

“The delta smelt example, resulting in 2 lawsuits, 3 judicial hearings, 2 court orders for Fish and Wildlife Service to rework their biological opinion, a reversal of the biological opinion, a reversal of a lower court’s decision, a redirection of water for the delta smelt directly resulting in significant economic harm to farmers, agricultural related businesses and rural economies that --- and still no recovery of the small minnow species, clearly demonstrates the need to modernize ESA. Taxpayers deserve a transparent, scientifically justified process leading to better management of funds that directly correlate to proven benefits to the affected species.” Dr. Don Parker, Manager of Integrated Pest Management, National Cotton Council of America, September 24, 2019.

**Dr. Don Parker
Manager of Integrated Pest Management
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September 24, 2019**

Thank you for allowing the National Cotton Council to provide comments here today. The U.S. cotton industry has experienced numerous, unjustified regulatory obstacles due to the Endangered Species Act (ESA). We recognize the important intent of this legislation, but we are continually discouraged by the lack of clear methodology, the dismissal of sound scientific data, and the latitude of interpretation for a Biological Opinion (BiOp). We believe the public is often misled to believe this legislation provides protection for iconic species such as the bald eagle, and seldom hear the same legislation is being applied to a minnow, regardless of the economic devastation imposed.

For example, the delta smelt once reportedly spread from the Suisun Bay, upstream through the delta in Central California. In the 1970s, the delta smelt reportedly began to decline. In 2005, the U.S. Fish and Wildlife Services (FWS) issued a biological opinion that the irrigation projects -- Central Valley Project and the California State Water Project -- were not having an adverse effect on the recovery of the delta smelt. A lawsuit was filed in 2007, and the Court found the biological opinion was arbitrary and capricious and ordered protection of the delta smelt while the document was redone. FWS changed their biological opinion in 2008, resulting in another lawsuit and again the court ruled the BiOp was arbitrary and capricious, ordered FWS to provide the court weekly justification for water use restrictions and develop another BiOp. In 2014, that verdict was reversed by the Ninth Circuit Court of Appeals commanding that endangered species must be saved “whatever the cost.”

The decision to restrict crop irrigation water quickly devastated cotton production in California. In 2005, California planted 660,000 acres of cotton and produced 1.6M bales of cotton. Fresno County ranked number one in the U.S. with 26 cotton gins. The San Joaquin Valley had another 64 gins.

Irrigation water restrictions diverted to “save the delta smelt” correlated with a reduction in cotton acres and loss of gins. By 2009, California only planted 189,000 acres of cotton, produced 470,000 bales, shut down 30 cotton gins, closed 8 other cotton industry businesses, and lost over 1,000 jobs.

In the summer of 2011, Victor Davis Hanson, in an article¹ from the magazine *City Journal*, reported,

“...the two most reliable studies were performed by the University of California at Davis and the University of the Pacific in Stockton. While differing in details, both analyses suggested figures of about 250,000 acres idled, 5,000 to 7,000 farmworkers laid off, and \$350 million in annual agricultural revenue lost. Of course, those were only the more direct results of the cutoffs. One reason that Central Valley cities like Fresno and Bakersfield are currently suffering 18 percent unemployment rates is that West Side farms have been forced to cut back on the many purchases that help support those commercial centers, from equipment, material, and fuel to insurance, real estate, trucking, shipping, and consulting contracts.”

A four-month trawling study conducted in 2018 reported 2 delta smelt, reportedly the lowest count since 1967.

In summary, the case of the delta smelt represents:

1. 2 lawsuits
2. 3 judicial hearings
3. 2 court ordered reworkings of the BiOp
4. A reversal in the FWS BiOp
5. A reversal of a lower court decision
6. Significant economic harm to farmers and cotton affiliated businesses, and rural economies
7. A loss of 1000 jobs – leading to local economic harm and decline
8. And no recovery of the species to justify these actions.

The well-intended ESA legislation needs modernization to provide a transparent process, reporting of all associated costs, valid scientific support of the process and restrictions imposed prior to substantial economic consequences, consideration of the Agency work load and budget, use of updated technology and science, and prioritization of species recovery funds. The number of lawsuits invoking ESA claims (whether against FWS or other Agencies) clearly reflects a lack of transparency and lack of a clear methodical process. The task to “save all species” is an overwhelming burden fighting against the basic, accepted concepts of evolution and survival of the fittest. The citizens and taxpayers of the U.S. deserve modernization of the ESA to reduce ambiguity and provide meaningful results while maximizing efficient taxpayer expenditures and minimizing harm to individuals, businesses, and local economies.

Thank you for allowing the National Cotton Council to provide these comments demonstrating the need to modernize the Endangered Species Act.

¹ <https://www.city-journal.org/html/california's-water-wars-13400.html>

