



**Executive Director's Report**  
Board of Director's Meeting  
October 2, 2019

---

Presented at this meeting are backgrounders on:

- Roundup® herbicide, and
- an agenda for a meeting between SAFCA and the Conservancy, and
- an update of federal regulations and the Clean Water Act, and
- a discussion starter on a mitigation land use conversion (see single page survey sheet), and
- more media on the nutria rodent and its threat to watered lands in the Central Valley.

In each case, the information is shared merely for information purposes. No decisions are sought or requested.

# THE WALL STREET JOURNAL.

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <https://www.djreprints.com>.

<https://www.wsj.com/articles/bayers-roundup-woes-deepen-as-germany-bans-key-chemical-11567610126>

## BUSINESS

# Bayer's Roundup Woes Deepen as Germany Bans Key Chemical

Germany has approved a plan to gradually restrict the use of glyphosate and ban it outright from the end of 2023



After Bayer acquired Roundup inventor Monsanto, it was hit by lawsuits from 18,400 farmers, hobby gardeners and others.

PHOTO: REGIS DUVIGNAU/REUTERS

By Ruth Bender

Sept. 4, 2019 11:15 am ET

BERLIN—Bayer AG's efforts to fend off thousands of lawsuits against its Roundup herbicide were dealt a symbolic blow Wednesday when Germany, the company's home country, said it would ban the product's key ingredient.

The move is unlikely to directly impact the chemicals and pharmaceuticals group's bottom line, because Germany is a negligibly small market for Roundup. While the decision was motivated by environmental considerations rather than glyphosate's alleged potential to cause cancer, which is at the center of the lawsuits, the optics of Roundup being banned in Bayer's backyard are jarring amid the company's insistence that it is safe to use.

After Bayer acquired Roundup inventor Monsanto Co. in 2018, the German company was hit by lawsuits from 18,400 farmers, hobby gardeners and others who said Roundup made them ill. The company is appealing the verdicts and has pointed to the scores of markets where glyphosate is licensed as evidence of its safety.

Nonetheless, Germany, where Bayer was founded and is headquartered, has approved a plan to gradually restrict the use of glyphosate, the main ingredient in Roundup, and ban it outright from the end of 2023, shortly after a Europe-wide license for the chemical expires.

The head of Bayer's crop science business, which now includes Monsanto, said the company disagreed with the move to a unilateral ban.

"The ruling ignores decades of scientific judgment from independent regulatory agencies around the world that glyphosate is safe when used properly," Liam Condon said.

Newsletter Sign-up

## What's News

What's News is a digest of the day's most important business and markets news to watch, delivered to your inbox.



The ban would have very little impact on Bayer's sales, analysts say. Bayer says Europe accounts for less than 10% of its total glyphosate sales, which the company doesn't break out. The bulk of glyphosate sales are generated in the U.S. and South America.

Bayer said pro forma crop science sales reached €19.3 billion (\$21.2 billion) in 2018, assuming Monsanto had been part of the business for the entire year and not just since June 7, 2018, when the acquisition closed.

The planned ban highlights the growing resistance to glyphosate in Europe, which could lead to European Union countries blocking another bloc-wide license in late 2022 when they are due to vote on a renewal.

In July, Austria became the first European country to impose a ban on glyphosate. In France, a court banned a Roundup brand earlier this year, while some mayors this summer moved to ban glyphosate in their municipalities.

The topic has split the EU for years. In 2017, a new five year-license was almost voted down until a last-minute nod from Germany tipped the balance. The surprise decision, made by the agriculture minister against the advice of the rest of the government, sparked an uproar in the country.

Other countries outside of Europe have adopted total and partial glyphosate bans in the past, such as Colombia and El Salvador. Sri Lanka in 2015 was the first country to issue a national ban, but later revoked it.

Before glyphosate is banned outright, Germany will push to gradually reduce its use, first banning it in gardens and parks and imposing stricter rules for its use in agriculture.

Write to Ruth Bender at [Ruth.Bender@wsj.com](mailto:Ruth.Bender@wsj.com)

Copyright © 2019 Dow Jones & Company, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <https://www.djreprints.com>.

# THE WALL STREET JOURNAL.

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <https://www.djreprints.com>.

<https://www.wsj.com/articles/a-scientific-roundup-11567551770>

OPINION | REVIEW & OUTLOOK

## A Scientific Roundup

The EPA intervenes against California's rogue cancer regulation.

