

Last week, Interior Secretary Salazar and Commerce Secretary Locke [issued a press release](#) announcing that they were withdrawing the Bush administration's midnight rules relaxing the ESA section 7 consultation requirements. (Background on the Bush rules is [here](#), [here](#), and [here](#).) The notice formalizing that decision has now been [published in the Federal Register](#). As Congress authorized them to do in the omnibus spending bill, the Secretaries have flat-out withdrawn the Bush administration's last-minute consultation changes, reinstating the consultation rules as they stood prior to that rule. At the same time, recognizing that the consultation rules have not been comprehensively revised in more than 20 years, they have invited public comment on "ways to improve the section 7 regulations while retaining the purposes and policies of the ESA."

A broad review of the Section 7 consultation rules is a good idea. There is no question that understanding about the threats facing listed species has advanced since the existing rules were developed, and that there are lessons to be mined from experience with those rules. As I wrote with Margaret Giblin and several other Center for Progressive Reform scholars in [comments on the the Bush administration's proposed rule](#) and a [letter to the Secretaries](#) requesting this withdrawal, a genuine review of the rules should take enough time to allow full exploration of the issues, include consideration of ways that they may be under- (as well as over-) protective, and rest on review of all available data.

The Bush administration's hasty rule changes showed none of those features. Not surprisingly, it looks like this administration will do much better, undertaking a sincere close look at the consultation process. The notice solicits comments on:

The applicability of section 7, the definitions of "jeopardy" and "adverse modification", the definition of "effects of the action", the definition of "action area", the appropriate standard of causation, the informal consultation process, methods to streamline both formal and informal consultation, flexibility for "low effect" consultations, formal consultation requirements, programmatic consultations, consideration of effects related to global climate change, incidental take statements, and reinitiation standards.

Comments will be accepted until August 3, 2009.