

## Campaign 2008

## News &amp; Politics

## Arts &amp; Life

## Business &amp; Tech

## Health &amp; Science

## Style &amp; Shopping

## Travel &amp; Food

## Sports

## Slate on NPR

## Disable Flyout

PRINT  
DISCUSS  
E-MAIL  
RECOMMEND  
NEWSLETTERS  
PODCASTS  
RSS

MORE  
**GREEN ROOM**  
COLUMNS

**Polar Bear Politics**

Listing polar bears under the Endangered Species Act won't do much good, but we should do it anyway.

*Holly Doremus*

posted Jan. 17, 2008

**Dispatch From Bali**

Will the negotiations fall apart over the idea of "climate justice"?

*Thomas*

*Kleine-Brockhoff*

posted Dec. 12, 2007

**An Uncertain Truth**

We don't know exactly how hot the Earth will get—and we're not about to find out.

*Jesse Lichtenstein*

posted Nov. 5, 2007

**Save the Earth in Two Not-So-Hard Questions**

What Steven

Landsburg doesn't understand about climate change.

*Joseph Romm*

posted Oct. 26, 2007

**Green Peace**

Did Al Gore deserve a Nobel Prize for his work on global warming?

**GREEN ROOM:** NEWS AND COMMENTARY ABOUT ENVIRONMENTAL ISSUES.

## Polar Bear Politics

LISTING POLAR BEARS UNDER THE ENDANGERED SPECIES ACT WON'T DO MUCH GOOD, BUT WE SHOULD DO IT ANYWAY.

*By Holly Doremus*

Posted Thursday, Jan. 17, 2008, at 12:24 PM ET



*Are polar bears on the verge of extinction?*

Just over a year ago, the U.S. Fish and Wildlife Service [proposed](#) to list the polar bear as threatened under the Endangered Species Act. Last week, the service missed the deadline to finalize or withdraw that proposal. Environmental groups have already filed a [notice of intent to sue](#) if Interior Secretary Dirk Kempthorne delays much longer.

But it's not immediately obvious that listing the polar bear makes sense. In the short term, populations are at reasonably high levels and holding steady. In the longer term, designating polar bears for protection won't stop climate change and therefore won't save their Arctic sea ice habitat. Given these harsh facts, is this battle to list the polar bear right away worth the fight?

There isn't much debate over the dangers posed to the polar bear. The Arctic sea ice has diminished noticeably in recent years, and climate models predict further losses to come.

It's true that polar bears are doing better than most species when they reach the protected list. The population worldwide is estimated at 20,000 to 25,000 and appears to be stable under current conditions. (For comparison, a 1993 [study](#) published in *Conservation Biology* reported a median population size of 4,000 for animals that had been listed as threatened species.) But population numbers don't tell the whole story, and current conditions are unlikely to persist. The key conclusion in the Fish and Wildlife Service's proposal to list the bear as threatened—that anticipated reductions in sea ice will put the polar bear at grave risk of extinction by the middle of this century—is supported by extensive peer review and by a series of reports issued last fall by the U.S. Geological Survey. Furthermore, species are "endangered" under the ESA if they are currently in danger of extinction, and they are "threatened" if they are likely to reach endangered status in the foreseeable future. (Click [here](#) [PDF] to read the relevant section of the law.) To determine whether those definitions are met, the service must look beyond current population numbers to how those numbers are likely to change.

That's what happened with the snail darter, the famous little fish that temporarily [halted construction of the Tellico Dam](#).

Stephan Faris  
 posted Oct. 15, 2007

**Search for more  
 Green Room  
 articles**

**Subscribe to the  
 Green Room RSS  
 feed**

**View our  
 complete Green  
 Room archive**

**FEATURED  
 ADVERTISER LINKS**

Book Marriott's  
 breakfast deal now  
 with Visa

T-Shirts, Custom  
 Jerseys, Hillary  
 Clinton T-Shirts

When it was listed as endangered in 1975, the snail darter was thriving in the lower Little Tennessee River. That stretch of the Little Tennessee, though, was scheduled to be drowned under the Tellico Reservoir. (Congress exempted the dam from the ESA nevertheless. The fish later turned up in a few nearby streams and persists today as a threatened species.) The threat to polar bears is developing on a longer timeline than the threat to snail darters, but the reasoning is the same: Human actions now are predictably committing the bear to future peril.

A second objection to the proposed listing is that it will not save the bear. For all its vaunted strength, the ESA does not provide an effective mechanism for controlling greenhouse-gas emissions. First, the ESA has no purchase against emissions that originate outside the United States. Second, even within the United States, greenhouse-gas emissions come from a multitude of sources. The ESA was designed to deal with actions directly connected to an affected species, such as overharvest or habitat development. It is ill-equipped to deal with the individual decisions that are responsible for a large proportion of U.S. greenhouse-gas emissions.

The service would never try to regulate individual electricity use, and it is inconceivable that a citizen suit against someone who drives a Hummer would succeed. Large emitters like the major utilities are therefore the more likely targets for legal action. (They're already [defending themselves](#) against a tort suit brought by a coalition of states claiming that their carbon emissions are harming people and the environment.) But the Supreme Court suggested in 1995 that establishing an ESA violation requires [proof of harm to an individual animal](#). Proving that a utility's emissions harmed a polar bear would be a daunting task for environmental plaintiffs. Even the largest emitters are not to blame for global warming in the unambiguous way that hunting or land development can harm species.