By The Editorial Board  
Sept. 3, 2019 7:02 pm ET



A customer shopping for Roundup products at a store in San Rafael, California, July 9, 2018. PHOTO: JOSH EDELSON/AGENCE FRANCE-PRESSE/GETTY IMAGES

Perhaps you've read that science should rule when determining environmental standards. So why aren't progressives cheering an Environmental Protection Agency order declaring that the chemical glyphosate doesn't cause cancer?

In an extraordinary intervention, the EPA recently said it will no longer approve product labels that claim glyphosate is carcinogenic to humans. Glyphosate is the active ingredient in Roundup, the popular weed killer. The herbicide has been on the U.S. market since 1974, and the scientific consensus is that it isn't carcinogenic in humans.



### The Costs of China's Crackdown on Hong Kong



0:00 / 20:06

SUBSCRIBE

The letter is a rebuke to California, which in 2015 said it would add glyphosate to its official list of carcinogens under the state's 1986 Safe Drinking Water and Toxic Enforcement Act, known as Proposition 65. California cited the World Health Organization's International Agency for Research on

Cancer's finding that glyphosate "probably" causes cancer.

This is the U.N. outfit that has warned against cancer from pickled vegetables, caffeine and working the night shift. California's move has inspired a flood of lawsuits against Roundup-maker Monsanto, including a \$2 billion jury judgment (reduced to \$86 million by a judge) in May for a California couple claiming glyphosate caused their cancer.

EPA's letter is an attempt to restore science to the glyphosate debate and counter California's rogue regulation. The letter cites EPA's extensive review of the scientific literature on

glyphosate, as well as the concurring judgments of regulators in Canada, Australia, the European Union, Germany, New Zealand and Japan.

The agency also cites its labeling authority under the Federal Insecticide, Fungicide, and Rodenticide Act, which should pre-empt state law. The EPA letter says it “considers the Proposition 65 warning language based on the chemical glyphosate to constitute a false and misleading statement.”

The EPA letter should also be evidence in current litigation brought by farm groups against California. In 2018 a federal judge issued a preliminary injunction against California, finding the farm plaintiffs would likely prevail in their claims that the state’s cancer-label requirement violates their First Amendment rights.

California’s Office of Environmental Health Hazard Assessment responded to the EPA letter by calling it “disrespectful of the scientific process,” but the opposite is true. California is the regulatory outlier attempting to impose its standards despite the precedent that federal law sets national standards on health and safety when Congress’s language is clear.

The EPA might also make a difference in thousands of lawsuits against glyphosate manufacturers. Many of the suits claim Monsanto and others failed to warn consumers about cancer risks, and defendants can now point out that they are barred by federal regulators from issuing such warnings.

California state judges overseeing current glyphosate lawsuits have largely excluded EPA’s conclusions as evidence in court. But anyone who cares about science and the law should welcome the EPA’s intervention.

Copyright © 2019 Dow Jones & Company, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <https://www.djreprints.com>.

The Natomas Basin Conservancy  
Sacramento Area Flood Control Agency

August 30, 2019

1. Master Agreement
  - a. Signed - March 4, 2009; Amendment 1 - March 12, 2012
  - b. Annual Estimate Procedure
    - estimated/actual TNBC labor
    - managed acreage percentage of overhead
  - c. 2018 Summary of Expenses
  - d. 2019 Anticipated Expenses
  - e. EPS Update on SAFCA HCF Cost Model
    - fixed asset inventory and replacement costs
  - f. CVRWQCB - Irrigated Lands Regulatory Program (PNSSNS Subwatershed Group)
  - g. Natomas Farms East Outlet Reconfiguration Project - reseeding
  - h. Irrigation Well Testing
2. Implementation Agreement 1 - Brookfield
  - a. Signed - June 3, 2009; Amend 1 - September 16, 2010 ; Amend 2 - May 19, 2011;  
Amend 3 - March 15, 2012; Amend 4 - March 6, 2013; Amend 5 - August 21, 2014
  - b. Historic Income and Expense Summary
  - d. 2018 Summary of Expenses
  - e. 2019 Anticipated Expenses
  - f. Tenant Lease
  - g. Endowment Funds Investment Policy
  - h. Conservation Easement – pending
  - i. SSIP/SSMP – pending
  - j. USACE Reach D borrow excavation - need to re-level?
3. Implementation Agreement 2 - Novak
  - a. Signed - April 3, 2013
  - b. 2018 Summary of Expenses
  - d. 2019 Anticipated Expenses
  - e. Conservation Easement – pending
  - f. Water Service - annexation to NCMWC service area complete
  - g. SSIP/SSMP – pending
  - h. Tenant Lease (send all new tenant leases to Jennifer H. once completed needed for County's Possessory Interest Renewals)
4. Implementation Agreement 3 - Pappa-Rosa
  - a. Signed - April 3, 2013; Amend 1 - ??, 2019 (to reflect sale of Area X to RD 1000)
  - b. 2018 Summary of Expenses
  - d. 2019 Anticipated Expenses
  - e. Conservation Easement – pending
  - f. SSIP/SSMP – pending
  - g. Sale of Area X to RD 1000 complete, adjustment of size of Area A and Area R
  - h. Tenant Lease

