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US Farmers May Face Crackdown on Pesticide Use

by Les Blumenthal

WASHINGTON - The nation's farmers could face severe restrictions on the use of pesticides as environmentalists, spurred by a favorable ruling from a judge in Washington state, want the courts to force federal regulators to protect endangered species from the ill effects of agricultural chemicals.

The eight-year-old ruling by a federal judge in Seattle required the National Marine Fisheries Service and the Environmental Protection Agency to review whether 54 pesticides, herbicides and fungicides were jeopardizing troubled West Coast salmon runs.

The agencies moved recently to restrict the use of three of the chemicals, including a widely used one with the trade name Sevin, near bodies of water that flow into salmon-bearing streams, and they're considering restrictions on 12 additional chemicals. The Washington State Department of Agriculture says such restrictions would prevent pesticide use on 75 percent of the state's farmland.

A federal judge in California has issued a similar ruling that involves 11 endangered and threatened species and 75 pesticides in the San Francisco Bay area.

Rather than continuing to file piecemeal lawsuits, the Center for Biological Diversity says it will file a broader suit this summer that involves nearly 400 pesticides and almost 900 species that are protected under the Endangered Species Act.

Washington state officials said the restrictions that could result from that lawsuit could affect agricultural production significantly in at least 48 states.

Dan Newhouse, the director of the Washington State Department of Agriculture, who farms hops, apples, cherries and other row crops on 600 irrigated acres in the Yakima Valley, said that if the courts ordered far-reaching restrictions, "farmers across the country will have significantly fewer tools at their disposal to manage plant pests and disease."

The U.N. Food and Agriculture Organization has estimated that 20 to 40 percent of global crop production is lost annually because of weeds, pests and disease.

Manufacturers of agriculture chemicals have threatened to sue the EPA, alleging that the agency's method of crafting restrictions is riddled with "major flaws" and the industry wasn't asked to participate.

Newhouse said there was so much uncertainty that it was impossible to tell how widespread or dramatic the effects of tighter restrictions might be. In Washington state, however, he said, "I am coming to

believe every farmer would be impacted one way or another."

The Endangered Species Act, which was signed into law in 1973, requires federal agencies that are contemplating any action that could "jeopardize" listed species to consult with the Fish and Wildlife Service or the National Marine Fisheries Service and come up with a plan to alleviate or lessen the effects. The National Marine Fisheries Service has jurisdiction over some fish species, such as salmon, and the Fish and Wildlife Service covers everything else.

The EPA has jurisdiction over pesticides, but environmentalists said it had largely ignored the endangered species requirements.

That began to change in 2002, when U.S. District Judge John Coughenour in Seattle ruled that the EPA had violated provisions of the Endangered Species Act by not consulting with the National Marine Fisheries Services about how the use of pesticides and other chemicals could affect the more than two dozen salmon runs that are protected under the act in Washington state, Oregon, California and Idaho.

"Such consultation is mandatory and not subject to unbridled agency discretion," Coughenour wrote.

After years of study, the fisheries service concluded in 2009 that three pesticides - carbaryl (Sevin), carbofuran (sold as Furadan, Curater and other brand names) and methomyl (sold under a variety of names) - were jeopardizing salmon runs and suggested that the EPA ban their use within 1,000 feet of salmon habitats and impose other restrictions that involved aerial spraying, wind speed and weather.

The EPA essentially agreed, but the manufacturers of the three chemicals say they won't adopt new labeling requirements for their products voluntarily, and they've threatened their own lawsuit.

The EPA has a 2012 deadline to finish studying the other chemicals and adopt restrictions on those that threaten salmon.

"For years and years and years, EPA didn't do these consultations on pesticides," said Steve Mashuda of the Seattle office of Earthjustice, the law firm that brought the 2002 suit on behalf of the Washington Toxics Coalition. "Those days are over."

Jeff Miller, a spokesman for the Center for Biological Diversity, said that until now, his group and others had approached the issue species by species and region by region.

"We are trying to get EPA to do it nationally," Miller said.

He said that even now, the EPA continued to drag its feet.

"I know Obama has a lot on his plate right now, but the EPA is still not aggressively taking on this issue," he said.

Newhouse of the Washington State Department of Agriculture said that state agriculture directors across the country were worried.

The consultation process between the EPA and the National Marine Fisheries Service and Fish and Wildlife Service needs to be overhauled, and that could entail changes in the Endangered Species Act and the Federal Insecticide, Fungicide and Rodenticide Act, Newhouse said.

In addition, he said, the EPA needs to examine recent studies such as one Washington state conducted that found only low levels of pesticides in five of the state's watersheds. The study said the pesticide levels weren't expected to affect salmon, though concentrations at some sites could harm aquatic species that salmon eat.

The companies that manufacture the three pesticides at the heart of the controversy argue that if the chemicals are used properly they won't jeopardize endangered or threatened species.

The industry also has argued that pesticides help maintain habitat for endangered species by controlling the spread of noxious and harmful weeds, pointing to endangered orchids that have thrived in various rights-of-ways that have been sprayed with herbicides.

EPA officials didn't respond to e-mail and telephone requests for comment, but they've notified the manufacturers that if they don't agree to the new labeling restrictions voluntarily, the agency will pursue "administrative procedures" against them.

On Capitol Hill, lawmakers are tracking the controversy, but no legislative fix has been introduced.

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