At best, the ESA can be used to compel major emitters to seek a permit allowing their emissions and to force consultation with the service over emissions caused or authorized by a federal agency. In that case, the service would have to identify an acceptable level of emissions and decide whether everything practicable had been done to reduce the impacts on listed species. What sorts of answers the service would come up with, and what good they would do the polar bear, is anyone's guess.

None of this provides a sound legal argument against listing, however. The service is not required to prove that naming the polar bear as a threatened species will solve all its problems. Invoking the ESA may have beneficial effects even if it does not directly save sea ice. For example, the listing of the [California gnatcatcher](#) prompted the Golden State to adopt new conservation laws, and the prospect of listing the [coho salmon](#) led Oregon to devise a new salmon conservation plan. Listing of the charismatic polar bear might increase political support for new regulatory measures. The polar bear faces other threats that the ESA is better suited to address, such as the impacts of oil exploration and production activities. Listing will add a legal weapon for combating arctic oil development.

Of course, there are political risks to pushing the limits of the ESA—namely, the fear that if conservation measures outstrip their political support, Congress might repeal or cripple the ESA. That fear motivated the spirit of compromise that dominated ESA implementation under Bill Clinton. A few years ago, environmental groups sued over the operation of a federal irrigation project that was drying up large stretches of the Rio Grande. They prevailed in court, winning a judgment requiring the Bureau of Reclamation to consult with the Fish and Wildlife Service. But the irrigation project had plenty of

**Olympic Runners Feeling Stupid For Cutting Off  
 Legs Before Finding Out About Prosthetic Ban**  
 Thu, 17 Jan 2008 01:00:58 -0500

**Jessica Simpson Completes Elaborate Plan To  
 Destroy Cowboys' Season**  
 Thu, 17 Jan 2008 01:00:26 -0500

**[audio] Department Of Treasure Releases 2008  
 Doubloons**  
 Thu, 17 Jan 2008 01:00:19 -0500

» More from the Onion

washingtonpost.com

Today's Opinions

**The RÅsumÅ© Gap**  
 Thu, 17 Jan 2008 00:00:00 EST

**Middle East Triangle**  
 Thu, 17 Jan 2008 00:00:00 EST

**Misstep in a Liberal Minefield**  
 Thu, 17 Jan 2008 00:00:00 EST

» More from washingtonpost.com

Newsweek

Today's Headlines

**NFL: Rough Justice**  
 Thu, 17 Jan 2008 17:07:47 GMT

**Better Prevention or Changing Attitudes?**  
 Thu, 17 Jan 2008 04:09:30 GMT

**When Ross Perot Calls...**  
 Thu, 17 Jan 2008 02:25:02 GMT

» More from Newsweek

friends, including the city of Albuquerque, which was looking to it for drinking water. Congress effectively reversed the court victory by ordering the bureau not to divert any water from people to fish. There was even talk of removing all water projects from the ambit of the ESA.

Such political risks seem low in this case, however. The polar bear surely has more political sway than a little-known minnow, big polluters are less sympathetic than farmers and municipal water users, and Congress is more sympathetic to environmental protection than it used to be.

The arguments against listing the polar bear don't stand up either legally or as a matter of policy. The polar bear fits the law's definition of a threatened species. Although the ESA cannot solve the problem of global warming, it might help push the nation toward a more effective solution. Listing is not likely to result in wholesale rebellion against the ESA, and it might help the bear in small ways, by forcing offshore oil interests in the arctic to take better account of their environmental impacts. Secretary Kempthorne should follow the law and add the polar bear to the protected list.

BACK TO TOP

 | PRINT  | DISCUSS  | E-MAIL  | RECOMMEND

*RELATED IN SLATE*

Chris Mooney described [how to win a global-warming lawsuit](#). Anne Applebaum reported from Berlin on the [baby polar bear](#) that became an anti-global-warming celebrity. Daniel Engber reviewed [Arctic Tale](#), a faux documentary about the plight of the polar bears. Rebecca Onion explained why [environmentalists have given up on saving the Salton Sea](#).

Holly Doremus is a professor of law at the University of California-Davis and a member-scholar of the Center for Progressive Reform.

Photograph of polar bear by Tom Brakefield/Stockbyte.

JOIN THE FRAY: OUR READER DISCUSSION FORUM  
 What did you think of this article?

[POST A MESSAGE](#) | [READ MESSAGES](#)

**ALSO IN SLATE**



**Should Nabokov's Son Burn His Last Manuscript?**



**It Turns Out You Can Be Too Thin**



**The Best Officer in the Army Just Quit. Uh-Oh.**



**Can a Doctor Force You To Have a Rectal Exam?**

[site map](#) | [build your own Slate](#)  
[feedback](#) | [about us](#) | [help](#) | [advertise](#) | [newsletters](#) | [mobile](#)  
© 2008 Washington Post.Newsweek Interactive Co. LLC  
[User Agreement and Privacy Policy](#) | All rights reserved