

House ESA Working Group Meeting
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Good Morning, my name is Kevin Kolevar and I serve as a Member of the Board of the Conservation Leadership Conference. I also lead Government Affairs and Public Policy for the Dow Chemical Company.

Wearing both my conservation and public policy hats, I would like to bring to your attention an area of particular concern under the Endangered Species Act – the agency consultation process. This is an area - from a conservation and public policy perspective - that is in dire need of legislative attention.

As you may know The Endangered Species Act (ESA) was passed by Congress in 1973 to protect threatened and endangered species (TES) and their ecosystems. Section 7 of ESA mandates that other governmental agencies consult with the National Fish and Wildlife and the National Marine Fisheries Services (Services) to ensure that effects of actions they authorize, fund or carry out are not likely to jeopardize the continued existence of listed species.

EPA regulates crop protection products under one statute (FIFRA) and two other federal agencies (Fish & Wildlife Service, National Marine Fisheries Service) then review EPA's extensive regulatory effort under a different statute (ESA), even though the agencies have different and competing statutory standards. This occurs despite the fact that highly qualified EPA scientists are required to independently review the results of extensive safety tests to determine that a given pesticide does not inadvertently harm wildlife, including endangered species.

This current duplication of effort under different statutory standards has resulted in consultation delays between the agencies, leading to numerous costly lawsuits, none of which have provided additional protection to endangered species. This unnecessarily duplicative review system threatens agricultural productivity and U.S. global competitiveness with no benefit to our nation's threatened and endangered species. Everyone from farmers to environmentalists, and even the regulators themselves, agree that the current regulatory system is broken and is in desperate need of repair.

EPA is required to consult with the Services on a regulatory action if that action may result in an effect on a listed species or its habitat. The Services have publicly stated that they do not have adequate resources to keep pace with EPA consultation requests. EPA has publicly stated that about one third of its consultation requests were met by claims that more information was needed from EPA, and about half received no response from the Services at all.

To date, EPA has not:

- Completed a consultation with the Services on a crop protection product that resulted in a label change
- Defined a practical, consistent process for managing products during the registration review process mandated by FIFRA

This bureaucratic wrangling between EPA and the Services has resulted in lengthy and costly lawsuits that do little to protect endangered species

- In the last decade, EPA has been sued multiple times on procedural grounds by opponents of pesticide usage citing EPA's failure to adequately "consult" with the Services on hundreds of product registrations.
- These lawsuits are used by pesticide opponents as a means to force reductions in pesticide usage.
- In a change in tactics, pesticide opponents are now attempting to stop pesticide registrations by threatening lawsuits if the Agency proceeds with registering products. In response, EPA is compelling registrants to develop complex and burdensome solutions that have a real impact on U.S. farmers to eliminate the need for consultation.
- These lawsuits jeopardize agriculture and pest control activities but it is unlikely that the proposed restrictions would have any benefit in actually protecting or promoting the recovery of endangered species.

And it's costing us by chilling investments and stalling economic growth. Currently, multiple manufacturing facilities sit idle in the United States waiting to produce new innovative products while hundreds of new jobs that are associated with these technologies: construction, engineering, research and development, sales and marketing are on hold. And these jobs can be found across the education spectrum from high school graduates and vocational school graduates to PhDs. The withholding of new technologies, that have been a critical component of our agricultural success, is negatively affecting U.S. farmers' international competitiveness.

This unnecessarily duplicative review system threatens agricultural productivity and U.S. global competitiveness with no benefit to our nation's threatened and endangered species. Everyone from farmers to environmentalists, and even the regulators themselves, agree that the current regulatory system is broken and is in desperate need of repair.

You should understand that we view this as a failure of the system. By and large, EPA staff appear committed to working cooperatively with companies to move products through the regulatory system, but this system is broken.

Legislation is desperately needed to fix this forty year old problem. Since the inception of the Endangered Species Act, it has been a statutory conflict with FIFRA that every administration has failed to resolve.