

# Congress of the United States

Washington, DC 20515

May 17, 2010

The Honorable Lisa P. Jackson  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. – Suite 2000  
Washington, D.C. 20460

Dear Administrator Jackson:

We write to express our strong concerns with the recent ultimatum issued by the Environmental Protection Agency (EPA) to implement the National Marine Fisheries Service (NMFS) 2008 biological opinion (bi-op) for the use of certain pesticides in Oregon, Washington, California, Idaho, and other states.

Without your swift action to address our concerns, jobs connected to agriculture and forestry in already economically depressed communities throughout the west will be negatively impacted by the misguided and unworkable policies that EPA is about to inflict on farmers, ranchers and foresters as a result of this flawed process.

Specifically, we understand that EPA's latest guidance calls for impractical and restrictive buffers and other limitations that would effectively result in a ban on the use of three pesticides (chlorpyrifos, diazinon, and malathion) for agriculture and forestry uses in many parts of our states. These pesticides are vital crop protection tools to control pests that devastate agriculture and timber, which fuel local economic activity in many areas of our districts.

We are concerned that NMFS' bi-op, issued under Section 7 of the Endangered Species Act to address EPA's registration of pesticide products under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), is not based on sound science. EPA's own Office of Prevention, Pesticides and Toxic Substances (OPPTS) in a September 15, 2008 letter to NMFS stated that NMFS' bi-op "lacks a level of transparency necessary for EPA to understand NMFS's rationale for its opinion that the use of any of these pesticides will jeopardize the continued existence" of salmon species. The OPPTS letter goes on to explain that they "have 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," and that the bi-op provides "no basis from which to have a meaningful discussion of Reasonable and Prudent Alternatives since it fails to identify a level of exposure to these pesticides that would not result, in NMFS opinion, in jeopardy to the species."

To add insult to injury, the EPA announced last fall that it intends to implement an alternative approach to the NMFS bi-op; an approach that, through EPA's own admission in a March 26, 2010 letter to California Citrus Mutual, provided "insufficient time for EPA to request and consider comment from stakeholders." In this same letter, EPA goes on to say that it will work with NMFS to ensure that in the future there is sufficient time to allow stakeholders to provide meaningful comment. Then, last month, EPA wrote that it expects registrants' voluntary compliance with EPA's implementation strategy. Unfortunately, waiting until the next opportunity to develop a biological opinion in collaboration or with adequate input from the agriculture and forestry interests or the registrant community, will be too late for many rural agriculture and forested communities.

Administrator Jackson, the time is now to resolve this untenable situation. There is too much at stake for agriculture in the Pacific Northwest and California to allow a biological opinion issued without public review and riddled with scientific uncertainty to stand as the final word on this important matter. In this light, we urge you to take action and remedy this situation before the registrants are required to post these limitations on their product labels.

As you know, the Endangered Species Act (ESA) requires federal agencies to reinitiate consultation on a federal action if new and material information that was not considered in the original consultation shows that the species are presently being impacted differently (either through improved or worsening conditions) by the federal action. As a result, the action or consulting agency has the obligation to reinitiate ESA Section 7 consultation. By use of the term "re-initiation" of consultation, we believe EPA can employ a process wherein a simple supplemental or amended biological opinion could be the vehicle to accommodate new, previously ignored and better information on the impacts pesticides have on listed species. As a result, a more scientifically informed set of actions can be implemented.

Reinitiating consultation will not only ensure the most current science drives decisions under the ESA, it will also promote transparency—a key directive of President Obama to all heads of executive departments and agencies of the Administration. We suggest that new and better information to fully inform EPA's obligations under FIFRA and Section 7 of the Endangered Species Act rest with those who have thus far been excluded from a seat at the table.

In closing, EPA's actions will define reasonable and environmentally sustainable pesticide use for agriculture and forestry in the Pacific Northwest and California for the next 15 years. The EPA can finally remedy this fatally flawed process by reinitiating consultation on the bi-op and address scientific uncertainties and key missing elements while bringing to the table, consistent with the principles of open and collaborative government, qualified representatives of the agriculture and forestry industries who stand to lose the most should the current federal framework continue on the ill-advised path that was chosen from the beginning.

We look forward to working with you to resolve this difficult issue.

Best regards,



Greg Walden  
Member of Congress



Doc Hastings  
Member of Congress



Cathy McMorris Rodgers  
Member of Congress

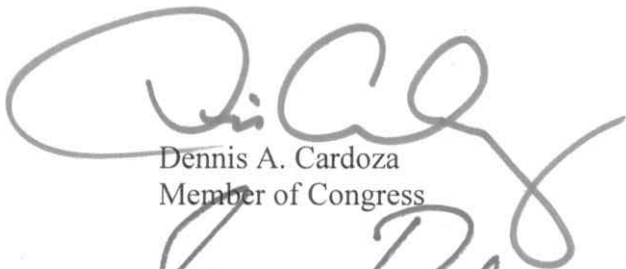


Michael K. Simpson  
Member of Congress

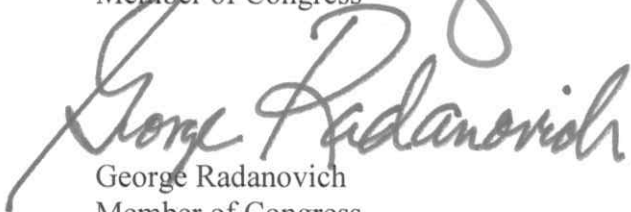
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Cc: Dr. Jane Lubchenco, Administrator, National Oceanic and Atmospheric Administration