

1. ENDANGERED SPECIES:

Bush admin told agencies to ignore greenhouse gas emissions in permitting

(10/15/2008)

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Top Bush administration officials told federal agencies that the Endangered Species Act cannot be used to regulate sources of greenhouse gas emissions, even if climate is the primary threat facing some imperiled plants and animals, according to administration legal memos obtained and released by an advocacy group.

The memos provide some of the legal justification for a special rule that exempted greenhouse gas emissions from the regulatory purview of the Endangered Species Act when the Interior Department listed the polar bear as a threatened species this year.

The decision angered environmental groups that had hoped to use the bear's listing to challenge proposed power plants or other carbon-emitting sources. [The Center for Biological Diversity, the Natural Resources Defense Council and Greenpeace have sued the administration in an attempt to overturn the rule and force more stringent protections for the bear.](#)

Advisers from the Interior Department and National Oceanic and Atmospheric Administration outlined their legal reasoning for exempting wildlife consultations over power plants in memos sent to agency heads earlier this month. The advocacy group Public Employees for Environmental Responsibility, PEER, obtained the documents and released them yesterday.

A memo from Interior solicitor David Bernhardt concludes that federal agencies do not need to consult with government biologists about the impact of greenhouse gases from a proposed project on protected plants or animals. Indirect effects on wildlife, the memo says, cannot be traced to one specific source, and cumulative effects "are of no relevance" under the species law.

The Endangered Species Act requires federal agencies to consult over the potential effects of any project that "may affect listed species or critical habitat." Environmentalists argue that that provision should include greenhouse gas contributors. But Bernhardt cites a May memo from the U.S. Geological Survey that found it is "beyond the scope of existing science" to link a specific source of carbon dioxide emissions as the cause of specific climate impacts at an exact location.

"We conclude that where the effect at issue is climate change in the form of increased temperatures, a proposed action that will involve the emission of GHG [greenhouse gas] cannot pass the 'may affect' test and is not subject to consultation under ESA and its implementing regulations," Bernhardt wrote.

Interior spokesman Chris Paolino said the solicitor crafted the memo to provide a legal analysis of opinions that have come from the Fish and Wildlife Service and USGS.

The National Marine Fisheries Service took a similar stance in advice to U.S. EPA. In a letter sent last week to the EPA office of air, NMFS's director of protected species, James Lecky, wrote that consultations for listed coral species should not be a factor in permits for power plants.

Corals are listed as threatened species under ESA, due in part to rising ocean temperatures that threaten their health. Lecky wrote that effects from a single power plant on coral species would be "exceedingly remote" and irrelevant to a consultation.

PEER executive director Jeff Ruch described the memos as "circular legalisms to justify continued inaction." He said that since federal scientists have already established that climate change is threatening imperiled species, the government should be able to take action to curb carbon emissions.

"The Bush position is that the death by a thousand cuts must be endured because we cannot know how many cuts we can survive," Ruch said.

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