

Wednesday, May 20, 2009

Obama's retention of Bush Administration rule undermines protections for polar bears

2:38 PM ET

Noah Greenwald [Biodiversity Program Director, **Center for Biological Diversity**]: "On May 8, 2009, Secretary of the Interior Ken Salazar announced that he **will not rescind** a "special rule" created by the Bush administration that sharply limits protections for the polar bear by exempting all activities that occur outside of the polar bear's range from regulation under section 9 of the Endangered Species Act, which prohibits "take" of endangered species.

The rule is designed to exempt regulation of greenhouse gas emissions. It is precisely because of greenhouse gases, however, that the polar bear was listed as a threatened species under the Endangered Species Act. Polar bears live only in the Arctic and are totally dependent on sea ice for all their essential needs. That ice is rapidly disappearing, reaching an all-time low in 2007, when the Arctic ice cap shrank by a record 1 million square miles below average - an area equivalent to six times the size of California. Several leading scientists now predict that the Arctic Ocean could be ice-free in the summer by 2012. In response to loss of sea ice, polar bears are already suffering starvation, drowning, and population declines. Leaving the special rule in place will ensure that the primary threat to the polar bear - global warming and associated climate change - will not be addressed by the Endangered Species Act.

Although targeted at greenhouse gas emissions, the broad language of the special rule also exempts other pollutants that harm polar bears, ranging from petroleum hydrocarbons, persistent organic pollutants, and heavy metals that come from outside the current range of the species, but have found their way into the Arctic via air and ocean currents. These pollutants, many of which have been identified in polar bear tissue and are believed to be causing health problems for the bears, present an additional threat to the survival of the species.

In retaining the rule, Secretary Salazar parroted many of the arguments made by the Bush administration, namely that it is not possible to make a direct link between one source of greenhouse gas emissions and harm to any particular polar bear and

that the Endangered Species Act was not enacted with global climate change in mind. As one of the strongest laws for protecting biodiversity in the world, however, the Endangered Species Act is broadly worded to identify threatened and endangered species and address threats to these species in whatever form they might come. As such, a broad array of threats to species have been addressed under the Endangered Species Act, including threats posed by pollutants that like emission of greenhouse gases have a diffuse impact on endangered species and their habitats.

In an April 20, 2009 biological opinion, for example, the **National Marine Fisheries Service** concluded that registration of a broad range of pesticides by the Environmental Protection Agency would result in incidental take of 28 species of listed Pacific salmon and prescribed reasonable and prudent measures to avoid this take. As with greenhouse gas emissions, there is no way to connect production or use of these pesticides with harm to any particular salmon, yet the Fisheries Service found credible scientific support for concluding that the pesticides would harm listed salmon. Given the scientific consensus that greenhouse gas emissions are in fact leading to the loss of summer sea ice and that this is harming polar bears, it is clear that a direct link can be made and that a similar approach as to that used for pesticides and salmon could be applied. With the Arctic melting away, it makes no sense to continue to exempt big polluters from provisions of existing law that could actually help address the problem."

Opinions expressed in JURIST's Hotline are the sole responsibility of their authors and do not necessarily reflect the views of JURIST's editors, staff, or the University of Pittsburgh.