5. Implementation Agreement 4 - Sharma & AKT Agricultural Fields
  - a. Signed - November 1, 2013
  - b. 2018 Summary of Expenses
  - c. 2019 Anticipated Expenses
  - d. Conservation Easement – pending
  - e. SSIP/SSMP – pending
  - f. Tenant Lease
  - g. Native grass planting
  
6. Implementation Agreement 5 - South Sutter
  - a. Signed - September 22, 2014
  - b. 2018 Summary of Expenses
  - c. 2019 Anticipated Expenses
  - d. Conservation Easement – pending
  - e. SSIP/SSMP – pending
  - f. Slope Repairs
  - g. Tenant Lease
  
7. Implementation Agreement 6 - Willey
  - a. Signed - August 21, 2014
  - b. Interim until USACE constructs West Drain realignment
  - c. 2018 Summary of Expenses
  - d. 2019 Anticipated Expenses
  - e. Tenant Lease
  
8. Implementation Agreement 7 - Hewitt
  - a. Signed - November 10, 2014
  - b. Interim until transfer to Sacramento County Airports
  - c. 2018 Summary of Expenses
  - d. 2019 Anticipated Expenses
  - e. Water Source (none)
  - f. Tenant Lease
  
9. Implementation Agreement 8 - Sharma, AKT & Natomas Farms West Marshes
  - a. Signed – June 21, 2017
  - b. Interim operation by HRS under contract to SAFCA
  - c. 2018 Summary of Expenses
  - d. 2019 Anticipated Expenses
  - e. Conservation Easement – pending
  - f. SSIP/SSMP – pending
  - g. Payment of monthly SMUD and quarterly NCMWC invoices under Impl Agree 8
  - h. Marsh Monitoring by ICF competitive bid?
  - i. Land Management Contract with HRS
  
10. Implementation Agreement 9 - Lower GGS Canal Monitoring
  - a. Signed – June 15, 2017
  - b. SAFCA requested TNBC to amend their contract with ICF and GGS sample to include canal monitoring during 2017 scope for 3<sup>rd</sup> party observer per agreement w/ RD1000
  - c. 2018 Summary of Expenses
  - d. 2019 Anticipated Expenses
  - e. Drainage Easement to RD 1000 for Lower GGS Canal
  - f. SSIP/SSMP SAFCA to monitor RD1000 – pending

11. Implementation Agreement 10 - Woodlands
  - a. Not anticipated before 2021
  
12. TNBC-SAFCA Agreements Flow Chart
  - a. List of Responsibilities
  
13. Natomas Farms West
  - a. Fence Agreement Status  
SAFCA Exec Director has authority to execute
  - b. Access road maintenance Complete? Billed to IA8?
  
14. TNBC Cummings Tract - SAFCA AKT Tract
  - a. Fish Well 2 Joint Use and Easement Agreement
  
15. TNBC Huffman West Tract
  - a. Lauppe - TNBC Joint Use and Easement Agreement  
TNBC to check with Lauppe if wells were producing enough
  
16. NCC Right of Way
  - a. NCMWC and PG&E easements and quitclaims on Lucich North and Frazer North  
Approved by TNBC Board April 5, 2017. NCMWC easement recorded. PG&E easement executed
  
17. NBP SREL Right of Way updates
  - a. SAFCA exchange of 10.42 +/- acres from TNBC's Cummings Tract for NBP levee, woodland and canal
  - b. SAFCA exchange of 19.86 +/- acres from TNBC's Allegheny Tract for NBP levee, woodland and canal
  - c. SAFCA exchange of 17.66 +/- acres from TNBC's Atkinson Tract for NBP woodland
  - d. TNBC exchange of 46.75 +/- acres from SAFCA's Matsumoto property for HCP replacement use
  
18. Sankey Gap Floodplain Storage
  - a. TNBC consulting re suitability of detention area for HCP habitat
  
19. Miscellaneous
  - a. Piezometers on TNBC properties
  - b. water control structures (define who owns), etc.  
Inventory of all fixed structures (water controls/piezometers) after TNBC/SAFCA trade/buy figure out who owns what and write an agreement.
  - c. Incidental Take Permit  
check if SAFCA had coverage from Fish and Wildlife
  - d. Adequacy of the Atkinson Well

