

PROTECT OUR REFUGES ACT OF 2019

—————
AUGUST 7, 2020.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed
—————

Mr. GRIJALVA, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2854]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2854) to amend the National Wildlife Refuge System Administration Act of 1966 to prohibit the use of neonicotinoids in a National Wildlife Refuge, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 2854 is to amend the National Wildlife Refuge System Administration Act of 1966 to prohibit the use of neonicotinoids in National Wildlife Refuges.

BACKGROUND AND NEED FOR LEGISLATION

Neonicotinoids are effective neuro-active insecticides that impair normal nerve impulses.¹ As insecticides, they are especially toxic to insects (including non-target pollinators), but also have potentially

¹See, e.g., ANNE SECORD & KATHLEEN PATNODE, U.S. FWS, PILOT STUDY TO EVALUATE NEONICOTINOID PESTICIDES IN NEW YORK AND PENNSYLVANIA STREAMS 4 (2018), <https://www.fws.gov/northeast/nyfo/ec/files/Neonicotinoid%20StudyFinal%20Nov5-2018.pdf>.

adverse human health impacts.² Use of neonicotinoid insecticides has continuously increased since 2005.

There are some national wildlife refuges in which farming occurs. In 2014, the Obama administration banned the use of neonicotinoid insecticides within the National Wildlife Refuge System except for conservation purposes, citing the impact of neonicotinoids on “non-target species.”³ In 2018, the Trump administration reversed this ban in a Fish and Wildlife Service (FWS) memo.⁴

The Protect our Refuges Act amends the National Wildlife Refuge System Administration Act to overturn the Trump administration’s action and fully prohibit the use of neonicotinoids in national wildlife refuges.

COMMITTEE ACTION

H.R. 2854 was introduced on May 20, 2019, by Representative Nydia M. Velázquez (D–NY). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Oceans, and Wildlife. On September 24, 2019, the Subcommittee held a hearing on the bill. On November 20, 2019, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered, and the bill was adopted and ordered favorably reported to the House of Representatives by a roll call vote of 17 yeas and 13 nays,⁵ as follows:

²*Neonicotinoid Pesticides and Adverse Health Outcomes*, U.S. DEP’T OF HEALTH & HUMAN SERVS., NAT’L TOXICOLOGY PROGRAM, <https://ntp.niehs.nih.gov/pubhealth/hat/selected/neonicotinoid/index.html> (last updated Apr. 6, 2020).

³Memorandum from James W. Kurth, Chief, Nat’l Wildlife Refuge Sys., to Regional Refuge Chiefs, Regions 1–8 (July 17, 2014), available at <https://www.centerforfoodsafety.org/files/agricultural-practices-in-wildlife-management-20849.pdf>.

⁴Memorandum from Gregory J. Sheehan, Principal Deputy Dir., FWS, to Service Directorate (Aug. 2, 2018), available at https://www.biologicaldiversity.org/campaigns/pesticides_reduction/pdfs/2018-8-2-FWS-memo-GMO-Neonics-on-wildlife-refuges.pdf.

⁵Rep. Matt Cartwright (D–PA), an original cosponsor of H.R. 2854, requested, after the closing of the vote, that the record reflect that had he been present he would have voted in favor of ordering the bill favorably reported.

F66590

Date: November 20, 2019

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 2854

Amendment:

Disposition: Final Passage: H.R. 2854 was ordered favorably reported to the House of Representatives by a roll call vote of 17 yeas and 13 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD	X		
2	Mr. Cartwright, PA			
3	Mr. Case, HI	X		
4	Mr. Clay, MO	X		
5	Mr. Costa, CA		X	
6	Mr. Cox, CA		X	
7	Mr. Cunningham, SC	X		
8	Ms. DeGette, CO	X		
9	Mrs. Dingell, MI	X		
10	Mr. Gallego, AZ	X		
11	Mr. Grijalva, AZ (Chair)	X		
12	Ms. Haaland, NM	X		
13	Mr. Horsford, NV			
14	Mr. Huffman, CA	X		
15	Mr. Levin, CA	X		
16	Mr. Lowenthal, CA	X		
17	Mr. McEachin, VA			
18	Ms. Napolitano, CA	X		
19	Mr. Neguse, CO			
20	Mr. Sablan, CNMI	X		
21	Mr. San Nicolas, GU			
22	Mr. Soto, FL	X		
23	Mr. Tonko, NY			
24	Mr. Van Drew, NJ	X		
25	Ms. Velázquez, NY			
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (Ranking)		X	
2	Ms. Cheney, WY		X	
3	Mr. Cook, CA		X	
4	Mr. Curtis, UT		X	
5	Mr. Fulcher, ID		X	
6	Mr. Gohmert, TX			
7	Ms. González-Colón, PR			
8	Mr. Gosar, AZ		X	
9	Mr. Graves, LA			
10	Mr. Herm, OK		X	
11	Mr. Hice, GA		X	
12	Mr. Johnson, LA			
13	Mr. Lamborn, CO		X	
14	Mr. McClintock, CA		X	
15	Mrs. Radewagen, AS	X		
16	Mr. Webster, FL			
17	Mr. Westerman, AR		X	
18	Mr. Wittman, VA			
19	Mr. Young, AK			
	TOTALS	17	13	
	Total: 44 / Quorum: 15 / Report: 23	YEAS	NAYS	PRESENT

HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress—the following hearing was used to develop or consider H.R. 2854: legislative hearing by the Subcommittee on Water, Oceans, and Wildlife held on September 24, 2019.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND
CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 19, 2020.

