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POLAR BEARS, OIL, AND THE CHUKCHI SEA:

THE FEDERAL GOVERNMENT SELLS MINERAL RIGHTS IN POLAR BEAR HABITAT IN ALASKA *by Matt Irwin**

Recent developments in the Chukchi Sea in the Arctic Circle have pitted environmentalists and indigenous peoples against the federal government and the oil industry. The Department of the Interior's Minerals Management Service ("MMS") has recently completed the lease sale of tracts of seabed located on Alaska's continental shelf in the Chukchi Sea.¹ The lease sale, which took place on February 6, 2008, evidenced an increased interest by the oil industry in the Chukchi Sea, with a record setting 667 bids on 488 blocks of seabed and \$2.6 billion in total high bids.² The MMS estimates that the area contains approximately 15 billions barrels of conventionally retrievable oil and 77 trillion cubic feet of conventionally retrievable natural gas.³

Drilling for oil and natural gas in the Chukchi Sea has numerous potential negative environmental effects. One of the most pressing environmental issues in light of the lease sale will be the plight of the polar bear.⁴ Oil extraction in the Chukchi Sea has a threefold impact on polar bear survival. First, because the Chukchi Sea area is home to approximately one-tenth of the world's polar bears, drilling for oil and natural gas in the Chukchi Sea poses potential harm to polar bear survival from threats like oil spills and damage to the local ecosystem from the oil and gas extraction.⁵ One environmentalist's estimate of the potential for an oil spill was as high as fifty percent.⁶ The second means by which oil extraction in the Chukchi impacts the survival of polar bears, and other Arctic wildlife, is perpetuating reliance on fossil fuels that contribute to climate change. Climate change poses perhaps the largest threat to polar bear survival because the break up of Arctic ice sheets due to higher temperatures in the Arctic diminishes the range for polar bears to hunt, decreases the ability of mothers to search for proper den sites, and reduces the availability of den sites.⁷ Finally, the amount of accessible oil and gas in the Chukchi Sea perpetuates the economic viability of the Trans-Alaska pipeline and forestalls the end of easy oil extraction in Alaska.⁸ The recent rise of oil prices has made investment in the difficult terrain of the Chukchi Sea and extending the lifetime of the Trans-Alaska pipeline attractive to oil companies and investors, despite fears and protests by environmental groups and Native Americans.⁹


By an interesting, if not suspicious, coincidence, the polar bear was to have the final decision of its listing under the Endangered Species Act ("ESA") publically released before the lease sale on January 8, 2008. However, the U.S. Fish and Wildlife Service ("FWS") declared on January 7, 2008 that it would postpone the release of the final decision for approximately thirty



Photo Courtesy of U.S. Fish and Wildlife Service

Polar bear with cub.

days.¹⁰ As of March 23, 2008, this decision has not been published. Listing polar bears as endangered or threatened under the ESA creates many difficulties in creating a recovery plan on the macro level due to the role of global climate change.¹¹ In regards to the potential listing of the polar bear under the ESA and the recent lease sale in the Chukchi Sea, the director of the FWS has stated that the oil companies that have bid on tracts in the Chukchi Sea will have to comply with the potential listing of the polar bear under the ESA.¹² The MMS has also stated that it will not allow oil exploration to take place within fifty miles (eighty kilometers) from shore to limit the potential harm to wildlife habitat in the Chukchi region.¹³

A group of plaintiffs, including Indigenous groups and local towns in the Chukchi region along with environmental advocacy groups, filed suit against the MMS and the FWS in the Federal District Court in Juneau, Alaska on January 31, 2008.¹⁴ The suit alleges, among other things, that the current environmental impact statement submitted by the MMS has failed to assess the impact of climate change and other potential impacts resulting from oil and gas extraction in the Chukchi region.¹⁵ The next few months and possibly years will no doubt see intense litigation and scientific inquiry as to the impact of mineral extraction in the Chukchi Sea on the survival of polar bears. 

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ENDNOTES: POLAR BEARS, OIL, AND THE CHUKCHI SEA *continued from page 40*

¹ U.S. Dep't of the Interior, Minerals Mgmt. Serv., *MMS Chukchi Sea Lease Sale 193 Breaks Energy Records With \$2.6 Billion in High Bids*, Feb. 6, 2008, available at http://www.mms.gov/alaska/latenews/newsrel/News%20Releases%202008/News%20Release%20-%20193%20results%20_2_.pdf [hereinafter *MMS Chukchi Sea Lease Sale*] (last visited Feb. 15, 2008).

² *MMS Chukchi Sea Lease Sale*, *id.*

³ *Shell Is High Bidder to Drill for Oil and Gas Off Alaska*, N.Y. TIMES, Feb. 7, 2008, available at http://nytimes.com/2008/02/07/business/07oil.html?_r=1&oref=slogin (last visited Feb. 20, 2008).

⁴ Editorial, *Regulatory Games and the Polar Bear*, N.Y. TIMES, Jan. 15, 2008, <http://nytimes.com/2008/01/15/opinion/15tue2.html?st=cse&sq=regulatory+games+and+the+polar+bear&scp=1> [hereinafter *Regulatory Games*] (last visited Apr. 5, 2008).

⁵ Steven Mufson, *Polar Bears' Plight Raised In Drill Bids For Oil, Gas*, WASH. POST, Feb. 7, 2008, at D01.

⁶ Elizabeth Arnold, *Conservation, Oil Exploration Debate Renewed*, NPR, Feb. 7, 2008, <http://www.npr.org/templates/story/story.php?storyId=18764727> (last visited Feb. 10, 2008).

⁷ Laura Navarro, Comment, *What About the Polar Bears? The Future of the Polar Bears as Predicted By a Survey of Success Under the Endangered Species Act*, 19 VILL. ENVTL. L.J. 169, 183 (2008).

⁸ Felicity Barringer, *Suit Seeks to Block Oil Search Off Alaska*, N.Y. TIMES, Feb. 1, 2008, <http://nytimes.com/2008/02/01/us/01lease.html?st=cse&sq=chukchi+sea&scp=2> (last visited Feb 12, 2008).

⁹ Wesley Loy, *Record Bids for Oil, Gas Leases in the Chukchi Sea*, ANCHORAGE DAILY NEWS, Feb. 7, 2008, available at <http://www.adn.com/front/story/307588.html> (last visited Mar. 21, 2008).

¹⁰ John Roach, *U.S. Delays Polar Bear Listing Decision*, NAT'L GEOGRAPHIC, Jan. 7, 2008, available at <http://news.nationalgeographic.com/news/pf/30111679.html> (last visited Feb. 20, 2008).

¹¹ Navarro, *supra* note 7, at 190.

¹² *Regulatory Games*, *supra* note 4.

¹³ Warren Bull, *Oil Exploration to Begin*, BBC NEWS, Jan. 3, 2008, available at <http://news.bbc.co.uk/1/hi/world/americas/7169144.stm> (last visited Mar. 21, 2008).

¹⁴ *Native Village of Point Hope v. Kempthorne*, (D. Alaska 2008) (No. 1:2008cv00004), available at http://dockets.justia.com/docket/court-akdce/case_no-1:2008cv00004/case_id-7147/ (last visited Feb 18, 2008).

¹⁵ Barringer, *supra* note 8.