

How litigation on the Endangered Species Act will affect agriculture

Farm Foundation
Tomorrow's Role of the Judicial Branch
Jan. 9, 2020

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Overview

- Pesticide registration decisions
- Endangered species listing decisions





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For Immediate Release, May 7, 2019

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Lawsuits Challenge Trump Administration's Ref

WASHINGTON— The Center for Biological Diversity filed four failure to release a trove of documents detailing how the admin especially as they relate to endangered species.

PRESS RELEASE

NRDC Lawsuit Against EPA Challenges Neonic Pesticide Registrations

Neonic Approvals Violate Endangered Species Act

May 7, 2019

GROUPS FIGHT TO PROTECT ENDANGERED SPECIES FROM DANGEROUS NEW PESTICIDE

Conservation groups sue Environmental Protection Agency for approval of pesticide without input from wildlife biologists



CONTACTS

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LAWSUIT LAUNCHED TO PROTECT ENDANGERED SPECIES FROM DANGEROUS NEW PESTICIDE

MARCH 24, 2014

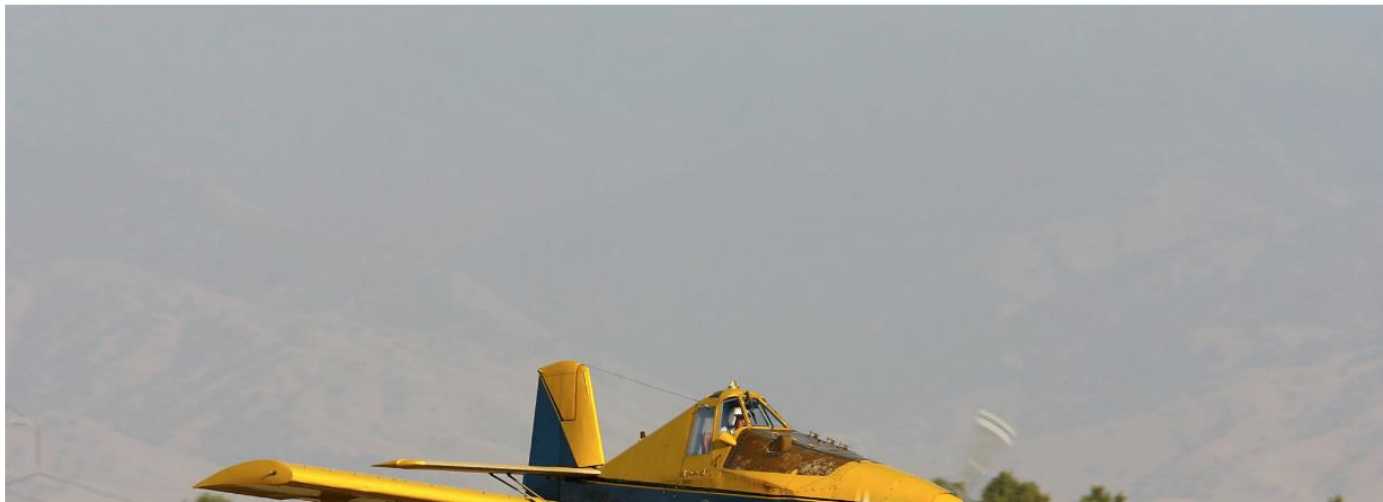
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Politics

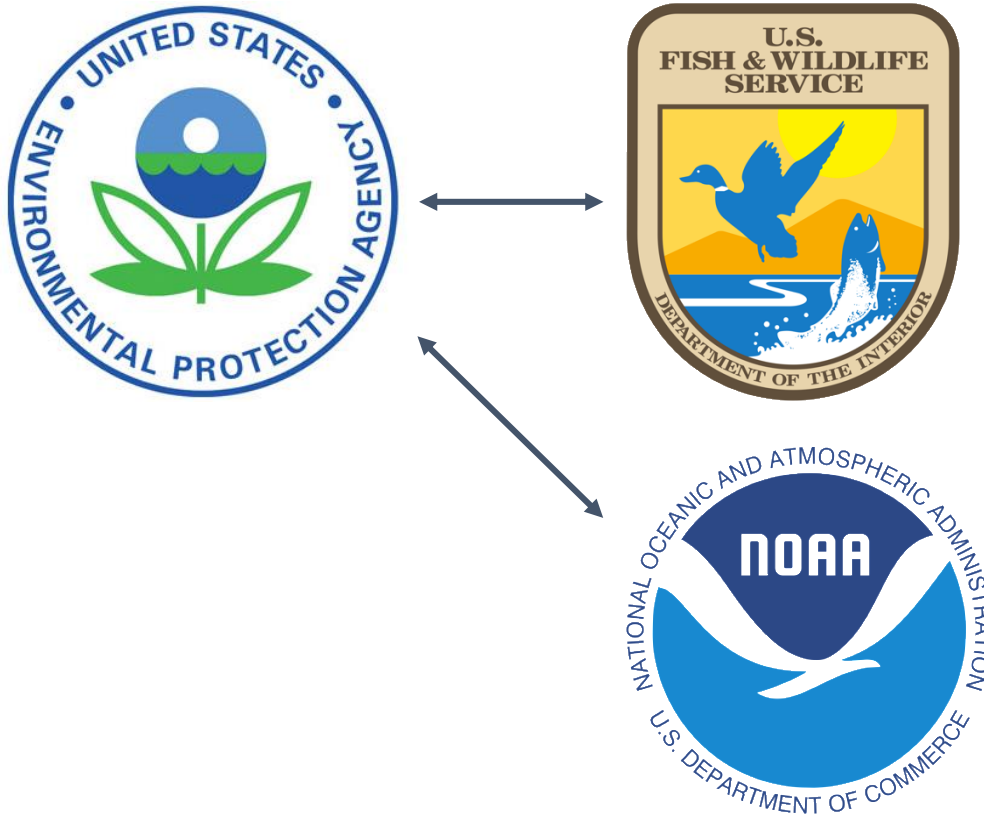
EPA Pesticide Approval Without Endangered Species Review in Farm Bill

