



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF PREVENTION, PESTICIDES
AND TOXIC SUBSTANCES

**DRAFT BIOLOGICAL OPINIONS ISSUED UNDER THE ENDANGERED SPECIES ACT, BY
THE NATIONAL MARINE FISHERIES SERVICE, RELATED TO PESTICIDES AND PACIFIC
SALMON AND STEELHEAD SPECIES**

EPA has initiated formal consultation with the National Marine Fisheries Service on the potential effects of certain pesticides to Pacific salmon and steelhead listed under the Endangered Species Act as either threatened or endangered. As EPA receives draft Biological Opinions relative to these consultations, they will be posted to www.epa.gov/espp and included in a public docket EPA-HQ-OPP-2008-0654, so that EPA may receive public input on any changes to a pesticide's registration recommended by the National Marine Fisheries Service.

BACKGROUND

The Endangered species Act (ESA) requires that Federal Agencies assess their "actions" to determine whether species listed as threatened or endangered under the ESA, may be affected by those actions, or whether critical habitat may be adversely modified. The registered uses of a pesticide constitute an EPA "action" under the ESA.

If EPA determines a pesticide's registered uses are likely to adversely affect a federally listed threatened or endangered species (listed species) or modify its critical habitat, EPA initiates "formal consultation" with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (the Service or Services), as appropriate. In response to a Federal Agency initiating formal consultation, the Service(s) develops a Biological Opinion (BO) in which it provides its opinion on whether the "action" is likely to jeopardize the continued existence of a listed species or is likely to adversely modify designated critical habitat and, if so, describes alternatives to avoid jeopardy.

PUBLIC INPUT

In 2005, EPA published in the Federal Register (FR 70 No. 211 pp. 66392-66402), a document titled *Endangered Species Protection Program Field Implementation*. That notice of how EPA intends to implement its responsibilities under the ESA, states (p 66401):

"If EPA must formally consult with the Services, after the Services issue a draft Biological Opinion, EPA will welcome input from State, Tribal and local governments **on draft reasonable and prudent measures and alternatives**. The purpose of this review would be to determine whether the alternatives or measures can be reasonably implemented and whether there are different measures that may provide adequate protection but result in less impact to pesticide users. The Agency will consider this input in developing its response to draft Biological Opinions."

APPLICANT INPUT

Further, the Services' Consultation Handbook (pp. 2-13), supports their consultation regulations and states:

“... the Service and the action agency meet their obligations to [the applicant or pesticide registrant] as outlined in 50 CFR section 402 through the following:
The applicant is entitled to **review draft Biological Opinions obtained through the action agency and to provide comments through the action agency.**
The Service will discuss the basis of their biological determination with the applicant and seek the applicant's expertise in identifying reasonable and prudent alternatives ...”.

COMMENTS

Draft Biological Opinions are being included in the docket (EPA-HQ-OPP-2008-0654) and posted to EPA's Web site (<http://www.epa.gov/oppfead1/endorsement/litstatus/effects>) to seek input on the Service's recommended reasonable and prudent measures and alternatives, as noted above. Such input should be submitted **within 30 days** of the date the Biological Opinion was included in the docket in order to be considered in EPA's response to the Draft Biological Opinion. Comments received by EPA on other aspects of the Draft Biological Opinion, will be forwarded to the Service for their consideration.

As stated in the Services' regulations (50 CFR 402.14(g)(5)):

“All comments on the draft Biological Opinion must be submitted to the Service through the Federal agency, although the applicant may send a copy of its comments directly to the Service.”

SUBMITTING YOUR COMMENTS

You may submit your comments, identified by the docket identification (ID) number EPA-HQ-OPP-2008-0654 and the pesticide to which the Biological Opinion pertains, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Mail: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001.

Delivery: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries

of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although, listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703)305-5805.