

# WASHINGTON UPDATE

## December 2006

### DEMOCRAT TAKEOVER IN HOUSE AND SENATE WILL INFLUENCE AGRICULTURE, ENVIRONMENT, AND SCIENCE AGENDA DURING THE 110TH CONGRESS

In case you missed it, the November elections brought forth the largest "power shift" in DC in over a decade. As of December 1, Democrats had picked up 29 House seats for a total of 231 out of 435 with 3 races still undecided. The Senate Democrats gained 6 seats, counting two Independents who will caucus with the party, giving the Democrats a 51-49 edge. Like the 1994 Republican's "Contract With America," the Democrats have outlined their "first 100 hours" agenda, which includes priorities like raising the minimum wage, cutting interest rates on student loans, and increasing energy efficiency and renewable fuels production. Still, the Democrats' capacity to get legislation enacted will remain limited, owing both to the procedural rules of the Senate (e.g., the filibuster), and to the president's veto power. Thus, the Democrats' greatest leverage will come through their control of committees, where they will have the power to conduct any hearings or investigations they wish, whether focused on legislative priorities or oversight.

For weed scientists, that will mean dealing with a combination of some old faces returning to key committees and new ones taking the reins. And although all these politicians have track records, even the pundits admit that it's too early to predict which issues will dominate the next 2 years, let alone how successful the Democrats will be in working with President Bush. One thing is for certain, Chairman and committee staff in both the House and Senate will change. Here are some early observations about how the Democrat victory in the House and Senate will affect weed and invasive plant science policy.

#### **Senate Agriculture Committee:**

Tom Harkin (D-IA) will take over the committee gavel from Saxby Chambliss (R-GA). Sen. Harkin is more interested in trying to strike a balance between competing demands from commodity groups that want continued government subsidies and environmentalists who want more money for conservation and renewable energy incentives. It will be the second time Harkin has been chairman during a reauthorization of the Farm Bill.

In Harkin's Iowa, corn and soybean production rule, and he will continue to support commodity crop subsidies. At the same time, Harkin is the creator of the Conservation Security Program (CSP) in the 2002 Farm Bill which pays farmers for following specific land and water conservation practices. One opportunity for the weed science societies may be to push for more stringent standards regarding noxious weed control requirements within many of the federal conservation programs such as CRP and CSP.

Three newly elected Democratic senators - Sherrod Brown of Ohio, Bob Casey of Pennsylvania and Amy Klobuchar of Minnesota were assigned tentatively to the Senate Ag

committee. During their campaigns, Klobuchar supported mandatory country-of-origin labeling for various products in the grocery store and disaster aid to farmers, while Casey supported biofuels and country-of-origin labels. Brown is a member of the National Farmers Union, which favors a larger federal role in agriculture.

#### **House Agriculture Committee:**

Collin C. Peterson (D-MN) will lead the House Agriculture Committee through next year's rewrite of the 2002 Farm Bill. In the past year, Peterson's initial plan was to seek a simple extension of the 2002 law. After the November elections and a meeting with USDA Secretary Johanns, the Minnesotan now says some parts are worth revamping such as increasing support for the energy and renewable fuels Title in the 2002 law and adding a disaster relief Title.

The 'Blue Dog' Democrat says energy independence will be the most important aspect of the new farm bill which will also allow the Farm Bill writers to build new coalitions with urban members. This is akin to the food stamp and nutrition assistance programs used to sell past farm bills to urban Congressional members. Since renewable fuels research will be a hot topic for years, if not decades to come, it may be time for weed scientists to take a serious look at the feasibility of using weed biomass for energy production.

As for ag research funding, the proposal for the National Institute of Food and Agriculture (NIFA) lost two major supporters to the election with the defeat of Rep. Gil Gutknecht (R-MN) and Sen. Jim Talent (R-MO). NIFA would increase funds available for food and agriculture (ag, consistent throughout newsletter) research in addition to the current available resources at USDA-ARS and CSREES through a competitively awarded grant program similar to that conducted through the National Institute of Health (NIH) and the National Science Foundation (NSF).

