

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NATURAL RESOURCES DEFENSE )  
COUNCIL, )  
40 West 20th Street, 11th Floor )  
New York, NY 10011-4231 )

*Plaintiff,* )

v. )

E. SCOTT PRUITT, in his official capacity )  
as the Administrator of the U.S. )  
Environmental Protection Agency )  
William Jefferson Clinton Building )  
1200 Pennsylvania Avenue, N.W. )  
Washington, DC 20460 )

17-cv-2034  
ECF Case

and )

UNITED STATES ENVIRONMENTAL )  
PROTECTION AGENCY, )  
William Jefferson Clinton Building )  
1200 Pennsylvania Avenue, N.W. )  
Washington, DC 20460 )

*Defendants.* )

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This action challenges the failure of the federal government to evaluate the impacts of neonicotinoid pesticides (“neonics”) on threatened and endangered species, like the rusty patched bumble bee, the black-capped vireo, and the San Bruno elfin butterfly.

2. Neonics are “systemic” pesticides. When a plant is treated with a neonic, it absorbs the pesticide, making the tissues of the plant itself—including its pollen, fruit, and nectar—toxic to pests and other wildlife.

3. Neonics are insecticides, which kill insects by design. Neonics also harm birds, fish, amphibians, and invertebrate species, such as crustaceans, mollusks, and spiders. Because neonics can persist in the soil and water for several years and are used in high volumes for agriculture and gardening, they are ubiquitous in the environment throughout most of the country.

4. The widespread presence of neonics in the environment presents serious risks to wildlife across large portions of the country. The collapse of bee and other pollinator populations in the last decade, like that of the endangered rusty patched bumble bee, is one consequence of this contamination. The chronic presence of neonics in ground and surface water also threatens aquatic species.

5. Neonics pose significant adverse consequences to threatened and endangered species. Yet the U.S. Environmental Protection Agency (“EPA”) has approved hundreds of neonic-containing pesticide products without consultation with the U.S. Fish and Wildlife Service (“FWS”) as required under the U.S. Endangered Species Act (“ESA”). This lawsuit challenges EPA’s registrations of pesticide products containing one of three main neonic active ingredients—acetamiprid, dinotefuran, and imidacloprid—and seeks vacatur of those registrations until EPA complies with the law.

## **PARTIES**

6. Plaintiff Natural Resources Defense Council (“NRDC”) is a national, non-profit environmental and public health organization with over 400,000 members. NRDC engages in research, advocacy, media, and litigation to protect public health and the environment, including wildlife. NRDC’s mission includes protecting wildlife in general and threatened and endangered species in particular.

7. NRDC members regularly observe, visit, and delight in the threatened and endangered species described in this Complaint. NRDC members intend to continue doing so in the future. NRDC members derive scientific, educational, recreational, conservation, aesthetic, and other benefits from the existence of these species in the wild.

8. Barbara Byrd is an NRDC member who lives on a 778 acre farm north of Jackson, MS, where she watches birds at least three times a week. Ms. Byrd is an avid birder, and has seen the black capped vireo, red-cockaded woodpecker, and yellow-billed cuckoo. Ms. Byrd hopes and intends to view all three species again, including a yellow-billed cuckoo that she believes is resident on her property.

9. Denise Byrne is an NRDC member who lives in Chicago, IL, and has frequently recreated outdoors since the late 1950s. In addition to outdoor recreation several times a month in the Chicago area, Ms. Byrne travels to South Central Wisconsin every or every other week during the warm weather and takes a road trip to a national park or other protected natural area at least once a month. Ms. Byrne has seen the Hine’s emerald dragonfly and Karner Blue butterfly in the wild and is

saddened by the perceptible loss of abundance of these and other insect species since her youth. Ms. Byrne has also attempted to view the rusty patched bumble bee. She hopes and intends to see all of these species on one of her future outings.

10. Carolynn Benninghoff is an NRDC member who lives in Rushville, IL, where she owns 210 acres of land with her husband. Ms. Benninghoff and her husband have been actively engaged in conservation and ecological restoration practices on her property since 1988, including the reintroduction of native flora to attract native insects and other animal life. In 2017, the Benninghoffs placed 200 acres of their land in a conservation easement. The easement specifically identifies the land as suitable for the American burying beetle. Ms. Benninghoff has been documenting the changes in wildlife on her property over the years and keeps a photo-journal of the different species she sees. Although Ms. Benninghoff has not seen an American burying beetle, she would like to, and hopes that as a result of her efforts, she will be able to see and document the beetle on her property.

11. Kevin Cummings is an NRDC member who lives in Urbana, IL, where he works as a malacologist for the Illinois Natural History Survey of the University of Illinois. Mr. Cummings regularly performs monitoring and tracking of Illinois mollusk species, particularly those of conservation interest, such as the rabbitsfoot mussel. Mr. Cummings has seen the rabbitsfoot mussel in the wild. Mr. Cummings has looked for the dwarf wedgemussel in the wild, and taught a class at the National Conservation Training Center in Jefferson County, WV, on how to identify the dwarf wedgemussel, among other species. Mr. Cummings also frequently recreates

outdoors and hopes and intends to see the rabbitsfoot mussel or dwarf wedgemussel on a future work or personal outing.

