

News Release



December 11, 2008

Contacts: Bruce Woods (FWS) 907-786-3695
Chris Paolino (DOI) 202-208-6416

New Rule Unifies Domestic and International Conservation Laws to Manage Polar Bear

Secretary of the Interior Dirk Kempthorne announced today that the U.S. Fish and Wildlife Service has finalized a Special Rule under the Endangered Species Act (ESA) providing for the conservation of the polar bear. While implementing important protections provided by the ESA, the special rule, in most instances, adopts existing conservation requirements for the polar bear under the Marine Mammal Protection Act (MMPA) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Service protected the polar bear as a threatened species under the ESA on May 15, 2008.

“When I announced the protection of the polar bear under the Endangered Species Act earlier this year, I outlined the need to continue to allow activities permissible under the stricter standards imposed by the Marine Mammal Protection Act,” said Kempthorne. “This rule will protect polar bear populations, while ensuring the safety of communities living in close contact with the bears and allowing for continued environmentally sound development of our natural resources in the arctic region.”

The special rule, issued under Section 4(d) of the ESA, adopts the conservation regulatory requirements of the MMPA and CITES for the polar bear in most instances; provides that incidental take of polar bears resulting from activities outside the bear’s current range is not prohibited under the ESA; clarifies that the Special Rule does not alter the Section 7 consultation requirements of the ESA; and applies the standard ESA protections for threatened species when an activity is not covered by an MMPA or CITES authorization or exemption. Further, this special rule does not affect any existing requirements under the MMPA, including incidental take restrictions, or those of CITES.

The 4(d) special rule does not affect the continued subsistence harvest or the production and sale of polar bear handicrafts by Alaska Natives. Those activities are already exempted under the ESA and the MMPA. The rule allows the continued noncommercial export of Native handicrafts and cultural exchange of items made from polar bear parts that would otherwise require a permit as a result of the polar bear listing under the ESA.

Onshore and offshore oil and gas exploration, development, and production activities in Alaska have been effectively governed for decades by the more stringent MMPA provisions. Under the 4(d) rule, the Department of the Interior will continue to primarily rely on the more stringent

provisions of the MMPA to manage that activity. However, the overlay of provisions of the ESA, such as the consultation requirements of section 7 of the ESA will still apply.

The final special rule maintains most of the benefits of the ESA, while streamlining the process by determining that any activity either authorized or exempted under the MMPA or CITES would also be authorized under the ESA. This is because for the most part the MMPA and CITES already provide comparable or stricter protection for polar bears. Under this final special rule, if an activity is authorized or exempted under the MMPA or CITES, the activity will be allowed to proceed without additional authorization under the ESA. However, express authorization under the ESA will be required if the activity is not authorized or exempted under the MMPA or CITES and would affect the polar bear or its critical habitat, when such critical habitat is designated.

Section 7 of the ESA requires federal agencies to ensure that the activities they authorize, fund or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a federal action may affect a listed species or its critical habitat, the permitting or action agency must enter into consultation with the Service. The special rule does not remove or alter in any way the consultation requirements under section 7 of the ESA.

Based on the extensive analysis associated with the polar bear listing rule it has been determined that activities and federal actions outside Alaska do not currently show a causal connection impacting individual polar bears. Therefore, no consultation is warranted at this time for any such activities and actions. This provision ensures that the ESA is not used inappropriately to regulate greenhouse gas emissions.

“This special rule will ensure that this icon of the arctic retains important protections as we work with the State of Alaska and other nations within the polar bear’s range to develop and implement conservation measures. But as President Bush and I have said before, the ESA is not the right tool to set U.S. climate change policy,” said Kempthorne. The rule, as delivered to the *Federal Register*, can be viewed at: <http://alaska.fws.gov/pdf/pb4d.pdf>.

The mission of the U.S. Fish and Wildlife Service is working with others to conserve, protect and enhance fish, wildlife, plants and their habitats for the continuing benefit of the American people. We are both a leader and trusted partner in fish and wildlife conservation, known for our scientific excellence, stewardship of lands and natural resources, dedicated professionals and commitment to public service. For more information on our work and the people who make it happen, visit www.fws.gov.

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