

# Court: US agency acted reasonably to protect seals

25 October 2016, by Becky Bohrer

An appeals court panel on Monday ruled that a federal agency acted reasonably in proposing to list a certain population of bearded seals threatened by sea ice loss.

The decision by a three-judge panel of the 9th U.S. Circuit Court of Appeals in San Francisco reverses a lower court ruling that found the decision by the National Marine Fisheries Service was improper.

At issue was whether the fisheries service can protect species as threatened under the Endangered Species Act when it determines that a currently non-endangered species will lose habitat due to climate change in coming decades.

In 2014, a federal judge in Alaska found there was no discernible, quantified threat of extinction within the foreseeable future for the seals and determined the listing decision was arbitrary.

But the appeals court panel ruling issued Monday said the [fisheries service](#) relied on the best available scientific data and seriously considered the comments it received. The panel's opinion also noted a high bar for overturning an agency action.

The service's listing decision was challenged by the Alaska Oil and Gas Association and others, who argued, among other things, that the seal population appeared to be healthy and the service's use of [climate projections](#) beyond 2050 were speculative.

Joshua Kindred, environmental counsel for the oil and gas association, cited concern with the level of research that contributed to the service's finding, saying there was a "failure to engage in that critical mass of scientific research."

He said the ruling was still being reviewed and a decision on any further steps had not been made yet.

The appeals court panel also rejected the state of Alaska's argument that the service failed to address several of its substantive comments, saying the record indicates otherwise.

The service "adopted the position of the overwhelming majority of the world's climate scientists and rejected Alaska's argument that climate projections are 'hypotheses' that are not linked to observable data and that cannot provide reasonable estimates of future climate change-related phenomena," the decision, written by Judge Richard Paez, states.

Kristen Monsell, an attorney with the Center for Biological Diversity, hailed the decision.

"This is a huge victory for bearded seals and shows the vital importance of the Endangered Species Act in protecting species threatened by climate change," she said in a release.

In a statement, the service, also known as NOAA Fisheries, said it appreciated the court's decision and would continue working with the state and interested parties to address threats to [bearded seals](#) and their habitat and to promote their conservation.

U.S. Sen. Dan Sullivan, R-Alaska, denounced the decision.

"I am deeply troubled by the 9th Circuit's decision today to allow unnecessary and crushing federal regulatory burdens to move forward, which will impact large swaths of Alaska lands and waters," Sullivan said in a statement Monday. "The listing will have detrimental impacts on our ability to access Alaska's lands and resources, which is why a broad coalition - Alaska Native organizations, resource development groups, individual Alaskans and the state - came together to oppose the listing pushed by outside radical environmentalists. I will do everything in my power to fight efforts by federal

agencies to lock up our lands and resources and stifle economic opportunities for Alaskans. I hope the U.S. Supreme Court will take up the matter in the coming term should the parties decide to appeal."

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