

Testimony to the House Finance Committee
Taqulik Hepa, Director
Department of Wildlife Management
North Slope Borough
January 26, 2010

Thank you, Mr. Chairman and members of the Committee. I appreciate this opportunity to speak to you today on behalf of the North Slope Borough and Mayor Edward Itta. I would like to share our views on the listing of the polar bear and other species under the terms of the Endangered Species Act and its effects on our local government, our communities and our subsistence hunting practices.

The borough has been involved in the management of polar bears on a daily basis since 1988, when Alaskan and Canadian subsistence users established the Inuvialuit-Inupiat Polar Bear Management Agreement. Since then, Native hunters have managed the aboriginal harvest of polar bears along the Arctic coast based on annual quotas recommended by polar bear scientists and the traditional knowledge of experienced Inuit hunters.

This co-management program has emphasized protection of denning bears, females and cubs, and it relies on continuous harvest monitoring. As a result, the polar bear take has remained below established quota levels on average for the past 20 years. The North Slope Borough has embraced this conservation effort and continues to do so, because we care about the polar bear as a resident Arctic species and we consider it essential to the cultural and nutritional wellbeing of our people.

But hunting is not the primary interaction we have with polar bears. As the human population increases on the North Slope and polar bears spend more time onshore because of receding sea ice, the borough has found it necessary to establish a polar bear deterrence program for the protection of both bears and people. With authorization from the U.S. Fish & Wildlife Service, our Department of Wildlife Management operates polar bear patrols to prevent human/bear encounters in the coastal communities of Kaktovik, Nuiqsut, Barrow, Wainwright, Point Lay and Point Hope. These patrols require staff, vehicles and deterrence equipment, and the borough has always been expected to cover the costs, despite the federal responsibility for polar bear protection.

So my first point is that if the federal government is concerned about polar bears, they should talk to us. North Slope people have a subsistence interest in the conservation of polar bears; we have centuries of traditional knowledge about the habits and health of the polar bear population; and the North Slope Borough has done more in recent decades to protect the species than any other governmental entity. We know how to manage the interaction of polar bears and people to limit harm to the bears while protecting the safety of a growing North Slope population. And I guess we're wondering why that doesn't seem to count for anything when it comes to setting policy on polar bears.

The North Slope Borough is very troubled about the expanding application of the Endangered Species Act as a way to protect polar bears and other listed species. The blunt force approach of the ESA is likely to have severe implications on our residents and communities – in terms of our continuing efforts to manage wildlife, our subsistence hunting practices (including such basic activities as coastal travel by snow machine or boat), and even routine infrastructure development.

Our concern is not only based on the sweeping nature of the ESA, but also on our recent experience with the U.S. Fish & Wildlife Service. In late 2008 in an effort to conserve Stellars Eiders, the North Slope Borough hammered out a MOA with the Service setting local conservation measures in place. Our hope was that the Service would focus on the biological needs of the species, outreach, and educational efforts. Unfortunately, the result was a season of intensive law enforcement activity. This is this punitive approach to wildlife management that first comes to mind as we consider the possibilities for an ESA management plan.

We don't know what specific restrictions the Feds will come up with. But having designated 200,000 square miles of critical habitat that includes our hunting grounds and travel routes and surrounds some of our communities, any restrictions are likely to compromise our freedom of movement through the area or our ability to improve our communities. For example, it is not hard to imagine that prohibited activities could include construction of the new runway that the village

of Kaktovik so desperately needs. If a polar bear den is identified near the community, the village may not be able to move their runway to higher ground in order to avoid being routinely swamped by storm surges, as it has been in recent years. That's just one example of a very justifiable public need that stands a good chance of getting derailed in the wake of this listing and the enormous critical habitat designation.

If polar bears were going to be hugely benefited by these restrictions on our daily lives, we could at least understand it. But the federal action on polar bears is based on rapid disappearance of the sea ice the bears depend on as a feeding platform. Unfortunately, there is nothing we can do on the North Slope to counteract that problem. Restricting our activity in a 200,000-square-mile area will not help the polar bear at all. It will only make life more difficult for people, local governments and commercial concerns.