12. Maria Walker is an NRDC member who lives in Kapaa, HI, where she and her husband have been beekeepers for the last twelve years. Although Ms. Walker keeps honey bees, she is enamored with the local flora and fauna of Hawaii and keeps a garden where she grows native plant species to attract native pollinators, including the anthricinan yellow-faced bee, assimulans yellow-faced bee, easy yellow-faced bee, *hylaeus kuakea*, *hylaeus longiceps*, and *hylaeus mana*. Ms. Walker also recreates outdoors several times a month, where she looks for native plants and bees and has seen one or more of the following species: the anthricinan yellow-faced bee, assimulans yellow-faced bee, easy yellow-faced bee, *hylaeus kuakea*, *hylaeus longiceps*, and *hylaeus mana*. Ms. Walker hopes to continue and expand her work to conserve and restore native Hawaiian wildlife, and hopes to see the anthricinan yellow-faced bee, assimulans yellow-faced bee, easy yellow-faced bee, *hylaeus kuakea*, *hylaeus longiceps*, and *hylaeus mana* in her garden or on one of her future outings.

13. Curtis Kruer is an NRDC member who lives in Sheridan, MT, where he moved, in part, due to his fascination with the local wildlife, and where he works on ecological conservation as an aquatic biologist. As a founding board member of the Montana Aquatic Resources Services, Mr. Kruer worked to secure channel migration easements for the Lower Yellowstone River so that it continues to harbor unique wildlife, such as the pallid sturgeon. Mr. Kruer knows the biology of the pallid

sturgeon and has seen one in captivity. Mr. Kruer recreates outdoors frequently and plans to take his children to the Lower Yellowstone River, where he hopes to see a pallid sturgeon in the wild.

14. David Pengelley is an NRDC member who lives in Corvallis, OR, where he moved two years ago after retiring in order to regularly view, identify, and enjoy the wildlife of the Pacific Northwest. Mr. Pengelley hikes in Taylor's Checkerspot butterfly habitat on a semi-weekly basis and Oregon silverspot butterfly habitat several times a year where he attempts to view those species. As a member of the Corvallis Audubon society, Mr. Pengelley has attempted to view the streaked horned lark and hopes to see one in the future. Mr. Pengelley also takes frequent trips to recreate outdoors in other parts of the state. He has visited the habitat of the Fender's blue butterfly to view the "golden paintbrush" plant, for which the Fender's blue butterfly is an umbrella surrogate species. He intends to return to view both the flower and the Fender's blue butterfly. He intends to visit the eastern part of the state to see the Oregon spotted frog, and the southern part of the state, where he has seen other vernal pool shrimp, in order to see the vernal pool fairy shrimp.

15. Randall Zielinski is an NRDC member who lives in San Francisco, CA, where he keeps a garden to attract bees, butterflies, and other pollinators. Mr. Zielinski frequently bikes and recreates outdoors, and enjoys viewing and identifying birds and butterfly species—particularly ones he has not seen before. Mr. Zielinski regularly visits San Bruno Mountain where he has seen the Mission blue and San Bruno elfin butterflies and hopes to see them again. He hopes and intends to view

the callippe silverspot butterfly and Myrtle's silverspot butterfly in his garden or on one of his future outings.

16. The interests of NRDC members in the species identified in this Complaint are and will be directly, adversely, and irreparably affected by Defendants' violation of the law. Defendants' registrations of the pesticide products identified in this Complaint without consultation with FWS as required by Section 7 of the ESA harms and increases the risks of harm to the species identified in this Complaint. NRDC members will continue to be harmed by Defendants' unlawful actions until and unless this Court provides the relief prayed for in this Complaint.

17. Defendant E. Scott Pruitt is sued in his official capacity as the Administrator of EPA. Under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), the EPA Administrator is the federal official responsible for the registration of pesticides. The EPA Administrator is also responsible for ensuring that pesticide registration decisions comply with the ESA.

18. Defendant EPA is an agency of the United States Government. Under FIFRA, EPA is the federal agency responsible for the registration of pesticides. EPA is also responsible for ensuring that pesticide registration decisions comply with the ESA.

### **JURISDICTION AND VENUE**

19. This Court has jurisdiction over this action pursuant to 16 U.S.C. § 1540(c), (g) (ESA), 5 U.S.C. § 702 (APA), 7 U.S.C. § 136n(a) (FIFRA), and 28 U.S.C. § 1331 (federal question jurisdiction).

20. This Court has the authority to issue the requested declaratory and injunctive relief pursuant to 16 U.S.C. § 1540(g) (ESA), 5 U.S.C. §§ 701-706 (APA), and 28 U.S.C. §§ 2201-2202 (declaratory and injunctive relief).

