



Chemical Producers & Distributors Association

Issue Brief

Endangered Species Act

Background

In 1973 the Endangered Species Act (“ESA”) was enacted to protect threatened and endangered species. The ESA is one of our nation’s most complex and rigorous statutes. Among other things, the ESA requires EPA to assess the effects of pesticides on endangered species and to “consult” with the U.S. Fish and Wildlife Service and the U.S. National Marine Fisheries Service (the “Services”) on potential effects. Because of EPA’s failure to do so, activist groups have successfully filed several lawsuits in the past resulting in the imposition of “interim measures” by judges. This included buffer strips around affected habitat where named pesticides could not be applied. In response, in 2004, the Services and EPA developed Counterpart Regulations to streamline the assessment and consultation process that they would use to identify potential pesticide effects on endangered species. However, due to additional lawsuits brought against EPA, the Counterpart Regulations have not been fully implemented and, in one case, were invalidated by a Washington state district judge.

On January 27th, 2010, the Center for Biological Diversity (CBD) filed a notice of intent to sue the EPA for failing to adequately evaluate and regulate 394 individual pesticides nationwide. The notice of intent alleges the EPA has violated the ESA by failing to consult with wildlife regulatory agencies about the impacts of pesticides – specifically referencing 887 endangered and threatened species (including mammals, birds, fish, amphibians, reptiles, mollusks, crustaceans, insects, and plants).

Recently, as a result of a court-ordered mandate stemming from a very similar lawsuit, only exponentially smaller in scope, EPA made a hasty yet precedent-setting decision to impose restrictions on the use of three critical crop-protection products resulting in buffer-zones and use limitations for more than 112 MILLION ACRES in Washington, Oregon, California, and Idaho. These crippling decisions were made without input from stakeholders in the affected areas; without adequate input from experts in the state governments; without using available real-world data; without the federally-mandated consideration of restrictions on affected parties; and without considering practical implementation of the proposed changes regarding product use and product labeling within the mandated timeframe.

Now that precedent for litigation leading to buffer-zones and use limitations has been established, the decision making process for this nationwide lawsuit could be potentially devastating for the agricultural community.

Position

CPDA supports efforts to evaluate the effects of pesticides on threatened and endangered species, provided the process is scientifically sound and transparent. We also support adherence by EPA and the Services to the strong framework provided by the Counterpart Regulations, including a consultation process that moves forward in a timely manner and includes the affected registrant. It is imperative that EPA develop a transparent process for implementing new protections with the full involvement of growers, state authorities and registrants.

CPDA is concerned lawsuits alleging that EPA’s methodology for assessing risks to endangered species is inadequate have slowed EPA efforts to assess potential pesticide risks to listed species; and have the potential to cripple the country’s vital food and fiber production through hasty use limitations.