While the House committee assignments have yet to be made on either side of the aisle, Peterson has indicated that a reorganization of the current five subcommittees under the House Ag Committee might be coming to provide more oversight of USDA programs and activities.

#### **Senate Environment and Public Works Committee:**

Few panels would see a more drastic change of focus. With the retirement of James M. Jeffords (I-VT), Barbara Boxer (D-CA) would take the gavel from James Inhofe (R-OK). Boxer and Inhofe have been known to "disagree" on many issues under the Committee's jurisdiction. At oversight hearings, Inhofe has strongly supported the Bush Administration's approach to pollution control while Boxer has felt that the Bush administration has made efforts to roll back bedrock environmental safeguards.

Prior to the Thanksgiving break, Boxer named the chairmen of the panel's six subcommittees and laid out an ambitious agenda with a focus on global warming. Under Boxer's direction, the committee is expected to undergo a sharp change in both substance and style. Earlier in November, outgoing chairman Inhofe published "A skeptic's guide to debunking global warming alarmism," a compendium of his Senate speeches and press releases titled "Hot and

Cold Media Spin Cycle: a challenge to journalists who cover global warming.” Meanwhile, Boxer’s state is leading the nation in efforts to combat global warming, enacting a law in August calling for a 25 percent reduction in state CO2 emissions by 2020.

The new Senate Environment and Public Works subcommittee lineup underlines Boxer’s focus on global warming. She will chair a newly named panel on Public Sector Solutions to Global Warming, Oversight, Children’s Health Protection and Nuclear Safety. Meanwhile, Sen. Lieberman (D-CT), recently re-elected as an independent, will chair a subcommittee on Private Sector and Consumer Solutions to Global Warming and Wildlife Protection.

Regardless of your political persuasion on global warming, Sen. Boxer has been a strong supporter of invasive species management and research in the past, particularly aquatic invasive species. She has supported legislation such as the Ballast Water Management Act of 2005 that amends the Nonindigenous Aquatic Invasive Species Prevention and Control Act of 1990 to revise certain aquatic invasive species prevention requirements and set forth protocols for the early detection and monitoring of recently established aquatic invasive species in U.S. waters. Boxer’s home state of California has also been a leader on invasive plant management initiatives. There should be many opportunities for WSSA members from California to build and cultivate a stronger relationship with Sen. Boxer and her staff.

#### **House Resources Committee:**

Nick Rahall II (D-WV) will take the reins of the House Resources Committee from Richard Pombo (R-CA). Rahall’s agenda will probably be a dramatic departure from that of Pombo, a California rancher who fought to loosen environmental laws and protect private property rights.

Pombo tried repeatedly to rewrite the Endangered Species Act, where he fought to ease its mandates by guiding the Threatened and Endangered Species Recovery Act (TESRA) through the House in 2005 before it stalled in the Senate. Rahall argues that more money is needed for federal agencies to fulfill their responsibilities under the law, but he does not favor a complete overhaul.

Likewise, Pombo and other critics of the National Environmental Policy Act (NEPA), which requires federal agencies to assess and minimize environmental impacts of major projects, have characterized that law as burdensome and antiquated. Rahall, however, says the law might need some “tinkering around the edges” but generally has been effective.

The House Resources committee is also likely to head in a different direction on energy policy. Pombo advocated boosting production of fossil fuels on public lands, including in Alaska’s Arctic National Wildlife Refuge (ANWR) and offshore. Being from a coal-producing state, Rahall fought those efforts. Rahall probably will seek to advance clean-coal technology and will likely push legislation that would redirect fees paid by coal companies to cover health care costs of some retired miners and to speed the cleanup of abandoned mine sites.