# Federal Agencies Revise Endangered Species Regulations to Reduce Burdens on Regulated Community

August 27, 2019 [Newsletters](#)



## Federal Agencies Revise Endangered Species Regulations to Reduce Burdens on Regulated Community

The U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) have revised their regulations implementing the Endangered Species Act (ESA). The new rules hardly “gut” the ESA, as some hyperbolic headlines have suggested. Rather, they address longstanding concerns that the previous regulations imposed unnecessary burdens on landowners and other stakeholders without providing proportionate benefits to wildlife. The revisions accordingly tweak technical aspects of the Services’ regulatory processes with the goal of reducing regulatory burdens without appreciably reducing protection of listed species. The Services change four aspects of their regulations: (1) the way they list and delist threatened and endangered species, (2) the way they designate critical habitat of listed species, (3) the way federal agencies consult with the Services about the effects of their actions on listed species, and (4) the way threatened species are protected.

### Background

The ESA aims to protect and recover fish, wildlife, and plant species at risk of extinction. It calls on NMFS (for marine species) and FWS (for all other species) to list species found to be “threatened” or “endangered.” A species may be listed as “endangered” if it “is in danger of extinction throughout all or a significant portion of its range” or “threatened” if it “is likely to become an endangered species within the foreseeable future.” The Act also directs the Services to designate “critical habitat” for each such species, including “the specific areas within the geographical area occupied by the species, at the time it is listed . . . on which are found those physical and biological features . . . essential to the conservation of the species and . . . specific areas outside the geographical area occupied by the species at the time it is listed . . . upon a determination by the [Service] that such areas are essential for the conservation of the species.”

The ESA generally protects listed species and their habitat in two ways. First, it prohibits any person from “taking” endangered wildlife species without a permit and authorizes the Services to develop regulations for the protection of threatened species. (Listed plants are protected somewhat differently.) “Take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect” or attempt any such conduct. Second, the ESA calls on federal agencies to ensure that actions they authorize, fund, or carry out are not likely to “jeopardize” the continued existence of any listed species or result in the “destruction or adverse modification” of the designated “critical habitat” of any such species. Toward this end, whenever a federal agency finds that its action, e.g., issuance of a permit for a project, “may affect” listed species or critical habitat, it must “consult” with the pertinent Service about that action. The consultation generally leads to the Service issuing a “biological opinion” whether the action would jeopardize a species or destroy or adversely modify its critical habitat. The Service also assesses whether the action would result in taking members of the species, and, if so, it includes an “incidental take statement” prescribing measures to minimize the effect of the take. If the federal agency and its permittees act in compliance with those measures, then any take resulting from those activities is not prohibited.

The Services previewed their regulatory revisions with a [press release](#) on August 12, 2019, and published the revised regulations in three parts ([listing species and designating critical habitat](#), [consultation](#), and [threatened species](#)) in the Federal Register today, August 27, 2019. The rules become effective on September 26, 2019, and establish only prospective standards, meaning they do not affect any earlier actions of the agencies and apply only to their decisions after that date.

### Listing and Delisting Species

*Economic Impacts.* The ESA requires the Services to decide whether to list a species “solely on the basis of the best scientific and commercial data available.” The Services’ prior regulation added that they will make listing decisions “without reference to possible economic or other impacts of such determination.”

The Services have deleted that phrase from their regulation, explaining that the ESA makes clear that “listing determinations must be made solely on the best scientific and commercial data available,” but it “does not prohibit the Services from compiling economic information or presenting that information to the public, as long as such information does not influence the listing determination.” Noting that the phrase “could be construed to not allow the Services to inform the public of the economic implications of the Services’ listing decisions,” the Service said that by removing it, they “are responding to strong and growing interest by some members of Congress and the public for increased

transparency regarding the economic impacts of regulations.”

Contrary to assertions in some media, the revised regulation does not allow the Services to consider economic impacts in deciding whether list a species. The Services indeed have emphasized as much in their explanation of the new rule. That said, publication of the economic impacts of listings may well have political significance, and that apparently is what some hope and others fear.

*Foreseeable Future.* The ESA provides that a species may be listed as “threatened” if it “is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” Neither the Act nor the earlier regulations described the meaning of “foreseeable future.”

The Services have now specified by regulation that “[t]he term foreseeable future extends only so far into the future as the Services can reasonably determine that both the future threats and the species’ responses to those threats are likely.” Noting that “listing decisions can be based on speculation” of what the future may bring, the Services provide in their regulation that they “will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species’ life-history characteristics, their projection timeframes, and environmental variability.” The rule adds that, in doing so, the Services “need not identify the foreseeable future terms of a specific period of time.”

