Endangered Species Act Update

Pesticide Program Dialogue Committee

Thursday, April 21

Session VII

Topics

- Current status of litigation-driven effects determinations and biological opinions
- Contemporary science issues
- Current thinking regarding the process for endangered species work in Registration Review
- Public process

Status of Litigation Driven Work

Lawsuit	# of chemicals	Request for Formal Consultation	Request for Informal Consultation	No Effect	Pending Effects Determinations	BiOps from Services
WTC	56	32	5	19		18
CATS	26	12	11	3		3
NRDC	1 – Atrazine	13	7			
SOSA	6	2	2	1		
CBD (CRLF)	66	64		2		
CBD (SF BAY – list A)	46	26		1	19	
CBD (SF BAY – list B)	30				30	
TOTALS	**231**	**149**	**25**	**26**	**49**	**21**

Status of Litigation Driven Work

Final BiOp's Received from NMFS on:	Active Ingredients:
November 18, 2008	Chlorpyrifos Malathion Diazinon
April 20, 2009	Carbofuran Carbaryl Methomyl
August 31, 2010	Azinphos-methyl Dimethoate Phorate Methidathion Naled Methyl parathion Disulfoton Fenamiphos Methamidophos Phosmet Ethoprop Bensulide

Status of Litigation Driven Work

Final BiOp's to be received from NMFS on:	Active Ingredients:
April 30, 2011 (March 1, 2011 draft) Anticipate new draft mid-May Final now scheduled for end of June	2,4-D Captan Linuron Chlorothalonil Diuron Triclopyr BEE
April 30, 2012	1,3-D Bromoxynil Diflubenzuron Fenbutatin-oxide Lindane Molinate Oryzalin Pendimethalin Prometryn Propargite Racemic metolachlor Thiobencarb Trifluralin

Implementation of BiOps

- BiOp's 1 & 2 – specific mitigation
  - EPA produced draft Endangered Species Protection Bulletins to implement the first 2 BiOps
  - Registrants of pesticides in BiOp 1 declined to adopt
  - Registrants of pesticides in BiOp 2 have not been requested to commit to adopt to date
- BiOp 3 – specific mitigation and performance standard for residues in water

NMFS BiOp 4

- Draft provided to EPA on March 1st with a final BiOp due to be completed by April 30, 2011
  - NMFS requested EPA input by April 12th
  - In turn EPA requested public input to the draft RPAs and RPMs by April 5th so we could consider that input in our response to NMFS
  - EPA committed to send all comments outside the scope of the draft RPAs and RPMs to NMFS for their consideration

NMFS BiOp 4.1

- On April 4th the Court granted NMFS and plaintiffs request for a 60-day extension of the due date for the final version of BiOp 4 placing the new due date at June 30, 2011
  - NMFS intends to consider all comments received by April 12th, in the new draft BiOp
  - NMFS anticipates next draft to EPA by mid-May with an expected 30 day comment period.
  - EPA will post to the web with new instructions on providing input to any revised RPAs or RPMs
  - Any comment received outside the scope of the draft RPAs and RPMs will also be provided to NMFS for their consideration in finalizing this biological opinion.

NMFS 5th + Biological Opinions

- The remaining 13 pesticides covered by the court-monitored schedule will be completed by NMFS in one or more additional biological opinions
- The extension granted by the Court on the 4th BiOp also extends the due date for this final set of biological opinions by 60 days – to April 30, 2012

Contemporary Science Issues

- Staff level science group among EPA, NMFS and FWS:
  - Exploring ways to address several scientific issues in EPA's analyses and the Services BiOps
  - These issues are scientifically complex and highly important to ecological risk assessment in general and for federally listed species
  - The federal government believes resolution of some of these issues could be significantly informed by independent review

Contemporary Science Issues

- EPA, Department of Commerce, Department of Interior and the US Department of Agriculture have requested the National Research Council of the National Academy of Sciences undertake an independent review of science issues related to:
  - Best Available Data
  - Mixtures – in the product, tank, or field
  - Sublethal Effects
  - Inert Ingredients
  - Geographic Data Sources and Information

Contemporary Science Issues

- Specifically we are asking the NRC to explore:
  - What constitutes best available scientific data and information?
  - What are the best scientific methods available for projecting sublethal, indirect and cumulative effects?
  - What methods could be used to assess the effects of mixtures in formulated products or in the environment?
  - What methodology might be used to project effects of inert ingredients?
  - What protocols might be used in the development of assumptions associated with model inputs and the use of sensitivity analyses to evaluate the impact of multiple assumptions on interpretation of results?
  - How might the federal government employ uncertainty factors to account for formulation toxicity, synergy, additivity, etc. ?
  - What constitutes authoritative geospatial information – including spatial and temporal scales that most appropriately delineate habitat of the species and duration of potential effects?