21. Plaintiff provided Defendants, the Secretary of the U.S. Department of Interior, and the Secretary of the U.S. Department of Commerce with written notice of Plaintiffs' intent to file this suit more than sixty days prior to the commencement of this action. This written notice is attached as Exhibit A to this Complaint.

22. Defendants have not remedied their violations of the law in response to Plaintiff's written notice.

23. Defendants have not provided notice, opportunity for public comment, or any form of hearing for the challenged pesticide product registrations identified below.

24. The requested relief would redress the harm to Plaintiff and its members caused by EPA's failure to consult with FWS on the pesticide product registrations identified herein as required by the ESA.

25. Venue is proper in the U.S. District Court for the District of Columbia pursuant to 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e) because a substantial part of the events giving rise to the Plaintiff's claims occurred in this district. Specifically, EPA is headquartered in Washington, D.C., and officials responsible for consulting with FWS under Section 7 of the ESA to ensure that registration decisions that may affect threatened and endangered species are not likely to



jeopardize those species' continued existence are located there. Plaintiff NRDC also has an office in Washington, D.C.

## **STATUTORY AND REGULATORY FRAMEWORK**

### The Endangered Species Act

26. Congress enacted the ESA in 1973 “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species . . . .” 16 U.S.C. § 1531(b). The Supreme Court has observed that “[t]he plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, whatever the cost,” and that in passing the law, Congress “intended endangered species to be afforded the highest of priorities.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 174, 184 (1978).

27. Under Section 7 of the ESA, all federal agencies must “insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [the critical] habitat of such species . . . .” 16 U.S.C. § 1536(a)(2).

28. Under the ESA and its implementing regulations, a federal agency proposing to “authorize[], fund[], or carr[y] out” an action must first determine whether that action “may affect” threatened or endangered species. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a). If the federal agency finds that a proposed action “may affect” threatened or endangered species, the agency must consult with either

FWS or the National Marine Fisheries Service (“NMFS”) under the ESA. 50 C.F.R. § 402.14(a). If the agency concludes that the action “may affect” but is “not likely to adversely affect” threatened or endangered species, consultation may conclude with the written concurrence of FWS or NMFS. *Id.* § 402.14(b)(1), (b)(3). If the proposed action “may affect” and is “likely to adversely affect” listed species, the federal agency must initiate formal consultation with FWS or NMFS. *See id.* § 402.14(c), (g), (h).

29. If FWS or NMFS conclude that a proposed action is not likely to jeopardize the continued existence of a threatened or endangered species or result in the destruction or adverse modification of critical habitat, but may result in an “incidental take” of such species, FWS or NMFS will propose reasonable and prudent measures considered necessary or appropriate to minimize the impact of such take. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i). Under the ESA, to “take” means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19). An “incidental take” is a take that occurs from the result of an otherwise lawful activity, but is not the purpose of that activity. 50 C.F.R. § 402.02.

30. If FWS or NMFS concludes that a proposed action is likely to jeopardize the continued existence a threatened or endangered species or result in the destruction or adverse modification of critical habitat, FWS or NMFS will propose reasonable and prudent alternatives, if any, that would avoid the jeopardy

or destruction/adverse modification. *See* 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(h)(3).

The Federal Insecticide, Fungicide, and Rodenticide Act

31. FIFRA is the primary federal statute that regulates pesticide use in the United States.

32. FIFRA generally prohibits the sale or distribution of any pesticide in the United States unless the pesticide is first registered by EPA. 7 U.S.C. § 136a. FIFRA defines “pesticide,” in relevant part, as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” *Id.* § 136(u).

33. FIFRA and its implementing regulations require registration of pesticide active ingredients and individual pesticide products offered for distribution or sale. *Id.* § 136a(a); 40 C.F.R. § 152.15.

34. To register a pesticide, EPA must determine, among other things, that the pesticide’s use will not cause “unreasonable adverse effects on the environment.” 7 U.S.C. § 136a(c)(5). Where information to support a full registration is lacking, EPA may, in some cases, “conditionally” register a new pesticide for a temporary period, provided that EPA determines use of the pesticide during that period will not cause unreasonable adverse effects on the environment. *Id.* § 136a(c)(7)(C).

35. EPA has the authority to restrict the use of a registered pesticide either through conditions on the approved pesticide label or conditions applicable to the registration. *See Id.* §§ 136a(c)(5)-(7), (d); 40 C.F.R. § 152.115(c).

36. EPA has the authority to cancel a pesticide registration if the pesticide’s use “causes unreasonable adverse effects on the environment.” 7 U.S.C. § 136d(b).

### STATEMENT OF FACTS

#### EPA’s Registrations of Acetamiprid, Dinotefuran, and Imidacloprid Products

37. Acetamiprid, dinotefuran, and imidacloprid are insecticides known as neonicotinoids or “neonics.” Neonics are used to kill insect and invertebrate species in lawn and garden care, agriculture, and other settings.

38. All neonics are systemic pesticides, meaning that they are taken up into the tissues of the plant and distributed, so that the plant itself—including its pollen, nectar, and fruit—harbors the active poison.