Critics have voiced concern that the Services, in considering whether to list species as threatened, may find they are unable to “reasonably determine” that certain future effects of climate change are “likely,” and thus refrain from factoring climate change into their decision-making. As already considerable evidence and understanding of climate change and its regional and local effects improve, though, one may just as reasonably surmise that the Services will find they can consider such effects under this rule at least in some circumstances. Only time will tell how the Services actually address climate change in their future listing decisions under this rule.

*Delisting Species.* The Services have revised the regulation regarding delisting species to clarify that “[t]he standard for a decision to delist a species is the same as the standard for a decision not to list it in the first instance.” In other words, if a listed species no longer meets the statutory criteria for listing as endangered or threatened, e.g., the threat of disease or predation has abated or the species’ habitat is no longer curtailed or threatened with destruction, it should be delisted. The Services also specify that a species should be delisted if it is found to be extinct or not to meet the statutory definition of a species.

The Services rejected suggestions to establish a higher standard for delisting species, maintaining that the ESA and courts interpreting it, have confirmed that decisions to delist species should be made in accordance with the same factors the ESA prescribes for listing.

### Designating Critical Habitat

*Determinations that Designation of Critical Habitat Is Not Prudent.* The ESA calls on the Services, “to the maximum extent prudent,” to designate the “critical habitat” of a listed species. The current regulation identifies two situations in which designation of critical habitat would not be prudent: (1) if a species is threatened by taking or other human activity and identification of critical habitat is expected to increase that threat; (2) if the designation would not be beneficial to the species.

The Services have now set forth a non-exhaustive list of circumstances that may warrant finding that designation of critical habitat is not prudent because it would not benefit the species. They have retained the first situation identified in the current regulation and replaced the second, which the Services say is unnecessary and courts have construed in unintended ways, with four new categories: (1) present or threatened modification or curtailment of habitat is not a threat to the species, or threats to habitat stem solely from causes that cannot be addressed through management actions developed from consultations under the ESA, e.g., melting glaciers, sea level rise, or reduced snowpack, (2) areas within U.S. jurisdiction provide no more than negligible conservation value for a species occurring primarily outside U.S. jurisdiction, (3) no areas meet the definition of critical habitat, or (4) a catch-all category where the Services otherwise determine that designation of critical habitat would not be prudent based on the best scientific data available.

*Designating Unoccupied Areas.* In 2016, the Services amended their regulations to eliminate a provision stating that they “shall designate as critical habitat outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.” The Services said then that the “rigid step-wise approach” prescribed in that provision may not be the best conservation strategy for a species and in some circumstances may result in a designation that is geographically larger, less efficient as a conservation tool.

The Services now say that owing to perceptions that, by eliminating that earlier provision, they intended to designate as critical habitat expansive areas of unoccupied habitat, they are returning to the two-step approach by restoring the requirement that the Services first evaluate areas occupied by the species. They also provide by regulation that they will consider unoccupied areas to be essential only where a critical

habitat designation limited to geographical areas occupied by a species would be inadequate to ensure the conservation of the species.

Under the new rule, for an unoccupied area to be considered essential, the Services must determine that there is a “reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.” Acknowledging that the ESA’s definition of “critical habitat” refers to “physical or biological features” only in the provision regarding occupied habitat, the Services observed, based on the ESA, its legislative history, and the reading of courts, that Congress intended the test for designating unoccupied critical habitat to be more demanding than that for occupied habitat. Accordingly, the Services say, their regulation’s reference to “physical or biological features essential to the conservation of the species” serves to further congressional intent. That reference also addresses, the Services add, the Supreme Court’s recent ruling in *Weyerhaeuser Co. v. U.S. Fish and Wildlife Service*, 139 S.Ct. 361 (2018), that an area must at a minimum be “habitat” before it can be considered as potential “critical habitat.” In that case, the U.S. Fish and Wildlife Service had designated critical habitat for the dusky gopher frog that included areas that were not only unoccupied, but absent substantial changes could not be occupied, by the frog. The Court rejected the designation, reasoning that critical habitat is necessarily a subset of the larger category of habitat.

### Agency Consultation with Services

Of the many proposed revisions of the regulations governing federal agencies’ consultation with the Services regarding the effects of their actions on listed species and critical habitat, three are most notable.

*Effects of the Action.* The Services simplified the regulatory definition of “effects of the action” by dispensing with categorizing effects as direct or indirect and separately accounting for effects of interrelated and interdependent actions, and instead collapsing all of these aspects into a new definition that encompasses “all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action.” The aim of this approach is to avoid quibbles about categorizing effects. The definition also specifies that “a consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur.”

