



## ARIZONA WILDLIFE FEDERATION

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March 30, 2004

Gary Frazer  
Assistant Director for Endangered Species  
U.S. Fish and Wildlife Service  
4401 North Fairfax Drive  
Room 420  
Arlington, VA 22203

Re: Proposed Rule Revising Joint Counterpart Endangered Species Act Section 7 Consultation  
Regulations, Federal Register Vol. 69, January 30, 2004 (Docket ID No. -021223326-4022-02)

Dear Mr. Frazer:

I am writing on behalf of the National Wildlife Federation and the Arizona Wildlife Federation, to oppose the Administration's proposed changes to Endangered Species Act (ESA) regulations governing pesticides.

This proposal would undermine the effectiveness of the ESA's fundamental safeguards, namely, the duty under ESA § 7(a)(2) to consult with the U.S. Fish and Wildlife Service and National Marine Fisheries Service (collectively the "Services") regarding impacts of federal actions on listed species and to devise conservation measures for avoiding jeopardy and critical habitat modification and for minimizing take. Under this proposal, the Environmental Protection Agency ("EPA") would be relieved of its current obligation to consult with the Services whenever registration or regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") "may affect" a listed species. Instead, EPA would be allowed to declare unilaterally that its action on pesticides would not adversely affect listed species and thereby evade any consultation with the Services. By removing the Services' wildlife experts from their statutory role in protecting listed species, the Administration would create new and unacceptable risks for species and would violate the procedural and substantive requirements of the ESA. *See* 16 U.S.C. §1536(a)(2) (each federal agency must devise methods to insure against jeopardy and critical habitat modification "in consultation with and with the assistance of" the Services).

In proposing this rule change, the Administration fails to offer any coherent explanation of why the existing ESA § 7 consultation regulations are supposedly inadequate. According to the Administration, the rule change is necessary to "better integrate the [pesticide registration] and ESA processes and to improve the efficiency and effectiveness of consultations on pesticide actions to enhance protection of" listed species and their critical habitat. However, these goals are achievable under the existing ESA § 7 regulatory framework.

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There is no question that past efforts to protect listed species from the harmful effects of pesticides, and to integrate the pesticide registration and ESA processes, have been adequate. For most pesticides, no action has been taken to avoid or minimize harm to listed species. In fact, for the vast majority of pesticides, EPA has never undertaken the biological assessments needed to identify impacts and to launch the consultation process with the Services. Nothing in the existing ESA regulations has prevented EPA from undertaking these steps. The reason why EPA is so far behind is because it has broadly resisted ESA compliance and has failed to request from Congress the needed funding for such compliance. Rather than proposing to weaken the very regulations that have proved so successful in so many other arenas of ESA protection, the Administration should make at least a good faith effort at complying with them.

In addition to allowing EPA to evade consultation with the Services on a potentially vast array of actions affecting listed species, the Administration's proposal also would seriously weaken the Services' role in cases where the ESA elects to consult. Specifically, EPA would be authorized to complete an analysis of the "effects" of any registration of a pesticide, and the Services would be *required* to incorporate EPA's analysis in its biological opinion unless they could prove that EPA's analysis was inadequate. This would eliminate the Services' central role under the ESA as the expert on listed species and shift a key responsibility to an agency that has no track record in addressing wildlife issues. *See* 16 U.S.C. § 1536(b)(3)(A) (assigning duty to Services to prepare biological opinion and to provide "a summary of the information on which the opinion is based, detailing how the agency action affects the species or critical habitat"). Only the Services, which routinely analyze the effects of a wide array of federal and non-federal actions on listed species, are qualified to perform a thorough analysis of effects, including cumulative effects, in a biological opinion. The Administration has offered no cogent explanation for why this statutory role should be eliminated.

The Administration suggests that the same safeguards for wildlife currently provided by the Services under ESA regulations could be provided by the EPA under the proposed rule change. However, EPA's track record in safeguarding wildlife from pesticides has been sorely lacking, and there is no basis for believing that the agency will begin providing the needed protections in the future. The attached examples illustrate the problem.

Four decades ago, the federal government allowed DDT to be used without taking impacts to wildlife into consideration. As a result of this neglect, the bald eagle, our national symbol, plummeted toward extinction. The Administration should learn from history and refrain from taking any steps that would allow the government to again ignore the impacts of pesticides on wildlife. The proposed rule changes should be abandoned.

