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Don't List the Polar Bear Under the Endangered Species Act

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The Department of the Interior (DOI), in response to litigation from environmental groups, is considering whether to list the polar bear as a threatened species under the Endangered Species Act (ESA). For the first time in the history of the ESA, the threat of global warming would be the reason for listing a well-known species. Given the ESA's sweeping powers, such a move would raise energy prices by putting an end to promising new oil and natural gas production in Alaska. Even more troubling, listing the polar bear could be used as a back door to implement global warming policy nationwide by restricting energy production and use throughout the U.S. This would obviously harm the economy and—considering the ESA's poor track record—could also harm the polar bears as well. The President should tell the DOI not to take this highly problematic step.

History of the ESA: More Economic Harm Than Environmental Good. Enacted in 1973 at a time of great concern over the bald eagle and other species, the ESA authorizes the DOI to create a list of species considered endangered or threatened. Once a new species is listed, the statute requires the DOI, working with other federal agencies, to formulate a recovery plan that includes any and all actions deemed necessary to protect the species and its habitat.

Notwithstanding its laudable goal of protecting species, the ESA outlines a flawed approach that has only gotten worse after three decades of judicial interpretation. The threshold for listing is easily met: Some 1,300 species are currently listed as

either endangered or threatened (a less stringent standard than endangered). This includes a number of species that are surprisingly common given their status.¹ The ESA also makes it easy for environmental groups to request a listing, and to sue if a listing is declined.

In addition, the “critical habitat” for many species is broadly defined to include vast areas. The government's recovery plans often contain onerous restrictions on economic activity inside the habitat and, in some cases, even outside it, trumping property rights in the process. Environmental groups can sue over the adequacy of these recovery plans to force the DOI to include additional restrictions.

While being highly successful in violating private property rights and hampering economic activities—especially for farmers, ranchers, and loggers in the rural West and elsewhere—the statute has done little to protect species. In its decades-long existence, only a very small percentage of the listed species have actually recovered or even shown any increase in their numbers.²

Experience has shown that a Washington-run crackdown on economic activities in the vicinity of these species is not the best way to help them.

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Indeed, many ESA critics believe, with good reason, that the real purpose behind the ESA is the curtailment of economic activities in affected lands—and the empowerment of environmental groups to exert control over this process.

Listing the Polar Bear: A Backdoor Global Warming Policy? Ulterior motives are likely a part of the push to list the polar bear. For several years now, global warming has been the top issue among environmentalists, yet the Bush Administration has (wisely) been skeptical about taking economically damaging steps in response to the putative threat. Even the 110th Congress—with its stated zeal to regulate the carbon dioxide emissions from fossil fuels blamed for warming—has done little toward that end despite entering its second year. For this reason, environmental activists have been trying to use existing authority to force a regulatory end run around congressional and White House inaction. The ESA is one avenue for doing so.

At first blush, the polar bear seems like an unlikely target for ESA listing. Its global numbers have increased substantially, from an estimated 8,000–10,000 in 1965–1970 to 20,000–25,000 today.³ Clearly, any warming that has occurred has not had an adverse impact on polar bear numbers. This is true of the polar bear populations in Alaska, Canada, Russia, and other nations.

Unfortunately, as mentioned above, the requirements for listing have never been particularly rigorous. In the case of polar bears, it may only require speculation that continued global warming will reduce the amount of summer ice in the Arctic that the bears rely upon. The increasing numbers of polar bears and the absence of any immediate threats does explain why they are being considered under the lesser status of threatened rather than endangered. Nonetheless, even threatened status

accords great power to the DOI should the agency choose to list it as such.

The state of Alaska strongly opposes the listing, questioning the need to do so and fearing the economic consequences. The first victim of listing would be new oil and natural gas production throughout the state and in its surrounding waters. It would likely put an end to any chances of opening up a small portion of the Arctic National Wildlife Refuge (ANWR), estimated to contain 10 billion barrels of oil—nearly 15 years worth of current imports from Saudi Arabia. Legislative proposals to open ANWR have faltered in Congress, but a polar bear listing would be the nail in the coffin. Other promising onshore areas could also be restricted. The fact that extensive oil drilling has been underway for decades in Prudhoe Bay and elsewhere in Alaska without harm to polar bears is something that should carry weight under the ESA, but probably will not.

A listing would also impact energy production in the waters surrounding Alaska. For example, the DOI is in the process of holding a lease sale for the Chukchi Sea, a vast area off Northwest Alaska estimated to contain 15 billion barrels of oil and 76 trillion cubic feet of natural gas.⁴ The DOI has already conducted extensive studies and concluded that the sale—which excludes areas believed to be habitat for polar bears—would not harm any bears. But a listing would likely end this highly promising source of domestic oil and gas.

Alaska is America's last best frontier for domestic oil and natural gas. Closing off these potential resources would add to energy prices for decades to come and increase reliance on imports.

Worse yet, since the rationale for listing is that carbon dioxide from fossil fuel use contributes to warming and thus harms the bears, the ESA could

1. As is discussed in this paper, the listing of the polar bear would lower the threshold further, as it would be the first time that a species whose numbers have actually increased would be listed, based on speculation of some future reversal of fortune due to global warming.
2. Nancy Marano and Ben Lieberman, "Improving the Endangered Species Act: Balancing the Needs of Landowners and Endangered Wildlife," Heritage Foundation *WebMemo* No. 861, September 23, 2005, at www.heritage.org/Research/EnergyandEnvironment/wm861.cfm.
3. Alaska Department of Fish and Game, comments to the U.S. Fish and Wildlife Service, April 9, 2007, pp. 23–24.
4. In addition to implementing the ESA, DOI handles oil and natural gas leasing on federal lands and offshore areas.

give the DOI authority to go after new power plants, factories, or just about any fossil energy-producing or energy-using entity in the U.S.—precisely the kind of sweeping controls environmental activists had hoped to achieve through climate change legislation. That scenario is not far-fetched. The DOI would certainly get sued if it declined to aggressively move against such activities.

It should be noted that the same Alaska state and local authorities who oppose listing also trumpet their record in protecting the polar bears and increasing their numbers. They fear that listing could actually hurt this effort. For one thing, Alaska's economy depends on energy production;

without it, the state's successful environmental programs would not be well funded. The state is also concerned that the red tape unleashed by the ESA could actually get in the way of these programs and jeopardize their continued success.⁵

Conclusion. There are better ways of protecting polar bears than the ESA, and there are better ways of dealing with global warming than the ESA. The Bush Administration should decline to list the polar bear as a threatened species.

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5. Alaska Department of Fish and Game, comments to the U.S. Fish and Wildlife Service, pp. 13–16.