United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued April 10, 2026 Decided August 25, 2026

No. 25-1005

CENTER FOR BIOLOGICAL DIVERSITY,
PETITIONER

v.

ENVIRONMENTAL PROTECTION AGENCY AND LEE M. ZELDIN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
RESPONDENTS

On Petition for Review of a Final Action
of the Environmental Protection Agency

Jonathan C. Evans argued the cause for petitioner. With him on the briefs was *Ryan Maher*.

Michelle Spatz, Trial Attorney, U.S. Department of Justice, argued the cause for respondents. With her on the brief were *Adam R. Gustafson*, Principal Deputy Assistant Attorney General, *Robert N. Stander*, Deputy Assistant Attorney General, and *Kimere J. Kimball*, Attorney.

Lucinda M. Langworthy, *Erica Peterson*, *Elbert Lin*, *Andrew R. Varcoe*, *Stephanie A. Maloney*, *Richard S.*

Moskowitz, and *Ellen Steen* were on the brief for amicus curiae Chamber of Commerce of the United States of America, et al. in support of respondents.

Before: SRINIVASAN, *Chief Judge*, HENDERSON and RAO, *Circuit Judges*.

Opinion for the Court filed by *Chief Judge* SRINIVASAN.

Concurring opinion filed by *Circuit Judge* HENDERSON.

SRINIVASAN, *Chief Judge*: Pursuant to the Clean Air Act, the Environmental Protection Agency sets national ambient air quality standards for pollutants that may endanger the public health or welfare. In December 2024, EPA published a rule retaining the existing standards for nitrogen oxides and particulate matter and revising the standard for sulfur oxides. The Center for Biological Diversity petitions for review of that rule, contending that EPA violated the Endangered Species Act by failing to consult with the federal wildlife services before taking an action that may affect protected species or habitat. Because EPA reasonably determined that the rule would have no effect on protected species or critical habitat, we deny the petition for review.

I.

A.

Two statutory schemes bear on EPA's issuance of the challenged national ambient air quality standards (NAAQS) rule: the Clean Air Act and the Endangered Species Act.

1.

The Clean Air Act established a comprehensive statutory scheme designed to reduce air pollution. *See* 42 U.S.C. § 7401(b), (c); *Am. Farm Bureau Fed'n v. EPA*, 559 F.3d 512, 516 (D.C. Cir. 2009). To that end, the Act requires EPA to set NAAQS for each pollutant whose emission "cause[s] or contribute[s] to air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7408(a)(1)(A).

For each pollutant, EPA establishes both primary and secondary NAAQS. *Id.* § 7409. Primary NAAQS are designed to protect the "public health," *id.* § 7409(b)(1), while secondary NAAQS must be set at a level "requisite to protect the public welfare," *id.* § 7409(b)(2). The term "public welfare" includes but is not limited to "effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate." *Id.* § 7602(h); *see Ctr. for Biological Diversity v. EPA*, 749 F.3d 1079, 1083–84 (D.C. Cir. 2014).

NAAQS generally do not expire. Nevertheless, EPA must "complete a thorough review" of the NAAQS every five years and "make such revisions . . . and promulgate new standards as may be appropriate." 42 U.S.C. § 7409(d)(1).

Each state must submit an implementation plan to enforce the NAAQS within its jurisdiction, which EPA then reviews and approves. *Id.* § 7410(a)(1), (2)(A); *see id.* § 7407(a). States must enforce both the primary and the secondary NAAQS for each pollutant through their implementation plans. *Id.* § 7410(a)(1). EPA monitors states' enforcement of the NAAQS by designating geographic areas as "attainment," "nonattainment," or "unclassifiable" for each NAAQS based on air-quality information submitted by each state. *Id.*

§ 7407(d). States with areas designated nonattainment must include in their implementation plans measures to bring those areas into attainment. *See id.* § 7502.

2.

The second relevant statutory scheme is the Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.*, which aims "to protect and conserve endangered and threatened species and their habitats." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 651 (2007). The ESA directs the Secretaries of the Interior and Commerce to list threatened and endangered species and designate critical habitat for species within their respective jurisdictions. *See* 16 U.S.C. § 1533. The Fish and Wildlife Service and the National Marine Fisheries Service (collectively, the Services) administer the Act with respect to species under the jurisdiction of the Secretaries of the Interior and Commerce, respectively. *Nat'l Ass'n of Home Builders*, 551 U.S. at 651; *see* 50 C.F.R. § 402.01(b).

