

Alaska Oil and Gas Association



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Ninth Circuit Court of Appeals Rules in Favor of Industry ***Ruling over Chukchi Sea Incidental Take Regulations viewed as a victory for science, process***

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ANCHORAGE- In what is viewed by the Alaska Oil and Gas Association (AOGA) as a victory for science and due process, the Ninth Circuit Court of Appeals yesterday issued its decision in the Center for Biological Diversity's (CBD) appeal of the Chukchi Sea polar bear and walrus incidental take regulations. The court – in a lengthy opinion– sustained the United States Fish and Wildlife's Service's (USFWS) regulations.

The three-judge panel asserted that USFWS correctly issued rules that authorize the oil and gas industry to “take” small numbers of polar bears and Pacific walruses incidental to their activities. It is important to note that the term “take” refers to incidents that could be construed as harassment or disruptions to behavior patterns. Under this standard, the impact to the species must also be negligible and there must be no unmitigable adverse impact on subsistence harvests. The regulations do not authorize any lethal takes of polar bears and walruses.

The case centered on USFWS' interpretations of the Marine Mammal Protection Act (MMPA). At issue was whether USFWS adequately analyzed the potential take of polar bear and walrus populations associated with oil and gas development in the Chukchi Sea and the adjacent coast.

The ruling in favor of USFWS' decision declared the science well-explained and acknowledged that the mitigation and monitoring measures in place as part of the regulations and subsequent Letters of Authorization (LOAs) are effective. Individual companies must apply for LOAs under the regulations in order to operate and take species incidental to their operations.

Center for Biological Diversity and other groups filed the lawsuit challenging the regulations in 2008. AOGA intervened in support of the USFWS and the regulations. In 2009, the district court upheld the regulations and CBD appealed. The Ninth Circuit heard oral arguments in the case in Fairbanks this June.

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“This ruling is important because even a court with a reputation for being anti-development recognized the flaws in the Center for Biological Diversity’s arguments; namely, that polar bears and walruses are not being adequately protected,” said Kara Moriarty, Executive Director at AOGA. “The Court reviewed the evidence and ultimately decided that the USFWS took the appropriate steps to protect these species while development proceeds in the Outer Continental Shelf. This case affirms that responsible resource development is possible in Alaska,” said Moriarty.

The Alaska Oil & Gas Association is a private, business trade association. Its member companies represent the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska. More information about the organization is available at www.aoga.org.

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