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Public Comments Processing
Attn: FWS-R7-ES-2009-0042
Division of Policy and Directives Management
U.S. Fish & Wildlife Service
4401 N. Fairfax Drive, Suite 222
Arlington, VA 22203

Re: Proposed Rule to Designate Critical Habitat for the Polar Bear

Dear Ladies and Gentlemen:

The Northwest Mining Association (NWMA) appreciates the opportunity to comment on the U.S. Fish & Wildlife Service's (Service) Proposed Rule to Designate Critical Habitat for the Polar Bear (FWS-R7-ES-2009-0042). NWMA opposes the overly broad and excessive designation of critical habitat for polar bear as identified in the proposed rule, and we strongly urge the Service to substantially reduce the area identified as critical habitat in accordance with the best available scientific data. Critical habitat designations should be confined to those areas that are absolutely essential to the conservation needs of polar bears.

NWMA is a 114 year old, 1,850 member, non-profit, non-partisan trade association based in Spokane, Washington. NWMA members reside in 40 states, including Alaska, and are actively involved in exploration and mining operations on public and private lands, especially in the West. Our diverse membership includes every facet of the mining industry including geology, exploration, mining, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. NWMA's broad membership represents a true cross-section of the American mining community from small miners and exploration geologists to both junior and large mining companies. More than 90% of our members are small businesses or work for small businesses. Most of our members are individual citizens.

NWMA's members, including those in Alaska, have extensive first-hand experience with the Endangered Species Act (ESA) and are key players in fish, wildlife and habitat stewardship. An overly broad critical habitat designation for polar bears as identified in the proposed rule could have a substantially adverse impact on NWMA's members.

NWMA endorses the full statement submitted for the proposed rule by the Resource Development Council for Alaska, Inc. (RDC) and below highlights a portion of RDC's comments.

The Proposed Rule is Unprecedented

The proposed rule is unprecedented in a number of ways. First and foremost, it applies to a species whose population worldwide has more than doubled over the past forty years. In fact,

polar bear populations are stable or increasing despite the recession of sea ice. This fact is a strong indication that protections in place today are effective in protecting polar bears.

No species has ever been listed under the ESA where the scientific data indicated the species continued to occupy its entire historical range at sustaining population levels. In Alaska, polar bears are abundant and are near historic population highs. No listings or critical habitat designations have occurred when an animal or plant was at the level of health at which the polar bear finds itself today.

In its petition to list the polar bear under the ESA, the Center for Biological Diversity claims that the species' current health is irrelevant. It argues that climate change will threaten polar bears in the future. However, the leading indicators of a species' risk in ESA listings and critical habitat designations are current population, trend and the range of the species. Due to their healthy status in these leading indicators, a listing of the polar bear is unnecessary.

Second, it is not clear how the designation of critical habitat would help polar bears. Given the limitations of the ESA, the listing will not stop sea ice from melting. In fact, the U.S. Geological Survey (USGS) has concluded that restrictions on human activities would not prevent polar bear habitat – Arctic sea ice – from disappearing during the summer months. This conclusion alone calls into doubt the usefulness of the ESA and its critical habitat designations. It does not make sense to impose significant burdens on industry, landowners, government agencies and society when there is no benefit to the species.

Third, the proposed listing and the major studies conducted by USGS used to justify an ESA listing are filled with uncertainty and doubt. The USGS admits to the limitations inherent in its studies and concedes that “uncertainty in projections of Arctic climate change is relatively high.” These limitations and high levels of uncertainty in climate change models call into question any conclusions and critical habitat designations.

The USGS studies do not change the fact that the proposed listing is unprecedented and based on highly speculative risks outlined in carbon emission scenarios and various climate change models. The USGS admits its models are highly unreliable and it reaffirmed that there continues to be a lack of science demonstrating in a *reliable* manner that polar bears are *likely* to become extinct in the *foreseeable future*. A principal issue in this debate continues to be whether the extent and pace of summer sea ice decline in the Arctic over the next century is *reliably predictable* and, if so, is *likely* to threaten the polar bear with extinction.

Fourth, the proposed critical habitat designation is unprecedented because of its massive scope. The proposed rule calls for the largest critical habitat area ever, overlaying approximately 200,500 square miles – an area larger than 48 of the 50 U.S. states.

The Proposed Critical Habitat Should be Substantially Reduced

Under the ESA, critical habitat is to be limited to specific areas occupied by a species on which are found those physical and biological features essential to the conservation of the species and which may require special management considerations. In addition, the ESA requires that decisions to designate critical habitat may only be made after consideration of the economic impact, the impact on national security, and any other relevant impact. Any area otherwise

qualifying for designation as critical habitat may be excluded from designation if the benefits of excluding the area outweigh the benefits of including the area, unless excluding the area would result in the extinction of the species concerned.

NWMA believes the proposed rule lacks clarification of the features essential to the conservation of polar bears. Moreover, there is a lack of demonstrated need for special management considerations. Under the ESA, special management considerations may be required only where the existing legal framework provides inadequate management measures or protections.

In determining whether special management measures or protections may be required, the Service should consider the statutes, regulations and ordinances currently in place. It should also recognize the fact that sea-ice habitat is not a biologically limiting factor given the polar bear's widely dispersed movement across a largely uninhabited and inhospitable area. Given these facts, there is not a compelling need for special measures or protections different from those afforded by the Marine Mammal Protection Act and other existing management authorities.

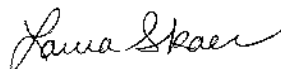
Conclusion

NWMA is very concerned that the listing of polar bears under the ESA and the proposed critical habitat designations could result in severe unintended economic consequences to Alaska and our nation and significantly impact U.S. energy production. Alaska's economy largely depends on access to and development of its natural resources, and these activities have coexisted with polar bears for decades.

The overly broad critical habitat designations could make it difficult to obtain any federal or state permits that have the potential to affect polar bears and their habitat – directly or indirectly. That difficulty, combined with the specter of litigation, will certainly stunt investment in new energy projects in Alaska and lead to a greater reliance on foreign imports. At the very least, the proposed critical habitat designations will result in delays and higher costs with no corresponding benefit to polar bears.

NWMA urges the Service to withdraw or significantly modify the over-reaching proposed critical habitat designations.

Sincerely,



Laura Skaer
Executive Director