Section 7(a)(2) of the ESA requires that each federal agency consult with the Services to "insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification" of such species' critical habitat. 16 U.S.C. § 1536(a)(2). The consultation requirement applies to "agency action[s]," which include "any action authorized, funded, or carried out" by an agency. *Id.*

When an agency takes an "action" meeting that definition, it must make an "effects determination" assessing whether the action "may affect" protected species or critical habitats. 50 C.F.R. § 402.14(a); 16 U.S.C. § 1536(a)(2); *see In re Ctr. for Biological Diversity*, 53 F.4th 665, 668 (D.C. Cir. 2022). If the agency determines that the proposed action will have no effect on any protected species or critical habitat, no formal consultation is required. *In re Ctr. for Biological Diversity*, 53 F.4th at 668. But if the agency concludes that the action "may affect" listed species or habitat, it must engage in formal consultation with the Services. 50 C.F.R. § 402.14(a). The effects determination must be made "at the earliest possible time." *Id.*

B.

The challenged rule concerns the secondary NAAQS for three criteria pollutants EPA regulates under the Clean Air Act: nitrogen oxides (N oxides), sulfur oxides (SO_X), and particulate matter (PM).

1.

N oxides include all forms of oxidized nitrogen compounds, including, most commonly, nitric oxide and nitrogen dioxide, which are emitted from a mix of transportation and industrial sources. SO_X refers to multiple gaseous compounds, of which sulfur dioxide is generally the most concentrated in ambient air. Nitrogen and sulfur from both those compounds can be transformed into PM or deposited on the land or in water through acid rain. Deposition of those pollutants—including through acid rain—can harm both terrestrial and aquatic species and ecosystems.

PM, the third criteria pollutant considered in EPA's review, consists of solid particles and liquid droplets found in the air, including dust, dirt, soot, and smoke. Inhalation of PM may cause harmful respiratory, cardiovascular, reproductive, and other health effects on humans and animals.

2.

In 1971, EPA first established secondary NAAQS for the three criteria pollutants, and it has reviewed those standards several times. EPA has never revised the secondary NAAQS for N oxides, nor had it revised the secondary NAAQS for SO_X until the rule challenged here. EPA has revised the secondary NAAQS for PM multiple times.

In August 2013, EPA initiated a multi-year review of the secondary NAAQS for N oxides, SO_X, and PM, for the first time addressing the ecological effects of all three pollutants together in one proceeding. In April 2024, after a nearly eleven-year review, EPA issued its proposed rule. The proposed rule left unchanged the secondary NAAQS for N oxides and PM, and it proposed to lower the secondary NAAQS for SO_X to a three-year annual average of between 10 and 15 parts per billion (ppb).

In October 2024, EPA prepared a memorandum addressing its obligations under the ESA with respect to the proposed rule. EPA concluded that the rule would have no effect on ESA-protected species or habitat because it would not change existing air-quality conditions or require additional emissions reductions.

With respect to its proposal to revise the secondary NAAQS for SO_X, EPA concluded that the downward revision would not affect existing air quality because the primary NAAQS for SO_X remained more stringent than even the reduced secondary NAAQS for SO_X in the proposed rule—meaning that the primary standard would continue to control the permissible amount of SO_X emissions. EPA found based on its air-quality analysis that "current air quality conditions in the U.S. generally meet the new secondary NAAQS," so revising the SO_X standards was not intended to change existing air quality. No-Effect Determination at 2 (J.A. 491).

As for the N oxides and PM secondary NAAQS, EPA explained that its decision to leave the existing standards in place would have no effect on air quality that could affect listed species or their habitat because its decision would not result in any area of the country being designated as nonattainment or needing additional emissions reductions. EPA also noted in a footnote that the decision to retain the existing NAAQS did not constitute an "action" triggering its consultation obligations under the ESA.

Based on its no-effect determination, EPA concluded that the ESA did not require consultation with the Services before issuing the final rule.

In December 2024, EPA published its final rule. The rule left in place the existing secondary NAAQS for N oxides and PM and revised the secondary NAAQS for SO_X to the lower end of the range contemplated by the proposed rule. *Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter*, 89 Fed. Reg. 105,692 (Dec. 27, 2024).