Next Steps in Resolution of Science Issues

- Complete the formal project request and acceptance process with NRC/NAS
- Federal agencies developing specific “charge questions” which will be provided to the NRC to help guide the scope of the project
- Anticipate 18 month project length
- Anticipate an NRC/NAS process that engages all affected parties for input

Public Input to Biological Opinions

- When EPA's registration review process leads to consultation with the Services, EPA retains a limited role relative to public participation
  - 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

Public Input to Biological Opinions

- Role relative to public input is limited
  - In this role EPA:
    - Will publish draft BiOps it receives 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 RPA/RPMs
  - EPA does not as a general matter solicit public comment on Draft products of other agencies (i.e, draft biological opinions)
  - EPA has agreed to provide to NMFS any comments we receive outside the scope of the draft RPAs and RPMs
    - EPA can not specifically consider such comments since the draft is not EPA's to amend
    - EPA therefore, will not write a response to comments document to elucidate how the comments were considered and their disposition

Public Outreach After Biological Opinions

- 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.
- Request for input is focused at this stage on draft Endangered Species Protection Bulletins.
  - 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 these approaches 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

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 – For example, MCFA Meeting

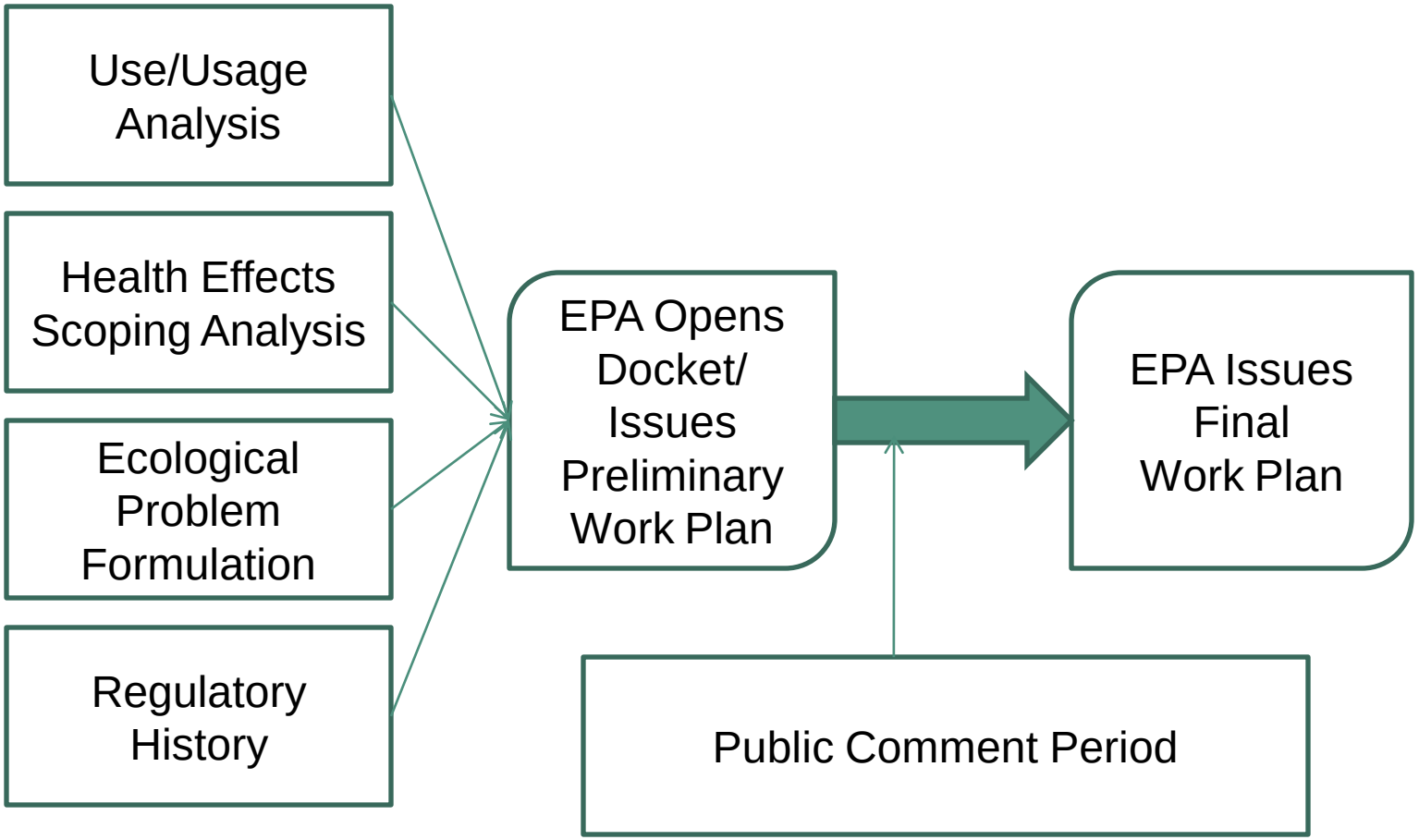
Questions for the PPDC

- How can EPA best obtain information to inform its preliminary work plan in Registration Review?
- In the context of the Registration Review process, when might be the most effective time to consult with the Services if risks to federally-listed threatened or endangered species are identified?
- How can the Services best obtain and consider public input in the development of Biological Opinions related to pesticide actions?

Charge Question #1

- How can EPA best obtain information to inform its preliminary work plan in Registration Review?

