

Endangered Species Update

SFIREG EQI

Anita Pease

Environmental Fate and Effects Division

Associate Director

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Topics

- Lawsuits and Court Decisions
- National Academy of Sciences Report
- Request for Species Location Information

Status of NMFS' PNW Salmonid Biological Opinions (BiOps)

- EPA has received six final BiOps for a total of 29 chemicals
- EPA has received and commented on the draft 7th BiOp from NMFS for 3 chemicals (diflubenzuron, fenbutatin oxide, and propargite)
- Completion of final 7th BiOp, remaining 4 chemicals currently under negotiation with plaintiffs and court – December 2013

Current Status of NMFS Salmonid BiOp Implementation

- NCAP suit against EPA for failure to implement first 2 BiOps
 - **Supplemental complaint submitted by NCAP in light of 4th Circuit ruling in Dow v. NMFS to vacate BiOp 1**
- Dow AgroSciences (applicant for BiOp 1) sued NMFS on 1st BiOp
 - 4th Circuit vacated BiOp 1 in February
 - NMFS is considering options for response to remand

Current Status of NMFS Salmonid BiOp Implementation

- Additional final BiOps (3-6) remain potentially affected by ongoing litigation
- EPA, NMFS, CDPR, and registrant are discussing implementation for thiobencarb (BiOp 6)
 - Consideration of existing state programs shown to reduce impacts of thiobencarb use on rice in CA waters
 - Stakeholder involvement
 - Resulted in “no jeopardy” conclusion with “reasonable and prudent measures (RPMs) based on existing state programs

Status of Other Litigation:

CA Red-Legged Frog

- 2011 – Suit filed by Center for Biological Diversity (CBD) against EPA and FWS for unreasonable delay in completing the CA red-legged frog consultation
 - CBD and FWS have reached agreement on a schedule for FWS to complete consultation on 7 pesticides
 - Intervenors challenged the entry to the settlement and have motioned to dismiss the case.
 - July 12th hearing held in Northern District Court of CA

Status of Other Litigation:

Mega/Mini Suit

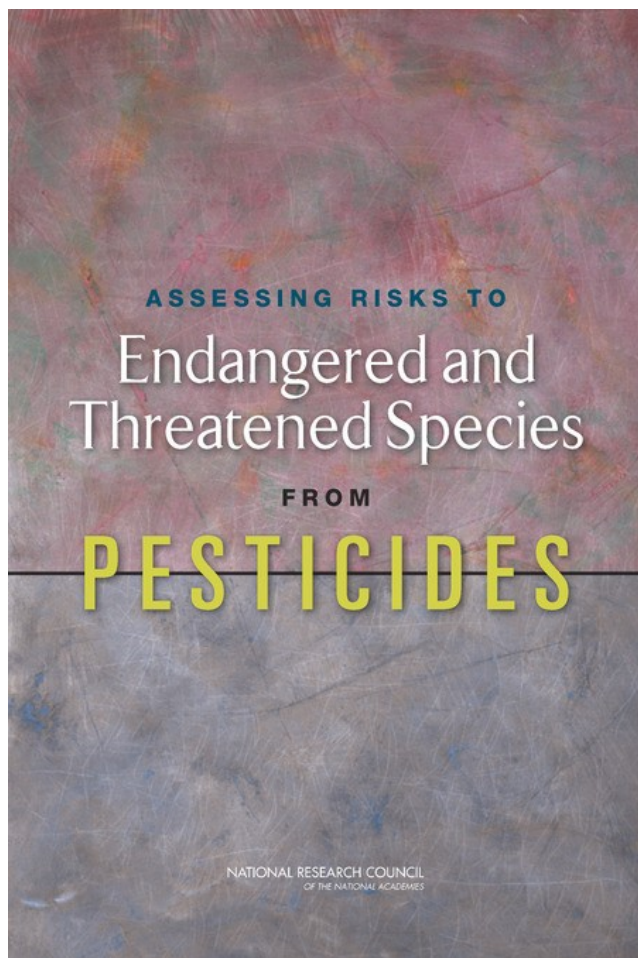
2011 – Suit filed by CBD against EPA for failure to consult on potential effects of over 300 active ingredients to over 200 listed threatened and endangered species (the “megasuit”)

- Court granted EPA’s motion to dismiss the complaint in April
- The court allowed CBD to amend and refile their complaint consistent with the court’s ruling
- In June 2013, CBD filed their amended complaint alleging that EPA has failed to consult or reinitiate consultation on approximately 50 pesticides for approximately 100 listed species
- Hearing on November 22 with oral arguments.

Status of Other Litigation: San Francisco Bay

- EPA preparing risk assessments
- 15 chemicals remain to be completed between December 2013 and December 2014
- Schedule and number of chemicals may be revised based on discussions with plaintiffs

National Academy of Sciences Report



- Released on April 30, 2013
- Developed in response to a joint request by EPA, NMFS, FWS, and USDA

Implementation of the NAS Recommendations

- EPA, FWS, NMFS and USDA met numerous times to discuss the report and to develop an implementation plan
- Workgroups of scientists from each agency reviewed all sections of the report and developed ideas for addressing scientific recommendations

Interim Agreements

- The Agencies agreed with the fundamental recommendations for ESA Section 7 consultations:
 - Use of a common approach based on existing ecological risk assessment framework
 - A three-step process:
 - May affect/no affect
 - Likely to adversely affect/not likely to adversely affect
 - Jeopardy and/or adverse modification/no jeopardy and/or adverse modification
 - Early engagement at all steps

Interim Agreements

- Implement recommendations as interim agreements on a phased and iterative basis
- Interim approaches focus the following categories:
 - Best available data
 - Geospatial data issues
 - Exposure modeling practices and uncertainties
 - Mixtures
 - Sublethal, indirect, and cumulative effects and effects models
 - Interspecies extrapolation and surrogate species
 - Risk characterization

Path Forward

- Fall - Winter 2013:
 - Agencies will describe the shared interim scientific approaches with the public in a workshop
 - Agencies will meet to discuss the status of existing geospatial information on listed species and agree on an interim approach and ultimately a mechanism to share available data

EPA's Request for Species Information

- Initial request from States for species location information made at May 2013 SFIREG EQI meeting
- This request is on hold, given collaborative efforts of the Agencies to collect and make the information available



Questions?