

Endangered Species Act Considerations and Mosquito Control

Issue: Decisions on how pesticides should be used near sensitive or listed species are not being developed in a transparent manner based upon sound science.

Background: The Endangered Species Act (ESA) is intended to protect species that are threatened with extinction and maintain their critical habitat. However, its implementation can impede mosquito control programs from protecting the public and wildlife from nuisance and disease-carrying mosquitoes.

During the pesticide registration process, EPA provides its analysis of a pesticide's potential environmental effects, including those involving endangered or threatened species, to the Fish and Wildlife Service and National Marine Fisheries Service (the Services), which are charged with administering the ESA. The Services then develop and issue Biological Opinions (BiOps), reflecting their conclusions of potential impacts to species and habitat from pesticide use. In developing BiOps, the Services are required to use the "best available" data to determine potential impacts on species, and where necessary, recommend measures to mitigate those impacts.

Historically, in many instances, the "best available data" relied on by the Services was not validated, and could be more appropriately classified as unsubstantiated opinions. The Services' process was not open and transparent, or subject to peer review. This was recognized in the 4th Circuit Court of Appeals ruling that NMFS was "arbitrary and capricious" in issuing BiOps relating to salmonids. As a consequence, the Services were forced to work with the EPA in identifying appropriate approaches in analyzing the potential for impacts of pesticide products, including public health pesticides, on endangered and threatened species. The development of these approaches is still underway.

Discussion: There is a concern that ESA regulatory decisions, which may adversely affect the ability to use pesticides to protect public health, will be made before the approaches being considered have been subjected to peer review and public comment, and where appropriate modified before they are finalized. A more prudent approach would be to make pesticide regulatory decisions only after the appropriate public review of the approaches has been completed. This would assure that the potential regulatory decisions are more robust as well as helping to avoid the potential for unnecessary restrictions on public health pesticides.

Action Needed: Congress should direct the Services to implement measures to ensure that ESA decisions are based upon peer-reviewed and validated science, transparency, and the rule of law. Further restrictions on the use of public health pesticides should not occur until the proper science-based approaches have been finalized.