Sincerely,

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*The following examples illustrate the problems with pesticides.*

- The National Marine Fisheries Service (NMFS) stated in its biological opinion on pesticide use on public forests that “Rainbow trout behavior changed at chlordane (organo-chlorine insecticide) concentrations below EPA no-to-be-exceeded concentration, illustrating the inadequacy of using current EPA application guidelines for avoidance of sublethal effects.”
- The Fish and Wildlife Service (FWS) comments on EPA’s Atrazine risk assessment stated: “Risk assessments that fail to address [the pesticide mixing] issue are likely to underestimate the true potential for ecological impacts, and as such, this represents a critical data gap that EPA needs to address.”
- EPA further lacks expertise on the status and habitat needs of endangered species. EPA’s own assessment of the pesticide diazinon acknowledged that EPA lacked knowledge about young Chinook salmon life cycles and habitat needs.
- EPA performs its species assessments by considering only doses of pesticides that kill species, without taking into account the peer reviewed scientific literature documenting serious impacts to species at levels below the lethal dose.
- EPA does not assess the cumulative effects of multiple pesticide uses on endangered species.

*The Harmful Impacts of Pesticides on People, Wildlife and the Environment*

This proposed rule change would benefit the chemical and pesticides industries by providing more streamlined approvals of pesticide registrations and regulations. But this removal of safeguards would come at the expense of people, wildlife, and the environment that people and wildlife share. Numerous examples of misuse of pesticide and rodenticides show how the health of people and wildlife are intertwined. For example, last year Brodifacoum, the same rat poison that killed several San Joaquin kit foxes and golden eagles in California, was responsible for most of the over 48,000 reported poisonings of children under six. [EPA Ecological Incident Information System and EPA March 22, 1999 Memorandum from Dr. Jerome Blondell of EPA’s OPPTS].

Over 1 billion pounds of pesticides are used each year on farms, ranches, lawns and golf courses across the United States. Because pesticides often travel from one level in the food chain up to the next, they can have damaging effects on many species that never came into direct contact with the pesticides. The adverse affect of these pesticides on non-targeted wildlife, including threatened and endangered species, is well documented. For example:

- Fenthion is extremely toxic to birds. The use of fenthion to control pest birds resulted in massive mortality of predatory raptors (Garrison et al. 1988). U.S. EPA has received numerous incident reports where deaths of non-target avian predators and scavengers have been attributed to their consumption of target species exposed to fenthion. Birds confirmed to have died from secondary exposure include: bald eagles, peregrine falcon, red-tailed hawk, sharp-shinned hawks, Cooper's hawks, American kestrels, snowy owls, great-horned owls, barred owls, and short-eared owls.
- Endocrine-disrupting pesticides such as dieldrin, alachlor, and atrazine can undermine neurological and behavior development in mammals, fish, amphibians, reptiles, and birds. [Special Report on Environmental Endocrine Disruption: An Effect Assessment and Analysis, USEPA EPA/630/R-96/012 February 1997]
- The “impending pollinator crisis,” according to the Department of Agriculture, is a major threat to our agricultural sector — and caused in significant part by pesticides. [USDA-ARS, 1991, Pollination Workshop Proceedings, unpublished, Denver, CO.]
- It is highly likely that one of the main causes of the decline of the leopard frog and other amphibians is pesticides. [Hayes et al. April 16, 2002. Hermaphroditic, Demasculinized Frogs after Exposure to the herbicide Atrazine at Low Ecologically Relevant Doses, 99 PNAS 5,476.; Hayes et al October 23, 2002. Atrazine-induced Hermaphroditism in American Leopard Frogs, Environ. Health Perspectives doi:10.1289/ehp.5932.] Even frogs collected from high in the Sierra Nevada contain detectable concentrations of organochlorine pesticides that appear to be compromising their immune system. [Sparling, D.W., G.M. Fellers, and L.L. McConnell. 2001. Pesticides and Amphibian population declines in California, USA. Environmental Toxicology and Chemistry 20:1591-1595.]
- A number of studies have shown that atrazine causes sexual defects in frogs, including feminization and deformities in sex organs. [Hayes et al. April 16, 2002. Hermaphroditic, Demasculinized Frogs after Exposure to the herbicide Atrazine at Low Ecologically Relevant Doses, 99 PNAS 5,476.; Hayes et al October 23, 2002. Atrazine-induced Hermaphroditism in American Leopard Frogs, Environ. Health Perspectives doi:10.1289/ehp.5932.] The U.S. Geological Survey has detected atrazine throughout the Chesapeake Bay and in every major stream that feeds it. [U.S. Geological Survey NAWQA Database Summary (<http://water.usgs.gov/nawqa/data>)
- Azinphos methyl has caused massive fish kills throughout the United States [EPA, Interim Reregistration Eligibility Decision for Azinphos methyl. 47 October 30, 2001].
- Carbofuran has caused mortality in more than 100 different species of birds including waterfowl, upland game birds, shorebirds, woodpeckers, raptors (such as Bald and Golden Eagles, Great Horned Owls, Red-Tailed Hawks, and Kestrels) and numerous species of songbirds. In 1989, US EPA estimated that 1 to 2 million birds were killed each year by carbofuran alone. Since the early 1990's, FWS has been urging EPA to cancel all forms of carbofuran because of its extreme toxicity to wildlife. EPA has refused.