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EPA's Pesticide Streamlining Rejected

A judge says the Bush administration may not skip review of the chemicals' impact on endangered species.

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Ruling that the Bush administration "plainly violated" the Endangered Species Act, a federal judge overturned a regulation Thursday that streamlined approval of pesticides by eliminating reviews by wildlife officials responsible for protecting rare animals and plants.

The judge restored pre-2004 standards requiring the Environmental Protection Agency to consult federal wildlife biologists before licensing pesticides.

The ruling was a victory for nine environmental groups that sued the U.S. Interior Department two years ago.

"Pesticides are driving America's wildlife toward extinction, and this administration wants to remove the checks and balances that hold them accountable," said attorney Patti Goldman of the law firm Earthjustice. She represents the coalition.

Added John Kostyack, senior counsel for one of the plaintiffs, the National Wildlife Federation: "The judge's decision means that these species may still have a fighting chance against pesticides."

The Bush administration's 2004 rule had allowed the EPA to bypass the U.S. Fish and Wildlife Service in order to shorten the years-long process of reviewing whether each pesticide posed danger to any of the nation's 1,200-plus endangered species.

The Center for Biological Diversity, another plaintiff, concluded in a 2004 report based on federal data that about 400 animals and plants at risk of extinction — including species of owls, salmon, frogs and sea turtles — were jeopardized by pesticides that are applied to or drift into their habitat or that flow into waterways from farms or yards.

Amphibians, including California's tiger salamander, red-legged frog and mountain yellow-legged frog, are among the most vulnerable to pesticides. Also, some of California's rarest fish — salmon, steelhead and delta smelt — are exposed to the chemicals from agricultural and urban runoff.

U.S. District Judge John C. Coughenour in Seattle ruled that the process approved in 2004 was "less protective" of wildlife than the old process and that there was a "total absence of any technical and scientific evidence to support or justify" it.

"There is overwhelming evidence on the record" that if the Fish and Wildlife Service were not consulted, "EPA risk assessments (leading to pesticide registrations) would actually result in harm to listed species," the judge wrote.

Coughenour acknowledged the EPA faced "a task of gargantuan proportions" in consulting Fish and Wildlife scientists on pesticides. But he said the Bush administration was "arbitrary and capricious" in letting the EPA bypass their review, because the Endangered Species Act requires such consultations for any action that could jeopardize a species' survival.

Interior Department officials said they received the ruling relatively late Thursday and were not prepared to offer a detailed response.

"Obviously these regulations arose out of our efforts to both protect wildlife and ensure pesticide applications are reviewed in a timely manner," said Fish and Wildlife Service spokesman Chris Tollefson. "Our foremost concern here is protecting threatened and endangered species, and we'll continue to do that. We'll just have to evaluate this ruling to see where we go from here."

Pesticide manufacturers had long urged the 2004 change, calling it a "sensible approach" to allow the EPA to judge the risks to wildlife from their products.

One of the most controversial pesticides is atrazine, an herbicide used on corn crops. The EPA approved its continued use in 2003 despite a finding by UC Berkeley biologist Tyrone B. Hayes that it feminizes frogs at low concentrations.

"Up to now, EPA's track record in addressing the effects of pesticides on endangered species has been abysmal," said Jamie Rappaport Clark, former director of the Fish and Wildlife Service and now executive vice president of Defenders of Wildlife, a plaintiff in the case. "Instead of solving the problem, they simply weakened the rules.... The court has put a stop to that."