39. EPA registered the active ingredients acetamiprid, dinotefuran, and imidacloprid for use throughout the United States, as well as hundreds of pesticide products containing acetamiprid, dinotefuran, or imidacloprid.

40. EPA registered the following products containing acetamiprid (the “Acetamiprid Products”):

<b>Product Name</b>	<b>EPA Reg. No.</b>	<b>Date of Reg.</b>
ADA 11280 Insecticide	66222-264	Nov. 02, 2016
Acetamiprid Technical 2	8033-135	Apr. 10, 2017
Anarchy 30 SG Insecticide	34704-1096	Sep. 15, 2016
Anarchy 70 WP Insecticide	34704-1098	Sep. 13, 2016
Anniston 30 SG Insecticide	83520-40	Sep. 01, 2016
Anniston 70 WP Insecticide	83520-41	Sep. 01, 2016
ArVida 30 SG Insecticide	91234-14	Aug. 10, 2016
ArVida 70 WP Insecticide	91234-15	Aug. 10, 2016
F7180-8 Fly Sticker Insecticide OTC	8033-115	Nov. 03, 2011

RaVida 8.5 SL Insecticide	91234-16	Aug. 10, 2016
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The EPA registrations of these products are hereinafter referred to as the “Acetamiprid Registrations.”

41. EPA registered the following products containing dinotefuran (the “Dinotefuran Products”):

<b>Product Name</b>	<b>EPA Reg. No.</b>	<b>Date of Reg.</b>
Certador Insecticide	7969-376	Oct. 15, 2015
Dinocide	7946-35	Sep. 23, 2014
Dinocide HP	7946-34	Sep. 23, 2014
Dinotefuran Injectable	74779-15	Mar. 01, 2013
Fly Bait Aerosol 568	7969-397	May 02, 2017
RF2174 Fly Bait Station	2724-839	Jul. 11, 2014
RF2179 Insecticide DPO	2724-838	Feb. 11, 2014
TC-294	499-566	Jan. 16, 2013
TC-315	499-561	Jun. 27, 2012
V-10276 0.088 SL Insecticide/Fungicide	59639-182	Oct. 21, 2011

The EPA registrations of these products are hereinafter referred to as the “Dinotefuran Registrations.”

42. EPA registered the following products containing imidacloprid (the “Imidacloprid Products”):

<b>Product Name</b>	<b>EPA Reg. No.</b>	<b>Date of Reg.</b>
Avatar PLX	70506-313	Mar. 03, 2015
AX Imida 4#	89167-7	Nov. 08, 2012
Axxs Imidacloprid Tech	87427-3	Mar. 28, 2017
Bandit 480 SC	85724-7	Nov. 05, 2012
Bithor XT	83923-13	Sep. 02, 2015
Brigadier HPG Insecticide	279-3459	Aug. 07, 2013
CFI-STAR-IFTZ-10 ST	42750-268	Aug. 26, 2014
CFI-STAR-IFTZ-35 ST	42750-267	Aug. 26, 2014
Couraze 4 Insecticide	67760-116	Mar. 07, 2012

CSI 0.2% IMI Plus Fertilizer	53883-362	Oct. 08, 2015
CSI IMI + Lambda 204 Insect Granules	53883-395	Nov. 21, 2016
CSI Imidacloprid + Fipronil SC	53883-328	Nov. 07, 2013
Custom Blend 10ST	42750-300	Sep. 25, 2015
Custom Blend 35ST	42750-299	Sep. 25, 2015
DISCUS® L	59807-18	Jul. 07, 2016
Dyna-Shield Conquest	34704-1102	Aug. 16, 2016
Dyna-Shield Foothold Virok	34704-1090	Apr. 30, 2014
EQUI-TM 4.0	55146-153	Mar. 07, 2016
F9210-1 Insecticide	279-3440	Dec. 06, 2011
IMA-jet 10%	74578-6	May 17, 2012
IMI + Lambda MUP	53883-383	Mar. 15, 2016
IMI 20 MUP	53883-385	Apr. 19, 2016
Imida PC 2F Select	89442-19	Mar. 19, 2014
Imidacloprid 0.025% + Beta-Cyfluthrin 0.0125% Ready-to-Use Insecticide	72155-110	Jun. 19, 2013
Imidacloprid 0.05% Termite Foam	72155-111	Dec. 23, 2014
Imidacloprid 2F Select	89442-5	Dec. 11, 2012
Imidacloprid 75WSP Select	89442-11	Apr. 17, 2013
Imidacloprid Granular Bait	73079-14	Aug. 09, 2012
Imidacloprid Plus Bifenthrin 1 + 1 Sc	83222-40	Jun. 25, 2012
Imigo 600 FS	70506-327	Aug. 08, 2016
Kaput Combo Prairie Dog Bait	72500-27	Jun. 13, 2016
Kaput® Ground Squirrel Bait	72500-24	Sep. 25, 2013
Kilter Insecticide	228-717	Jan. 02, 2013
KRD-1403	3008-124	Jun. 01, 2016
Lancer Gold Insecticide	70506-242	Oct. 05, 2011
Liberty BIF-IMID 0.5-0.25	89168-34	Mar. 27, 2014
Liberty Imidacloprid 4SC	89168-23	Feb. 28, 2013
Liberty Teb-Imida SC	89168-27	Jan. 14, 2014
MalEx CitrusLeafminer	85354-5	Apr. 20, 2016
Mallet® 75 WP Bulk Product	55146-130	Jul. 22, 2013
MANA 11201	66222-247	Feb. 21, 2013
Marathon 1% Granular Greenhouse and Nursery Insecticide	59807-15	Dec. 17, 2013
MGK® Intermediate 2967	1021-2578	May 14, 2012
Movento RC	264-1170	Sep. 29, 2014
Multicide® Intermediate 2951	1021-2567	Nov. 04, 2011
Mylva Imidacloprid Roach Bait	92028-3	Apr. 28, 2017
NEONIC Miticide/Insecticide	83100-33	Apr. 07, 2014

