

# WebMemo



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## Global Warming: Using the Polar Bear to Impose Costly Measures

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In 2008, the Bush Administration, responding to litigation from an environmental group, listed the polar bear under the Endangered Species Act (ESA). Bush Secretary of the Interior Dirk Kempthorne also made some changes to the implementation of the ESA in order to limit the adverse consequences. But now, the omnibus appropriations bill, first passed by the House and now being debated in the Senate, seeks to reverse these common sense limitations.

If successful, this revised polar bear policy would greatly threaten economic growth and serve as a powerful anti-stimulus measure, not just in the polar bears' Alaskan habitat but throughout the United States. These rule changes are a costly and unnecessary form of backdoor global warming policy and have no business in a massive spending bill that is headed for quick passage with limited debate. With such drastic implications for the nation, the Senate should, at a minimum, fully debate the pros and cons of such a policy.

**History of the ESA: More Economic Harm Than Environmental Good.** Enacted in 1973, the ESA authorizes the Department of the Interior (DOI) to create a list of species considered endangered or threatened. Once a new species is listed, the statute requires 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. Broad citizen suit provisions allow environmental activist groups to force DOI to enjoin any activity alleged to be in violation of the provisions of the ESA, to list additional species, or to expand provisions for already-listed species.

Notwithstanding its laudable goal of protecting species, the ESA has proven to be a flawed approach that has only gotten worse after three decades of judicial interpretation. Some 1,300 species are listed, but very few have actually recovered to the point of being de-listed, and only 5 percent are more than 50 percent recovered.<sup>1</sup>

While doing little to protect species, the ESA's provisions have been highly successful in curtailing economic activity in the vicinity of the designated habitat for the 1,300 species.

**The ESA, Global Warming, and Polar Bears.** Such ulterior motives are clearly a part of the push to list the polar bear. Its global numbers have actually doubled, from an estimated 8,000–10,000 in 1965–1970 to 20,000–25,000 today.<sup>2</sup> Unfortunately, the requirements for listing have never been rigorous. In the case of polar bears, listing was based on speculation that, according to computer models, continued global warming will reduce the future amount of Arctic summer ice upon which the bears rely.<sup>3</sup> In this way, the ESA is being used to implement global warming policy.

Among its many requirements, the ESA states that “each federal agency shall, in consultation with

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and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat.”<sup>4</sup> These so-called Section 7 consultations routinely add delays to economic activities near endangered species and sometimes block them entirely.

Most directly, the polar bear listing could curtail energy production in Alaska. This would be unfortunate, as Alaskan oil and natural gas potential is tremendous. A 2008 U.S. Geological Survey study estimated there are 40 billion barrels of undiscovered oil above the Arctic circle—which would nearly double America’s proven reserves—as well as tremendous volumes of natural gas.<sup>5</sup>

The impacts of the polar bear listing stretch well beyond Alaska, though locking up Alaskan energy would be bad enough. Carbon dioxide, the ubiquitous byproduct of fossil fuel combustion, is the agent DOI blames for the warming that supposedly shrinks the ice and thus harms the bears. Consequently, any activity producing or using energy—building a new bridge in Alabama, opening a factory or power plant in Arizona, expanding a dairy operation in New York, constructing a school in Idaho—could invoke the Section 7 consultation process. Bottom line: Environmental activists could use the ESA to hold up any of thousands of projects across the U.S. This would include many if not all of the “shovel ready” projects that are funded in the stimulus package.

Anticipating these adverse economic impacts, Secretary Kempthorne took several steps to address them. This included a rule to limit the Section 7 consultations to those where the cause and effect

between the activity in question and the harm to species is not tenuous (thus excluding carbon dioxide and other greenhouse gas emissions from any individual source) and a rule specifically exempting new global warming considerations with regard to the polar bear listing.

**Congressional Attempts to Undo These Regulations.** Now, Section 429 of the House-passed Omnibus Appropriations Act would allow DOI to reverse these rules for the polar bear listing and, worse, to do so without the customary notice and comment rulemaking. In other words, the provisions here would allow DOI to make the change and do so with even less transparency and accountability than usual.

If this is done, then every activity that involves energy—from expanding a power plant to starting a farm—could get caught up in ESA red tape. The long-term economic impacts would be severe, and ironically the shorter-term effects would undercut the thrust of the stimulus package to spur an economic recovery.

Consider all new construction projects as well as efforts to create or expand all but the very smallest of businesses—the very kinds of things that are both a part of the stimulus package and that in any event are necessary for economic growth. Assuming the proposed changes are enacted, then all of the federal agencies involved in one way or another in such projects—for example, the Environmental Protection Agency for the many things that require EPA permits—will have to engage in Section 7 consultations with the Department of the Interior over the global warming implications. At the very least, such projects will be held up by bureaucratic delays, thereby creating opportunities for environmental groups and others to initiate litigation

1. See “Implementation of the Endangered Species Act of 1973,” Committee on Resources, U.S. House of Representatives, 109th Cong., 2nd Sess., May 2006, pp. 7–12.
2. Alaska Department of Fish and Game, comments to the U.S. Fish and Wildlife Service, April 9, 2007, pp. 23–24, at [http://www.adfg.state.ak.us/special/esa/polarbears/state\\_comments4-9-07.pdf](http://www.adfg.state.ak.us/special/esa/polarbears/state_comments4-9-07.pdf) (March 2, 2009).
3. Secretary of the Interior Dirk Kempthorne, press conference on polar bear listing, May 14, 2008, at [http://www.doi.gov/secretary/speeches/081405\\_speech.html](http://www.doi.gov/secretary/speeches/081405_speech.html) (March 2, 2009).
4. Endangered Species Act of 1973, Public Law 93-205, Section 7.
5. Donald L. Gautier and Brenda S. Pierce, U.S. Geological Survey, “Circum-Arctic Resource Appraisal: Estimates of Undiscovered Oil and Gas North of the Arctic Circle,” July 2008.

against them. Aside from delays, which could stretch into years in some cases, some projects could end up being scaled back in an effort to mitigate the supposed adverse impact, and others could be stopped entirely.

Beyond being bad policy in itself, the very fact that this complicated and far-reaching change is being done in an omnibus bill with precious little opportunity for debate strongly urges that these provisions should not be rushed into law.

**Backdoor Extremism.** The American people do not need a costly backdoor global warming policy implemented through the misuse of preexisting ESA authority never intended for that purpose. But at no time is such a policy more harmful than in the

midst of a severe recession. The adverse economic impacts of ill-advised global warming measures are clear and are a big part of the reason why Congress has yet to directly enact any such measures. Doing it indirectly via the ESA and quietly tucking it into the massive omnibus appropriations bill now moving through the Senate would be just as damaging. The Senate should allow and encourage a full debate on this pernicious policy rather than cramming this legislation through with little to no discussion of the economic perils it would bring to the nation's future.

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