If the federal government really wants to protect the polar bear, it needs to address the issues of ocean warming and climate change. Nothing will be accomplished by restricting the ability of our communities to go about normal daily life. We are clearly not the cause of any serious threat to these species, and yet we could face civil and criminal liability under the ESA for any harm to a single polar bear, even though we are not having any effect on climate change or sea ice. This is not right.

In 2007, the North Slope Borough filed comments opposed to the listing of the Polar Bear under the ESA. We did so because – although we are

very concerned about sea ice retreat – we didn't think there was enough data on polar bears to justify a listing, and we don't think the ESA is the right tool to deal with climate change issues.

As we noted in our 2007 comments, we have observed the effects of the warming Arctic for many years. Sea ice is forming later in the fall, it is not as thick as it used to be, and it thaws earlier in the spring. Violent storms are now more frequent and more intense and they're happening both earlier and later in the year. So we are experiencing the effects of climate change. But as we wrote in our comments to Secretary Kempthorne, "the causes of a changing northern climate lie outside our region, and we firmly believe that any action to counter the warming trend must focus on those causes at their sources."

Unfortunately, it looks like the polar bear listing is going to be the wave of the future. For the first time in history, there is now the likelihood of a large number of other North Slope species being listed. The federal government has already listed at least 5 species on or near the North Slope and is considering at least 7 more. Based on our long experience with bowhead whales, cooperative management agreements for polar bears, and work with bird species such as spectacled and Steller's eiders, we believe most species can be managed best under the Marine Mammal Protection Act, the Migratory Bird Treaty Act, and – for the polar bear – our international conservation agreements. There are also state and federal wildlife laws and other international treaties that can be used as additional tools. We don't need ESA listings to create the best

possible conservation programs along the Arctic coast. And as I said before, no management plan in the Arctic is going to get at the source of receding sea ice, which is the specific problem.

We are also concerned that management under the ESA is driven by litigation, and ESA litigation is targeted at the federal government, ignoring any local consequences. Any person can bring litigation under the "citizen suit" provisions of the ESA, and local communities are little more than collateral damage in these actions. Our ability to participate in traditional activities gets thrown under the bus in the wake of broad federal actions resulting from this kind of litigation. It is not only unfair, it's completely unreasonable.

We are exploring ways to limit the risks to our communities. The Polar Bear Special Rule under section 4d of the ESA gives the federal government an opportunity to shield us from some liability. This special rule protects against liability for incidental takes authorized by the Marine Mammal Protection Act, and for self-defense and deterrence. We are worried, though, that litigations - to which we are not a party - in federal court could strike down the 4d Rule and the protection it provides.

Finally, I want to reiterate that in considering actions under the ESA, the Federal Government hasn't recognized the value of local and traditional knowledge. We know species such as polar bear and arctic seals better than anyone. We pay close attention to these animals and interact with

them almost daily. They are part of our culture, our food supply, and our way of life. We have worked with federal agencies on many Arctic species, and we've had notable successes, including the Alaska Eskimo Whaling Commission managing the endangered bowhead whale and the Alaska Nanuuq Commission managing polar bears.

Even so, our knowledge is often ignored in federal planning, and it was not fully considered in formal consultation before the polar bear listing. Mayor Itta testified at hearings, wrote letters, and spoke to Administration officials. Yet it's fair to say that the final analysis did not consider the experience and knowledge of the people most familiar with the species. So we don't believe there has been an adequate weighing of local and traditional knowledge in the early ESA decisions.

The North Slope Borough is glad to know that you are reviewing new and potential listings under the ESA, and we are grateful for the chance to speak on our behalf. There's no question in our minds that the ESA tackles complex problems with a giant hammer aimed in the wrong direction. It creates tremendous uncertainty for people in our isolated communities, and it may well lead to legal liability even though we are causing no harm to the species. There has to be a better way, and we are eager to work with you toward a more sensible solution.
