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Hastings, Lucas, Peterson Praise Federal Court Ruling on NOAA's Salmon Opinion

Federal Appellate Court Affirms Bipartisan Concern BiOp Based on Flawed Science

WASHINGTON, D.C. – In a major victory for American agriculture, the 4th Circuit Court of Appeals issued a landmark ruling Thursday in the case [Dow AgroSciences LLC v. National Marine Fisheries Service](#) reaffirming that government decision-making must be based on science and not the misguided agenda of activist groups. House Natural Resources Chairman Doc Hastings, House Agriculture Chairman Frank Lucas, and House Agriculture Ranking Member Collin Peterson praised the ruling, which focuses on a National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service Biological Opinion (BiOp) relating to Endangered Species Act (ESA)-listed salmon and use of agricultural crop protection products registered by the Environmental Protection Agency (EPA).

The appellate court found "arbitrary and capricious" data and conclusions in NOAA's 482-page BiOp, issued in 2008, that 27 species of salmon were jeopardized by three widely-used crop protection products and that 500 to 1,000 foot buffers were required to mitigate use of those products. The court's stunning 23-page opinion concluded, "*In sum, the Fisheries Service's November 2008 BiOp relied on a selection of data, tests, and standards that did not always appear to be logical, obvious, or even rational.*" The Court also noted that NOAA's BiOp lacked analyses of economic or technological feasibility of its proposed mitigation measures, as is required by ESA regulations.

"This Court ruling re-affirms what states, other federal agencies, and multiple House Committees have already found: that NOAA's salmon BiOps for crop protection products are based on flawed science, outdated data, and fail to consider the economic impact of buffers on as much as 60 percent of agriculture in Washington alone," said House Natural Resources Chairman Doc Hastings. "I am hopeful that this ruling, together with pending National Academy of Sciences' peer review of these flawed BiOps, will force NOAA back to the drawing board to use sound science, current data and economic analyses it has ignored for too long."

"Whether we are talking about NOAA's evaluation of pesticides in the Pacific Northwest, the Fish and Wildlife Service evaluation of the lesser prairie chicken in the southern Great Plains or countless other decisions, it amazes me how little regard there is within the Services for science and the economic consequences of their actions," said House Agriculture

Committee Chairman Frank Lucas. *"It is my hope that the order of the Fourth Circuit will finally encourage the Services to balance the goals of species protection with the requirement that their decisions be technically and economically feasible."*

"The court's decision reaffirms the need for science-based information within the regulatory process. This is a long-needed step in the right direction," **said House Agriculture Ranking Member Collin Peterson.**

The Court's opinion identifies several specific concerns about NOAA's BiOp, including:

- NOAA's Bi-Op includes questionable models that would impose "one-size-fits-all," 500 to 1,000 foot buffers;
- NOAA's Bi-Op fails to analyze or consider the economic or technological feasibility of any of its mitigation measures;
- NOAA's Bi-Op models are not based on "real-world conditions" of how these products could potentially have on salmon;
- NOAA's Bi-Op relies on 20-year old, outdated water monitoring data that does not accurately reflect current mitigation efforts, and ignores new data provided by states and other entities.

Background

In March 2011, the EPA, NOAA, U.S. Fish and Wildlife Services (FWS) and Department of Agriculture (USDA) contracted with the National Academies of Science (NAS) for a limited study of some minor scientific questions related to the Service's biological opinions. On May 3, 2011, the House Agriculture and Natural Resources Committees held a [joint hearing](#) where a bipartisan group of Members asked that this study be expanded to include a comprehensive peer review of the service's work, as well as an evaluation of the technical and economic feasibility of its opinions as is required under agency regulations.

In an apparent attempt to shield itself from scientific scrutiny, the NOAA has repeatedly refused to allow the NAS to conduct a comprehensive evaluation of its work which unfortunately calls into question the value and utility of its soon to be released report. A follow-up [letter](#) to the various agencies from Chairmen Lucas and Hastings, as well as Chairman Mike Simpson of the Appropriations Subcommittee on Interior, Environment and Related Agencies, outlined a number of questions that the NAS study must include for the work to be of value in this policy debate.

On July 12, 2012, the House Committee on Agriculture reported out legislation (H.R. 6083) which would prohibit the EPA from acting on the NOAA's biological opinions until such time as the NOAA contracts with the NAS for a comprehensive peer review and economic analysis of its work.

The House Natural Resources Committee has also probed the Administration's adherence to transparency and data quality relating to ESA decisions and has held three full committee hearings on litigation's impact on the ESA.

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