

Controversy Continues to Swirl Around Monarch Butterfly

By

The Monarch butterfly – or, more accurately, the alarming decline of the Monarch – continues to generate government attention and clashes among stakeholders, as reflected in multiple federal initiatives and two recent lawsuits.

The life cycle of the beautiful black-and-orange Monarch butterfly is familiar to many. Each year Monarchs undertake a spectacular, multi-generational migration of up to three thousand miles between their wintering grounds in the mountains of Mexico and their summer breeding grounds in the US and Canada. Importantly, the sole food source for Monarch larvae is milkweed (*Asclepias spp.*), a once-common denizen of fields and margins across North America. Milkweed has been virtually wiped out in many places for a variety of reasons. These reasons include urban sprawl, development, and the introduction of genetically modified corn, soybeans, and other row crops, which enable herbicide applications “over the top” of the growing crop to kill weeds. Monarchs face other challenges as well, including illegal logging in their Mexican wintering grounds, extreme weather events, disease and predation. Over the past 20 years, Monarch populations have crashed by as much as 90%, from 1 billion to 33 million individuals.

In the face of the precipitous decline of Monarchs as well as of honeybees and other economically important pollinators, on June 20, 2014, President Obama issued a Memorandum creating a Pollinator Health Task Force headed by EPA and the USDA to establish a comprehensive federal strategy to protect pollinators. In May 2015, the Task Force announced an ambitious National Strategy that, among other things, called for a dramatic increase in Monarch populations within five years through a variety of domestic and international actions and public-private partnerships. Then, in June 2015, EPA issued for public comment a detailed risk management approach for taking actions to protect Monarch butterflies, including restrictions on some pesticide uses. The USDA, however, voiced opposition to EPA’s proposals as premature and incomplete, a view echoed by various pesticide industry and farm groups.

Meanwhile, in August 2014, the Center for Biological Diversity (CBD) and the Center for Food Safety (CFS) petitioned the Fish and Wildlife Service (FWS) to list Monarchs as a threatened species under the Endangered Species Act (ESA), an action that would trigger additional protections. As required by the ESA, the FWS initiated a 90-day review, concluding in December 2014 that listing “may be warranted.” That conclusion triggered a mandatory 12-month full review, but the FWS failed to complete its review and issue a decision, e.g., a proposal to list Monarchs under the ESA, by the end of 2015. Accordingly, on March 10, 2016, the CBD and CFS filed suit against the FWS in federal district court in Arizona to compel the FWS to issue its decision by a date certain.

While clashes continue over possible listing of the Monarch as a threatened species, another lawsuit pending in the US Court of Appeals for the Ninth Circuit concerning Dow AgroScience’s (DAS’) herbicide, Enlist Duo, took another twist. Enlist Duo, containing 2,4-D and glyphosate, is intended for use on genetically modified crops. Several environmental groups challenged EPA’s October 2014 decision to register the product arguing, among other things, that EPA had not adequately considered potential harm to Monarchs. EPA effectively agreed, asking the Ninth Circuit in November 2015 to take the unprecedented step of *vacating* the Enlist Duo registration, an action DAS vigorously opposed. Rather than do so, the Ninth Circuit ruled that it would remand the matter back to EPA so that it could review additional scientific information, a remedy that EPA also proposed and DAS did not oppose. Undaunted, environmental groups asked the Ninth Circuit on March 11, 2016 to decide the merits of their challenges *now*, noting the Enlist Duo still remains available for sale.

While litigation over possible additional federal actions to protect Monarchs rages on, international efforts to preserve and restore the Monarchs' wintering grounds and to plant more milkweeds along migration routes and in summer breeding areas have begun to show results. In February 2016, researchers estimated that there were 140 million Monarchs wintering in Mexico this past winter, more than triple the number for the prior winter. However, officials cautioned that this progress could easily be reversed and that much remains to be done to restore the Monarch to its prior glory as an icon of summer.