Nitro Shield® IV	1381-252	Jul. 19, 2013
Nouvel Fuse Foam	87093-5	Feb. 29, 2016
NUP-14001 MUP	35935-106	Dec. 10, 2014
Nuprid-S WG Bulk Product	55146-140	Sep. 10, 2013
Optrol Insecticide Concentrate	74779-14	Apr. 18, 2012
Pro-Mate Merit 0.2% with Turf Fertilizer	5905-591	Feb. 05, 2013
Raxil Pro Shield Insecticide and Fungicide	264-1186	Nov. 01, 2016
SATIVA® IMF MAX	55146-119	Aug. 10, 2012
SATIVA® IMF RTU	55146-122	Aug. 10, 2012
SATIVA® IMT MAX	55146-124	Aug. 10, 2012
SATIVA® IMT RTU	55146-123	Aug. 22, 2012
Senator 480 FS	55146-121	Jun. 29, 2012
Sharda Imidacloprid 0.5% + Tricosene 0.1% WG	83529-54	Sep. 8, 2016
Sharda Imidacloprid 10% + Tricosene 0.1% WG	83529-63	Jan. 17, 2017
Sharda Imidacloprid 11.3% + Bifenthrin 11.3% SC	83529-61	Jun. 13, 2016
Sharda Imidacloprid+Metalaxyl+Tebuconazole ST	83529-67	Jan. 05, 2017
SHP Imidacloprid Technical	90057-1	Aug. 28, 2014
SPIRATO IM 413 FS	55146-117	Jul. 26, 2012
Tacoma Ag Imidacloprid 4.0	83520-43	Dec. 29, 2016
Temprid Granular Insecticide	432-1583	Apr. 11, 2016
Temprid RTU	432-1527	Jun. 11, 2013
Temprid SC-F Insecticide	432-1544	Oct. 08, 2015
Triple Crown T&O Insecticide	279-3456	Apr. 01, 2013
Velum Total	264-1171	Feb. 06, 2015
Willowood Imidacloprid 2SC	87290-33	Apr. 04, 2012
Willowood Imidacloprid 4SC	87290-26	Sep. 19, 2012
Willowood Imidacloprid PCO	87290-39	Mar. 07, 2013
Willowood Imidacloprid Technical Insecticide	88544-2	Apr. 23, 2012

The EPA registrations of these products are hereinafter referred to as the “Imidacloprid Registrations.”

43. The products listed in Paragraphs 40 to 42 are hereinafter referred to collectively as the “Neonic Products.” The EPA registrations for the products listed in Paragraphs 40 to 42 are hereinafter referred to collectively as the “EPA Registrations.”

The EPA Registrations Authorize Broad Use of the Neonic Products

44. Each EPA Registration of each of the Neonic Products authorizes use of that pesticide product anywhere in the United States in accordance with its approved label. EPA approves the pesticide label as a part of the registration.

45. The EPA Registrations, variously, authorize use of the Neonic Products in home or commercial settings as well as on nearly all major agricultural crops, including corn, soy, cotton, wheat, and most fruits and vegetables—including tomatoes, grapes, strawberries, squashes, broccoli, leafy greens, citrus fruits, stone fruits, and root vegetables.

46. The EPA Registrations, variously, authorize application of the Neonic Products by spraying, irrigating or inundating the soil, trunk injection, or as a coating on a plant's seed. Some of the EPA Registrations authorize "bait" products that attract wildlife to ingest the neonic active ingredient.

The Neonic Products Leave Significant Amounts of Acetamiprid, Dinotefuran, and Imidacloprid in the Environment

47. The Neonic Products are used extensively in the United States and the pesticides are found throughout the environment, including in soil, sediment, water, and the tissues of plants.

48. When the Neonic Products are applied as a seed coating, 95% of the neonic active ingredient remains in the soil or wider environment on average. When the Neonic Products are applied as a spray, a significant amount of the neonic active ingredient is deposited in soil, sediment, water, and other plants due to spray drift and residue.



