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Sent: Monday, February 09, 2004 12:17 PM
Subject: Endangered Species Consultation Process to Be Improved Through Joint Regs

EPA Pesticide Program Updates from EPA's Office of Pesticide Programs 01/30/04

Note: The **U.S. Fish and Wildlife Service (FWS)** and the **National Marine Fisheries Service** are proposing **regulations that essentially streamline the consultation process for EPA** with them in endangered species assessments. They have made this proposal given their thorough **review and endorsement of EPA's ecological risk assessment methodology**. Details below.

Endangered Species Consultation Process to Be Improved Through Joint Regulations Proposed by the Wildlife Agencies

Today, January 30, 2004, the **U.S. Fish and Wildlife Service (FWS)** and the **National Marine Fisheries Service (NMFS)**, jointly referred to as the Services, published proposed "counterpart regulations." These regulations propose changes to the Endangered Species Act (ESA) consultation process for pesticides, to make it more efficient and timely, thereby improving the protections for endangered and threatened (listed) species. Over the years, EPA has worked with the Services to engage in consultations on a variety of pesticide regulatory actions. As a result of those experiences, EPA and the Services agree that changes to the existing regulations would result in more efficient and effective consultations and thus better protections for listed species.

EPA's pesticide laws include provisions to ensure the protection of fish and wildlife. EPA requires and evaluates extensive ecological effects test data before registering a new pesticide or reregistering an existing pesticide. Therefore, EPA already performs much of the scientific analysis that FWS and NMFS perform in the consultation process. Under the ESA, and in consultation with the Services, EPA must ensure that its regulatory actions are not likely to jeopardize threatened and endangered species or destroy or adversely modify their critical habitats. EPA's pesticide risk assessment and regulatory processes ensure that protections are in place for all populations of nontarget species. Because endangered species need specific protection, EPA has developed risk assessment procedures to determine whether individuals of an endangered species have the potential to be harmed by a pesticide, and if so, what specific protections may be appropriate. This proposal is based in large measure on the Services' thorough review and endorsement of EPA's ecological risk assessment methodology.

The proposed regulations:

--Permit EPA determinations that a pesticide is "not likely to adversely affect" a species, without further consultation with the Services, provided EPA and the Services are working in accordance with an agreed-upon Alternative Consultation Agreement (an interagency agreement for implementing the counterpart regulations).

--Provide for the Services' periodic oversight of EPA's "not likely to adversely affect" determinations.

--Provide for advance coordination between EPA and the Services where EPA may request Service participation in the development of an effects determination.

--Provide for strict timelines for completion of formal consultation when necessary and provide for "partial" consultation that will start the process for evaluating the impact of pesticides on listed species.

As required by law, the Services would make the final determination whether threatened or endangered species are jeopardized by the action. EPA believes that improving the consultation process will better protect listed species and their habitat by ensuring that pesticides are examined in a timely and comprehensive manner. **The Services are seeking comment on these proposed rules. The Federal Register Notice announcing the proposed regulations has a 60 day public comment period until March 30, 2004.** During the public comment period, EPA will hold a public workshop focused on how we perform risk assessments and make determinations about whether a pesticide may have an effect on a listed species. This proposal, as well as other supporting documents, are available at <http://www.epa.gov/oppfead1/endanger/consultation/index.html>

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