Hon. RAÚL M. GRIJALVA,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2854, the Protect Our Refuges Act of 2019.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Janani Shankaran.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 2854, Protect Our Refuges Act of 2019			
As ordered reported by the House Committee on Natural Resources on November 20, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 2854 would prohibit the use of neonicotinoids—a type of insecticide used in agriculture—within the National Wildlife Refuge System, which is managed by the U.S. Fish and Wildlife Service (USFWS).

USFWS allows private farming on certain refuge lands under cooperative agreements. Under those agreements, farmers are generally responsible for all costs associated with producing crops, including the costs for insecticides. CBO expects that implementing H.R. 2854 could result in a small increase in the administrative workload of USFWS to manage those agreements; however, we estimate that any additional costs incurred by the agency would not be significant. Any spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Janani Shankaran. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to amend the National Wildlife Refuge System Administration Act of 1966 to prohibit the use of neonicotinoids in National Wildlife Refuges.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

This bill contains no unfunded mandates.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**NATIONAL WILDLIFE REFUGE SYSTEM
ADMINISTRATION ACT OF 1966**

* * * * *

SEC. 5 NEONICOTINOID.

No person may use a neonicotinoid in the System.

SEC. [5.] 6. DEFINITIONS.

For purposes of this Act:

(1) The term "compatible use" means a wildlife-dependent recreational use or any other use of a refuge that, in the sound professional judgment of the Director, will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge.

(2) The terms "wildlife-dependent recreation" and "wildlife-dependent recreational use" mean a use of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation.

(3) The term "sound professional judgment" means a finding, determination, or decision that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of this Act and other applicable laws.

(4) The terms "conserving", "conservation", "manage", "managing", and "management", mean to sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable Federal and State laws, methods and procedures associated with modern scientific resource programs. Such methods and procedures include, consistent with the provisions of this Act, protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking.

(5) The term "Coordination Area" means a wildlife management area that is made available to a State—

(A) by cooperative agreement between the United States Fish and Wildlife Service and a State agency having control over wildlife resources pursuant to section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664); or

(B) by long-term leases or agreements pursuant to title III of the Bankhead-Jones Farm Tenant Act (50 Stat. 525; 7 U.S.C. 1010 et seq.).

(6) The term "Director" means the Director of the United States Fish and Wildlife Service or a designee of that Director.

(7) The terms "fish", "wildlife", and "fish and wildlife" mean any wild member of the animal kingdom whether alive or dead, and regardless of whether the member was bred, hatched, or born in captivity, including a part, product, egg, or offspring of the member.

(8) The term "person" means any individual, partnership, corporation, or association.

(9) The term "plant" means any member of the plant kingdom in a wild, unconfined state, including any plant community, seed, root, or other part of a plant.

(10) The terms "purposes of the refuge" and "purposes of each refuge" mean the purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a refuge, refuge unit, or refuge subunit.

(11) The term "refuge" means a designated area of land, water, or an interest in land or water within the System, but does not include Coordination Areas.

(12) The term "Secretary" means the Secretary of the Interior.

(13) The terms "State" and "United States" mean the several States of the United States, Puerto Rico, American Samoa, the Virgin Islands, Guam, and the territories and possessions of the United States.

(14) The term "System" means the National Wildlife Refuge System designated under section 4(a)(1).

(15) The terms "take", "taking", and "taken" mean to pursue, hunt, shoot, capture, collect, or kill, or to attempt to pursue, hunt, shoot, capture, collect, or kill.

* * * * *

DISSENTING VIEWS

Neonicotinoids (neonics) are critical to agriculture, protecting over 100 different crops around the world, including tomatoes, berries, citrus, tree nuts and leafy greens, from an unlimited range of destructive insects. In addition to combatting insect damage to crops, neonics also protect forests, wildlife habitat and other areas. Neonics have been approved by the Environmental Protection Agency (EPA) and have been safely and extensively used over the past twenty plus years in the United States. In fact, EPA has repeatedly and consistently found the class of insecticides banned by H.R. 2854 to be safe to human health and the environment (including wildlife) when used in accordance with the label. For example, Imidacloprid has such a favorable safety profile for mammals that it is used in flea and tick control products that are applied directly to dogs and cats.

Supporting the elimination of the use of neonics in National Wildlife Refuges sends mixed messages. If a pesticide applicator is using a product within EPA's label parameters, then exposure to non-target organisms will be kept at acceptable levels regardless of whether these organisms are located on private, federal, State, or tribal lands. To ban neonics only on federal lands, such as National Wildlife Refuges, is not only arbitrary but it undermines the integrity and legitimacy of EPA's pesticide risk assessment process, which is widely recognized as the best in the world. The public would question the government's decision to "protect" certain federal properties, but not others.

It should be noted that the U.S. Forest Service (USFS) could be impacted as well where its lands overlap or abut National Wildlife Refuges. USFS has a large stake in proper pest management, as it faces major forest insect infestations that must be properly managed to avoid catastrophic tree losses and possibly wildfires. Regarding specific pest threats in forests and trees, neonics are used to combat the emerald ash borer, which has killed millions of ash trees across the United States; the Asian longhorn beetle, a threat to hardwood forests in the northern U.S. (especially in the northeast), which kills ash, birch, elm, sycamore, maple, poplar, willow and other tree species; the spotted lanternfly (expected to expand in the northeast), which is an invasive pest that attacks many species of trees, fruit crops and vines; the hemlock woolly adelgid; and citrus psyllids, which are responsible for spreading deadly citrus greening disease in Florida and California.

For these reasons, we oppose H.R. 2854.

ROB BISHOP.
LOUIE GOHMERT.
JODY B. HICE.