### **House Science Committee:**

The new chair of the House Science Committee will be Rep. Bart Gordon (D-TN). He shares many of the same interests as his predecessor, retiring Rep. Sherwood Boehlert (R-NY). That list includes increasing spending on science, improving U.S. science and math education, developing new energy technologies to reduce the country's dependence on foreign oil, and ensuring that government scientists are free to disseminate their results. Gordon says that legislation to boost U.S. competitiveness will be a priority for Democrats and that he also expects the panel to take up a reauthorization of programs at NSF.

### **House Appropriations Committees:**

Rep. David Obey (D) from Wisconsin is expected to win the chairmanship of the full House Appropriations Committee. The anticipated Chairwoman for the Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies is Rosa L. DeLauro (D) from Connecticut. She is likely to make food safety a priority, including improved enforcement of food safety laws and surveillance for bovine spongiform encephalopathy, or mad cow disease. The House Interior-Environment Appropriations Subcommittee Chairman Charles Taylor (R-NC) was defeated by former NFL player Heath Shuler (D-NC). Rep. Norm Dicks (D) from Washington is expected to become the new chairman. Peter J. Visclosky from Indiana is expected to chair the House Appropriations Subcommittee on Energy and Water Development, and Related Agencies. Allan Mollohan (D) from West Virginia is expected to chair the House Appropriations Subcommittee for Science and related agencies.

### **Senate Appropriations Committees:**

On the Senate side, Robert Byrd (D) from West Virginia, the most senior member in the Senate, will take over the chairmanship of the appropriations committee from Thad Cochran (R-MS). Senator Herb Kohl of Wisconsin is expected to become chairman of the Senate Agriculture Appropriations Subcommittee. Byron Dorgan (D) of North Dakota is likely to become chairman of the Senate Appropriations subcommittee for the Interior. He is likely to follow up on his complaints in recent years that funding levels for environmental agencies have been stagnant while their responsibilities have substantially increased. The leadership for the Senate Appropriations Subcommittee on Energy and Water is still unclear as Sen. Reid (D-NV) is likely to give up the chairmanship of the panel when he becomes Senate majority leader. That could lead to other shifts among Democrats, with Patty Murray of Washington or Dianne Feinstein of California possibly giving up their current subcommittees to take over Energy and Water. Finally, Barbara A. Mikulski (D-MD) is expected to take over the subcommittee gavel for Commerce, Justice and Science appropriations.

## **PRESIDENT BUSH SIGNS SALT CEDAR AND RUSSIAN OLIVE CONTROL BILL IN TO LAW**

On October 11, 2006, President Bush signed the Salt Cedar and Russian Olive Control Demonstration Act (**SCROCDA**) into law. Since we are short on acronyms here in DC, **SCROCDA** should be a worthwhile acronym for those of you west of the Mississippi River to get to know. Plus it sounds “tough”.

The bill (**SCROCDA**) directs Interior Secretary Dirk Kempthorne acting through the Commissioner of Reclamation and the Director of the U.S. Geological Survey to disburse \$80 million over 5 years (FY 2006-2010) to carry out a salt cedar (*Tamarix spp*) and Russian olive (*Elaeagnus angustifolia*) assessment and demonstration program. Since FY 2006 is already gone and FY 2007 appropriations should have been approved by Oct. 1, 2006, only 3 fiscal years of this bill remain in play for all practical purposes. Under **SCROCDA**, FY 2008-2010 are authorized at \$15 million per year.

This legislation has three major components: (1) assess the current extent of the infestation by salt cedar and Russian olive trees in the western United States; (2) demonstrate strategic solutions for the long-term management of such trees and the reestablishment of native vegetation; and (3) assess economic means to dispose of biomass created as a result of removal of tamarisk and Russian olive trees. A majority of the authorized appropriations will be designated for Phase 2, the demonstration and long term management and research projects. This legislation has many proponents and more details will be forthcoming. The National and Regional Weed Science Societies will be circulating a letter of support for **SCROCDA** appropriations in the near future.

