



Alaska Oil Industry Seeks To Toss Polar Bear Case

By Hilary Russ

Law360, New York (August 19, 2009) -- An oil and gas association that intervened in a lawsuit over polar bears and walruses in Alaska's oil fields has asked a federal court to dismiss the case.

The Alaska Oil and Gas Association filed a cross-motion for summary judgment in the U.S. District Court for the District of Alaska Aug. 18, saying accidental "taking" of the animals during oil and gas exploration had no more than a "negligible impact" on marine mammal stocks.

The request comes in one of a host of lawsuits brought by conservation groups over wildlife and federal regulations in oil-rich Alaska.

The Center for Biological Diversity and Pacific Environment sued the U.S. Department of the Interior in July for authorizing the "incidental take" of Pacific walruses and polar bears during oil and gas exploration in Alaska's Chukchi Sea.

The groups say the agency's regulations would allow unlimited harassment of the two species and potentially some deaths, in violation of the Marine Mammal Protection Act, the Endangered Species Act and the National Environmental Policy Act.

"These regulations ... indicate the Department of the Interior is far more concerned with protecting oil company profits than polar bears," Brendan Cummings, an attorney with the Center for Biological Diversity, said at the time. "If polar bears and Pacific walrus are to survive in the face of global warming, we simply cannot allow oil development in the Chukchi Sea."

The conservation groups say an oil spill would be "catastrophic" for polar bears and walruses and that there are no proven technologies for cleaning them up in the high Arctic. The groups point out that the Interior Department has estimated a 40 percent chance of a large spill occurring.

The regulations would allow oil companies to "saturate the ocean" with sonic blasts, operate offshore drill rigs, build hundreds of miles of roads and run seismic trucks through polar bear denning areas, the two groups said.

They are seeking declaratory and injunctive relief.

In December the state's oil and gas association intervened as a defendant,

saying it had "petitioned the U.S. Fish and Wildlife Service for the rule-making challenged in this litigation and accordingly has an interest in the authorization which is the subject for this action," according to the association.

The conservation groups asked the court for summary judgment in February, saying the regulations should be scrapped along with any findings that concluded that the exploration left no significant impact on animal populations.

The groups also ask the court to order that the Fish and Wildlife Service prepare an environmental impact statement before issuing new regulations authorizing incidental takes in the Chukchi Sea.

The Bush-era Department of Interior promulgated the regulations "with an eye toward placating industry rather than protecting the species in its charge," the groups claim in their motion for summary judgment.

But in its cross-motion, the Alaska Oil and Gas Association argues that the current lawsuit is the fourth brought by advocacy groups to impede "expeditious and orderly" oil and gas exploration of the area.

"At issue here is the eighth regulation in a series - spanning four presidencies dating back to 1991 - in which the U.S. Fish and Wildlife Service authorized incidental, unintentional, nonlethal take of small numbers of polar bears and walrus," the association says.

Efforts to mitigate disruption to polar bear and walrus populations have been successful, the association says, adding that the conservation groups' "false premise reflects determined ignorance of the best available scientific information."

The association asks the court to deny the plaintiffs' summary judgment motion, grant its motion and throw out all claims asserted in the case.

The plaintiffs are represented by attorneys from the Center for Biological Diversity.

The defendant-intervenors are represented by Stoel Rives
<http://www.law360.com/company_articles/3880> LLP.

The case is Center for Biological Diversity et al. v. Dirk Kempthorne, Secretary of the Interior, et al., case number 3:08-cv-00159-rrb, in the U.S. District Court for the District of Alaska.