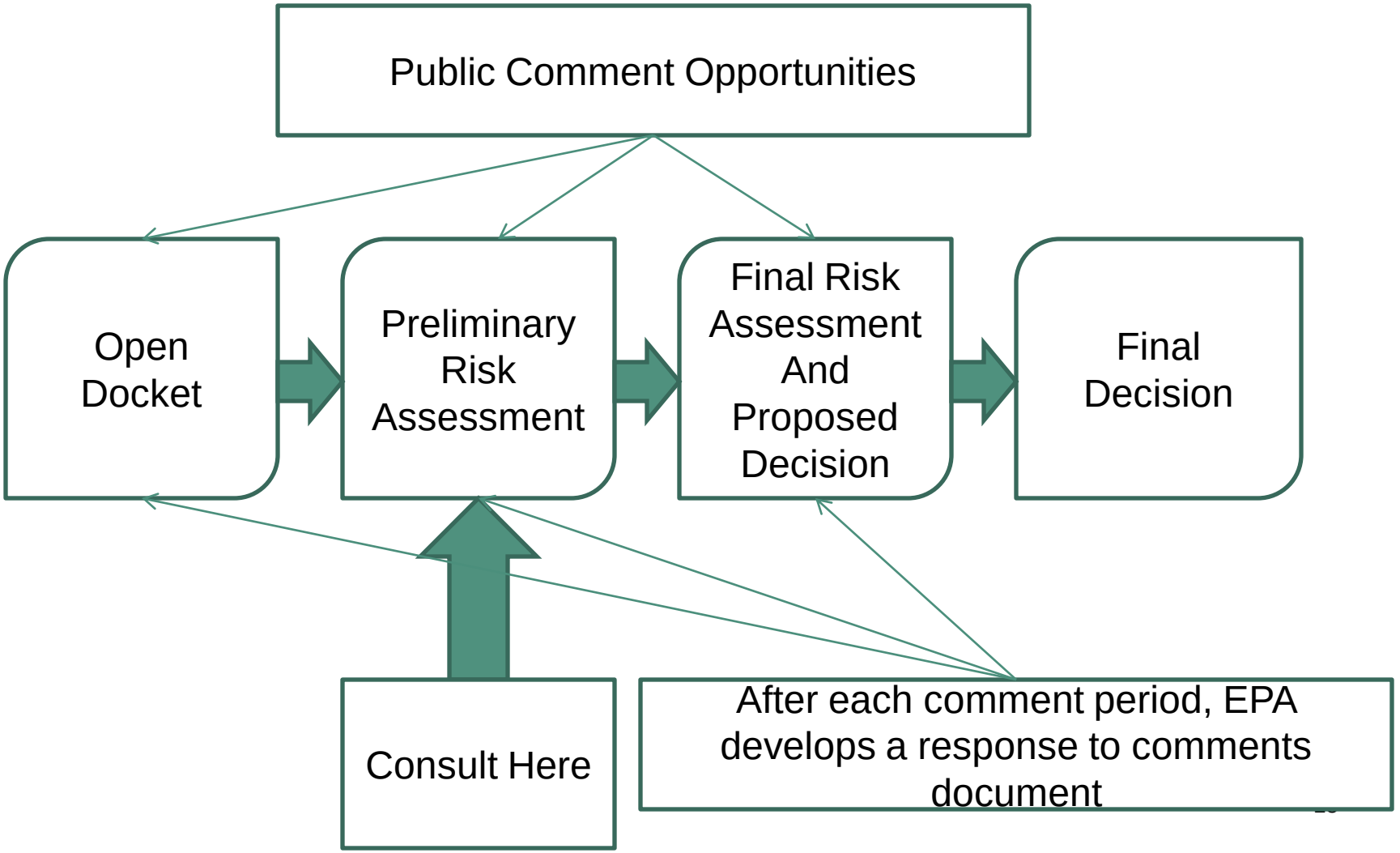
Informing Preliminary Work Plans



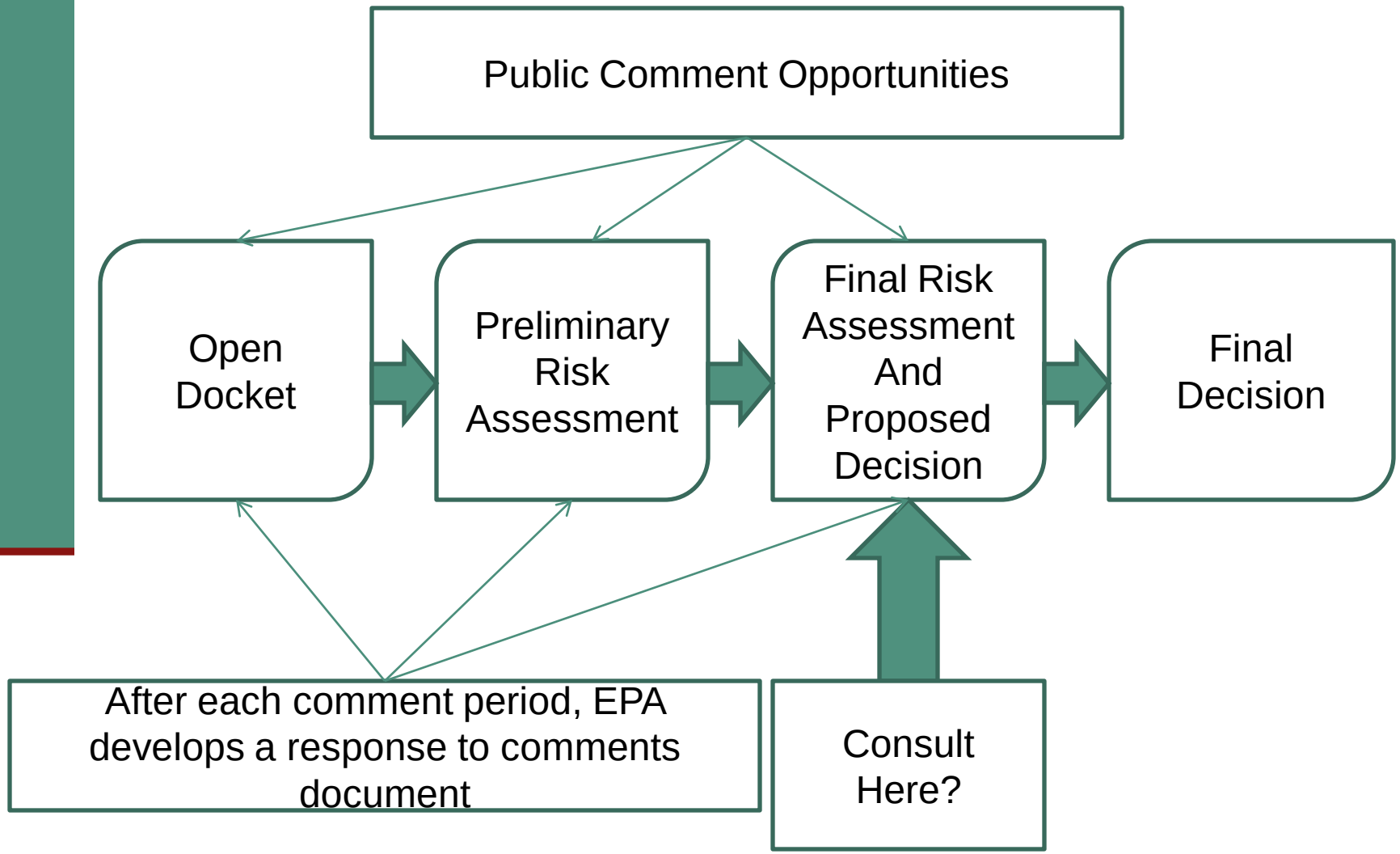
Charge Question #2

- In the context of the Registration Review process, when might be the most effective time to consult with the Services if risks to federally-listed threatened or endangered species are identified?