#### **WSSA SUBMITS COMMENTS ON MSMA REREGISTRATION BY EPA**

In August 2006, the EPA said it would not reregister the organic arsenical herbicides, in particular MSMA. Many WSSA members feel that MSMA is a critical weed management tool in cotton, turf, roadside weed, and herbicide resistance management, especially in southern cropping systems. The EPA offered a public comment period for concerns and objections that ended on November 11, 2006 and the WSSA submitted the following selected comments:

“The registration of MSMA is critical to maintaining safe and economically viable weed management options in cotton and turf production systems. A variety of treatments or techniques must be available for management of weeds in these systems. By eliminating MSMA as a weed management control option, the economic integrity of these production and management situations will be severely degraded. MSMA needs to remain as a critical weed resistance management option, plus it is the only control option for several widespread and problematic grass weeds in turf..... The EPA’s primary concern with using organic arsenical herbicides is the potential for applied organic arsenical products to transform to a more toxic inorganic form of arsenic in soil with subsequent transport to drinking water. Yet, the EPA Office of Ground Water and Drinking Water states that arsenic occurs naturally in rocks and soil, water, air, and plants and animals. It can be further released into the environment through natural activities such as volcanic action, erosion of rocks and forest fires, or through human actions. Approximately 90 percent of industrial arsenic in the U.S. is currently used as a wood preservative, but arsenic is also used in paints, dyes, metals, drugs, soaps and semi-conductors. High arsenic levels can also come from certain fertilizers and animal feeding operations. The WSSA is not aware of the increased exposure of arsenic to the U.S. population from MSMA derivatives. If EPA has conclusive data indicating

otherwise, the WSSA would be very appreciative in learning this..... Given the depth of expertise available with the WSSA, we believe we can help the EPA with all manner of questions relative to assessment of the reregistration of MSMA. This expertise includes understanding the scope of data included in the reregistration packages submitted to EPA, herbicide modes of action, environmental mobility, non-target risks, use limitations, potential persistence and selectivity, and comparative efficacy. Given this expertise we would like to participate in any efforts to develop such a protocol for re-evaluating the reregistration of MSMA.

### **VAN WYCHEN ATTENDS 2006 ANNUAL MEETING OF THE ASSOCIATION OF FISH AND WILDLIFE AGENCIES**

The Association of Fish and Wildlife Agencies (AFWA) annual meeting was held September 17-22 Aspen, CO. AFWA represents all of North America's fish and wildlife agencies - promoting sound management and conservation, speaking with a unified voice on important fish and wildlife issues. My primary goal was to establish and build relationships and identify areas of common interest shared by WSSA and AFWA on invasive plant issues. AFWA considers invasive plants as one of the greatest challenges to wildlife and fisheries management in the 21st century.

In 2005, AFWA established an Invasive Species Committee to provide a national forum for coordinated action among state and federal agencies, and provide a foundation for development of a strategic AFWA invasive species plan. Federal land management agencies commit millions of dollars to fighting invasive species challenges, and strategic coordination among state and federal agencies is critical to the conservation and expansion of existing wildlife and fisheries habitat. The WSSA plans to continue this initiative during National Invasive Weed Awareness Week by helping coordinate a joint session between the Federal Interagency Committee for the Management of Noxious and Exotic Weeds and AFWA. For more information about the AFWA Invasives Species Committee or to become a member, please contact Amber Pairis at 202-624-7890 or [apairis@fishwildlife.org](mailto:apairis@fishwildlife.org).

### **GLYPHOSATE-RESISTANT MARESTAIL CONFIRMED IN NEBRASKA**

WSSA members Alex Martin and Stevan Knezevic with the University of Nebraska confirmed the first glyphosate-resistant weed species in Nebraska - marestalk, also known as horseweed. They first suspected resistance had developed almost a year ago, but it took tests and growing plants from last year's seeds to confirm it. Prior to the introduction of glyphosate-tolerant crops only a few weed species (e.g. ryegrass and goosegrass) had developed resistance to glyphosate worldwide. However, the number of glyphosate-resistant weeds tripled in just over eight years of repeated glyphosate use over a large land area (over 50 million acres). Current examples of glyphosate-resistant weeds in the U.S. include waterhemp, lambsquarters, giant ragweed, common ragweed, palmer amaranth and marestalk (horseweed).

