DEFENDERS OF WILDLIFE ◆ EARTHJUSTICE ◆ NORTHWEST CENTER FOR ALTERNATIVES TO PESTICIDES ◆ PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS ◆ INSTITUTE FOR FISHERIES RESOURCES

March 28, 2011

Nancy Sutley, Chair
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20503

On January 26, 2011, eighteen members of the U.S. House of Representatives asked the Council on Environmental Quality to halt or further delay federal evaluation of the effects of toxic pesticides on threatened and endangered West Coast salmon and steelhead. That request, however, is based on a misunderstanding of the science underlying the required protections and on an inaccurate picture of the process that the National Marine Fisheries Service and the Environmental Protection agency have followed. We write to urge CEQ to instead use its resources and authorities to ensure that these agencies can effectively complete and immediately implement the long-overdue measures necessary to protect West Coast salmon and steelhead from the harm caused by these pesticides.

Specifically, the letter asks CEQ to intervene in the on-going Endangered Species Act (ESA) consultation process based on allegations that biological opinions have been prepared without an adequate opportunity for input from pesticide manufactures and users and without considering the best available science on the levels of these chemicals found in salmon waters. Both of these contentions are incorrect.

First, the letter is based on a misunderstanding of the consultation process as it has unfolded for the eighteen pesticides that have been evaluated so far. Since the draft of the first biological opinion ("BiOp") evaluating the effects of the organophosphates chlorpyrifos, diazinon, and malathion was released in 2008, EPA has released draft BiOps *specifically* to solicit and consider input from pesticide manufacturers, local, state, and tribal governments, and the general public.[1] It has published guidance outlining the procedures for input and established a docket number (EPA-HQ-OPP-2008-0654) for this specific purpose at www.regulations.gov.

[1] While this Organophosphate biological opinion ("OP BiOp") does not represent the first consultation evaluating the effects of a pesticide on a listed species, it is the first of many such consultations since the Court confirmed EPA's obligation to consult on its pesticide registrations and reregistrations more than eight years ago. Washington Toxics Coalition v . EPA, 413 F.3d 1024 (9th Cir. 2005). This and other recent biological opinions are the result of a process that began before 2002, when EPA first requested consultation for diazinon and bensulide. EPA's effects determinations for these and other pesticides required by Washington Toxics Coalition were made by December, 2004.

http://www.regulations.gov/#!docketDetail;dct=PS;rpp=10;so=ASC;sb=postedDate;po=60;D=EPA-HQ-OPP-2008-0654.

To date, EPA has received over 300 comments on the first three BiOps alone, including from each of the manufacturers, many pesticide users, various state agencies, and concerned members of the public. In addition, for each BiOp prepared, EPA and NMFS have held extensive meetings with pesticide manufacturers, and have received large amounts of information and material from those registrants. NMFS has described this input and detailed how it considered the information it received in each of the BiOps issued thus far.[2] The categorical statement in the House members' letter that EPA has not adequately consulted with the pesticide industry and grower interest groups cannot be squared with the agencies' actions, EPA's notice and request for comments on each of these draft BiOps, and the extensive input received. We continue to support EPA's effort to solicit input from all interested groups and individuals as it completes other consultations and believe that the agencies have used their existing authorities to conduct this process in a transparent manner that allows for input from all affected parties and that will quickly achieve compliance with the law.

Second, as the amount of input into the process demonstrates, NMFS did not "ignore" the best available monitoring data and science relevant to the presence of these chemicals in salmon waters. To the contrary, each BiOp explicitly discusses the data relied upon, discloses gaps in that information, and details how NMFS dealt with any uncertainty. NMFS requested and analyzed the most current information that manufacturers, state agencies, and users were willing to provide – including voluntary measures and growers' best practices. For example, NMFS relied on extensive monitoring conducted by the United States Geological Survey, as well as data from state agencies like the California Department of Pesticide Regulation.[3] In some West Coast watersheds, this monitoring revealed levels of these pesticides well above standards set to protect aquatic life - sometimes at concentrations 1000 times higher than accepted levels, presenting a risk not only to the fish and those people who may consume them, but also to human populations which also use these same rivers as a source for urban water supplies. Moreover, because use patterns and practices change and because high levels of these pesticides are routinely found in actual water samples, NMFS also properly focused on the legal uses allowed by the current pesticide labels.

NMFS comprehensively reviewed this data and all other information regarding the impacts of pesticides on salmon and ultimately concluded that current uses of these insecticides

---

[2] See, e.g., OP BiOp at 16-21 (detailing meetings with registrants and nine file boxes of information provided to EPA by registrants alone); Biological Opinion re: Environmental Protection Agency Registration of Pesticides Containing Carbaryl, Carbofuran, and Methomy ("Carbamate BiOp") (Apr. 20, 2009) at 6-16; Biological Opinion Environmental Protection Agency Registration of Pesticides Containing Azinphos methyl, Bensulide, Dimethoate, Disulfoton, Ethoprop, Fenamiphos, Naled, Methamidophos, Methidathion, Methyl parathion, Phorate and Phosmet (Aug. 31, 2010) at 6-23 (discussing extensive meetings, comments, and information exchanges between the agencies and the manufacturers, and public comments).

[3] See, e.g., OP BiOp at 242-52 (discussing water quality and water monitoring studies); id. at 173-75 (citing USGS National Water-Quality Assessment Program data).

jeopardize the existence of these imperiled fish. It then required proven and time-tested protections that would help keep harmful levels of these chemicals out of salmon waters in the first place. Measures such as no-spray buffers, vegetative strips to catch run-off from fields, and limits on pesticide application rates during adverse weather conditions have been employed for years by state and federal regulators and effectively reduce the amount of pesticides that enter our waters.

The highly toxic pesticides that NMFS has so far examined in biological opinions, and which were the subject of the Washington Toxics Coalition lawsuit leading to this analysis, were not chosen at random. These organophosphate and carbamate pesticides are some of the most widely used and broadest-spectrum – as well as most dangerous – neurotoxic chemicals still used in both agricultural and/or urban insect control. Numerous cost-effective and less toxic alternatives to these pesticides already exist to meet the demand from farmers who often avoid the use of such heavy-handed broad-spectrum chemicals because they kill beneficial insects and can lead to greater pest problems over time.

Rather than further delaying this already long-overdue evaluation of the impacts of pesticides on threatened and endangered species, we urge CEQ instead to help the agencies focus their efforts and resources to implement the long-overdue measures required to protect salmon from the impacts of these lethal chemicals. While there have been some differences of opinion between EPA and the Services over interpretations of some of the science, the agencies themselves can and should resolve these differences. It should be scientists who make such scientific judgments, not politicians.

Sincerely,

Patti Goldman
Vice President for Litigation
Earthjustice

Zeke Grader (by pg)
Zeke Grader
Executive Director
Pacific Coast Federation of Fishermen's Associations and the Institute for Fisheries Resources

Kim Leval
Executive Director
Northwest Center for Alternatives to Pesticides

Jamie Rappaport Clark
Executive Vice President
Defenders of Wildlife