



Committee on Natural Resources

Rep. Nick J. Rahall, II - Chairman

1324 Longworth House Office Building - Washington DC, 20515 - <http://resourcescommittee.house.gov>

H.J. Res. 18 House Joint Resolution Providing for Congressional Disapproval of Regulations Relating to Interagency Cooperation Under the Endangered Species Act January 2009

Description of the Regulations: Section 7 of the Endangered Species Act of 1973 (ESA) requires all federal agencies to consult with the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) to determine whether a proposed agency action may jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat of a listed species. In cases where the Services find jeopardy, mitigating actions, referred to as reasonable and prudent alternatives, are proposed to allow the proposed agency action to go forward. Section 7 is considered by most to be the centerpiece of the ESA.

In August of 2008, the Bush Administration (acting through the FWS and NMFS) proposed changes to the regulations that guide the consultation process. After an expedited public comment period of only 60 days (increased from 30 days at Congressional request), the FWS then proceeded to review more than 300,000 public comments – most opposing the regulations – in one week's time, and published the final rule in the Federal Register on December 16, 2008.

The new regulations give federal agencies broad discretion for determining when their action may affect a listed species and would allow them to permit a broad range of activities without consulting FWS or NMFS biologists. The rule changes also narrow the scope of activities that may be considered as affecting a listed species. Similar regulations proposed in 2006 to provide the Environmental Protection Agency with the discretion to determine when and whether to consult under Section 7 were found to be an abdication of FWS responsibility under the law and were rejected by the Courts. The rules adopted in December 2008 have faced similar criticisms and were opposed by 81 members of the House of Representatives.

The Congressional Review Act of 1996 (CRA): The CRA establishes special procedures by which the Congress can disapprove a broad range of regulatory rules issued by Federal agencies. Under the terms of the CRA, once a rule is submitted, the Congress can pass a joint resolution disapproving the rule. If the resolution becomes law, the rule cannot take effect or continue in effect, and the agency in question may not reissue the rule or any substantially similar rule without explicit authority granted under a subsequently enacted law. H.J. Res.18 initiates that process in the House.

The CRA provides for expedited consideration of a disapproval resolution as long as the resolution is introduced within 60 days after Congress receives the rule, exclusive of recess periods. If a session of Congress adjourns sine die less than 60 days of session after receiving a rule – as was the case with this particular rule – the full 60-day period for action on the resolution begins again on the 15th day of session after the next session convenes. In this case, the next session of Congress convened on January 6, 2009.