

Modernize the Endangered Species Act (ESA)

Position: Pest Management Professionals are protectors of public health and stewards of the environment. Now is the time to modernize the ESA to adhere to sound science and enable the development of innovative products to better protect people, their businesses, and their properties; through smarter allocation of government resources to better protect our nation's precious natural resources, diversity of species and healthy ecosystems.

Synopsis: The Endangered Species Act of 1973 (ESA) was signed into law on December 28, 1973, ESA provides for the conservation of endangered or threatened species and the ecosystems on which they depend. The ESA's intent to protect and preserve species and their habitats is vital and necessary to conserve American ecosystems and our tremendous natural resources.

The Department of Interior, specifically the U.S. Fish and Wildlife Services and National Marine Fisheries Services (collectively the Services), are tasked with implementing the ESA. Under Section 7 of ESA, Federal agencies must consult with the Services when any action the agency carries out, funds, or authorizes *may affect* a listed endangered or threatened species.

When a pesticide is undergoing a new registration or registration-review, a consultation between the U.S. Environmental Protection Agency (EPA) and the Services is triggered if it appears that the pesticide may affect a listed species, which results in the EPA and the Services conducting parallel scientific assessments with different standards and expertise. If the Services determine that the agency action places a threatened or endangered species in jeopardy, the Services will see this as a violation of the ESA and mitigation measures are required to move forward.

The Federal Insecticide and Rodenticide Act (FIFRA) designates the EPA, not the Services, as the lead federal agency tasked with the registration and registration-review of all pesticides used in the U.S. EPA conducts comprehensive human health and ecological risk assessments and exhausts immense resources on the registration and review of pesticides, using the most current science-based information and peer-reviewed scrutiny. Pesticides approved by EPA pursuant to FIFRA may not cause any unreasonable adverse effects on the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide. During the extensive review of pesticides, EPA implements the Endangered Species Protection Program (ESPP), which provides an additional review of those species listed as endangered and threatened.

Unfortunately, the collaborative consultation process is broken and unnecessarily bureaucratic. Differing statutory standards and a lack of resources at the Services has led to a back log of decisions. In 2013 a panel of the National Academy of Sciences (NAS) published a report identifying critical scientific disagreements concerning ecological risk assessments. The NAS report provides guidance that EPA and the Services are working toward fixing, but it remains broken while external factors continue to exacerbate the flawed consultation process.

The leading external factor on the broken consultation process is a concerted effort by activists to use the ESA to inhibit the use of valuable pesticides used to protect public health, food and property. Since 2004, numerous citizen lawsuits have been brought by activists against the Services and EPA. The litigation against the Services and EPA asserts a failure to adequately perform consultation and has led to settlements and court orders that restrict the use of pesticides while creating unrealistic timelines to perform consultations in a piecemeal process. Neither the Services nor the EPA will be able to conduct full consultation as currently constituted.

ESA has not been significantly amended since the 1980s, during the past thirty years it has become abundantly clear that the ESA is broken. The process is not working, and species are not recovering at an acceptable rate, while government agencies continue to spin their wheels in a dysfunctional process, wasting tremendous resources against significant litigation. Now is the time to modernize the ESA by implementing a process that best utilizes government resources and sound scientific decisions.