



Oregon

Theodore R. Kulongoski, Governor

Department of Agriculture

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Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington DC 20460



Dear Administrator Jackson:

I am writing to express specific concerns regarding the implementation of the court ordered mitigation measures resulting from the consultation between the National Marine Fisheries Service (NMFS) and the U.S. Environmental Protection Agency (EPA) for specific pesticides used near habitat of salmon and steelhead subject to the protections of the Endangered Species Act. While Oregon is committed to ensuring that the use of pesticides are managed to limit the risks to listed fish and aquatic health, we are concerned that the proposed approach places undue burden on the forestry and agricultural communities and as proposed is not workable on the ground.

NMFS has issued two biological opinions (BiOp) for six pesticides (chlorpyrifos, diazinon, malathion, carbaryl, carbofuran, and methomyl) with restrictions soon to be required on pesticide labels. These pesticides, as well as an additional 31 active ingredients subject to the same process within the next two years, are used for crop protection in Oregon agriculture, forestry, range management, and other sites critical to the economic sustainability of agriculture production and natural resource protection in this state. The Oregon Department of Agriculture (ODA) is most concerned with how EPA is attempting to meet the provisions of the court order and the NMFS BiOp without fully considering the cost of implementation and the impact of those costs on the agriculture and forestry sectors of Oregon.

Briefly, I would like to address a few specific areas of concern:

1. **Implementation of mitigation measures.** The reasonable and prudent alternatives (RPAs) being acted upon by EPA to mitigate risk to salmon listed under the Endangered Species Act could effectively eliminate the use of pesticides subject to the BiOp in many areas of Oregon. ODA requests EPA consider the impacts of these mitigation measures and factor in the effect of the complexity of understanding the restrictions on pesticide users. Of specific concern are:
 - a. The definition of water bodies involved (e.g. do man-made ditches under 4 feet deep require buffers?)
 - b. The unrealistic and complex parameters used in the Buffer Calculator will not be readily understandable or applicable by pesticide users
 - c. Use of the "Bulletins Live" website for all mitigation measures when clear label restrictions would more effectively accomplish the goal.



2. Lack of adequate outreach information

- a. ODA and Oregon State University Extension Service provide a significant amount of pesticide education to ensure our applicators are well informed and compliant with pesticide regulations. As noted above, label restrictions have been the traditional means of communication with pesticide users.
- b. The states have not been provided with any outreach resources to aid in the education and training of pesticide applicators. The only "outreach" EPA provided ODA has been a few items advertising "Bulletins Live" and one powerpoint presentation in 2006. This is less than adequate for the size and impact of this program.

3. Lack of funding to support program activities

- a. ODA, as well as other states, receives \$5,000 annually from EPA through the Consolidated Pesticide Cooperative Agreement to address endangered species issues. The ODA pesticide program includes pesticide licensing, education and recertification, product registration, water quality, and compliance monitoring and enforcement. Implementing EPA's Endangered Species Protection Program significantly affects every aspect of each program segment. \$5,000 is a wholly inadequate investment by EPA to address the challenges that this program presents.

As EPA and NMFS address the remaining pesticides in the WTC court ordered consultation, or other pesticides as they are challenged, ODA would like to be an active partner in developing RPA's that take fully into account the impacts on agriculture and forestry in our collective efforts to protect endangered salmon and steelhead in Oregon. The need for increased financial support of this program is evident. Additionally, the economic impact on the industries that must implement it must be fully considered, with a clear demonstration that intended environmental benefits will actually be realized. And finally, implementation must be technically and economically feasible and strive to avoid undue harm to forestry and agriculture.

Sincerely,



Katy Coba
Director

Cc: Steve Owens, EPA Assistant Administrator
Arthur-Jean Williams, Associate Director
Environmental Fate & Effects Division