



Natural building blocks for quality of life

March 3, 2009

Dear Senator:

This week the Senate will consider the FY 2009 Omnibus Appropriations Act. While there is much to laud in this bill, one troubling provision needs to be removed. Specifically, Section 429 which provides authority for the Secretary of the Interior and/or the Secretary of Commerce to withdraw two Endangered Species Act (ESA) rules (ESA Section 7 and Section 4(d)) within 60 days of enactment. ESA Section 7 clarifies that a federal agency may determine, on its own, that a construction project is likely to affect a species listed on ESA, without requiring U.S. Fish and Wildlife Service to make the determination and Section 4(d) provides protections for the polar bear.

Policy riders have a long history of being attached to spending bills, but this one is very different and the precedent it sets may undermine the entire rulemaking process. This rider would nullify the law that governs the Federal rulemaking process: the Administrative Procedure Act (APA) of 1946. The APA has governed since 1946 the way in which administrative agencies of the U.S. Federal government may propose and establish regulations along with a judicial review process. If this provision is not struck from the bill, Congress would undermine the APA, a cornerstone of open and transparent government.

Two methods currently exist by which Congress can nullify these rules. First, the Congressional Review Act (CRA) was specifically designed to allow Congress to rescind a regulation. Second, the secretaries of Interior and Commerce currently have the authority to force change on existing regulations through the normal regulatory process making Section 429 unnecessary.

In conclusion, Congress needs to address these two regulations through the CRA or normal rulemaking process. NSSGA urges you to press Senate leaders to strike Section 429 from the Omnibus Appropriations Act and address these regulations through regular order.

Sincerely,

Jennifer Joy Wilson
President & CEO