

# Alaska Oil and Gas Association

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Testimony of Marilyn Crockett, Executive Director  
Alaska Oil and Gas Association  
On  
Polar Bear Critical Habitat Proposal and Draft Economic Analysis  
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Good evening. My name is Marilyn Crockett and I am the Executive Director of the Alaska Oil and Gas Association (AOGA). AOGA is private, nonprofit trade association whose member companies account for the majority of oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska. AOGA's members are the principal industry stakeholders that operate within the range of, and that incidentally interact with, polar bears in Alaska and in the adjacent U.S. Outer Continental Shelf ("OCS") and we are longstanding supporters of polar bear conservation, management and research in Alaska and western Canada.

As a result of the location and nature of oil and gas activities in Alaska, AOGA's members have substantial direct experience, data and knowledge about the habitat subject to the Proposed Rule, about polar bear behavior and activity on and adjacent to the North Slope, and about interactions between the oil and gas industry and polar bears. This experience, data and knowledge bears directly upon, among other issues, the location of essential biological features, the economic consequences of designating active oil and gas fields as critical habitat, and the need for special management measures.

The original Proposed Rule provided for 200,541 square miles of critical habitat. We previously noted that this unprecedented designation is larger than 48 of the 50 states and significantly larger than the state of California. The Service has now corrected this area based on a mapping error to 187,166 square miles. Although the Service has now deleted an area larger than Maryland, the revised areas is *still* larger than 48 of the 50 states and *still* significantly larger than California.

The legislative history surrounding Congress' decision to amend the ESA in 1978 to limit critical habitat designations is instructive in this regard. Prior to 1978, the ESA had no express definition of critical habitat and occupied areas were broadly designated as critical habitat. This practice creating growing concerns that critical habitat was being designated "as far as the eye can see and the mind can conceive." In response to these concerns, Congress created the current definition of critical habitat which limits critical habitat designations to "specific areas" that contain "the physical or biological features . . . essential to the conservation of the species" *and which* "may require special management considerations or protections." 16 U.S.C. § 1532(5)(A). This narrowing definition was designed to push back against overbroad designations where those designations were simply not useful or helpful for the conservation of threatened or endangered species. The Proposed Rule's efforts to designate an area larger than California for the polar bear despite the fact that the designation will have no conservation benefit is directly contrary to Congress' intent.

Simply put, the Service can exclude any area where the costs of designation, including economic impacts, outweigh the conservation or economic benefits of designation. Such exclusions

avoid unnecessarily burdening economic activity and designating areas as critical habitat where there is little or no benefit in doing so.

Although the information contained in the Draft Economic Analysis is sufficient to warrant broad exclusions of critical habitat, it is readily apparent that the Draft significantly underestimates the scope of the administrative and process-related costs that the designation of critical habitat will impose on the oil and gas industry. For example, the Draft estimates that the incremental cost to a third party of considering critical habitat in a formal ESA Section 7 consultation is a mere \$1,750. This grossly underestimates the incremental costs to the oil and gas industry in Alaska. AOGA estimates that private industry costs for a single Section 7 consultation on the kinds of large scale oil and gas projects and related infrastructure contemplated in Alaska could easily run into the multiple millions of dollars. The incremental costs of considering critical habitat in those consultations will far exceed the Service's \$1,750 estimate. Indeed the third party incremental administrative costs of conducting a section 7 consultation on a single forecasted project could easily eclipse the Service's projection of \$185,000 for all oil and gas consultations for the next 30 years.

The Draft also improperly discounts a number of other significant indirect costs to the oil and gas industry that are associated with the critical habitat designation. The Draft properly discusses how the designation of critical habitat creates additional litigation risk and uncertainty about project development in critical habitat areas. But it then discounts these impacts as "too speculative for this analysis." That is not correct for a number of reasons. Principally, while these costs may be difficult to quantify, they are real and must be considered qualitatively if not quantitatively. In addition, a number of these costs, specifically litigation costs, delay and lost production costs, and increases in risk premiums due to uncertainty, can be reasonably quantified. These costs, like the incremental administrative costs of considering critical habitat in a section 7 consultation, provide no conservation benefit to the polar bear. These reasonably foreseeable costs further demonstrate the appropriateness of limiting the critical habitat designation to "specific areas" that contain "the physical or biological features . . . essential to the conservation of the species" *and which* "may require special management considerations or protections" as Congress intended.

In our detailed written comments to be submitted prior to the July 6 deadline, AOGA will be quantifying these costs. We urge the Service to (1) reconsider, revise and, in particular, to narrow the proposed designation in accordance with the provisions of the ESA and as supported by the best scientific and commercial data available and to (2) revise the Economic Analysis to accurately reflect the true costs related to this designation.

Thank you for the opportunity to testify.