

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 11 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

STATE OF ALASKA,

Plaintiff - Appellant,

and

NORTH SLOPE BOROUGH,

Plaintiff,

v.

NATIONAL MARINE FISHERIES
SERVICE,

Defendant - Appellee,

CENTER FOR BIOLOGICAL
DIVERSITY,

Intervenor-Defendant -
Appellee.

No. 24-3148

D.C. No.

3:22-cv-00249-SLG

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
Sharon L. Gleason, Chief District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Submitted July 9, 2025**
San Francisco, California

Before: H.A. THOMAS and DE ALBA, Circuit Judges, and RAKOFF, District Judge.***

The State of Alaska appeals the district court’s grant of summary judgment to the National Marine Fisheries Service (NMFS) in Alaska’s action challenging NMFS’s negative 90-day finding on Alaska’s petition to delist the Arctic ringed seal as a threatened species under the Endangered Species Act (ESA). We have jurisdiction under 28 U.S.C. § 1291. We affirm.

“We review de novo the district court’s grant of summary judgment to determine whether NMFS’s ESA listing decision was ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.’” *Alaska Oil & Gas Ass’n v. Pritzker*, 840 F.3d 671, 675 (9th Cir. 2016) (quoting 5 U.S.C. § 706(2)(A)). Our review under the Administrative Procedure Act (APA) is “highly deferential, presuming the agency action to be valid and affirming the agency action if a reasonable basis exists for its decision.” *Ctr. for Biological Diversity v. Bureau of Land Mgmt.*, 833 F.3d 1136, 1146 (9th Cir. 2016). “Agency action should be affirmed ‘so long as the agency considered the relevant factors

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

and articulated a rational connection between the facts found and the choices made.” *Audubon Soc’y of Portland v. Haaland*, 40 F.4th 967, 979 (9th Cir. 2022) (quoting *Pritzker*, 840 F.3d at 675). Where, as here, NMFS has made a prior listing determination, a subsequent petition generally does not “present substantial scientific and commercial information . . . unless the petition provides new information not previously considered.” 50 C.F.R. § 424.14(h)(1)(iii) (2016).

1. NMFS reasonably determined that new climate change projections were consistent with those it had considered at the time of its 2012 listing decision. *See* Endangered and Threatened Wildlife; 90-Day Finding on a Petition to Delist the Arctic Subspecies of Ringed Seal Under the Endangered Species Act, 85 Fed. Reg. 76018, 76022 (Nov. 27, 2020). We have explained that “[t]he fact that climate projections for 2050 through 2100 may be volatile does not deprive those projections of value in the rulemaking process.” *Pritzker*, 840 F.3d at 680. Here, NMFS “provided a reasonable and scientifically supported methodology for addressing volatility in its long-term climate projections, and it represented fairly the shortcomings of those projections—that is all the ESA requires.” *Id.* Nor did NMFS act arbitrarily and capriciously in determining that the lowest emissions scenario—which is based on new technologies that have not been widely implemented—was unrealistic because current trends in annual global emissions are consistent with high-end emissions scenarios. *See* 85 Fed. Reg. at 76022; *see*

also *Pritzker*, 840 F.3d at 679 (“[W]e ‘must defer to the agency’s interpretation of complex scientific data’ so long as the agency provides a reasonable explanation for adopting its approach and discloses the limitations of that approach.” (quoting *Nw. Ecosys. All. v. U.S. Fish & Wildlife Serv.*, 475 F.3d 1136, 1150 (9th Cir. 2007))).

2. NMFS reasonably declined to rely on the U.S. Fish and Wildlife Service’s (USFWS) 12-month findings about the Pacific walrus because they were not specific to the Arctic ringed seal. *See* 85 Fed. Reg. at 76022. An agency acts neither arbitrarily nor capriciously when it “adopt[s] a foreseeability analysis that is responsive to new, reliable research while accounting for species-, threat-, and habitat-specific factors.” *Pritzker*, 840 F.3d at 682. Here, NMFS reasonably explained that USFWS’s 12-month findings about the Pacific walrus had no bearing on NMFS’s decision about whether delisting the Arctic ringed seal may be warranted. *See* 85 Fed. Reg. at 76022.

3. NMFS did not improperly disregard new information contained in the petition about the Arctic ringed seal’s response to sea ice loss and other climate-related changes. First, in its 90-day finding, NMFS discussed at length why the petition’s cited studies did not constitute new information. *See id.* at 76021–27. Second, NMFS reasonably explained that its “listing of Arctic ringed seals as threatened was not based on evidence indicating that population size or health had

declined, nor was it based on a presumption that a climate driven decline would be detectable at that time or shortly thereafter.” *Id.* at 76024. Instead, its decision “was based primarily on the conclusion that continuing Arctic warming would cause substantial reductions in sea ice and on-ice snow depths,” which is expected to result in decreased pup survival and population declines within the foreseeable future. *Id.* An agency need not wait until “it ha[s] quantitative data reflecting a species’ decline, its population tipping point, and the exact year in which that tipping point would occur before it could adopt conservation policies to prevent that species’ decline.” *Pritzker*, 840 F.3d at 683; *see also id.* (noting that NMFS “need not wait until a species’ habitat is destroyed to determine that habitat loss may facilitate extinction”).

In sum, NMFS reasonably determined that the petition did not present new information indicating that delisting the Arctic ringed seal may be warranted. Because NMFS considered all relevant factors and “articulated a rational connection between the facts found and the choices made[,]” *id.* at 675, we must “defer to the agency’s interpretation of complex scientific data” in this case, *id.* at 679.

AFFIRMED.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate electronic filing system or, if you are a pro se litigant or an attorney with an exemption from the electronic filing requirement, file one original motion on paper.

Petition for Panel Rehearing and Petition for Rehearing En Banc (Fed. R. App. P. 40; 9th Cir. R. 40-1 to 40-4)

(1) Purpose

A. Panel Rehearing:

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - A material point of fact or law was overlooked in the decision;
 - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Rehearing En Banc

- A party should seek en banc rehearing only if one or more of the following grounds exist:
 - Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
 - The proceeding involves a question of exceptional importance; or

- The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing or rehearing en banc must be filed within 14 days after entry of judgment. Fed. R. App. P. 40(d).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(d).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-4.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- Attorneys must file the petition electronically via the appellate electronic filing system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-8000.

Petition for a Writ of Certiorari

- The petition must be filed with the Supreme Court, not this Court. Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov.

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista, maria.b.evangelista@tr.com);
 - **and** electronically file a copy of the letter via the appellate electronic filing system by using the Correspondence filing category, or if you are an attorney exempted from electronic filing, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 10. Bill of Costs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

9th Cir. Case Number(s)

Case Name

The Clerk is requested to award costs to *(party name(s))*:

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

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