

Target: Protecting Endangered Species from Pesticides

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Under the Endangered Species Act, EPA is required to consult with the U.S. Fish and Wildlife and National Marine Fisheries Services (the "Services") to ensure that no EPA actions impact endangered species. The Services have proposed to streamline this process by allowing EPA to conduct these risk assessment evaluations when registering pesticides and renewing pesticide registrations. In March, we argued that the EPA has neither the legal authority nor the technical expertise to bypass this necessary review by the Services.

Bypass of Review by Fish and Wildlife and National Marine Fisheries Services (the "Services") as Required By Endangered Species Act

Issue:

Can the Services streamline the risk assessment process required by Section 7 of the Endangered Species Act for the registration and reregistration of pesticides by allowing EPA to conduct that evaluation?

Background:

The Services proposed joint counterpart regulations for consultation under section 7 of the Endangered Species Act of 1973 ("ESA") for regulatory actions under the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"). The proposed regulations would eliminate the need for EPA to consult with and obtain the written concurrence from the Services that no endangered species would be harmed when taking FIFRA actions--namely the registration and reregistration of pesticides. The Services' rationale for this proposed regulation was that EPA had the expertise to undertake such evaluations and to require the Services to make these assessments was duplicative and time consuming, resulting in delays.

RtE Position:

The proposed regulations should be withdrawn. Pesticides pose a serious threat to endangered species. The EPA's evaluation in the FIFRA registration process alone is not sufficient to protect wildlife species from the ill-effects of pesticides.

EPA is not legally permitted to bypass the consultation process, which is required by the ESA and the Services have a Congressionally mandated, statutory duty under Section 7 of the ESA to conduct risk assessments. This statutory duty of the Services cannot be waived by a regulatory fix. Furthermore, the EPA's

authority to make risk assessments is limited. Exceptions to the consultation process are already imbedded within the ESA, and therefore not only is the waiver process contained in the proposed regulation contrary to law, but it is not necessary.

In addition to the legal barriers to the Services' proposal to bypass the mandatory consultation process, is the fact that EPA is simply not qualified to conduct evaluations required under Section 7 of the ESA. Not only has EPA's risk assessment review process been demonstrated to be deficient, but it has found to be biased, inaccurate, and incomplete as well. Therefore, even if EPA were legally permitted to conduct such reviews, they are not qualified to do so.

Update:

In March, RtE commented on the proposed rule as well as the Environmental Assessment. However, on August 5, USFWS finalized the rule in favor of the proposal.

RtE is reaching out to other environmental groups to explore potential collaboration in litigating the regulations.

Links:

RtE-ESA_CounterpartLetter.pdf

Rock the Earth letter of March 29, 2004, to the U.S. Fish & Wildlife Service, commenting on the Joint Counterpart Endangered Species Act Section 7 Consultation Regulations.