



The Endangered Species Act Consultations for Pesticides: A Path Forward

The Issue

The Environmental Protection Agency (EPA or the Agency) and the Fish and Wildlife Service and National Marine Fisheries Service (collectively, the Services) have long held dramatically different views on how to assess potential environmental risks of pesticides. The agencies have historically disagreed on fundamental legal and science policy matters related to their respective obligations under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Endangered Species Act (ESA).

On April 30, 2013, a panel of the National Academy of Sciences (NAS) published a report providing guidance to EPA and the Services on six key scientific issues at the heart of the agencies' disagreements regarding the environmental risk assessment of pesticides.¹ Since then, the agencies have been working to address the NAS report's recommendations, resulting in the agencies developing "Interim Approaches" for ESA pesticide risk assessment.² The agencies are testing these Interim Approaches on three insecticides that have been subject to EPA review, registration and regulation by EPA for decades with no known instances of harm to endangered species.

To obtain a pesticide registration, applicants must submit, and EPA must review the conclusions of over 100 scientific tests on the pesticide's effects on the environment. A pesticide registration must be reviewed and renewed every 15 years. Despite the history of safe use, EPA recently released for public comment draft biological evaluations (BEs) for chlorpyrifos, diazinon, and malathion stretching over 12,000 pages each and concluding, based on a series of unsupported and unrealistic, overly conservative assumptions, that the chemicals are likely to negatively affect over 95% of all endangered species.³ The evaluations ignore factual information on the cause of species declines as well as successful recovery of species. For example, the population of Kirtland's warbler has increased 10 fold as a result of habitat management programs, which is strikingly inconsistent with the Agencies' conclusion. Now, those thousands of pages and conclusions go to the Services for them to undertake yet another lengthy review. The Interim Approaches are unsustainable and have not resulted in meaningful analysis that would likely lead to measurable benefits to endangered species. A solution must be found that maximizes the efficient use of governmental resources and minimizes duplicative review, while realistically continuing to protect wildlife, public health and agricultural productivity.

Key Facts

- EPA has committed to completing "registration review" for 1,166 pesticide active ingredients (AIs) in the next 6 years, which includes an ESA review of each AI. It will take EPA and the Services over 2 years to complete an ESA review on just 3 AIs. **The Services would require at**

¹National Academy of Sciences, *ASSESSING RISKS TO ENDANGERED AND THREATENED SPECIES FROM PESTICIDES*, 26-27 (2013).

² Environmental Protection Agency, *Interim Approaches for National-Level Pesticide Endangered Species Act Assessments*, (July 2015) available at <https://www.epa.gov/sites/production/files/2015-07/documents/interagency.pdf>.

Based on the Recommendations of the National Academy of Sciences April 2013 Report

³ Chlorpyrifos, Diazinon, and Malathion Registration Review; Draft Biological Evaluations; Notice of Availability; EPA-HQ-OPP-2016-0167, 81 FR 21341 (Apr. 11, 2016).



least \$758 million and hundreds of new staff to meet their ESA obligations associated with registration review for currently listed species (approximately 2,400) using the Interim Approaches consultation process.⁴

- **The current ESA consultation process done by EPA and the Services will significantly delay or completely interrupt and potentially shut down EPA's normal FIFRA registration and registration review process.** This regulatory uncertainty is impacting the crop protection industry's ability to provide products that contribute to agricultural productivity.
- Despite claims made by some activists, **EPA already evaluates the potential effects of a pesticide on all non-target species, including endangered species** through the FIFRA registration process. Under FIFRA, before approving a pesticide's use, EPA must ensure that the proposed use does not cause "any unreasonable adverse effects on the environment (including fish, wildlife and 'non-target' plants)." Applicants for a pesticide registration must submit EPA-required scientific studies to EPA so that the Agency can thoroughly evaluate the pesticide's potential environmental impacts. EPA also considers other available data and can require additional data to ensure its registration decisions are scientifically sound.
- Activist initiated ESA/FIFRA litigation has been ongoing for almost 15 years and there is no end in sight. Despite the government's implementation of the Interim Approaches and its work on the first three draft BEs, there have been multiple new ESA lawsuits challenging new product registrations, leading to additional regulatory uncertainty. **These lawsuits have a chilling effect on the introduction of new, more modern pesticide products.** Further, ESA litigation has diverted the severely restricted resources of both EPA and the Services away from conservation efforts that would be more beneficial to the protection and recovery of threatened and endangered species and critical habitat.

CropLife America seeks to work with the government and other interested stakeholders, to find reasonable and feasible alternative science-based approaches that are efficient, continue to ensure safety and regulatory compliance of pesticide products, and improve conservation and potential recovery of endangered species and their habitats. An improved ESA consultation process is needed to make the best use of limited government resources, and to increase transparency and public trust in the risk assessment processes. Creative thinking and new approaches are needed to allow growers and other pesticide users to continue to have access to the tools they need to protect families, crops, homes and wildlife from pests and diseases.

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⁴ Summit Consulting LLC, Analysis of Cost Estimates and Additional Resources Required for Timely FIFRA/ESA Pesticide Registration Review, Summary Overview and Methodology Documentation (Oct. 2016).