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**Via First Class Mail & Electronic Mail (wlross@doc.gov)**

April 30, 2019

Secretary Wilbur Ross  
U.S. Department of Commerce  
1401 Constitution Avenue  
Washington, D.C. 20230

**Re: Comments in support of State and Local Government and Alaska Native Community  
Petition to Delist the Arctic Ringed Seal under the Endangered Species Act**

Dear Secretary Ross:

The National Marine Fisheries Service (“NMFS”) recently received a *Petition to Delist the Arctic Subspecies of Ringed Seal (Phoca hispida hispida) under the Endangered Species Act* (“Petition”), dated March 26, 2019, from the State of Alaska, the Arctic Slope Regional Corporation, the Inupiat Community of the Arctic Slope, and the North Slope Borough (collectively, “Petitioners”). The Petitioners represent the primary state and local government and Alaska Native community interests with a stake in the use and management of the resources of Alaska’s North Slope and associated offshore waters, including the Arctic ringed seal. We write to urge NMFS to seriously consider and act upon the well-supported bases presented by the Petitioners for the delisting of the Arctic ringed seal subspecies under the Endangered Species Act (“ESA”).

The Petition presents compelling new information and analyses that were unavailable when NMFS listed the Arctic ringed seal as a threatened species under the ESA in 2012.<sup>1</sup> At that time, NMFS determined, based upon very limited data and associated uncertainties, that the potential habitat-related threats to the Arctic ringed seal, as modeled to the end of the 21<sup>st</sup> century, were sufficient to justify a threatened listing. However, the new information presented in the Petition demonstrates that NMFS’s interpretations and ultimate conclusions based upon the limited data available in 2012 were in error.<sup>2</sup> Moreover, the Petition demonstrates that, based on the best

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<sup>1</sup> 77 Fed. Reg. 76,706 (Dec. 28, 2012).

<sup>2</sup> 50 C.F.R. § 424.11(d)(3) (“Subsequent investigations may show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error.”).

scientific and commercial data available today, the Arctic ringed seal is not in danger of extinction now or in the foreseeable future. For the reasons set forth in the Petition, and the additional reasons summarized below, the Arctic ringed seal should be removed from the list of threatened species under the ESA.

**1. Future habitat conditions can be reliably predicted only through mid-century.**

Among other things, the Petition presents the findings of the Intergovernmental Panel on Climate Change's ("IPCC") fifth assessment report ("AR5").<sup>3</sup> IPCC's AR5 indicates that future habitat conditions can be reliably predicted only through mid-century, after which significant variation among scenario outcomes makes habitat predictions unreliable. Specifically, IPCC's AR5 models four future scenarios (called Representative Concentration Pathways, or "RCPs"), representing a range of potential future technological developments and regulatory environments. Through 2055, the four scenarios model temperature projections in the Alaska region that vary within a 1.5°C range.<sup>4</sup> After 2055, however, the four scenarios deviate significantly, with variability of up to 5°C among the scenarios. Because of this wide variation, the models cannot be relied upon to accurately predict climate outcomes past the year 2055.<sup>5</sup>

This new modeling underscores the error in NMFS's 2012 listing decision, in which NMFS relied on outdated modeling of the most unlikely potential climate outcome to predict changes in snow cover.<sup>6</sup> This outcome is not reliable both because: (1) the significant variation in scenario modeling that is now understood to occur beyond the mid-century point makes any predictions for the end of the century without a rational basis, and (2) NMFS assumed the most unlikely of the climate change scenario outcomes, which varies the furthest from the mean projection and is therefore the least reliable projection. The ESA requires NMFS to make listing decisions based upon the *best available* information, not based upon a worst-case scenario.

**2. The best available data show that population-level responses can be reliably forecasted just three generations into the future.**

The Petition further demonstrates that, in addition to using improper timeframe and scenario outcomes to predict changes in climate, NMFS used an erroneous timeframe when considering the Arctic ringed seal's potential *response* to climate change scenarios. NMFS's selected timeframe—to the end of the 21<sup>st</sup> century—was based solely upon NMFS's erroneous conclusions about climate predictability (addressed above) and was not based upon biological

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<sup>3</sup> Petition at 13-14 (citing Intergovernmental Panel on Climate Change, *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, <https://www.ipcc.ch/report/ar5/wg1/>).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 14 (citing National Marine Fisheries Service, *Guidance for Treatment of Climate Change in NMFS Endangered Species Act Decisions* (Jun. 17, 2016)).

information about the species.<sup>7</sup> However, agencies commonly consider a species' biology, such as its life history, when assessing the "foreseeable future" for ESA listing purposes. As a relevant and recent example, NMFS's sister agency, the U.S. Fish and Wildlife Service ("USFWS"), confirmed that population-level responses to environmental change can only be reliably forecasted up to *three generation lengths* for an Arctic marine mammal species with a similar life history and habitat needs.<sup>8</sup> USFWS reached this conclusion in its 12-month finding that an ESA listing of the Pacific walrus is not warranted. In making this determination, USFWS considered the extent to which it could make reliable predictions regarding the status of the species in response to stressors.<sup>9</sup> USFWS explained that, beyond the three-generation timeframe, "conclusions concerning the impacts of the effects of climate change on the Pacific walrus population are based on speculation, rather than reliable prediction."<sup>10</sup> USFWS's conclusions demonstrate that NMFS erred in attempting to predict population-level responses to climate change almost nine decades in the future based on no consideration of the species' biological life history. Instead, NMFS should have analyzed the potential for population-level impacts over three generations of Arctic ringed seals, or the equivalent of 36 years, extending to 2055.<sup>11</sup>

