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(Original Signature of Member)

110TH CONGRESS
2D SESSION

H. R.

To amend the Outer Continental Shelf Lands Act to prohibit preleasing, leasing, and related activities in the Beaufort and Chukchi Sea Planning Areas unless certain conditions are met.

IN THE HOUSE OF REPRESENTATIVES

Mr. INSLEE introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Outer Continental Shelf Lands Act to prohibit preleasing, leasing, and related activities in the Beaufort and Chukchi Sea Planning Areas unless certain conditions are met.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Polar Bear Seas Pro-
5 tection Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Americans cherish healthy oceans and wild-
2 life that marine ecosystems support, and feel a
3 strong moral responsibility to protect these resources
4 for the benefit of current and future generations.

5 (2) The marine ecosystems and coastal habitats
6 of the Beaufort and Chukchi Seas, along Alaska's
7 northern and northwestern shores, provide habitat
8 for a large array of wildlife, including endangered
9 bowhead whales, beluga whales, polar bears, threat-
10 ened spectacled eiders, threatened Steller's eiders,
11 walrus, seals, and fish.

12 (3) These ecosystems and wildlife they support
13 are vital to the survival of the subsistence cultures
14 of the Alaska Native peoples of the North Slope and
15 have been for thousands upon thousands of years.

16 (4) There is a wide consensus among scientists
17 that the Arctic is undergoing dramatic changes due
18 to climate change, and that these changes are affect-
19 ing vital sea ice habitat for a number of species, in-
20 cluding polar bears, walrus, and seals.

21 (5) In January 2007, the United States Fish
22 and Wildlife Service proposed listing the polar bear
23 (*Ursus maritimus*) as a threatened species under the
24 Endangered Species Act of 1973. The polar bear de-
25 pends on sea ice as a platform to hunt seals, its pri-

1 mary food, and projected loss of sea ice due to global
2 warming was believed to jeopardize polar bears
3 throughout their range.

4 (6) On January 9, 2008, the Department of the
5 Interior missed the legal deadline to make a final
6 rule on whether to provide Endangered Species Act
7 of 1973 protections to the polar bear.

8 (7) On February 6, 2008, the Department of
9 the Interior moved forward with oil and gas leasing
10 in the Chukchi Sea Lease Sale 193 area, which con-
11 tains about 29.4 million acres offshore Alaska from
12 north of Point Barrow to northwest of Cape
13 Lisburne, which is polar bear habitat.

14 (8) On April 19, 2008, a United States District
15 Court Judge ruled that the Department of the Inte-
16 rior must make a decision on whether to list the
17 polar bear under the Endangered Species Act of
18 1973 by May 15, 2008.

19 (9) In September 2007, the United States Geo-
20 logical Survey issued a series of reports that pro-
21 jected changes in future sea ice conditions, if real-
22 ized, will result in loss of approximately 2/3 of the
23 world's current polar bear population by the middle
24 of the 21st century and extirpation of polar bears in
25 Alaska. The agency also concluded that because the

1 observed trajectory of Arctic sea ice decline appears
2 to be underestimated by currently available models,
3 this assessment of future polar bear status may be
4 conservative.

5 (10) While the major threat to polar bears is
6 global warming, resulting from continuing emissions
7 of green house gases, potential oil and gas develop-
8 ment in the Beaufort and Chukchi Seas poses addi-
9 tional risks to polar bears and other marine life in
10 the Beaufort and Chukchi Seas.

11 (11) There is currently no effective means to
12 recover spilled oil in the harsh environment of the
13 Beaufort and Chukchi Seas, especially during peri-
14 ods of solid and broken ice.

15 (12) The Minerals Management Service's 2007-
16 2012 OCS leasing plan anticipates offering 40 mil-
17 lion acres of the Chukchi Sea for lease and expand-
18 ing leasing in the Beaufort Sea to 33 million acres.
19 All of this area overlaps with vital polar bear habi-
20 tat.

21 (13) In the environmental impact statement for
22 the first of five lease sales planned for the current
23 5-year OCS leasing plan in the Arctic Ocean, Lease
24 Sale 193 in the Chukchi Sea, the Minerals Manage-
25 ment Service concludes that the effects of a large oil

1 spill, particularly during the broken-ice period, could
2 pose significant risks to the polar bear population,
3 and that a large oil spill could have significant im-
4 pacts on other marine mammals including whales
5 and walrus. In the same document the agency
6 states that there was a lack of information on ma-
7 rine mammal ecology, and habitat use.

8 (14) In addition, onshore industrial develop-
9 ment activities necessary to support offshore oil and
10 gas development can damage important habitat and
11 cause harmful disturbance of denning polar bears,
12 and other wildlife.

13 (15) Because of the threats oil and gas develop-
14 ment poses to subsistence resources, public health,
15 and survival of their culture, tribal governments, in-
16 cluding the Native Village of Point Hope, the Native
17 Village of Barrow, the Inupiat Community of the
18 Arctic Slope, and the Alaska Intertribal Council,
19 have expressed opposition to offshore oil and gas de-
20 velopment in the Beaufort and Chukchi Seas.