49. Acetamiprid, dinotefuran, and imidacloprid from the Neonic Products dissolve in rain and irrigation water, move through soil and sediment, become absorbed into plants, and work their way into ground or surface water. Acetamiprid, dinotefuran, and imidacloprid persist in soil, sediment, water, and the tissues of plants, and accumulate there from repeated use of the Neonic Products year after year.

50. Acetamiprid, dinotefuran, and imidacloprid accumulate and endure in the areas where the Neonic Products are used, in adjacent areas, and in hydrologically connected areas.

Threatened and Endangered Species Are Exposed to Acetamiprid, Dinotefuran, and Imidacloprid from the Neonic Products

*Terrestrial Invertebrates*

51. The American burying beetle, *nicrophorus americanus*, is a federally endangered terrestrial insect. Its habitat includes portions of Western Arkansas, Southeastern Kansas, Southeastern Massachusetts, Central Nebraska, Eastern Oklahoma, Rhode Island, Southern South Dakota, and Northern Texas. American burying beetle larvae feed on carrion, and then bury themselves in soil, emerging forty-five to sixty days later as mature adults.

52. The rusty patched bumble bee, *bombus affinis*, is a federally endangered insect pollinator. Its habitat includes portions of Illinois, Indiana, Iowa, Maine, Massachusetts, Minnesota, Ohio, Virginia, and Wisconsin. Rusty patched bumble bees collect pollen and nectar, often from flowers in agricultural areas or other areas where neonic pesticides are commonly used.

53. The San Bruno elfin butterfly, *callophrys mossii bayensis*, mission blue butterfly, *icaricia icarioides missionensis*, callippe silverspot butterfly, *speyeria callippe callippe*, and Myrtle's silverspot butterfly, *speyeria zerene myrtleae*, are federally endangered insect pollinators. Their habitat includes portions of Central and Northern California. These butterflies drink nectar, often from flowers in agricultural areas or other areas where neonic pesticides are commonly used.

54. The Taylor's checkerspot, *euphydryas editha taylori*, is a federally endangered insect pollinator. Its habitat includes portions of Western Oregon and Western Washington. Taylor's checkerspots drink nectar, often from flowers in agricultural areas or other areas where neonic pesticides are commonly used.

55. The Oregon silverspot butterfly, *speyeria zerene Hippolyta*, is a federally endangered insect pollinator. Its habitat includes portions of Northwestern California, Western Oregon, and Western Washington. Oregon silverspot butterflies drink nectar, often from flowers in agricultural areas or other areas where neonic pesticides are commonly used.

56. The anthricinan, yellow-faced bee, *hylaeus anthracinus*, assimulans yellow-faced bee, *hylaeus assimulans*, easy yellow-faced bee, *hylaeus facilis*, and Hawaiian yellow-faced bees, *hylaeus kuakea*, *hylaeus longiceps*, and *hylaeus mana*, are federally endangered insect pollinators. Their habitat includes several islands in Hawaii. These bees collect pollen and nectar, often from flowers in agricultural areas or other areas where neonic pesticides are commonly used.

57. The Fender's blue butterfly, *icaricia icarioides fenderi*, is a federally endangered insect pollinator. Its habitat includes portions of Western Oregon. Fender's blue butterflies drink nectar, often from flowers in agricultural areas or other areas where neonic pesticides are commonly used.

58. The Karner blue butterfly, *lycaeides melissa samuelis*, is a federally endangered insect pollinator. Its habitat includes portions of Northeastern Illinois, Northern Indiana, Michigan, Eastern Minnesota, Eastern New York, Northern Ohio, and Central Wisconsin, often in predominantly agricultural areas. Karner blue butterflies drink nectar, often from flowers in agricultural areas or other areas where neonic pesticides are commonly used.

59. The threatened and endangered terrestrial invertebrate species described in Paragraphs 51 to 58 (the "Listed Terrestrial Invertebrates") are exposed to acetamiprid, dinotefuran, and imidacloprid from use of the Neonic Products in their habitat and in areas adjacent or hydrologically connected to their habitat. Of the Listed Terrestrial Invertebrates, the species described in Paragraphs 52 to 58 are insect pollinators (the "Listed Insect Pollinators").

*Aquatic Invertebrates*

60. The dwarf wedgemussel, *alasmidonta heterodon*, is a federally endangered freshwater mussel. Its habitat includes portions of Northern North Carolina, Central Maryland, Central Massachusetts, Western New Hampshire, Southern New York, Northeastern Pennsylvania, Eastern Vermont, and Virginia.

Dwarf wedgemussels live in both small and large streams and are commonly found in a variety of sediment types including clay, sand, gravel and pebble, and silt.

61. The vernal pool fairy shrimp, *branchinecta lynchi*, is a federally threatened freshwater crustacean. Its habitat includes portions of Southwestern Oregon and Central California, including in California's Central Valley, a major agricultural region. Vernal pool fairy shrimp live in temporary freshwater pools and are eaten by birds and amphibians.

