



THE SECRETARY OF THE INTERIOR  
WASHINGTON

APR 01 2008

The Honorable Barbara Boxer  
Chairman, Committee on Environment  
and Public Works  
United States Senate  
Washington, D.C. 20510

Dear Madam Chairman: *Barbara*

As a former United States Senator and a former member of the Committee on Environment and Public Works (EPW), I have the utmost respect for the mission of the Committee and its oversight responsibilities. Therefore, I appreciated our conversation several days ago on this oversight responsibility and how it relates to the issue of the polar bear.

It was during my tenure on the EPW Committee that the members approved my bill, supported on a bipartisan basis, supported by Senators Harry Reid, Max Baucus, Jim Inhofe, John Warner, and others, to improve the Endangered Species Act (ESA). I also want to acknowledge the considerable contributions to the ESA and Safe Drinking Water Act made by the late John Chafee, who led the Committee during my tenure. It was that Committee that unanimously approved, with your support, my legislation to improve the Safe Drinking Water Act that today is still the law of the land.

Both on the phone and in writing, I have committed to appear before the Environment and Public Works Committee once a mutually agreeable date is found and a final determination on the polar bear has been made. I have directed Matt Eames, Director of the Office of Congressional and Legislative Affairs, to work with your staff to find such a date once a decision is made.

Since a final determination has not been made, I must respectfully decline at this time the opportunity to appear at an April 2, 2008, hearing that was set without my prior agreement. I am, in my official capacity, one of the named defendants in litigation on the matter that is the subject of the hearing. In fact, one of the other witnesses at the hearing is a representative of one of the plaintiffs in that case. Again, I will appear before the Committee at a mutually acceptable time once a decision has been made.

As you know, on January 9, 2007, the U.S. Fish and Wildlife Service (FWS) proposed to list the polar bear as a threatened species throughout its range after a scientific review of the polar bear found that populations may be threatened by decreasing sea ice extent and coverage and inadequate regulatory mechanisms to address sea ice recession. In January 2007, I directed the U.S. Geological Survey (USGS) to perform new research aimed at providing additional analysis to assist our process of moving from a proposed rule to a decision. I also directed the FWS to work with the public and pertinent sectors of the scientific community to broaden our understanding of the factors affecting the species and to gather additional information to inform the final decision.

In September 2007, USGS scientists provided the results of their new research to the FWS. This research included an evaluation of polar bears occupying similar physiographic ecoregions and a determination of how the observed and projected changes in sea ice translate into changes in polar bear habitat availability and status. The research updated population information on polar bears of the Southern Beaufort Sea of Alaska and provided new information on the status of two other polar bear populations (Northern Beaufort Sea and Southern Hudson Bay). The USGS studies also provided additional data on arctic climate and sea ice trends and modeled probabilities of change to polar bear numbers throughout the species' range over various time periods.

As a result of the new USGS research findings, the FWS reopened and later extended a second comment period to allow the public time to review and respond to the USGS findings. At the time the decision was made to reopen and extend the comment period, Director Dale Hall informed me that the FWS would likely need extra time to adequately evaluate and incorporate results from the comments received. The FWS received over 670,000 comments on the proposed listing. The review of the science involved in determining whether the polar bear should be listed has been extensive and has involved Director Hall and USGS Director Mark Myers.

It is important to recognize that there are occasionally tensions between the ESA's time deadlines and the ability of the Department to render a thorough and defensible decision. As one example, former Secretary of the Interior Bruce Babbitt and former FWS Director Jamie Rappaport Clark, were unable to meet the listing deadline for the lynx. I believe Secretary Babbitt wanted to make sure his decision was well-founded, though the necessary deliberations meant missing deadlines. I believe Secretary Babbitt recognized, as I do, that these decisions must be sound and defensible, based on the law and the best available science. I experienced his interest in the ESA when I was developing my Senate ESA reform bill. I worked closely with Secretary Babbitt and Director Clark on the drafting of provisions to improve ESA implementation.

Your March 21 letter referenced the Department's duty to protect the polar bear from the threat of extinction. The Department does have the duty to determine whether the polar bear should be listed under the ESA and currently protects the bear under the stringent provisions of the Marine Mammal Protection Act. You also have questioned why I did not delay approval of the Chukchi Sea oil and gas lease sale. The threat to the polar bear identified by the Department's scientists is receding sea ice. The January 2007 proposed listing of the polar bear as threatened included the following with respect to oil and gas activities:

*However, based on mitigation measures in place now and likely to be used in the future, historical information on the level of oil and gas development activities occurring within polar bear habitat within the Arctic, the lack of direct quantifiable impacts to polar bear habitat from these activities noted to date, and because of the localized nature of the development activities, or possible events such as oil spills, they do not threaten the species throughout all or a significant portion of its range.*

Moreover, should the polar bear ultimately be listed, any oil and gas exploration and development activities would be subject to the ESA, the Marine Mammal Protection Act, the National Environmental Policy Act, and other relevant laws. The timing of the lease sale does not affect these requirements.

I have a duty under the ESA to examine the factors for listing a species and making a determination based on science and the requirements of the law. My decision will be based solely on these requirements.

I repeat my commitment to appear before the Committee once a decision is made and a mutually agreed upon time is reached. Careful deliberation will not imperil the survival of the polar bear; it will better ensure that the decision is legally sound and based upon the best available science and the requirements of the law.

Sincerely,



DIRK KEMPTHORNE

*Thank you, Updorn Chairman.*