

United States Senate

WASHINGTON, DC 20510

February 18, 2014

The Honorable Sally Jewell
Secretary
U.S. Department of Interior
1849 C Street, N.W.
Washington, D.C. 20240

The Honorable Penny Pritzker
Secretary
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Secretary Jewell and Secretary Pritzker:

We are writing to express concerns regarding the Section 7 consultation process under the Endangered Species Act (ESA) between the U.S. Fish and Wildlife Service (FWS), the National Oceanic and Atmospheric Administration (NOAA), and the Environmental Protection Agency (EPA) regarding the proposed rule under 316(b) of the Clean Water Act ("the proposed rule"). Specifically, we are requesting that your agencies vacate the consultation process as it relates to the proposed rule as we believe that it is an inappropriate application of the ESA.

As indicated in a February 10, 2013 modified settlement agreement, the EPA has been working to finalize proposed requirements for cooling water intake structures (CWIS) at existing power plants. It has recently come to our attention that a Section 7 consultation process began shortly before the proposed rule was to be finalized this past June. It is unclear at whose direction or why the consultation was initiated during the final review of the proposed rule. Unfortunately, inquiries to your agencies regarding this process have not resulted in any substantial response.

The proposed rule is expected to create standards that would apply to existing power plants nationally. These power plants are located throughout several different regions and sub-regions of the United States, each with its own environment, site-specific conditions and requirements, and surrounding species and habitat. Therefore, we fail to understand how the outcome of a Section 7 consultation process would be adequately or appropriately applied on a national level through the proposed rule. While we recognize the goals of the ESA as they apply individually to CWIS at existing power plants, we fail to see the value in applying provisions of the ESA beyond a project- by-project basis, which we deem to be a more appropriate application of the Section 7 consultation process.

The utilities to which this proposed rule will apply provide clean and low-cost power to many of our constituents. Ultimately, this current roadblock, if not properly addressed, will only result in even higher energy costs for consumers across the country with no corresponding benefit. Therefore, we respectfully request that you immediately direct your agencies to vacate the consultation process that is being incorrectly applied to a national rulemaking process. At a time when resources are limited and regulatory uncertainty is high, we do not believe that this exercise is a prudent use of time or limited taxpayer resources.

We appreciate your attention to this matter, and as Members with a key role in the oversight of your agencies, we will continue to monitor this issue until it has been appropriately resolved.

Respectfully,









cc: Administrator Gina McCarthy, Environmental Protection Agency