### **3. New snow cover estimates contradict listing decision assumptions.**

As a result of its reliance on the most unlikely climate change scenario outcome, NMFS's 2012 listing determination erroneously predicted, and heavily relied upon, a "substantial decrease" in snow cover for Arctic ringed seals.<sup>12</sup> A 2018 study shows that this critical assumption was in error. Specifically, as detailed in the Petition, Littell *et al.* (2018) predict an annual *increase* in snowfall in the interior and northern areas of Alaska beyond mid-century, and expect increases to continue in many areas, including the North Slope, through the end of the century under all but the most extreme scenario (RPC 8.5).<sup>13</sup> Moreover, Littell *et al.* predict that any snowfall decreases are likely to take place outside of the winter season, which is when snow cover is most

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<sup>7</sup> Petition at 11.

<sup>8</sup> *Id.*; see U.S. Fish and Wildlife Service, Endangered and Threatened Wildlife and Plants; 12-Month Findings on Petitions To List 25 Species as Endangered or Threatened Species, 82 Fed. Reg. 46,618, 46,643-64,644 (Oct. 5, 2017) (using a three generation timeframe to define the "foreseeable future" for purposes of its Pacific walrus listing analysis); see also U.S. Fish and Wildlife Service, *Final Species Status Assessment for the Pacific Walrus (Odobenus rosmarus divergens)* (May 2017) at 115, 158 (explaining use of three 15-year walrus generations, representing 2015 to 2060).

<sup>9</sup> 82 Fed. Reg. at 46,643.

<sup>10</sup> *Id.*

<sup>11</sup> Petition at 12.

<sup>12</sup> See *id.* at 14. NMFS predicted that snow depths would drop throughout most of the Arctic ringed seal's range from 25-35 cm to 20-25 cm in many places and down to 5 cm in some areas. 77 Fed. Reg. at 76,708.

<sup>13</sup> Petition at 14-15 (citing Littell, J.S. *et al.* 2018. Alaska Snowpack Response to Climate Change: Statewide Snowfall Equivalent and Snowpack Water Scenarios. Water 10, 668.).

important to ringed seals.<sup>14</sup> This 2018 study constitutes the best available science, and further supports the conclusion that NMFS's 2012 listing of the Arctic ringed seal was in error.

**4. New data show that the Arctic ringed seal subspecies remains highly abundant despite observed changes in sea ice.**

Finally, the Petition demonstrates that observed changes in sea ice and duration to date have not resulted in detectable reductions in the abundance of the Arctic ringed seal subspecies or the fitness of individual ringed seals. New data indicate that the Arctic ringed seal population remains at a very high level, and the data do not show any population decline (whether related to climate change or otherwise).<sup>15</sup> Additionally, as also detailed in the Petition, studies conducted since the 2012 listing decision demonstrate that ringed seals in the Bering and Chukchi seas have not exhibited declines in body condition, growth, or pregnancy rate, which indicate a positive response to environmental conditions—in direct contrast to the erroneous predictions set forth in NMFS's 2012 listing decision.<sup>16</sup> Studies also show that pups are surviving to weaning in current ice and snow conditions.<sup>17</sup> These new data further demonstrate that NMFS's 2012 assumptions regarding the Arctic ringed seal's response to changing habitat conditions were in error and must be reconsidered.

**5. In sum, the Petition demonstrates that NMFS should delist the Arctic ringed seal subspecies.**

The new information and analyses presented in the Petition demonstrate that NMFS's interpretations and ultimate conclusions based upon the limited data available in 2012 were in error. Moreover, the Petition demonstrates that, based on the best scientific and commercial data available today, the Arctic ringed seal subspecies is not in danger of extinction now or in the foreseeable future. NMFS has acknowledged that the 2012 listing determination was “not necessarily set in stone and may be subject to review or reconsideration based on the best available science and the agency's lawful interpretation of the relevant statutes and regulations.”<sup>18</sup> The Petition clearly shows, based on concrete and relevant new information, that such review and reconsideration is warranted now. For the reasons set forth in the Petition and this letter, NMFS should take the necessary steps to remove the Arctic ringed seal from the list of threatened species under the ESA.

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<sup>14</sup> Littel *et al.* 2018, *supra* note 13, at § 3.3.

<sup>15</sup> Petition at 16.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

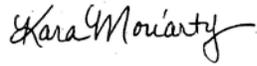
<sup>18</sup> Reply Brief for the Federal Appellants at 1, *Alaska Oil and Gas Ass'n v. Ross*, 772 Fed. Appx. 666 (9th Cir. 2018) (No. 16-35380).

Sec. Wilbur Ross

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Sincerely,



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