21 **SEC. 3. PROHIBITION ON LEASING IN BEAUFORT AND**
22 **CHUKCHI SEA PLANNING AREAS.**

23 Section 8 of the Outer Continental Shelf Lands Act
24 (43 U.S.C. 1337) is amended by adding at the end the
25 following:

1 “(q) PROHIBITION ON LEASING IN BEAUFORT AND
2 CHUKCHI SEA PLANNING AREAS.—

3 “(1) The Secretary shall not offer for or ap-
4 prove leasing, preleasing, or any related activity (in-
5 cluding approving any seismic activity, offering any
6 new lease, or approving an exploration or develop-
7 ment plan) within any area of the Chukchi or Beau-
8 fort Sea marine and coastal ecosystems until—

9 “(A) the National Research Council—

10 “(i) identifies missing information on
11 the composition, distribution, status and
12 ecology of the living marine resources in
13 the Beaufort and Chukchi Sea marine and
14 coastal ecosystems that—

15 “(I) focuses on the changes
16 caused and likely to be caused by cli-
17 mate changes; and

18 “(II) supports the establishment
19 of baseline information and the deter-
20 mination of the potential impacts, in-
21 cluding cumulative impacts, of all oil-
22 and gas-related activities on plant and
23 animal species, marine and coastal en-
24 vironments, and Alaskan Native com-

1 munities and their subsistence activi-
2 ties;

3 “(ii) reports on the adequacy of ongo-
4 ing and completed environmental, public
5 health, and cultural studies (including on-
6 going and completed studies conducted by
7 the Alaska environmental studies program
8 of the Minerals Management Service) in
9 providing information described in clause
10 (i); and

11 “(iii) submits to Congress a report
12 that—

13 “(I) identifies missing informa-
14 tion;

15 “(II) evaluates the adequacy of
16 ongoing and completed studies; and

17 “(III) makes recommendations
18 on any additional studies or research
19 that are required to provide missing
20 information identified pursuant to
21 clause (i);

22 “(B)(i) the polar bear is listed as an en-
23 dangered species or a threatened species under
24 the Endangered Species Act of 1973 (16 U.S.C.

1 1531 et seq.) and critical habitat is designated
2 for the species; or

3 “(ii) the Secretary publishes a deter-
4 mination that such a listing is not war-
5 ranted;

6 “(C) the Secretary –

7 “(i) performs an oil spill response gap
8 analysis for proposed and existing arctic oil
9 operations;

10 “(ii)(I) using a public process that in-
11 cludes consultation with local governments,
12 tribal governments, natural resource man-
13 agers, and other stakeholders, sets a
14 standard required of lessees to ensure that
15 at least 85 percent of the total volume of
16 spilled oil can be recovered mechanically
17 and removed from the environment within
18 30 days after the initial release in any ice
19 condition or season of the year;

20 “(II) demonstrates that the 85 per-
21 cent recovery standard can be achieved
22 prior to issuing any leases, and prior to
23 approving any seismic exploration, explo-
24 ration plans, or development and produc-
25 tion plans; and

1 “(III) requires that the oil spill re-
2 sponse gap for activities under each lease
3 ensures 85 percent oil recovery in any
4 given ice condition or season of the year;

5 “(iii) implements a procedure to close
6 areas in whole or seasonally to oil and gas
7 activity because of the existence of a re-
8 sponse gap; and

9 “(iv) establishes requirements for in-
10 stalling, operating, and maintaining oil
11 spill prevention systems, or institutes oper-
12 ating restrictions to improve safety and
13 minimize spill risks; and

14 “(D) the Secretary determines that—

15 “(i) all recommendations submitted by
16 the National Research Council report
17 under subparagraph (A)(iii)(III) are imple-
18 mented;

19 “(ii) oil and gas exploration and devel-
20 opment activities can be conducted in the
21 Beaufort and Chukchi Sea Planning Areas
22 without posing a risk of substantial ad-
23 verse impact to wildlife, or wildlife habitat
24 and subsistence; and

1 “(iii) any mitigation measures nec-
2 essary to avoid such risks are identified
3 and the efficacy of the measures is estab-
4 lished.

5 “(2) In this subsection:

6 “(A) The term ‘response gap’ means a pe-
7 riod of time during which the oil spill recovery
8 standard established pursuant to paragraph
9 (1)(C)(ii)(I) cannot be achieved.

10 “(B) The term ‘response gap analysis’
11 means—

12 “(i) a calculation of the response op-
13 erating limits of spill response systems for
14 a set of environmental factors, such as
15 wind, sea state, sea ice, and visibility, and
16 an analysis of the frequency, duration, and
17 timing of conditions that would limit a re-
18 sponse in a particular location, including
19 an assessment of local response capabilities
20 and oil spill contingency plans, using a
21 methodology that accounts for the cumu-
22 lative interplay between factors that would
23 cause two or more variables that are indi-
24 vidually within the system’s limits to ex-
25 ceed those limits when combined;

1 “(ii) based on such calculation, an as-
2 sessment of the frequency, duration, and
3 timing of occurrence of one or more lim-
4 iting factors or limiting combinations that
5 may preclude achieving the oil spill recov-
6 ery standard established pursuant to para-
7 graph (1)(C)(ii)(I) using either modeled or
8 historical environmental and climate data
9 for a given location or area; and

10 “(iii) based on such calculation and
11 assessment, a quantification of the per-
12 centage of time during which local condi-
13 tions exceed the demonstrated limits of
14 spill response systems to achieve achieving
15 the oil spill recovery standard established
16 pursuant to paragraph (1)(C)(ii)(I).”.