## **EPA ISSUES FINAL RULE ON AQUATIC PESTICIDE APPLICATIONS**

On November 21, 2006, the EPA issued a final rule clarifying two specific circumstances in which a Clean Water Act (CWA) permit is not required before pesticides are applied. This rule represents efforts by EPA over the past five years through consultations with numerous stakeholders and two public comment periods. The final rule states that CWA permits are not required to apply pesticides directly to water to control pests, including mosquito larvae, aquatic weeds and other pests in the water nor when pesticides are applied to control pests that are present over or near water where a portion of the pesticide will unavoidably be deposited to the water in order to target the pests effectively.

The rule reinforces and clarifies the authority set forth in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Before a herbicide is registered, it must undergo extensive study and review to help ensure that it does not cause unreasonable adverse effects on human health and the environment, which includes herbicide applications directly to or near a body of water. The final rule will become effective on January 26, 2007. However, the implications of the rule on pending Region IX circuit court cases are unknown at this time. For more information: [http://cfpub.epa.gov/npdes/home.cfm?program\\_id=41#water\\_transfer](http://cfpub.epa.gov/npdes/home.cfm?program_id=41#water_transfer)

## **GUIDANCE ON PESTICIDE PRODUCT WARRANTY STATEMENTS AVAILABLE**

Most, if not all, pesticide labels contain some type of warranty disclaimer language. EPA's Office of Pesticide Programs (OPP) has posted on its Web site a document that provides a discussion and examples of warranty statements for pesticide products that the agency considers either acceptable or unacceptable. OPP is aware that some warranty disclaimer statements may contain potentially false or misleading language, or words and phrases that are in some way objectionable. Additionally, OPP is frequently asked by applicants/registrants about warranty disclaimer language they wish to place on pesticide labels. Therefore, OPP is posting on its web site the agency's guidance on warranty statements.

There are four types of label language associated with warranty disclaimers, and statements of limitations of liability that the Agency has found to be unacceptable under statutory and regulatory standards. It is important to recognize that these statements must be assessed on a case-by-case basis. Following are examples of statements that have been found unacceptable:

- Overly broad statements negating or detracting from the Directions for Use or other label language (including precautionary statements and directions for use). For instance, the warranty statement that the product may not work would negate Directions for Use that explained how the product was to be used.
- Label language asserting that the buyer has accepted the manufacturer's statement of his/her respective rights (e.g., manufacturer states buyer's rights are extremely limited or require a specific process to be realized). Because these statements are almost always incomplete (in terms of fully explaining a buyer's rights in the jurisdiction (state) of

purchaser and because they can mislead buyers into thinking that they have no legal remedy, they may constitute “misbranding” under FIFRA.

- Overly broad language implying the buyer has no legal right to recover damages from manufacturer (e.g., “all such risks shall be assumed by the buyer”).
- Because Experimental Use Permit (EUP) labels must be used in strict accordance with the EUP program, the warranty on EUP labels may not disclaim control over use.

For more information: <http://www.epa.gov/pesticides/regulating/labels/warranty.pdf>

### **USDA-APHIS LISTS SOUTH AFRICAN RAGWORT AND MADAGASCAR RAGWORT AS NOXIOUS WEEDS**

The USDA Animal and Plant Health Inspection Service (APHIS) has amended the noxious weed and imported seed regulations by adding South African ragwort (*Senecio inaequidens* DC.) and Madagascar ragwort (*Senecio madagascariensis* Poir.) to the list of terrestrial noxious weeds and to the list of seeds with no tolerances applicable to their introduction. The final rule was adopted on October 5, 2006 and was necessary to prevent the artificial spread of these noxious weeds into the U.S. For more information, contact WSSA member Dr. Al Tasker, Noxious Weeds Program Coordinator, Invasive Species and Pest Management, at 301-734-5225.

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