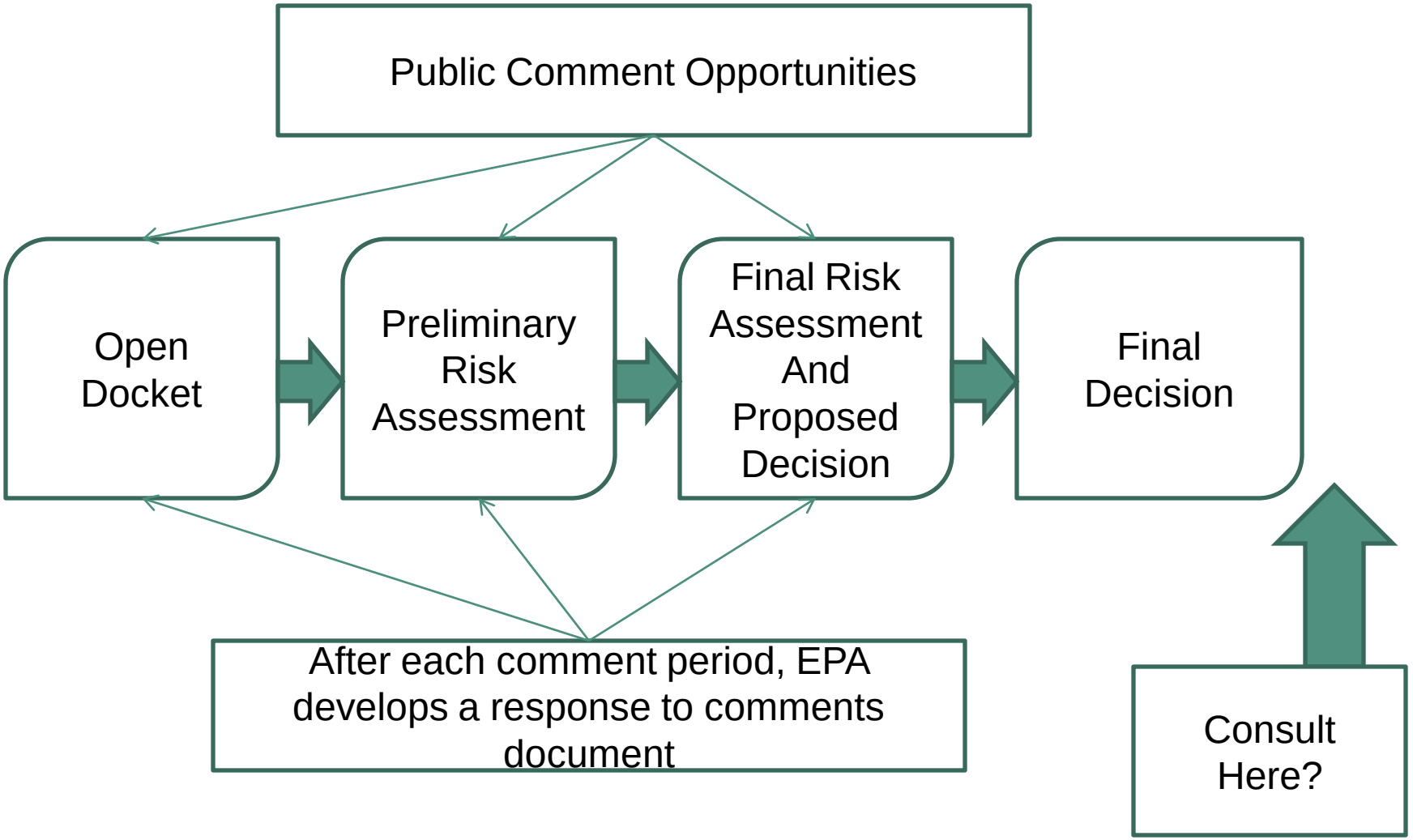
When to Consult During Registration Review: Current Process



When to Consult During Registration Review: Alternative Option #1



When to Consult During Registration Review: Alternative Option #2



Charge Question #3

- How can the Services best obtain and consider public input in the development of Biological Opinions related to pesticide actions?