The Center for Biological Diversity (CBD) petitions for review, contending that EPA violated section 7(a)(2) of the ESA by failing to consult with the Services before promulgating the rule.

II.

A.

Before addressing the merits of CBD's petition, we must consider its standing. Although EPA questions CBD's standing only in brief footnotes, we have an independent obligation to assure ourselves of jurisdiction. *Grocery Mfrs. Ass'n v. EPA*, 693 F.3d 169, 174 (D.C. Cir. 2012).

CBD asserts that it has associational standing to challenge EPA's rule. To establish associational standing, CBD must show that its "members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Growth Energy v. EPA*, 5 F.4th 1, 26 (D.C. Cir. 2021) (quoting *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000)). CBD straightforwardly satisfies the latter two requirements. *See Ctr. for Biological Diversity v. EPA*, 861 F.3d 174, 182 (D.C. Cir. 2017). The environmental interests asserted in CBD's petition are germane to its mission of protecting the environment and endangered species, and neither the claim asserted nor the relief requested (vacatur of portions of the final rule and an order requiring EPA to engage in consultation under the ESA) requires the participation of any member in the lawsuit. *Id.*

As for the first requirement, CBD has identified at least one member with Article III standing to challenge EPA's rule. The familiar tripartite test for Article III standing requires that CBD demonstrate that at least one of its members has "(1) an injury in fact that is 'concrete and particularized' and 'actual or imminent,' which is (2) 'fairly traceable to the challenged action of the defendant' and (3) 'likely' to be 'redressed by a favorable decision.'" *Growth Energy*, 5 F.4th at 27 (quoting *Laidlaw Env't Servs.*, 528 U.S. at 180–81). For procedural injuries such as the failure to comply with the ESA's consultation requirement, we have "relax[ed]—while not wholly eliminating—the issues of imminence and redressability." *Id.* The petitioner must show that the agency's failure to comply with the ESA "demonstrably increased some specific risk of environmental harms that imperil the members' particularized interests in a species or habitat with which the members share a geographic nexus." *Am. Fuel & Petrochems. Mfrs. v. EPA*, 937 F.3d 559, 592 (D.C. Cir. 2019) (cleaned up). And, to show redressability, the petitioner need not show that engaging in the procedure will change the result of the agency's substantive decision, only that the agency "*could* reach a different conclusion." *Growth Energy*, 5 F.4th at 28 (quoting *Ctr. for Biological Diversity*, 861 F.3d at 185).

CBD has made the required showing. In its declarations, CBD identifies several members with cognizable aesthetic interests in species that may be affected by the criteria pollutants. *Cf. Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562–63 (1992); *WildEarth Guardians v. Jewell*, 738 F.3d 298, 305–06 (D.C. Cir. 2013). For example, CBD member Ileene Anderson avers that she has an aesthetic interest in San Joaquin kangaroo rats and intends to visit them in the future. Other CBD members describe recreational activities and travel planned around visiting species including hellbender salamanders, whooping cranes, and the Chiricahua leopard frog.

CBD has also demonstrated the requisite causal link between the alleged procedural violation and its members' injuries by pointing to record evidence that continued emission of the criteria pollutants demonstrably increases the risk of harm to the relevant species. *Cf. Ctr. for Biological Diversity* *v. EPA*, 56 F.4th 55, 67–68 (D.C. Cir. 2022). CBD cites record evidence that San Joaquin Valley has among the highest concentrations of PM in the country and points to rodent studies demonstrating a likely causal link between long-term exposure to PM and nervous-system impacts that may harm kangaroo rats. Other record evidence indicates that acid rain and acid deposition may harm whooping cranes, Shenandoah salamanders, and Chiricahua leopard frogs. And, because consultation with the Services could cause EPA to adopt more stringent secondary NAAQS that would reduce emissions and the resulting harm to protected species, CBD's members' injuries are redressable by a decision ordering EPA to engage in the consultation process. *See WildEarth Guardians*, 738 F.3d at 306; *Ctr. for Biological Diversity*, 861 F.3d at 185.

