

Cold Comfort: Polar Bears Win in Court

By Brent Kendall

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Chalk up a court victory for polar bears, which were on the winning side of a notable appeals court ruling Friday that upheld their listing as a “threatened” species under the Endangered Species Act.

The Bush-era U.S. Fish and Wildlife Service made the listing in 2008, concluding the polar bear was likely to become endangered in the foreseeable future because its sea-ice habitat was declining thanks to warming temperatures.

Environmental groups said the agency’s decision marked the first time a species was listed under the Endangered Species Act primarily based on the effects of climate change.

The U.S. Court of Appeals for the District of Columbia Circuit upheld the polar-bear listing in a 36-page ruling, saying the federal government acted reasonably.

The listing “is the product of FWS’s careful and comprehensive study and analysis. Its scientific conclusions are amply supported by data and well within the mainstream on climate science and polar bear biology,” Senior Judge Harry Edwards wrote for a unanimous three-judge panel.



“The decision affirms what we already know: The polar bear is dependent on ice, that ice is declining and will continue to decline,” said Rebecca Riley, a lawyer with the Natural Resources Defense Council, one of several environmental groups that supported the Fish and Wildlife Service in the case.

The state of Alaska and hunting groups were among those that challenged the polar-bear listing. They argued that polar bears are abundant, with no evidence that population decline is imminent.

Neither the Fish and Wildlife Service nor Alaska officials immediately responded to requests for comment.

Kassie Siegel, a lawyer with the Center for Biological Diversity, said that since the polar-bear listing, other species, including several types of seals, have received Endangered Species Act listings based on threats from climate warming.

Even with Friday’s ruling, environmentalists face restrictions in trying to use the polar-bear listing to attack greenhouse-gas emissions.

Both the Bush and Obama administrations adopted rules that prevent would-be challengers from using the listing to pursue legal action against emitters, such as power plants and refineries, that reside outside of the bears’ habitat.