*Environmental Baseline.* The effects of a proposed action are measured from the “environmental baseline.” Determining that baseline is sometimes complicated by how to account for ongoing or changing actions over time and other actions that may be the subject of past or future consultations. The Services have defined “environmental baseline” to mean “the condition of the listed species or its designated critical habitat, without the consequences to the listed species or designated critical habitat caused by the proposed action.” They add that this baseline “includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process.”

*Destruction or Adverse Modification.* Since the ESA obligates federal agencies to ensure that their actions are not likely to result in the “destruction or adverse modification” of critical habitat, the meaning of that phrase is critical, and it has been the subject of much litigation. In 2016, the Services revised their regulatory definition to state: “Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.”

The Services have now revised their definition in two ways. First, they have added “as a whole” to the first sentence to clarify that the appropriate scale for determining destruction or adverse modification is the effect on the entire critical habitat designation and not some smaller scale, e.g., the action area or a portion of the designated critical habitat. Just as a determination of “jeopardy” of a species is made at the scale of the entire listed species, the Services explain, so too a determination of destruction or adverse modification should be made at the scale of the entire critical habitat designation. Second, the Services removed the second sentence because it is unnecessary and has caused confusion and controversy. The revised regulation largely solidifies the Services’ longstanding practices.

The Services also confirmed their earlier commentary on the proposed revisions regarding what it means to “appreciably diminish” the value of critical habitat, explaining that this determination depends on the proposed action’s effect on the value of the entire critical habitat. Moreover, the analysis must always consider, they said when proposing the revisions, whether the effects of the proposed action are “appreciable” even where a species already faces severe threats apart from the federal agency action prompting the consultation. “It is sometimes mistakenly asserted,” they added, “that a species may already be . . . ‘in jeopardy’ . . . by baseline conditions, such that any additional adverse impacts may be found to meet the regulatory standards for [jeopardy] or ‘destruction or adverse modification.’” Pointing to several court decisions that demonstrated just that, they declared “[t]hat approach is inconsistent with the statute and our regulations.”

In order to alleviate confusion, the Services offered further explanation in their preamble to the final rule: The consultation process entails several stages of evaluation of effects on critical habitat. First, the federal agency must determine whether its proposed action, e.g., approve a project, “may affect” critical habitat, thus triggering the obligation to consult with the pertinent Service. Second, the Service must determine whether the action “has an adverse effect on the critical habitat within the action area.” After effects are determined at the action-area scale they are next analyzed with regard to the critical habitat as a whole. In doing so, the Services look at the adverse effects, evaluate their impact and assess “whether the effects diminish the role of the entire critical habitat designation.” “Even if it is determined that the effects appear to diminish the value of the critical habitat,” the Services note, “a determination of ‘destruction or adverse modification’ requires more than adverse effects that can be measured and described.” The Services must evaluate whether the adverse effects “will diminish the conservation value of the critical habitat in such a considerable way that the overall value of the entire critical habitat designation to the conservation value of the species is appreciably diminished.” “It is only when adverse effects from a proposed action rise to this considerable level that the ultimate conclusion of ‘destruction or adverse modification’ of critical habitat can be reached.”

### Protection of Threatened Species

In the ESA, Congress prohibited the taking of endangered species and authorized the Services to adopt regulations specifying protections for threatened species. For each species NMFS has listed as threatened, it has routinely adopted regulations prescribing prohibitions, protections or restrictions tailored to that species. The FWS on the other hand adopted a blanket regulation that largely extended the protections afforded endangered species to all threatened species, thus generally erasing the distinction between the two categories.

FWS has now adopted a revised rule that preserves application of its earlier blanket regulation to species listed as threatened before the effective date of this new rule. For species listed as threatened in the future, the FWS may adopt species-specific rules as provided in the ESA and any such species-specific rule will set forth all prohibitions and exceptions applicable to that threatened species.

Critics object that no longer providing blanket protection for species listed as threatened puts those species at greater risk. The new rule though merely restores the approach Congress prescribed in the ESA distinguishing between threatened and endangered species, calls on FWS to adopt species-specific rules as NMFS has done without controversy for decades, and leaves FWS free to adopt a species-specific rule for a particular threatened species that effectively affords that species the same protections provided for endangered species.

### Conclusion

The Services’ regulatory revisions, while technical and detailed, substantially change some important standards and procedures by which the Services currently implement the ESA. The Services emphasize that the changes are prospective and do not require reevaluating any previous decisions based on the prior regulations. They maintain as well that the changes are designed to simplify and otherwise improve regulatory procedures and decision-making in order to reduce unnecessary regulatory burdens without compromising the ESA’s promise of protecting listed species and their habitat. Widespread concerns about these changes reflect the ESA’s importance and popularity in our society. They reflect, in some instances, misunderstanding and misinformation about the new rules. The ultimate effects of these rules will largely depend on how the Services interpret and implement them case-by-case in their future decisions.