62. The rabbitsfoot mussel, *quadrula cylindrica cylindrica*, is a federally threatened freshwater mussel. Its habitat includes portions of Northern Alabama, Arkansas, Illinois, Central Indiana, Eastern Kansas, Kentucky, Northern Louisiana, Western Mississippi, Southern Missouri, Central Ohio, Eastern Oklahoma, Western Pennsylvania, and Central Tennessee. Rabbitsfoot mussels live in rivers and streams, often within watersheds in major agricultural regions.

63. The Hine's emerald dragonfly, *somatochlora hineana*, is a federally endangered aquatic insect. Its habitat includes portions of Northeastern Illinois, Northern Michigan, Central Missouri, and Wisconsin. Hine's emerald dragonflies live in water for two to four years during their "nymph" stage of development, often within wetlands in major agricultural regions.

64. The threatened and endangered aquatic invertebrate species described in Paragraphs 60 to 63 (the "Listed Aquatic Invertebrates") are exposed to acetamiprid, dinotefuran, and imidacloprid from use of the Neonic Products in their habitat and in areas adjacent or hydrologically connected to their habitat.

*Birds*

65. The yellow-billed cuckoo, *coccyzus americanus*, is a federally threatened bird. Its habitat includes Arizona, Utah, and Washington, as well as portions of California, Western Colorado, Idaho, Nevada, Western New Mexico, Oregon, Texas, and Western Wyoming. The diet of the yellow-billed cuckoo consists primarily of caterpillars, but also includes other terrestrial invertebrates and seeds.

66. The streaked horned lark, *eremophila alpestris strigata*, is a federally threatened bird. Its habitat includes portions of Western Oregon and Western Washington. The diet of the streaked horned lark consists primarily of seeds and insects.

67. The red-cockaded woodpecker, *picoides borealis*, is a federally endangered bird. Its habitat includes portions of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Central Missouri, Eastern North Carolina, South Carolina, and Eastern Texas. The diet of the red-cockaded woodpecker consists primarily of insects, other terrestrial invertebrates, and seeds.

68. The black-capped vireo, *vireo atricapilla*, is a federally endangered bird. Its habitat includes portions of Oklahoma and Texas. The diet of the black-capped vireo consists primarily of insects and other terrestrial invertebrates.

69. The threatened and endangered bird species described in Paragraphs 65 to 68 (the “Listed Birds”) are exposed to acetamiprid, dinotefuran, and imidacloprid from use of the Neonic Products in their habitat and in areas adjacent or hydrologically connected to their habitat.

*Aquatic Vertebrates*

70. The Oregon spotted frog, *rana pretiosa*, is a federally threatened amphibian. Its habitat includes portions of California, Oregon, and Washington. The diet of adult the Oregon spotted frog consists mainly of insects.

71. The pallid sturgeon, *scaphirhynchus albus*, is a federally endangered freshwater fish. Its habitat includes the portions of the Lower Yellowstone, Missouri, and Lower Mississippi river basins located in the following states: Arkansas, Iowa, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska , North Dakota, South Dakota, and Tennessee. The diet of the pallid sturgeon includes small aquatic insects, such as mayflies and caddisflies.

72. The threatened and endangered fish and amphibian species described in Paragraphs 70 to 71 (the “Listed Aquatic Vertebrates”) are exposed to acetamiprid, dinotefuran, and imidacloprid from use of the Neonic Products in their habitat and in areas adjacent or hydrologically connected to their habitat.

*Exposure Pathways for the Vulnerable Species*

73. The species listed in Paragraphs 51 to 72 are hereinafter referred to as the “Vulnerable Species.”

74. The Vulnerable Species contact or ingest soil, sediment, water, bait, and plant material containing acetamiprid, dinotefuran, and imidacloprid from the Neonic Products.

75. The Listed Terrestrial Invertebrates and the Listed Birds are directly sprayed with the Neonic Products and exposed to spray drift.

76. Many of the Listed Birds ingest bait containing and seeds coated with acetamiprid, dinotefuran, or imidacloprid from the Neonic Products.

77. The Listed Insect Pollinators ingest the pollen and nectar of plants that have absorbed acetamiprid, dinotefuran, and imidacloprid from the Neonic Products.

The Neonic Products Are Likely to Adversely Affect the Vulnerable Species

78. The exposures described in Paragraphs 74 to 77 are likely to adversely affect the Vulnerable Species because those exposures impair, cause illness to, or kill the Vulnerable Species, worsening their chances of survival in the wild.

79. Acetamiprid, dinotefuran, and imidacloprid target nerve cells—binding to them and triggering a sustained, involuntary response.

80. Sufficient exposure to acetamiprid, dinotefuran, or imidacloprid results in convulsions, paralysis, and, eventually, death. The Vulnerable Species experience these effects from exposure to acetamiprid, dinotefuran, and imidacloprid from the Neonic Products.

81. Sufficient sublethal exposure to acetamiprid, dinotefuran, or imidacloprid impairs cognitive, neuromuscular, and reproductive functions and suppresses the immune system—causing illness by increasing susceptibility to parasites or disease. The Vulnerable Species experience these effects from exposure to acetamiprid, dinotefuran, and imidacloprid from the Neonic Products.

