



The Great Salmon Debate

The History of a Controversy

The history of the controversy involving the debate around the ESA and chlorpyrifos regulation is extremely complex. Here's a thumbnail sketch of how the present situation came about:

2001: Washington Toxics Coalition Lawsuit

The Washington Toxics Coalition in concert with other environmental organizations filed a lawsuit against EPA claiming that the Agency was in violation of the Endangered Species Act (specifically, section 7(a)(2)) by failing to consult with NMFS and FWS about its registrations of 54 pesticide active ingredients and their potential effects on 26 Pacific salmon and steelhead populations listed by the federal government as endangered under the ESA. (Dow AgroSciences and CropLife America (CLA) were active participants in this litigation: Dow AgroSciences filing an amicus brief and CLA filing as an intervener.)

2002: EPA's Settlement Agreement

EPA entered into a settlement agreement requiring the Agency to initiate consultation with NMFS on the effects on salmonids of registered uses for all 54 pesticide active ingredients. EPA completed the required assessments during 2002-04, but NMFS did not appear to be actively involved in the process.

2007: Northwest Coalition for Alternatives to Pesticides Suit

The Northwest Coalition for Alternatives to Pesticides sued NMFS claiming that the Service had failed to complete the required consultations in a timely manner. The following year, NMFS settled the suit by agreeing to complete consultations by issuing Biological Opinions (BiOps) on 37 pesticides as to the precautions needed for the protection of endangered salmonids. By court order, these BiOps were to be completed on a set timetable, with the first BiOps – for chlorpyrifos, malathion and diazinon – to be issued in draft form in July 2008 and then finalized in October of the following year. (Under court order, BiOps for 34 additional pesticides must also be completed in the next four years.)

2008: NMFS Draft Biological Opinion

In 2008 when NMFS issued the BiOp for chlorpyrifos (and the other two pesticides), its assessment was hastily assembled to meet a litigation-driven deadline, and it was severely criticized both by registrants and the regulatory community, including the EPA, the California Department of Pesticide Regulation and the Washington State Department of Agriculture. Among the objections made to the BiOp were claims that:

- a) NMFS had failed to provide a solid scientific demonstration that the salmon species in question were actually at risk from the three pest control products in question.
- b) The conclusions of the BiOp were based on outdated labeling and inaccurate information on product use.
- c) Instead of integrating into its assessment the extensive monitoring data collected by EPA and state regulators over a period of decades, NMFS unilaterally prepared its own evaluation based on unvalidated modeling, thus favoring assumption-based decision-making over real-world data on the presence of the three compounds in actual salmon habitat.

2009: Registrant Cooperation and Concerns

On a parallel track, Dow AgroSciences and two other registrants, Makhteshim-Agan and Cheminova, agreed to work with EPA on implementing the EPA's intended approach to the NMFS recommendations, based on the BiOp that EPA previously strongly criticized. Dow AgroSciences was initially encouraged that EPA's approach, while still highly precautionary, was better grounded in science than the assessment offered by NMFS.

As always, however, the devil is in the details, and the three registrants are presently concerned that the Agency's overly broad definition of salmon habitat will result in no-use buffer zone restrictions being extended to every ditch, drain, canal and irrigation furrow containing water that could, arguably, eventually reach salmon habitat. This would result in buffers being applied dozens of miles from habitat where salmon might actually live, essentially leading to a prohibition of use of these products in large areas of the Pacific Northwest.