

SECRETARY SALAZAR HAS UNTIL MAY 9th, 2009 TO RESCIND BUSH ADMINISTRATION RULES WEAKENING THE ENDANGERED SPECIES ACT AND PROTECTIONS FOR THE POLAR BEAR

On March 11, 2009, President Obama signed legislation giving Secretary of the Interior Ken Salazar the authority to immediately rescind, with the stroke of a pen, two Bush regulations that fundamentally undermine protections for the Nation's endangered species. The first (the "consultation regulations") changes the regulations that govern how the Endangered Species Act is carried out by exempting thousands of federal activities, including those that generate greenhouse gases, from review under the Endangered Species Act. The second (the "polar bear special rule") severely limits protections for the polar bear. Under the bill, if Secretary Salazar does not withdraw the Bush regulations within 60 days, they will stay in effect.

How do the consultation regulations exempt federal projects from scientific review under the Endangered Species Act?

Under the Endangered Species Act, federal agencies must consult with one of two wildlife agencies — the U.S. Fish and Wildlife Service or the National Marine Fisheries Service — if the federal agencies permit, fund, or otherwise carry out actions that "may affect" endangered species. During consultation, scientists from the two expert agencies prescribe measures necessary to ensure that the actions do not jeopardize the continued existence of protected species.

Under the Bush regulations, federal agencies, often with little or no biological expertise of their own, can decide for themselves whether they need to consult with the wildlife agencies. Because federal agencies, such as the Minerals Management Service or Army Corps of Engineers, have missions that are in many cases in direct conflict with the conservation of endangered species, the self-consultation rules amount to allowing the fox to guard the hen house.

Has exempting federal agencies from oversight been tried before?

Letting federal agencies determine the impacts of their own projects has already been tried — and it failed miserably. In 2003, the Bush administration published similar regulation to "streamline" the process for proposed logging projects by the Forest Service and Bureau of Land Management under a program called the National Fire Plan. A federally ordered review of this program by the wildlife agencies determined that the two land management agencies violated the Endangered Species Act in no less than 68 percent of their projects.

How do the consultation regulations exempt greenhouse gas emissions and other pollutants?

Despite the fact that global climate change is the primary threat to the polar bear, corals and many other species, the consultation regulations exempt consideration of greenhouse gas emissions through broad language that could be interpreted to apply to other pollutants as well. For example, dumping of DDT, which had such disastrous consequences for the bald eagle and many other birds, could be exempted under the new regulations. The regulations attempt to cut the heart out of the critically important

cumulative effects analysis, by exempting federal actions that “are manifested through global processes” and result in “an extremely small, insignificant impact” on protected species. Scientists and Congress have long understood that many of our most severe environmental problems result from sources that appear individually minor but collectively cause devastating damage.

Given that greenhouse gas emissions pose a grave and growing threat to endangered species, there is no reason why federal agencies should not look at ways to reduce their greenhouse gas emissions just as they look at ways to reduce pesticides that harm salmon, logging that harms owls, or any other threat to protected species. There can be no reasonable objection to a process in which agencies approving sources of greenhouse gas emissions, from fossil fuel development to fuel economy regulations, will look for ways to reduce those emissions. Doing so would be complementary and in addition to other greenhouse gas emissions reductions that the Obama administration must implement under the Clean Air Act and other laws, and complementary to any new requirements in federal climate legislation.

What does the polar bear special rule do?

The polar bear special rule exempts all greenhouse gas emissions generated outside the range of the polar bear from regulation under the Endangered Species Act. While oil and gas development and other industrial activities in polar bear habitat produce a large volume of greenhouse gas pollution, the majority of greenhouse emissions occur outside the bear’s range. Global warming and the melting of the Arctic sea ice is the primary threat to the polar bear and the reason for its listing. It is utterly illogical to prevent the Endangered Species Act from addressing this primary threat. The Act has a three decade track record of success in saving 98% of all species listed from extinction, and has an important role to play both in helping to reduce greenhouse emissions and improving management to give the polar bear the best chance of surviving in a warming world.

Does President Obama’s memorandum take care of the problem?

On March 3, 2009, President Obama issued a memorandum that requires federal agencies to consult as if the old regulations were still in effect. This is only a first step towards undoing the harm of the new regulations, and does not address the exemption for greenhouse emissions or restore full protections for the polar bear. In order to do so, Secretary Salazar must immediately rescind both the consultation regulations and the polar bear special rule.

What Happens if Salazar Rescinds the Regulations?

If Salazar rescinds the self-consultation regulations, the previous regulations that have successfully protected species since 1986 would simply be reinstated. If Salazar rescinds the polar bear special rule, the polar bear will receive the full protections of the law.

What Happens if Salazar Refuses to Rescind the Regulations?

The regulations would remain in effect and the polar bear and other species deprived of full protection, until and unless the regulations are struck down by the courts.