



PPC

PESTICIDE POLICY COALITION

A Coalition Working for Sound Pest Management Policies

www.pesticidepolicy.org

February 22, 2011

Office of Pesticide Programs
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Petition for Rulemaking To Establish Procedures Consistent with Section 1010 of the 1988 Amendments to the Endangered Species Act; Notice of Availability, 75 FR 80492 (December 22, 2010) [Docket No. EPA-HQ-OPP-2010-0854]

Ladies and Gentlemen:

The Pesticide Policy Coalition (“PPC”) submits the following comments in support of the petition to establish by rulemaking clear and equitable procedures for notice and comment on the Environmental Protection Agency’s (“EPA’s”) pesticide effects determinations for endangered species and subsequent actions, including draft Biological Opinions and potential product restrictions, consistent with Section 1010 of the 1988 amendments to the Endangered Species Act (“ESA”).

PPC is a coalition of food, agriculture, pest management, and related organizations that support transparent, fair, and science-based regulation of pest management. PPC members include nationwide and regional farm, commodity, specialty crop, and silviculture organizations; cooperatives; food processors and marketers; pesticide manufacturers, formulators and distributors; pest- and vector-control operators; research organizations; and other interested parties. PPC serves as a forum for the review, discussion, development, and advocacy of pest management policies and issues important to its members.

The PPC recognizes that ESA section (7)(a)(2) imposes a duty on federal agencies, including the Environmental Protection Agency (“EPA”), to ensure that actions carried out by agencies are “not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species...”. 16 USC Section 1536(a)(2). This

duty applies to the registration of pesticide products by EPA. The PPC also understands that this may, in some circumstances, result in additional restrictions on pesticide use by growers, pesticide applicators, and other end users in limited geographical areas.

In 1988, EPA proposed the Endangered Species Protection Program (“ESPP”) as a mechanism for implementing its obligations under the ESA. 53 FR 7716 (Mar. 9, 1988). Initially, the ESPP was intended as a voluntary program that provided for pesticide label statements referring users in specified counties of concern to county bulletins detailing pesticide use limitations designed to protect listed species based on maps of species and habitat location provided by the Fish and Wildlife Service.

Congress expressed immediate concern about the impact of the Agency’s proposal on agricultural lands, inaccuracies in the maps, inadequate public review and comment opportunities, and the need for additional education and training programs. As a result, Congress enacted Section 1010 of the ESA amendments of 1988. Pub. L. No. 100-478, 102 Stat. 2306, Section 1010 (1988). The intent of Section 1010 was to ensure that EPA put measures in place under the ESPP to “minimize the impacts to persons engaged in agricultural food and fiber commodity production and other affected pesticide users and applicators.”

The petition before the Agency to promulgate procedures for notice and comment on the Agency’s pesticide effects determinations for endangered species and subsequent actions, including draft Biological Opinions and potential product restrictions is consistent with Section 1010 of the 1988 amendments to the ESA and is therefore supported by the PPC. We are concerned that some federal agencies may routinely and purposefully ignore Section 1010 in their activities affected by the ESA.

We also note that the petition before the Agency is consistent with a number of the provisions of Executive Order 13563, “Improving Regulation and Regulatory Review,” issued on January 18, 2011. Specifically, Executive Order 13563 calls for public participation. It directs agencies to promote an open exchange with State, local, and tribal officials; experts in relevant disciplines; affected stakeholders; and the public in general.

Executive Order 13563 also contains the following critical provisions that we urge EPA to adopt when considering its duties under the Endangered Species Act including,

- A reaffirmation that agencies should strive to employ the “least burdensome tools for achieving regulatory ends.”
- A directive that agencies to take steps to harmonize, simplify, and coordinate rules and regulations. It also emphasizes that some sectors and industries face redundant, inconsistent, or overlapping requirements. In order to reduce costs and to promote simplicity, this directive calls for greater coordination among federal agencies, which would certainly improve the regulatory environment

faced by pesticide users under the current patchwork of environmental statutes that now seem to govern pesticide use.

- A reaffirmation for agencies to uphold principles of scientific integrity and to ensure the objectivity of the information on which it relies to support its regulatory actions. Numerous pesticide stakeholders, State government agencies and EPA's own Office of Pesticide Programs, have raised serious concerns about the quality of the science used to support recent biological opinions developed by the National Marine Fisheries Service. In spite of these concerns, EPA is poised to impose additional regulatory restrictions on pesticide products that are the subject of the biological opinions. These potential actions are inconsistent with the intent of Executive Order 13563.

In conclusion, the PPC supports the aforementioned petition. Additionally, the PPC urges EPA to embrace the provisions of Executive Order 13563 in all regulatory actions that impact the availability and use of pesticide products. The PPC appreciates the opportunity to submit these comments, and welcomes detailed discussion of them in more detail with EPA.

Sincerely,



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