David Ivester  
Briscoe Ivester & Bazel LLP  
155 Sansome Street, 7th Floor  
San Francisco, CA 94104  
Telephone: (415) 402-2700  
Fax: (415) 398-5630





BY TONY BIZJAK  
tbizjak@sacbee.com

Are Sacramento's streets the most dangerous of any big city in California? The answer may well be yes.

A review of eight recent years of automobile crashes involving injuries and fatalities shows Sacramento typically ranks poorly among large cities in several categories, notably crashes involving alcohol, where the capital city's crash rate was highest in four of the eight years.

Sacramento also ranked first in five out of eight years on a composite index of crashes that included a mix of alcohol, speed, night-driving and hit-and-runs, according to the data from the California Office of Traffic Safety.

Children are among the victims in a disproportionate number of crashes. In 2016, the most recent state data year, 40 children under age 15 were injured or killed while walking next to

or crossing capital city streets. That was the highest rate among the state's large cities. That same year, 29 children on bicycles were injured or killed, second worst among big cities.

The data is no surprise to Laura van der Meer of South Natomas. West El Camino Avenue in her neighborhood has become congested and dangerous, she said, since officials closed a portion of the nearby Garden Highway for levee work. The result has been that drivers in a hurry over-react during rush-hour, some of them pulling into bike lanes to get around stalled traffic and even riding onto sidewalks.

"I was inches away from getting hit yesterday (again) walking home from my RideSacRT," she tweeted to The Sacramento Bee and city leaders last week. "People are passing on the right shoulder unsafely and often on the sidewalk. Someone is going to get killed!"

SEE DRIVERS, 2A



## The 5 most dangerous corridors

City traffic safety officials have identified five major street sections as the most dangerous in the city, and have launched community discussion in each of those areas to determine what safety measures are appropriate for each corridor.

Source: City of Sacramento

NATHANIEL LEVINE  
nlevine@sacbee.com

# California working to eradicate giant rodents from Central Valley waterways



THADDEUS MILLER ttmiller@mercedsunstar.com

California Rep. Josh Harder, D-Turlock, toured the North Grasslands Wildlife Area with Nutria Eradication Program Manager Valerie Cook on Aug. 2 to get a look at the region of the state hit the hardest by the invasive nutria, a huge South American rodent.

BY KATE IRBY  
kirby@mcclatchy.com

### WASHINGTON

A rookie California lawmaker plans to haul a 20-pound rodent carcass into Congress on Tuesday to press his colleagues for money to fight an invasive species wreaking havoc on his district.

Rep. Josh Harder, D-Turlock, hopes a hearing on his bill will convince his colleagues that funding to stop an invasive species in California's Central Valley is sorely needed — before the problem gets worse and costs drastically increase.

Nutria, a large South American rodent, were found in Merced County two years ago,

alarming California wildlife officials because of the rodent potential to harm infrastructure that moves waters to Central Valley farms and Southern California cities.

Full-grown nutria can grow large as a beagle, devour up to 25 percent of their body weight daily and have up to 200 offspring per year. Without help, officials have estimated there could be a quarter million nutria in California destroying the wetlands and waterways within five years.

The bill would award \$7 million to the California Department of Fish and Wildlife over five years to combat the spread of nutria. Harder's proposal is scheduled for a hearing in the House of Representatives Water Oceans and Wildlife Subcommittee on Tuesday.

Harder plans to bring a stuffed, dead nutria he's getting

SEE NUTRIA, 1

### CUSTOMER SERVICE

To subscribe or report delivery issues,

800-284-3233 or [sacbee.com/customer-service](http://sacbee.com/customer-service)

Comics  
Horoscopes  
Local

8B, 9B  
7B  
3A

Lottery  
Obituaries  
Opinion

4B  
4A  
9A

People  
Puzzles  
Television

questioned whether the schools' satellite programs in California met criteria for them to receive GI Bill benefits.

And, California's state approving agency has refused to declare a for-profit college called Ashford University as eligible to receive GI Bill benefits.

California Attorney General Xavier Becerra filed a lawsuit against the college in 2017 alleging it engaged in unfair business practices and misled students. Becerra's complaints cites two veterans who felt manipulated by Ashford counselors. The lawsuit is unfolding in San Diego County Superior Court, and the state won't declare Ashford as eligible

Johnson told lawmakers the state should create its own regulations to empower California state government to look at other standards in evaluating colleges. That would help the department make its case in court when colleges contest the state's decision to suspend their GI Bill eligibility, she said.