82. The Neonic Products are likely to adversely affect the Listed Fish and Amphibians and the Listed Birds by diminishing their food source. The Listed Fish

and Amphibians and the Listed Birds consume insects and other invertebrates, whose populations are diminished by acetamiprid, dinotefuran, and imidacloprid from the Neonic Products.

EPA's Failure to Consult Regarding the EPA Registrations

83. EPA has not initiated or completed consultation with FWS pursuant to Section 7 of the ESA as to whether registrations of the Neonic Products would jeopardize the continued existence of the Vulnerable Species or result in the destruction or adverse modification of the Vulnerable Species' critical habitat.

**CLAIMS FOR RELIEF**

*Claim 1: EPA's Failure to Consult with FWS on the Acetamiprid Registrations Violates Section 7 of the ESA*

84. Plaintiff incorporates by reference all preceding paragraphs.

85. Defendants registered the Acetamiprid Products pursuant to FIFRA. 7 U.S.C. § 136a.

86. The Acetamiprid Registrations authorize use of the Acetamiprid Products in the United States.

87. Use of the Acetamiprid Products as authorized by the Acetamiprid Registrations harms the Vulnerable Species. Accordingly, the Acetamiprid Registrations "may affect" and are "likely to adversely affect" the Vulnerable Species and their critical habitat. 50 C.F.R. § 402.14.

88. Defendants' failure to consult under Section 7 of the ESA regarding the impacts of the Acetamiprid Registrations on the Vulnerable Species and their failure to ensure that the Acetamiprid Registrations do not jeopardize the continued



existence of the Vulnerable Species or adversely modify their critical habitat violates the ESA and its implementing regulations, and is arbitrary, capricious, and otherwise not in accordance with law in violation of the APA. 16 U.S.C. § 1536(a)(2); 5 U.S.C. § 706.

*Claim 2: EPA's Failure to Consult with FWS on the Dinotefuran Registrations Violates Section 7 of the ESA*

89. Plaintiff incorporates by reference all preceding paragraphs.

90. Defendants registered the Dinotefuran Products pursuant to FIFRA. 7 U.S.C. § 136a.

91. The Dinotefuran Registrations authorize use of the Dinotefuran Products in the United States.

92. Use of the Dinotefuran Products as authorized by the Dinotefuran Registrations harms the Vulnerable Species. Accordingly, the Dinotefuran Registrations “may affect” and are “likely to adversely affect” the Vulnerable Species and their critical habitat. 50 C.F.R. § 402.14.

93. Defendants’ failure to consult under Section 7 of the ESA regarding the impacts of the Dinotefuran Registrations on the Vulnerable Species and their failure to ensure that the Dinotefuran Registrations do not jeopardize the continued existence of the Vulnerable Species or adversely modify their critical habitat violates the ESA and its implementing regulations, and is arbitrary, capricious, and otherwise not in accordance with law in violation of the APA. 16 U.S.C. § 1536(a)(2); 5 U.S.C. § 706.

*Claim 3: EPA's Failure to Consult with FWS on the Imidacloprid Registrations Violates Section 7 of the ESA*

94. Plaintiff incorporates by reference all preceding paragraphs.

95. Defendants registered the Imidacloprid Products pursuant to FIFRA. 7 U.S.C. § 136a.

96. The Imidacloprid Registrations authorize use of the Imidacloprid Products in the United States.

97. Use of the Imidacloprid Products as authorized by the Imidacloprid Registrations harms the Vulnerable Species. Accordingly, the Imidacloprid Registrations “may affect” and are “likely to adversely affect” the Vulnerable Species and their critical habitat. 50 C.F.R. § 402.14.

98. Defendants’ failure to consult under Section 7 of the ESA regarding the impacts of the Imidacloprid Registrations on the Vulnerable Species and their failure to ensure that the Imidacloprid Registrations do not jeopardize the continued existence of the Vulnerable Species or adversely modify their critical habitat violates the ESA and its implementing regulations, and is arbitrary, capricious, and otherwise not in accordance with law in violation of the APA. 16 U.S.C. § 1536(a)(2); 5 U.S.C. § 706.

**REQUEST FOR RELIEF**

Plaintiff respectfully requests that the Court enter judgment as follows:

A. Declare that EPA’s issuance of Acetamiprid Registrations, Dinotefuran Registrations, and Imidacloprid Registrations without initiating or completing the required consultations with FWS violates Section 7 of the ESA;

B. Order Defendants to initiate and complete the required ESA Section 7 consultation for the Acetamiprid Registrations, Dinotefuran Registrations, and Imidacloprid Registrations without further delay;

C. Vacate the Acetamiprid Registrations, Dinotefuran Registrations, and Imidacloprid Registrations or order other interim mitigation measures to ensure the protection of listed and endangered species, including the Vulnerable Species, along with their critical habitat, until the required consultations can be performed;

D. Award Plaintiff its costs and reasonable attorneys' fees; and

E. Grant such other relief that the Court considers just and proper.

Respectfully submitted this 3<sup>rd</sup> day of October, 2017.

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