

Federal appeals court hears arguments on polar bear habitat

August 11 2015, by Dan Joling



In this June 15, 2014 file photo, a polar bear dries off after taking a swim in the Chukchi Sea in Alaska. A Justice Department lawyer told appeals court judges Tuesday, Aug. 11, 2015, in Anchorage, Alaska, that they should overturn a lower court decision rejecting a U.S. Fish and Wildlife Service plan for polar bear critical habitat. (Brian Battaile/U.S. Geological Survey via AP, File)

A federal plan designating a huge swath of the U.S. Arctic as critical polar bear habitat should be upheld over the objections of the state of Alaska, petroleum industry groups and communities along Alaska's north

coast, a Justice Department lawyer told an appeals court Tuesday.

Robert Stockman acknowledged that the U.S. Fish and Wildlife Service plan designating an area larger than California as critical habitat lacked specifics, such as the exact sites where polar bears establish dens. But the agency acted based on the best data available from polar bear experts as is required by endangered species law, he said.

"The service had to make a judgment call based on limited data," Stockman said.

Polar bears, a marine mammal, were declared a threatened species in 2008 under former President George W. Bush because of diminishing sea ice brought on by global climate warming. Polar bears use sea ice to breed and hunt ice seals.

An endangered species listing requires the agency overseeing the species to develop a plan to help the population recover. The designation of a species' critical habitat does not automatically block development, but it requires federal officials to consider whether a proposed action would interfere with the recovery of a threatened population.

The U.S. Fish and Wildlife Service habitat plan designating 187,000 square miles of polar bear critical habitat drew lawsuits from the state of Alaska, petroleum trade associations, local governments and Alaska Native businesses with interests in the Alaska Arctic. The state and the trade associations said the designation would cost millions and to lead to delays in projects, additional consultations with layers of government and litigation for development projects.

About 95 percent of the polar bear habitat plan covers ocean. In considering the combined lawsuits, U.S. District Court Judge Ralph Beistline in 2013 found no problem with the marine portion of the

habitat plan.

The remaining 5 percent covered barrier islands along the coast and land used by female polar bears for creating dens and giving birth. Beistline concluded the agency had not shown that the geographical features needed by bears were present on much of the coastal land designated as critical habitat.

Attorney Jeffrey Leppo of Seattle, representing the state and the trade associations, told the three-judge panel of the 9th Circuit Court of Appeals that the agency had shown the presence of birthing dens on just 0.2 percent of the land portion of the habitat designation and had arbitrarily chosen additional swaths along the Alaska coast.

"We're saying there is no science to support these decisions," he said.

Stockton, however, said that even the limited data showed polar bears traveling up to 50 miles inland. Not all dens could be documented, he said, and birthing females could not be expected to take direct paths to prime den sites. It could have been argued, he said, that the protected habitat designation on land was too small.

Rebecca Noblin, an attorney for the Center for Biological Diversity, which intervened with other environmental groups in the case, said that when there are uncertainties in data, the law requires decisions in favor of protecting the threatened species. Polar bears will largely disappear unless greenhouse gas emissions can be reduced to halt the continued loss of summer sea ice, experts say.

"If we want them to survive long enough for that to happen, we have to throw everything we've got at protecting them from other threats," Noblin said.

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Citation: Federal appeals court hears arguments on polar bear habitat (2015, August 11) retrieved 23 May 2024 from <https://phys.org/news/2015-08-federal-appeals-court-arguments-polar.html>

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