

Narrow Changes to ESA Regulations **By Secretary of the Interior Dirk Kempthorne**

In May, as I announced the listing of the polar bear as a threatened species, I also signaled that I would update the Endangered Species Act regulations to prevent abuse of the listing to erect a backdoor climate policy outside our normal system of political accountability. Never designed to address global challenges like climate change, current ESA regulations could lead to a flood of unnecessary consultation on projects or other actions that will not harm listed species. This week I proposed changes to the ESA regulations to fulfill my earlier commitment by clarifying that consultation is not required in these circumstances.

In listing the polar bear, we concluded that melting sea ice associated with a changing climate will reduce bear habitat in the foreseeable future to an extent that threatens the bear's survival. Though we drew that conclusion, at the same time scientists told us it is not possible to establish a causal connection between a particular emission—say from an individual power plant—and loss of sea ice or harm to bears. This rule follows that same science and logic, and clarifies that for projects that have no effects on listed species at all, insignificant effects, or wholly beneficial effects, an agency may choose not to consult.

By clarifying that certain actions do not require consultation, the Fish and Wildlife Service and NOAA fisheries will be able to focus their time and resources on analysis and actions that really make a difference in protecting species. Under the ESA, when federal agencies, build a road, install a dike, restore a wetland, issue a permit for a power plant, or take any other action, they must consult with the Fish and Wildlife Service or NOAA Fisheries, if that action might affect a threatened or endangered species.

These regulatory updates maintain protections against harm to threatened and endangered species. The law prohibits harm and harassment—take—of species without a special permit. That prohibition remains. The law also prohibits modification of critical habitat that adversely affects nesting sites, food sources, shelter, or other features important to the species' survival. Again, we have not proposed to change these standards.

Agencies will need to use this consultation discretion judiciously, as they always have, because under the ESA, it is the action agency's responsibility to protect listed species, and their officials would continue to face criminal and civil penalties if their actions harm them.

By making these changes, we prevent an expansion of the ESA into an inefficient, indirect avenue for greenhouse gas regulation, a purpose for which the ESA was never intended—and for which it is ill suited, without exposing listed species to any additional harm. The Fish and Wildlife Service and NOAA Fisheries already perform thousands of consultations each year. This rule would allow land managers to maintain their focus on projects that will most help species recovery where there is a danger to the species.

The Bush administration has acknowledged climate change as a serious problem. However, efforts to address climate change should occur through the proper forums including the Congress, not through ESA regulations.