

A Ninth Circuit [ruling](#) yesterday overturned approval of offshore drilling in the Arctic. The ruling may directly impact the Trump Administration's plans for oil leasing in the Arctic National Wildlife Refuge (ANWR). By requiring agencies to consider emissions when fossil fuels are ultimately burned, the Court of Appeal's decision may also change the way that agencies consider other fossil fuel projects such as gas pipelines.

In *Center for Biological Diversity v. Bernhardt*, environmental groups challenged the Interior Department's approval of an offshore drilling and production facility on the north coast of Alaska. In its environmental impact statement, the agency refused to consider the effects of the project on carbon emissions outside the United States.

On its face, as the court was quick to point out, the agency's position makes no sense. It's like assuming that if you pour water in one end of the bathtub it won't rise on the other end. There's a world market for oil, so increased supply anywhere means that prices go down and world demand goes up. The Interior Department also said that the effect on emissions was too uncertain to quantify, but the court pointed out that Interior had failed to provide support to back up this assertion.

The greenhouse gases from burning fossil fuels are called "downstream" emissions in terms of the production, processing, and transportation of those fuels. The Republican majority on the Federal Energy Regulatory Commission has taken a position similar to Interior's. Despite prodding from the D.C. Circuit and strong [dissent](#) from one commissioner, FERC has refused to take downstream emissions into account when approving gas pipelines and LNG export facilities. That refusal was always [questionable](#) and has become even less tenable given this additional precedent.

In its [environmental impact statement](#) for oil leasing in ANWR, the agency seems to have followed the same course as it did for offshore drilling — the same path that the Ninth Circuit found unacceptable:

"While petroleum is obviously a global commodity, the analysis here is based on changes in US demand, projected from estimates made with a market demand model called MarketSim, developed by the Bureau of Ocean Energy Management (BOEM). The MarketSim model considers only the US supply and demand for petroleum and other US energy use; thus, the accuracy of the change (increase) in petroleum demand estimated from MarketSim projections is limited, given its scope is just the US market; however, any type of supply and demand projections must be considered quite uncertain, given the inherent difficulties in economic projections."

The Ninth Circuit's ruling today seems to invalidate this part of the ANWR EIS. Unless reversed by the Supreme Court, this ruling will be a serious obstacle to the Trump Administration's hurried effort to begin leasing before the end of Trump's term. (Another part of the Ninth Circuit's ruling, involving the Endangered Species Act, may also be a barrier.) More broadly, yesterday's ruling should reinforce the trend in other courts requiring agencies to consider downstream emissions from coal, oil, and gas projects. That's a win for rational decision making, as well as a win for the environment.