

US EPA ARCHIVE DOCUMENT

# *Endangered Species Protection Program Implementation*

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PESTICIDE PROGRAM DIALOGUE COMMITTEE  
*SESSION VIII – Update on ESA Consultation Status*

April 23, 2009



# *Biological Opinions -NMFS*



- Settlement agreement between NMFS and Northwest Coalition for Alternatives to Pesticides
  - Completion of consultation on 37 actions for which EPA initiated consultations between 2001 – 2005
    - Opinions issued for 6 actions
    - Remaining 31 actions will be addressed by NMFS between now and February 29, 2012 in eight additional biological opinions.



## *Opinions on 6 EPA "actions"*

- November 2008 final opinion re: 3 OP's (chlorpyrifos, diazinon and malathion)
- April 2009 final opinion re: 3 carbamates (carbaryl, carbofuran, and methomyl)

# *Biological Opinions - conclusions*



	3 ops	CARBARYL /CARBOFURAN	METHOMYL
Jeopardy	27 ESUs of 28 total ESUs	22 ESUs of 28 total ESUs	18 ESUs of 28 total ESUs
Adverse modification to Critical Habitat	25 of 26 designated	20 of 26 designated	16 of 26 designated
No jeopardy or habitat modification	1 ESU	6 ESUs	10 ESUs

# Biological Opinions - RPAs



	3 ops	CARBARYL /CARBOFURAN	METHOMYL
Application Buffers	500 ft ground (1ppb) 1000 ft aerial (12 ppb)	200-600 ft ground 1000 ft aerial	50 ft ground 1000 ft aerial
Vegetative buffer strips	20 ft Ag. uses	None	None
Wind speed	<10 mph Apply near water first	<10 mph Apply near water first	<10 mph Apply near water first
Moisture	No application if field is at capacity or rain forecast within 48 hours	No application if field is at capacity or rain forecast within 48 hours	No application if field is at capacity or rain forecast within 48 hours

# Biological Opinions — RPAs (cont)



	3 ops	CARBARYL /CARBOFURAN	METHOMYL
Reporting	Fish mortality within 4 days of application in the vicinity of application reported to EPA	Fish mortality within 4 days of application in the vicinity of application reported to EPA	Fish mortality within 4 days of application in the vicinity of application reported to EPA
Monitoring	EPA to implement effectiveness monitoring plan in off-channel habitats with annual reports and data to NMFS	EPA to implement effectiveness monitoring plan in off-channel habitats with annual reports and data to NMFS	EPA to implement effectiveness monitoring plan in off-channel habitats with annual reports and data to NMFS



# *Biological Opinions* — RPAs (cont)

- Exception to RPA elements for WA state 24(c) for carbaryl use in Willipa Bay and Greys Harbor
  - 2<sup>nd</sup> element applies – wind speeds <10 mph
  - 5<sup>th</sup> element – effectiveness monitoring plan in off-channel habitat
    - Biop provides specifics for monitoring plan for Willipa Bay and Greys Harbor





# Biological Opinions - RPMs

- Even with RPA, action will result in take; therefore, incidental take statement with unspecified amount of take authorized and RPM to minimize impact of take.
- RPM states that EPA must:
  - Minimize the amount and extent of incidental take from use of pesticide products containing the 6 active ingredient by reducing the potential of chemicals reaching the water;
  - Monitor any incidental take or surrogate measure of take that occurs from the action; and
  - Report annually to NMFS OPR on the monitoring results from the previous season.

# Biological Opinions — Terms and Conditions



	3 ops	CARBARYL /CARBOFURAN	METHOMYL
	Provide info on reporting fish kills to EPA	Provide info on reporting fish kills to EPA	Provide info on reporting fish kills to EPA
	EPA to report to NMFS probable or highly probable incidences	EPA to report to NMFS probable or highly probable incidences	EPA to report to NMFS probable or highly probable incidences
	EPA to implement effectiveness monitoring plan	Wind <10 mph Apply near water first	Wind <10 mph Apply near water first
	500 ft ground, 1000 ft aerial buffer for Ozette Lake sockeye	No application if field is at capacity or rain forecast within 48 hours	No application if field is at capacity or rain forecast within 48 hours



## *Biological Opinions – implementation*

- NMFS believes uses of the three OP's and three carbamates will jeopardize the continued existence of the species noted but jeopardy will not occur in the one year provided for EPA to implement the biological opinion.
- EPA is considering how it might implement the opinion and will inform NMFS of its decisions



# Biological Opinions - FWS

- Over 45 determinations submitted to FWS 2007 – 2008
- January 14, 2009, letter declining to engage in formal consultation on each
  - FWS indicates not all information to initiate was provided
    - All labels and list of all ingredients therein
    - Toxicity data for these ingredients and for any recommended tank mixes
    - Exposure analysis that represents worst case in addition to EPA's standard "high-end" analysis
    - Estimate of existing and future pollutant loads in the action area
    - Analysis of the extent of effects over the reregistration period
    - Environmental mixture analysis – EPA may do their own or await FWS development of a methodology



# *Biological Opinions*

- EPA is evaluating the input from FWS
- Will respond to FWS after EPA determines its path forward on these issues

# *Bulletins Live!*



- Down for testing
- Ready to load first bulletins which focus on the use of methoxyfenozide in WI and MI
- Protection of Karner blue butterfly and Hine's emerald green dragonfly

# Bulletins Live!



- Will be developing and adding information to EPA Web site relative to *Bulletins Live!*
  - *Clarify what lack of limitations means*
  - *Reported confusion that “no requirements” meant there would be no harm to listed species*
    - *True if we’ve assessed a pesticide*
    - *Not true if we have not assessed a pesticide*

# Registration Review

- Completed first two comprehensive risk assessments for conventional pesticides
  - *Clomazone and fomesafen*
  - *Pilots to determine the value of focusing on species biology or species location to help assess impacts to listed species*



# Registration Review

- Draft risk assessments and letters initiating consultation scheduled to be posted in the docket April 22<sup>nd</sup>
- Plan is to receive and review public comments in the same 135 day timeframe in which consultation should occur
  - Proposed regulatory action could then take into account public input and information in Services' Biological Opinions.



# *Other activities*

- **Endangered Species Information Tracking System (ESITS)**
  - Status
- **Registration Review Workgroup (RRW)**
  - Goal is to develop nationwide risk assessment process to evaluate impact of pesticides on listed species and critical habitat in compliance with ESA.

# *Other activities*

- **Result of RRW should be process that:**
  - Bases decisions on best available scientific and commercial data
  - Produces assessments consistent with Overview document, ESA, FIFRA
  - Is transparent and scientifically and legally defensible



# *Other activities*

- **Path forward for RRW includes charge to:**
  - Develop a process that considers mitigation
  - Produce publicly available guidance, reference documents, and templates as appropriate
  - Consider supplementing Overview Document, as appropriate

# Other activities

## ■ Critical issues for RRW to consider include:

- Sublethal effects in defining the action area and in quantitatively and qualitatively evaluating risk
- How to consider tank and environmental mixtures
- Worst case v. high end estimated concentrations in water
- Information on species habitat, biology etc. and baseline status of listed species
- Data standards and open literature queries