

## **COURT CALLS FOR JUDICIAL REVIEW OF AGENCY'S BIOLOGICAL OPINION FOR SALMON**

A highly controversial National Marine Fisheries Service (NMFS) assessment concluding that farmers in California and the Pacific Northwest need to adopt stringent new restrictions in order to protect salmon from exposure to pesticides will now undergo judicial review, based on a recent ruling by the U.S. Court of Appeals for the Fourth Circuit.

Dow AgroSciences looks forward to having this case decided on the merits in District Court. Dow AgroSciences and other registrants will ask the Court to require NMFS to set aside its Biological Opinion for chlorpyrifos and two other insecticide products (the BiOp) and, in issuing a new one, to consider all the data and use "the best scientific and commercial data available," as required by the Endangered Species Act (16 U.S.C. § 1536(a)(2)).

EPA is already on record that it considers the basis for restrictions called for by the BiOp to be flawed. There is no consensus that salmon are at risk from authorized uses of chlorpyrifos, no evidence that these restrictions will actually benefit salmon as a species – and no doubt that, if implemented, they will disrupt agriculture, take prime cropland out of production and also impose needless harm on affected farmers.

Beyond this court case, and in concert with growers and other interested parties, Dow AgroSciences will continue to press for sound regulatory policies for the protection of endangered species, including assessments grounded in the best available science and actual product use conditions and use of the extensive monitoring data that has been developed to document water quality in affected areas over years of regulatory oversight.

### Background

EPA is currently attempting to impose new restrictions based on the NMFS BiOp, which EPA has severely criticized.

- EPA has said that it does not believe that available data support NMFS' position that salmon species are threatened by currently authorized uses of chlorpyrifos (and two other related insecticide products).
- EPA has criticized the NMFS assessment, on which these restrictions are based, as both lacking in transparency and flawed by worst-case assumptions, selective use of data and failure to consider the impact of existing safeguards offered by current product use restrictions.

*.. Read excerpts of the criticisms that EPA and other regulatory authorities have made of the NMFS assessment*  
<http://www.chlorpyrifos.com/pdf/Comments-BiOp.pdf>

Despite the criticisms leveled against the NMFS BiOp, EPA is planning to impose product use restrictions, ostensibly to protect salmon, miles from actual salmon habitat – on more than 112 million acres in the Western U.S., including some of America's most valuable and productive farm and forest land. And the Agency proposes to do this without an economic assessment of the impact on agriculture, despite a Congressional directive that the Agency avoid disrupting food and fiber production in implementing Endangered Species Act (ESA) provisions.

In deciding to implement NMFS' recommendations, EPA has also not given serious consideration to the input of agricultural stakeholders, state regulators or agricultural experts in Washington, Oregon, California and Idaho (where the restrictions would have taken effect), many of whom have strongly objected to both the proposed restrictions and the way in which EPA is planning to put them into effect.

### About Chlorpyrifos

Chlorpyrifos is important to U.S. agriculture because it controls a wide range of insects on fruits, nuts, vegetables and other important crops. Chlorpyrifos is an important part of grower Integrated Pest Management programs because it is less disruptive to beneficial insects than other products and more effective against crop pests than many alternative treatments. For some crops and crop pests, there are no alternative products that are effective and readily available to growers. *Read more about the benefits of chlorpyrifos in protecting crops <http://www.chlorpyrifos.com/product-benefits.htm>*

Chlorpyrifos is registered today in about 100 nations, including most developed nations, based on detailed review of extensive scientific studies by regulatory authorities charged with the protection of human health. Registered uses rest on more than four decades of experience with the product, health surveillance of manufacturing workers and applicators and an extensive database on studies on health and the environment. No pest control product has been more thoroughly studied.

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