear study could hurt case for more oil, gas drilling in Alaska

A US Geological Survey report released earlier this month strengthened the polar bear's case for an Endangered Species Act listing, a development which could create obstacles for energy companies hoping to take advantage of new exploration and production opportunities in Northern Alaska.

The report focused on a melting trend affecting summer ice packs in the polar bear's prime habitat, like Hudson Bay and the Beaufort Sea. Polar bear mothers den on the ice, and the animals use it as a platform for hunting. USGS used climate models to project that 66% of the world's polar bears could disappear by 2050 because of loss of their frozen habitat.

The USGS effort was part of a year-long look into whether the US Fish and Wildlife Service should list polar bears as endangered, as it proposed to do in January. But should FWS decide to finalize the listing by a January 2008 deadline, the move might complicate efforts by two other Interior agencies to expand opportunities for oil and natural gas production in the Arctic.

The Minerals Management Service's five-year plan for the Outer Continental Shelf, which took effect in July, opened Alaska's largely undeveloped Chukchi and Beaufort seas to more energy leasing. The Bureau of Land Management, mean-while, issued a proposed environmental impact statement for the northeastern section of the National Petroleum Reserve last month which lists expanded minerals production as an option. In the past the agency has listed it as a preferred option.

All of these areas contain polar bear habitat, and if the animals were listed as endangered, human activity in them would be subject to more environmental analysis and possibly more restrictions on development.

Environmentalists in favor of listing the bear believe the USGS report will make that happen. Brendan Cummings, a staff attorney for the Center for Biological Diversity, said the animal's case had gone from "incredibly strong to completely irrefutable" after the report. He said the polar bear attracts the kind of public attention that would make it very awkward for FWS not to designate it now.

An endangered species listing would instantly grant polar bears some protections, like a blanket prohibition on harm and harassment of individual bears. This same protection already exists for Alaska's polar bears under the Marine Mammal Protection Act, however, though an ESA listing would allow private advocates to sue for enforcement.

Following such a decision, FWS would empanel experts to determine how best to protect polar bears. The Endangered Species Act bars the federal government from taking any action (like issuing permits) that would "jeopardize the continued existence" of listed species, or that would result in the "destruction or adverse modification" of their habitat.

Restrictions on development possible

The designation of critical habitat, seasonal restrictions, and other measures would all be possible methods of protected listed polar bears. But at a minimum, land managers and companies would be required to show why their actions did not compromise the population's health by conducting more extensive environmental reviews.

Shell and MMS are currently experiencing the effects of this requirement, after a federal court placed an injunction on the oil company's plans to drill exploratory wells in the Beaufort Sea this year. Environmentalists filed a suit claiming that MMS did not complete an ESA-mandated review of the plan's impact on endangered bowhead whales.

Richard Ranger of the American Petroleum Institute argued that it is historically very unusual to base an endangered species decision on future predictions, rather than an actual downturn in population. However, the law's "threatened" category specifically protects species that are not currently facing extinction but will be in the future.

Both Ranger and Cummings of the Center for Biological Diversity pointed to a recent review by the IUCN Polar Bear Specialist Group to support their cases. The study by the international conservation group showed that some bear populations are experiencing decline in numbers and marks of poor health, while others are stable or growing. Data did not exist for all population groups.

Industry: no additional protections warranted

Ranger said the study showed that over their entire range, polar bears were healthy and did not need ESA protection. Cummings said that in areas where bear populations had increased, it was usually because hunting restrictions had allowed the animals to partially recover from past over-harvesting. He said that decreased populations, smaller bears, lower cub survival rates, and instances of polar bear cannibalism in areas like the Hudson Bay and the Beaufort Sea pointed to serious challenges for the species as a whole.

Ranger said that if the animals were indeed listed, the industry could face “terms and conditions that would be greatly limiting to exploring for oil and gas in areas that are thought to have great potential.”

Some conservation groups believe that a polar bear listing based on the effects of climate change would have implications beyond the creature’s native environment. Cummings said that because greenhouse gas emissions contribute to climate change, which in turn melts arctic ice, major contributors of GHG should be regulated under the ESA. He said his group would sue to force Interior to curtail the GHG footprint of projects like MMS’s 5-year plan, which he said would lead to as much GHG pollution as the US as a whole produces in one year.

Chuck Clusen, who directs the Alaska project for the Natural Resources Defense Council, did not think such a sweeping result was likely. He said FWS could potentially issue a statement in support of greenhouse gas legislation, but would likely focus its own efforts on preserving bear habitat and enforcing mitigation practices in areas where the animals live.

In April, API and other oil and gas stakeholders filed comments with FWS calling the proposed listing “arbitrary and capricious.” One of their arguments centered on the Center for Biological Diversity’s conviction that FWS would be obligated to regulate GHG emissions. FWS has said it does not have the expertise to do so, the energy groups argued. “If FWS cannot regulate the causes of future sea recession, then the proposed listing is merely an empty gesture with no regulatory force,” they wrote. If FWS did consult on federally approved GHG-producing projects, they said, “it would stretch ESA to the breaking point.”

Larry Bell, a spokesman for FWS, was unable to comment on whether Cummings’ interpretation was possible or likely if the bear is listed. Bell said the USGS study and FWS had focused more on the effects of climate change than on its possible causes. It could take the government an additional year to develop a strategy for protecting the polar bear if it is ultimately listed, Bell said. Until that decision is made, “I don’t know what that recipe will look like,” Bell said. — Jean Chemnick