The proposed rule the department put forward this year would have declared that GI Bill benefits could only be used at schools that qualify for California student aid, such as Cal Grants. In general, Cal Grants go to students who attend California public colleges and universities.

Other criteria would

its requirements in such a way that her degree became more expensive and time-consuming.

"You've got folks who are trying to do the right thing," said Muth, a former Marine. "These aren't people who are being reckless or doing something crazy. They were trying to pursue higher education after serving their country, and then someone jumps in and takes advantage of them."

FROM PAGE 1A

## NUTRIA

from the U.S. Department of Agriculture to emphasize the scale of the problem to other lawmakers.

"This is a uniting issue, both farmers and environmental activists have reached out to my office expressing concern about this," Harder said. "So it's not a Republican or Democrat issue, once people understand the problem, they're behind it."

While bills have mostly hit a standstill in the divided Congress, a hearing for such an issue is an indication the funding could be included in a budget bill that Congress is required to pass later this year. The bill is sponsored by Reps. Jim Costa, D-Fresno, John Garamendi, D-Walnut Grove, TJ Cox, D-Fresno, and Barbara Lee, D-Oakland.

Harder said this is one of his top priorities this

Congress.

"Water is always the top priority, and this is part and parcel of preserving our infrastructure," Harder said.

Harder's bill would revive the Nutria Eradication and Control Act of 2003, which was successful when the species threatened the Chesapeake Bay in Maryland. The programs supported by the bill encourage habitat protection, education, research, monitoring, and capacity building to provide for the long-term protection of wetlands from destruction caused by nutria.

The California Department of Fish and Wildlife has received \$10 million this year from the state Legislature and grants to eradicate nutria, which Peter Tira, spokesman for Fish and Wildlife, said was a substantial help.

"When we started we

didn't have any money, and we had to redirect staff from other places, so now we can hire a full-time staff dedicated to nutria," Tira said. "Our response right now is an emergency response, and now we can really battle against nutria, which is long and takes a real commitment. ... We need that to be successful."

An additional \$7 million would be huge for the program, according to Tira. The department has caught or killed more than 700 nutria since they were discovered in California. The species has no natural predator in the area.

"If you don't get on nutria early you won't have any hope of ever getting rid of them," Tira said. "It's a lot less expensive to aggressively address nutria here on the front end than live with them in perpetuity and address their damages."

Kate Irby: 202-383-6071  
@KateIrby

In-Line Canal Advantages



CIC

ITC

ITE

- Individualized
- Sizes to meet your lifestyle
- Uses the ear's natural ability to locate sounds
- Comfortable to wear
- Most models compatible with wireless Bluetooth® Technology

Another Great

Save on our advanced line

BUY 1, GET 2

50% OFF

Manufacturer's Suggested Retail Price All ME-1

Good only from participating Miracle-Ear® Hearing Aid Centers or discounts apply. Discount does not apply to prior sale. Cannot combine with any other offers. Cash value

Limited Time

Receiver-In-The-Canal

\$995.00

MSRP \$3090 SAVE \$2095

Offer valid on Model ME2400

100% Digital & 100% Programmable

Valid at participating Miracle-Ear® Hearing Aid Centers. Limit one hearing aid per customer at the price.

May not be combined with other offer and cash value 1/20th cent. Offer

Some FEDERAL WORKERS and RETIREES may be eligible

Co-Pay! No Exam Fee! No Adjustment Fee! Most Insurance Plans

Call today to make your reservation for



AT THESE PARTICIPATING MIRACLE-EAR CENTERS

CITRUS HEIGHTS

5460 Sunrise Blvd., Ste. #2  
Citrus Heights, CA 95610  
(916) 378-4261

WOODLAND

1837 E Gibson Road, Suite K,  
Woodland, CA 95776  
(916) 520-1913

9267 L  
E  
(

Visit us online at [www.miracle-ear.com](http://www.miracle-ear.com)

\*Hearing test is always free. Hearing aids do not restore natural hearing. Individual experience and ability to adapt to amplification. Hearing test is an audiometric test to determine amplification. If you suspect a problem please seek treatment from your physician. \*\*Blue Cross Blue Shield, The Blue Cross Blue Shield Association. Blue Cross Blue Shield Association does not endorse or sponsor the contents of this advertisement. Trademarks referring to specific products identify the source of the services about which information is provided. Such trademarks are so used within 45 days of delivery if not completely satisfied and 100% of the purchase will be refunded.

09/17 ASIC