EPA contends that CBD's theory of causation is too speculative to support Article III standing because it requires assuming that, had EPA consulted with the Services, the Services would have urged EPA to promulgate more stringent NAAQS and EPA in fact would have done so. CBD's allegations satisfy the "relax[ed]" standards for causation and redressability applicable to procedural injuries such as those alleged here. *Growth Energy*, 5 F.4th at 27; *see also Ctr. for Biological Diversity*, 56 F.4th at 67. In fact, in *Growth Energy*, we considered a similar challenge to EPA's failure to consult with the Services based on a no-effect determination, and we found that the petitioners demonstrated causation and redressability because they "need not show that 'court-ordered compliance with the procedure would alter the final [agency decision].'" *Growth Energy*, 5 F.4th at 28 (alteration in original) (quoting *Ctr. for Biological Diversity*, 861 F.3d at 185). Instead, the possibility that remedying the alleged deficiencies in EPA's effects determination *could* lead EPA to consult with the Services and ultimately reach a different substantive decision sufficed to show redressability. *Id.* at 29.

CBD likewise has standing to challenge EPA's rule on the secondary NAAQS for N oxides, SO_X, and PM.

B.

On the merits, CBD identifies two alleged deficiencies in EPA's no-effect determination. First, CBD contends that EPA's no-effect determination was arbitrary and capricious because EPA disregarded evidence of the cumulative and ongoing effects of pollutant emissions and deposition on protected species. Second, CBD argues that EPA violated the ESA implementing regulations' requirement to make the effects determination "at the earliest possible time." 50 C.F.R. § 402.14(a).

As a threshold matter, the ESA's consultation requirements apply only if EPA's rule amounts to an action "authorized, funded, or carried out" by the agency. 16 U.S.C. § 1536(a)(2). The parties do not dispute that EPA's decision to tighten the secondary NAAQS for SO_X is such an action. But they disagree about whether EPA's decisions to retain the preexisting secondary NAAQS for N oxides and PM are actions under section 7(a)(2). We need not resolve that dispute: because we conclude that EPA's no-effect determination was not arbitrary or capricious and was not completed at an improper time, we assume without deciding that the final rule leaving in place existing N oxides and PM standards was an "action" implicating consultation obligations under the ESA.

1.

a.

The ESA requires agencies to consult with the Services on any action that "may affect" ESA-protected species or their critical habitats. 50 C.F.R. § 402.14(a). "'May affect' purposefully sets a low bar: 'Any possible effect, whether beneficial, benign, adverse or of an undetermined character, triggers the formal consultation requirement.'" *Growth Energy*, 5 F.4th at 30 (quoting *Interagency Cooperation—Endangered Species of 1973, as Amended*, 51 Fed. Reg. 19,926, 19,949 (June 3, 1986)).

To determine whether a proposed action "may affect" protected species or habitat, we look to the Services' definition of "effects of the action" in the regulations implementing the ESA. The ESA implementing regulations in place at the time of EPA's final NAAQS rule defined "effects of the action" as: "all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action but that are not part of the action." *Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation*, 89 Fed. Reg. 24,268, 24,297 (Apr. 5, 2024) (codified at 50 C.F.R. § 402.02 (2024) (vacated)). Under that definition, "[a] consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur." *Id.*

While this petition has been pending, a district court in the Northern District of California vacated that regulatory definition of "effects of the action" on the ground that the requirement that effects be "reasonably certain to occur" contravened section 7(a)(2)'s mandate that agencies "insure" their actions are "not likely to jeopardize" listed species or their habitats and use the "best available data" to do so. *See Ctr. for Biological Diversity v. Dep't of Interior*, No. 24-cv-04651, 2026 WL 898264, at *11–15 (N.D. Cal. Mar. 30, 2026). The plaintiffs in that case did not argue that the regulation's requirement of but-for causation violated the ESA, nor did the court conclude as much. *Id.* But based on its holding that the regulation's imposition of a reasonable-certainty requirement for all effects violated section 7, the court vacated the entire regulatory definition—including the portion addressing but-for causation. *Id.* at *25.

That court's vacatur of the regulatory definition ultimately has no substantive effect on our consideration of CBD's petition, but understanding why requires a bit of an explanation. In vacating the regulatory definition, the court replaced it by reinstating the definition of "effects of the action" that had been in place prior to the addition of the reasonable-certainty requirement. *Id.* That regulation defines "effects of the action" as "the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline." 50 C.F.R. § 402.02 (2018). The definition does not elaborate on the "direct effects" of a proposed action, but it explains that "[i]ndirect effects" are "those that are caused by the proposed action and are later in time, but still are reasonably certain to occur." *Id.* (alteration in original).