Environmental groups describe provision as an ‘unprecedented attack’



Pesticide Registration Decisions

ESA must consult to avoid “jeopardy” and “adverse modification”



Restrictions for Specific Pesticides

NATIONAL MARINE FISHERIES SERVICE
ENDANGERED SPECIES ACT SECTION 7 CONSULTATION
CONFERENCE AND BIOLOGICAL OPINION:
ENVIRONMENTAL PROTECTION AGENCY'S REGISTRATION OF PESTICIDES
CONTAINING DIFLUBENZURON, FENBUTATIN OXIDE, AND PROPARGITE



“Do not authorize application of pesticide products when wind speeds are greater than or equal to 10 mph”

“Do not authorize application of pesticide products when soil moisture is at field capacity, or when a storm event likely to produce runoff from the treated area is forecasted within 48 hours....”

TAGS: [Policy & Regulation](#) | [Biologicals](#) | [Product](#)

ASK THE ANALYST



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PRINT



US politicians concerned over ESA process

02 Feb 2011 | **NEWS**

A number of US politicians have raised concerns over planned restrictions on pesticide use in four western states because of risks to endangered salmon. House Natural Resources Committee chairman Doc Hastings and 17 other Representatives have written to the White House Council on Environmental Quality with concerns over the “flawed” consultation process under the Endangered Species Act (ESA) between the EPA and the National Marine Fisheries Service (NMFS).

Refine pesticide labels

Create and use refined
species range maps

Improve pesticide
exposure models

Refine pesticide
labels

How to comply with ESA while minimizing impact on agriculture?

Species-specific avoidance
and minimization

Create efficient
monitoring system

Collect and use
pesticide usage data

EPA and registrants provide
species data and analyses

Offset impacts through
habitat restoration

What can federal government do?

- FWS, NMFS, and EPA develop ESA policies for unique challenges of pesticide consultations
 - Mitigation policy
 - Seek data and analyses from users and registrants
 - Need for much better interagency collaboration
 - More efficient consultation process
- Congress
 - Funding for more biologists at FWS/NMFS
 - Hold agencies accountable under 2018 Farm Bill provision



Upcoming ESA listing decisions

National Listing Workplan 5-Year Workplan (May 2019 Version)

Key to Action Types: 12M/PLPCH – 12-month finding on a petition to list a species. If listing is warranted, we generally intend to proceed with a concurrent proposed listing rule and proposed critical habitat designation, if critical habitat is prudent and determinable.

Discretionary Status Review/PLPCH – Status review undertaken by discretion of the Service. Results of the review may be to propose listing, make a species a candidate for listing, provide notice of a not warranted candidate assessment, or other action as appropriate.

PLPCH: For species that are already candidates for listing, a proposed listing determination would either propose the species for listing or provide notice of a not warranted finding. We generally intend to propose critical habitat designations concurrent with proposed listing rules, to the extent prudent and determinable.

Package Name	Species Name	Action Type	Lead FWS Legacy Region	Priority Bin Ranking (1-5) or LPN	Planned FY	Range	Species Scientific Name
Ozark Endemic Crayfishes	Big Creek crayfish	Discretionary Status Review/PLPCH	R3	3	FY19	MO	<i>Faxonius peruncus</i>
Ozark Endemic Crayfishes	coldwater crayfish	12M/PLPCH	R3	3	FY19	AR, MO	<i>Faxonius eupunctus</i>
Ozark Endemic Crayfishes	Eleven Point River crayfish	Discretionary Status Review/PLPCH	R3	3	FY19	AR, MO	<i>Faxonius wagneri</i>
Ozark Endemic Crayfishes	Spring River crayfish	Discretionary Status Review/PLPCH	R3	3	FY19	AR, MO	<i>Faxonius roberti</i>
Ozark Endemic Crayfishes	St. Francis River crayfish	Discretionary Status Review/PLPCH	R3	3	FY19	MO	<i>Faxonius quadruncus</i>
	Berry Cave salamander	PLPCH	R4	LPN 8	FY19	TN	<i>Gyrinophilus gulolineatus</i>
	Ocala vetch	12M/PLPCH	R4	2	FY19	FL	<i>Vicia ocalensis</i>

<https://www.fws.gov/endangered/what-we-do/listing-workplan.html>

Monarch Butterfly – Preemptive Conservation?



Nationwide Candidate Conservation
Agreement for Monarch Butterfly on
Energy and Transportation Lands

An integrated Candidate Conservation
Agreement with Assurances (CCAA) and
Candidate Conservation Agreement
(CCA)

Questions

- What does success look like in 5 years? 10 years?
- What types of conservation measures are feasible to implement?
- How can the agriculture community help federal agencies and Congress create a path forward on pesticide consultations?
- What future trends in agriculture should the federal agencies consider when they evaluate pesticide effects?
- How can the agriculture community supply better data on pesticide usage to avoid overly conservative assumptions?