

US EPA ARCHIVE DOCUMENT

# Endangered Species Act/Pesticide Consultation

## – Public Outreach (*session # 4*)

Presented to the Pesticide Program  
Dialogue Committee

By: Donald Brady &  
Richard Keigwin

4/29/10

# ESA Update-Public Outreach

---

- Purpose today:
  - Provide an update on implementation of BiOp's and revised BiOp schedule
  - Describe NMFS' process
  - Describe EPA's process
  - Solicit comments/suggestions

# Implementation of BiOp's

---

- BiOp “1” – three OP pesticides
  - EPA has provided registrants with description of activities necessary to preclude jeopardy
  - Registrants have been asked to provide EPA with their response; final actions will be determined based on applicant response
  
- BiOp “2” – three NMC pesticides
  - EPA is preparing to respond to NMFS with description of activities we will undertake to preclude jeopardy

# Schedule for Future BiOp's

---

- Additional BiOp's from NMFS
  - Some NMFS deadlines have moved back 2 months
    - next final BIOP is due in August 2010
    - last one is due in February 2012
  - On February 29, 2012 we anticipate we will have received 17 final BiOp's concluding consultation for pesticides containing any of 37 active ingredients

# NMFS Process for Developing BiOps

---

- Procedures governing development and issuance of BiOp's are in the Services Joint Regulations on Consultation (*50 CFR 402*) and in the Services Endangered Species Consultation Handbook (*1998 final*).
- Regulations and handbook do not provide for public comment period.
- Regulations and handbook do not require detailed response to comment document to address input from action agency, applicants or others.
- Regulations and handbook do provide several opportunities for input by applicants.

# NMFS Process for Developing BiOps

- "*Applicant*" is any person who requires formal approval or authorization from a Federal agency as a prerequisite to conducting an action (50 CFR 402.02). For pesticide actions the registrant is an applicant.
- EPA must provide the applicant an opportunity to submit information for consideration during the consultation (50 CFR 402.14(d)).
- NMFS must discuss with the applicant, NMFS review and evaluation, the basis for findings in the BiOp, and the availability of reasonable and prudent alternatives (RPAs) that the agency and the applicant can take to avoid jeopardy. (50 CFR 402.14(g)(5))
- The Service will utilize the expertise of the Federal agency and applicant in identifying RPAs. (50 CFR 402.14(g)(5))
- If requested, the Service shall give the Draft BiOp to the Federal agency so they can analyze the reasonable and prudent alternatives. (50 CFR 402.14(g)(5))
- The applicant may request a copy of the draft BiOp from the Federal agency. (50 CFR 402.14(g)(5))
- All comments on the draft BiOp must be submitted to the Service through the Federal agency, although the applicant may send a copy of its comments directly to the Service. (402.14(g)(5))

# Public Outreach – EPA Role

---

- EPA role relative to applicant input to the BiOp, is as a conduit to NMFS.
- In this role EPA:
  - identifies applicants who may have rights under the ESA
  - provides applicant input to NMFS
  - facilitates meetings between NMFS and applicants
  - provides draft BiOp's to applicants
- EPA cannot compel NMFS to respond to or accept applicant input.



# Public Outreach – EPA Role

- EPA's FR notice regarding implementation of the Endangered Species Protection Program (*70 FR 211; Nov. 2, 2005; pp. 66392-66402*) outlines EPA's public outreach relative to consultation.
- There are three major phases that may provide opportunity for public input:
  - Prior to a "may affect determination" by EPA;
  - identifying potential mitigation; and
  - prior to issuance of a final Biological Opinion to EPA by the Services.
- More specifically:
  - EPA will consider in its risk assessment process, any relevant, timely information received.
  - EPA will seek input when identifying potential mitigation measures if such measures are being sought prior to consultation.
  - EPA will publish draft BiOp's for purposes of obtaining input to Draft Reasonable and Prudent Alternatives (RPAs) and Measures (RPMs).
    - EPA considers this input in providing EPA comments to NMFS on the RPAs.

# Public Outreach – EPA Role

---

- EPA's FR notice regarding implementation of the Endangered Species Protection Program (*70 FR 211; Nov. 2, 2005; pp. 66392-66402*) outlines EPA's public outreach relative to implementation.
- EPA headquarters relies on EPA Regions and State and Tribal regulatory partners for their input and to obtain input from other affected parties such as grower groups or users.
- Requested input may include:
  - Whether maps accurately depict landmarks, rivers, roads, etc.
  - How best to characterize use limitation areas on the maps (i.e., using township/range/sections or landmarks, etc.).
  - Whether any local conditions would preclude the use limitation from being implemented.

# EPA's Outreach on BiOp's 1 and 2

---

- For BiOp's 1 and 2 EPA followed this approach to the extent possible.
  - Received comments that some stakeholders, particularly grower groups, wanted more direct contact with OPP Headquarters
    - Awareness of BiOp status/implementation
    - Explanation of responsibilities and roles
- EPA is committed to seeking increased opportunities for interaction and building awareness

# EPA Public Outreach – Moving Forward

---

- Continue to meet with any interested parties
- Identify affected registrants who choose to be considered as applicants to NMFS as early as possible in consultation process
- Provide ongoing/frequent notice of BiOp publication schedule
- Explore additional new opportunities based on your input and suggestions

# EPA Public Outreach – Moving Forward

---

- Suggestions?
- Input?
- Comment?