Assuming without deciding that the Northern District of California's vacatur of the regulatory definition of "effects of the action" requires us to apply the reinstated regulatory definition in reviewing this petition, *cf. Trump v. CASA, Inc.*, 606 U.S. 831, 841 n.4, 847 n.10 (2025), we consider whether the reinstated definition of "effects of the action," like the now-vacated one, carries a but-for causation requirement for direct and indirect effects. We conclude it does.

The reinstated regulation does not expressly indicate the applicable standard of causation for an environmental consequence to be considered an "effect of" a challenged action. The parties, though, do not dispute in their post-argument letters addressing the intervening decision that the same but-for causation standard explicitly adopted in the now-vacated regulation also applies under the reinstated one. We agree with the parties' evident assumption that the reinstated regulatory definition requires but-for causation for a consequence to be considered an "effect of" a proposed action.

When a provision of law does not specify the relevant standard for causation, we have routinely interpreted the provision to incorporate a but-for causation requirement. *See Hudson v. Am. Fed'n of Gov't Emps.*, 151 F.4th 456, 461 (D.C. Cir. 2025). And the Supreme Court has interpreted the National Environmental Policy Act's requirement that administrative agencies consider the "environmental effects" of their proposed actions to require "a reasonably close causal relationship" that incorporates but-for causation. *See Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)). The Court has similarly interpreted other provisions of the ESA to require but-for causation. *See Babbitt v. Sweet Home Chapter of Cmtys. for a Greater Oregon*, 515 U.S. 687, 700 n.13 (1995).

Nothing in the reinstated regulatory definition suggests a departure from the ordinary assumption that a provision of law carrying a causation requirement contemplates but-for causation. To the contrary, the Services explained in the preamble to the rule establishing the now-vacated regulatory definition that they "have applied the 'but for' test to determine causation for decades." *Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation*, 84 Fed. Reg. 44,976, 44,977 (Aug. 27, 2019). And when proposing that rule, the Services likewise explained that it "has long been our practice that identification of [effects of the action] is governed by the 'but for' standard of causation." *Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation*, 83 Fed. Reg. 35,178, 35,183 (July 25, 2018).

We thus understand the reinstated regulatory definition—like the now-vacated one it replaced—to require but-for causation for a consequence to be an "effect of" a proposed action. With that standard in mind, we proceed to the substance of CBD's challenge to EPA's no-effect determination.

b.

We review EPA's no-effect determination under the Administrative Procedure Act's arbitrary-or-capricious standard. *See Growth Energy*, 5 F.4th at 32; *Ctr. for Biological Diversity*, 749 F.3d at 1087 n.15. Under that standard, the agency's decision must be "reasonable and reasonably explained." *Americans for Clean Energy v. EPA*, 864 F.3d 691, 726 (D.C. Cir. 2017) (quoting *Jackson v. Mabus*, 808 F.3d 933, 936 (D.C. Cir. 2015)). Our review is "highly deferential, and presumes agency action to be valid." *Lead Indus. Ass'n, Inc. v. EPA*, 647 F.2d 1130, 1145 (D.C. Cir. 1980) (citations omitted). We must affirm EPA's decision "if the record shows EPA considered all relevant factors and articulated a 'rational connection between the facts found and the choice made.'" *Catawba Cnty. v. EPA*, 571 F.3d 20, 41 (D.C. Cir. 2009) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).

EPA's no-effect determination satisfies those requirements. In its October 2024 memorandum, EPA concluded that its secondary NAAQS rule would have no effect on protected species because neither its revisions to the secondary NAAQS for SO_X nor its decision to leave in place the preexisting standards for N oxides and PM would result in any changes to air quality that could affect protected species.

First, with respect to SO_X, EPA's rule tightened the secondary standard to an annual average concentration of sulfur dioxide of 10 ppb, averaged over three consecutive years. As EPA explained, that revision was neither intended to achieve air-quality changes nor expected to do so. The primary NAAQS would remain the controlling standard, and current air-quality conditions "generally meet" the new standards. No-Effect Determination at 2–3 (J.A. 491–92).

