

Congress of the United States
House of Representatives
Washington, DC 20515

January 26, 2011

Nancy Sutley
Chairwoman
Council on Environmental Quality
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Chairwoman Sutley,

We write to express our concerns and request your immediate attention regarding the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) and the Environmental Protection Agency's (EPA) flawed consultation process resulting in biological opinions (bi-ops) and regulations that will significantly restrict the use of critical crop protection tools in Washington, Oregon, Idaho, and California. A substantial portion of the fruits, vegetables, and grains that sustain not only the United States, but the world at large are grown in these states. Implemented in their current form, these bi-ops will force family farmers out of business and devastate rural communities and trade throughout the districts we represent, while crippling our food production capacity for the foreseeable future.

In 2002, a U.S. District Court judge ruled that the EPA did not adequately consult with NMFS regarding the impact of certain chemicals on endangered salmon populations, as required under the Endangered Species Act, when drafting pesticide, herbicide, and fungicide labels for 37 different products.

In response, in 2008, NMFS released its first biological opinion addressing three pesticides. Unfortunately, this bi-op ignores the best available science on the prevalence of chemicals in salmon spawning waterways, while expanding existing buffer zones so great that it would affect millions of acres in the Northwest and California, including a staggering 61 percent of farmland in Washington state and 55 percent in Oregon.

In a September 2008 letter to NMFS, the EPA's Director of Pesticide Programs expressed "serious questions and doubts about the support for NMFS' conclusion that these three pesticides jeopardize all of these species and adversely modify their critical

habitat.” The letter goes on to state that NMFS provided “no basis” for its conclusion that the identified level of exposure would cause any harm to endangered species.

Despite these written concerns from a high level official in EPA, neither NMFS nor EPA allowed public comment before the bi-op became final. The agencies didn’t even informally consult with the agricultural community regarding current practices and options to ensure that pesticides do not adversely affect endangered salmon populations.

We understand NMFS faces court-imposed deadlines to release the remaining bi-ops, and that a pending lawsuit seeks to force EPA’s implementation of the first three. However, we are concerned that these agencies are not adequately addressing allegations in an April 2009 lawsuit that NMFS’ first bi-op is arbitrary, capricious, includes defective modeling and analysis, fails to include the best scientific and commercial data, and violates the Administrative Procedures Act and the Endangered Species Act. We believe the accuracy of the science and analysis included in the bi-ops are vital to the integrity and defensibility of all future bi-ops, and that NMFS must correct any flaws that currently exist.

Furthermore, several lawsuits have now been filed by various interests in multiple federal circuit court jurisdictions relating to these pesticide consultations, including one last week that would, by some estimates, require over 28,000 consultations on hundreds of new bi-ops. We are concerned that confusion about the Administration’s policy will likely result in conflicting court rulings, legal uncertainty, and additional lawsuits about the policy and scientific ramifications of these bi-ops. Better intra-agency coordination amongst these agencies and with the Department of Justice (DOJ), tasked with defending the government’s position in these lawsuits, is needed immediately.

In our view, DOJ should seek an additional and reasonable extension of time with the court to ensure EPA, in consultation with the Department of Agriculture (USDA) and other state agencies, is able to ensure that the NMFS bi-ops are based on the best available science. In addition, more time would allow the public to comment on these important rules that will affect jobs and economic activity in the Northwest, California, and eventually, other areas of the nation.

We are encouraged that the agencies held their first meeting with a small group of agricultural stakeholders on January 5 of this year, and we believe that an inclusive process should continue to move forward to improve future consultations and improve the science. We are hopeful that these meetings will also address our concerns on the first few bi-ops as well.


In addition, we request your involvement to ensure that NMFS, EPA, the Department of the Interior, USDA, and DOJ work together on this issue in a coordinated manner to strengthen the modeling and implement a scientifically sound bi-op that has been drafted through an open and transparent process. This must occur for the bi-ops affecting 19 products that remain to be drafted. However, and more importantly, intra-agency peer review is needed to reassess and address flaws with the existing three bi-ops.


At a time when our economy is already struggling, these regulations would cost jobs and impose a significant blow on the ability for the economy to recover. We urge you to halt moving forward with regulations that are based on questionable science and written with minimal opportunity for public input, and to take immediate steps to seek extensions of court-imposed deadlines to address these concerns. We stand ready to work with you to reverse the direction of this damaging policy.


Sincerely,


Doc Hastings
Member of Congress

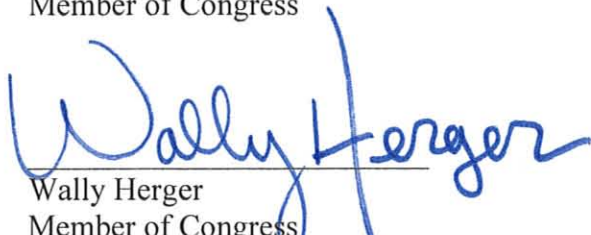

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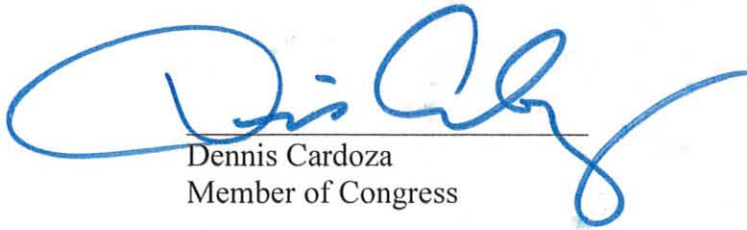

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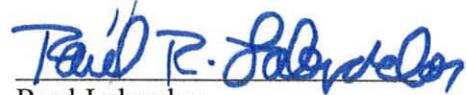
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