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Species may be listed as threatened based on climate change projections, court says

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Federal authorities may list a species as “threatened” based on climate models that show habitat loss in the coming decades, an appeals court decided Monday.

The state of Alaska, oil company groups and Alaskan natives had challenged a decision by the federal government to list a sea ice seal subspecies as threatened and deserving of protection.

The challengers maintained the subspecies’ population was currently healthy and the climate projections were speculative.

A three-judge panel of the San Francisco-based U.S. 9th Circuit Court of Appeals disagreed. The ruling would allow government protection of all sorts of wildlife likely to be affected by climate change in the decades ahead.

The panel decided unanimously that the National Marine Fisheries Services reasonably determined that loss of Arctic sea ice over shallow waters would “almost certainly” threaten the survival of a Pacific bearded seal subspecies by the end of the century.

“The service need not wait until a species’ habitat is destroyed to determine that habitat loss may facilitate extinction,” Judge Richard A. Paez, a Clinton appointee, wrote for the court.

The bearded seals are among several species, including the polar bear, that the government has classified as threatened because of climate change.

A lawyer for an environmental group that sought the listing said the 9<sup>th</sup> Circuit decision was particularly significant because it allowed for protection of a species based on models of conditions at the end of the century.

“This legal victory is likely to have major implications for many other climate-threatened species,” said Kristen

Monsell, a staff attorney for the Center for Biological Diversity, which sought the listing.

The state and the oil and gas industry opposed the listing because it could interfere with offshore drilling.

Before issuing a permit to drill, the federal government would have to determine whether the activity would affect the bearded seal. If so, the company's exploration could be restricted.

A lawyer for the state of Alaska said the ruling may be appealed.

"If this opinion stands, the National Marine Fisheries Service would list a species that is abundant and in good health based on the claim that climate change will impact habitat over the next 100 years and may cause harm," said Brad Meyen, senior assistant attorney general for Alaska.

A lawyer for the oil and gas industry could not be reached for comment.

The bearded seals congregate on ice floes over shallow waters, where they give birth to pups and nurse. The floes give the nursing mothers close access to food sources — organisms on the ocean floor — and enable the pups to learn to dive, swim and hunt away from their predators, the court said.

Climate models show that the ice floes would disappear during breeding times, and mother seals would have to nurse their young on shore, where they would be vulnerable to predators such as polar bears and walruses.

A lack of ice floes in shallow waters also would force the seals to forage in the deeper ocean, which contains fewer of the organisms they depend on for survival, the government found.

One peer reviewer said the 80-year prediction was more likely than not to "greatly" underestimate the impact of climate change on the seals.

"All parties agree that there will be sea ice melt," the court said. "The only uncertainty is the magnitude of warming, the speed with which warming will take place, and the severity of its effect."

Although climate projections for 2050 through 2100 may be volatile, they remain valuable in the government rule-making process, the court found.

The Endangered Species Act does not say a species can be listed "only if the underlying research is ironclad and absolute," Paez wrote.

"It simply requires the agency to consider the best and most reliable scientific and commercial data and to identify the limits of that data when making a listing determination," the court concluded.