

Appeals court upholds designation of polar bear habitat

February 29 2016, by Dan Joling



In this Sept. 5, 2012 file photo, Ahpun, a female polar bear, strolls around her cage at the Alaska Zoo in Anchorage, Alaska. A federal appeals court says the U.S. Fish and Wildlife Service followed the law when it designated more than 187,000 square miles as critical habitat for threatened polar bears. The 9th Circuit Court of Appeals on Monday reversed a 2013 lower court decision that said the critical habitat designated, an area larger than California, was too

extensive and not specific. (AP Photo/Dan Joling, File)

The U.S. Fish and Wildlife Service followed the law when it designated more than 187,000 square miles—an area larger than California—as critical habitat for threatened polar bears in Alaska marine waters and its northern coast, an appeals court ruled Monday.

The 9th Circuit Court of Appeal reversed a 2013 lower court decision that the designation was too extensive and not specific.

A spokesman for the Center for Biological Diversity, which petitioned to designate polar bears as a threatened species, called it a victory for the marine mammal.

"The polar bear gets the full protection of critical habitat to which it's entitled, it deserves and it truly needs," Brendan Cummings said.

The federal government in 2008 declared polar bears threatened under the Endangered Species Act, citing melting sea ice. Polar bears need ice for hunting, breeding and migrating.

The move made the polar bear the first species to be designated as threatened under the act because of global warming.

A designation of critical habitat is required as part of a recovery plan. The Fish and Wildlife Service set aside acreage along Alaska's northern coast but 95 percent is in the ocean waters of the Beaufort and Chukchi seas.

The Alaska Oil and Gas Association, the state of Alaska, a coalition of Alaska Native groups and other oil and gas interests sued, calling the

designation an overreach.



In this June 15, 2014 file photo, a polar bear dries off after taking a swim in the Chukchi Sea in Alaska. The U.S. Fish and Wildlife Service followed the law when it designated more than 187,000 square miles, an area larger than California, as critical habitat for threatened polar bears in Alaska marine waters and its northern coast, an appeals court ruled Monday, Feb. 29, 2016. The 9th Circuit Court of Appeal reversed a 2013 lower court decision that the designation was too extensive and not specific. (Brian Battaile/U.S. Geological Survey via AP, File) MANDATORY CREDIT

Former Alaska Gov. Sean Parnell said the critical habitat designation included areas that account for almost half of Alaska's oil production, and petroleum exploration and production would be delayed or restricted.

U.S. District Court Judge Ralph Beistline ruled that the Fish and Wildlife Service's designation of sea ice as critical habitat was valid. However, he ruled the agency had not shown that areas on land and barrier islands had features making them appropriate for polar bear dens and he rejected the entire plan.

Appeals court judges said the lower court decision appeared to consider denning habitat but not the need by bears to have undisturbed access to and from sea ice.

The appeals court judges agreed that the agency did not have to prove that existing polar bears actually used certain designated areas, only that those areas were critical to the conservation of the species. They said the agency drew rational conclusions from the best scientific evidence available.

Cummings said specificity in designating habitat is impossible given the dynamic nature of the Arctic, where polar bears move by walking or merely resting on shifting sea ice. Polar bears, he said, are not like salmon that return to the same streams every year to spawn.

"You can't say the bear will take this specific path to its denning area, and therefore, let's only protect that narrow corridor," he said. "You need to protect on the scale of the ecosystem, which is what Fish and Wildlife did."

Alaska Attorney General's Office spokeswoman Cori Mills called the decision disappointing. State attorneys are reviewing options for further judicial review, she said by email.

"Alaska originally brought this case because of the overly broad designation of more than 187,000 square miles as critical habitat without a real connection between the area designated and the survival or

recovery of polar bears," Mills said.

Alaska Oil and Gas Association President Kara Moriarty said the critical habitat designation will dramatically increase costs associated with Alaska North Slope projects probably jeopardize future projects.

"Each project will have to undergo an additional level of federal scrutiny that is impossible to predict," she said.

A spokeswoman for the U.S. Fish and Wildlife Service had not seen the decision.

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