EPA supported that conclusion with an air-quality analysis that estimated whether any emissions reductions would be necessary to meet the revised secondary SO_X NAAQS of a 10 ppb three-year annual average, considered in the context of the unchanged primary SO_X NAAQS of a 75 ppb one-hour average. Although the primary standard's level of 75 ppb is higher than the revised secondary standard's level of 10 ppb, EPA explained that "the primary standard is expected to remain the controlling standard" because the primary standard is based on a one-hour averaging time as compared with an annual averaging time. *Id.* at 3 (J.A. 492). The primary standard's substantially shorter averaging time allows it to constrain peak concentrations of the pollutant and requires essentially continuous emissions limitations, which ultimately lowers the longer-term averages.

EPA's analysis of current air quality demonstrated as much: all but two monitor sites already attained the revised secondary NAAQS of 10 ppb as a three-year annual average, and the remaining two sites were projected to attain a three-year annual average of no higher than 6 ppb after implementing controls to attain the primary standard. And, for the areas already meeting the primary standard, EPA found that the three-year annual average ranged from 0.02 ppb to 3.61 ppb, with 99 percent under 2.5 ppb, far below the updated secondary standard. Accordingly, EPA reasonably concluded that "the adoption of the new annual secondary NAAQS [for SO_X] is not expected to (i) result in any additional areas being designated nonattainment or (ii) require implementation of additional emissions reductions." *Id.* at 4 (J.A. 493).

Second, with respect to N oxides and PM, EPA explained that leaving the preexisting standards in place without any revisions would not result in any new nonattainment designations or require additional emissions reductions. Because the secondary NAAQS rule would not require any new pollution controls, EPA understandably determined that the rule "is not anticipated to cause any changes in air quality, or in related environmental conditions (e.g., related to atmospheric deposition)" and thus that consultation under section 7(a)(2) was not required. *Id.*

CBD does not contest EPA's explanation of why its rule—including its tightening of the SO_X standard—will not change criteria-pollutant emissions or air quality. Instead, CBD contends that EPA's no-effect determination was arbitrary and capricious for a different reason: because EPA assertedly disregarded evidence of the "ongoing and cumulative ecological effects from the deposition from Nitrogen and Sulfur air pollution, as well as the direct effects of Particulate pollution on animals." CBD Br. 39. In support of that contention, CBD cites evidence that ESA-protected species are harmed by the deposition of nitrogen, sulfur, and particulates and the inhalation of PM. CBD also points to recommendations from EPA's Clean Air Scientific Advisory Committee and the National Park Service to tighten the secondary NAAQS for all the criteria pollutants during the review that led to the challenged rule.

Even assuming CBD is correct that the secondary NAAQS are insufficient to protect against ongoing and cumulative harms from deposition and inhalation of the criteria pollutants, CBD fails to identify any effects that would not occur but for the 2024 rule. As EPA explained, its proposed rule would not result in any changes to attainment designations nor require implementation of additional pollution controls to reduce emissions beyond what the preexisting NAAQS already required. CBD does not contend otherwise.

So, areas of the country that already attained the preexisting secondary NAAQS for N oxides and PM and the preexisting primary NAAQS for SO_X would experience no changes in air quality—or resulting environmental conditions—as a result of EPA's challenged rule. And areas designated as nonattainment under the preexisting regime were already obligated to take steps to come into compliance. Any changes to air quality in those areas would thus be attributable to preexisting air-quality standards—not to EPA's 2024 secondary NAAQS rule, which left the controlling standards for all of the criteria pollutants untouched. The secondary NAAQS rule, in short, is not the but-for cause of any ongoing or cumulative environmental effects, even assuming CBD is correct that such effects will occur and accumulate. And if the challenged rule is not the but-for cause of environmental effects, then it does not trigger a consultation obligation.

CBD next argues that EPA's discussion of attainment designations and implementation plans improperly focuses on the "administrative consequences" of the rule rather than the "real-world impacts of continued deposition on the environment." CBD Br. 43. That argument merely repackages CBD's concern about ongoing and cumulative impacts.

EPA, CBD contends, improperly ignored that additional deposition of nitrogen, sulfur, and particulates can harm protected species, even if EPA's rule would not require any changes to the administration or enforcement of the preexisting NAAQS. But these administrative tools are the mechanisms by which the NAAQS are enforced. Implementation plans establish emissions limits and control mechanisms for the criteria pollutants. *See* 42 U.S.C. §§ 7407(a), 7410(a). EPA monitors implementation plans through attainment designations, which identify geographic areas for which additional pollution-control measures are required. *See id.* § 7502. The "administrative consequences" of EPA's rule are thus the mechanisms by which the rule would have the "real-world impacts" about which CBD is concerned. EPA's focus on those impacts was not improper. If the rule does not result in any changes to the mechanisms for affecting air quality, EPA could reasonably conclude that the rule will not result in any changes to air quality that might affect protected species. Whatever effects there are would exist regardless of the challenged rule.

Finally, CBD argues that EPA applied an incorrect environmental baseline because it failed to include past harms that cause ongoing effects. CBD's argument misconceives the environmental baseline. The baseline is "the condition of the listed species or its designated critical habitat in the action area, *without* the consequences to the listed species or designated critical habitat *caused by the proposed action*." 50 C.F.R. § 402.02 (emphasis added). Impacts included in the environmental baseline thus are not "effects" that would prevent an agency from reasonably concluding that the proposed action would have no effect on protected species. To the contrary, EPA's inclusion of the ongoing and cumulative impacts of criteria-pollutant emissions in the environmental baseline properly captured the effects that would occur regardless of the proposed rule. Because any ongoing and accumulating harms would occur even if EPA had promulgated no rule at all, such harms cannot be considered "effects of" EPA's rule.

2.

In addition to challenging EPA's no-effect determination as arbitrary and capricious, CBD contends that EPA's no-effect determination came too late. According to CBD, the no-effect determination violated the ESA because it was made two months before the agency promulgated its final rule rather than "at the earliest possible time," as the implementing regulations require. 50 C.F.R. § 402.14(a). That argument fails.

Neither the ESA itself nor the implementing regulations require that an effects determination be made within any particular timeframe. *See* 16 U.S.C. § 1536; 50 C.F.R. § 402.14. To the contrary, the regulation's reference to "the earliest *possible* time," 50 C.F.R. § 402.14(a) (emphasis added), contemplates that the agency has some flexibility in determining when during consideration of a proposed rule to make an effects determination. That open-ended language stands in contrast to other provisions of the ESA and its implementing regulations that impose concrete deadlines for other stages of the consultation process. *See, e.g.*, 16 U.S.C. § 1536(b)(1)(A)–(B); 50 C.F.R. § 402.14(e). And our decisions establish only that an agency must make an effects determination before taking final action, not that it must do so by any particular date in advance of the action. *See Ctr. for Biological Diversity*, 861 F.3d at 188.

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For the foregoing reasons, we deny the petition for review.

So ordered.

KAREN LECRAFT HENDERSON, *Circuit Judge*, concurring: In my view, the Environmental Protection Agency's decision to forgo modification of the secondary National Ambient Air Quality Standards for nitrogen oxides and particulate matter is a quintessential example of "inaction" that does not trigger the Endangered Species Act's interagency consultation requirement to begin with. *Fund for Animals, Inc. v. Thomas*, 127 F.3d 80, 83 n.3, 84 n.6 (D.C. Cir. 1997).[1] Thus, I see no need to consider the soundness of the Agency's determination that its decision will have no effect on any listed species or critical habitat. *See id.* Nevertheless, I agree with my colleagues that, if the Agency's decision was an "action" requiring consultation, 16 U.S.C. § 1536(a)(2), the Agency's no-effect determination was timely and neither arbitrary nor capricious, *see* 50 C.F.R. § 402.14(a). Thus, the Agency had no obligation to consult with the Fish and Wildlife Service or the National Marine Fisheries Service. *Ctr. for Biological Diversity v. DOI*, 563 F.3d 466, 475 (D.C. Cir. 2009). Although I would deny the petition for review based on "inaction," I join the Court's opinion in full.

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[1] *See WildEarth Guardians v. EPA*, 759 F.3d 1196, 1208–09 (10th Cir. 2014); *W. Watersheds Project v. Matejko*, 468 F.3d 1099, 1102, 1107–08 (9th Cir. 2006); *Cal. Sportfishing Prot. All. v. FERC*, 472 F.3d 593, 595, 598–99 (9th Cir. 2006).