



Congress of the United States

House of Representatives

July 22, 2010

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

Re: Comments on EPA's Implementation of the National Marine Fisheries Service's 2008 biological opinion for the use of pesticides and Endangered Species Act-listed salmon, Docket number EPA-HQ-OPP-2008-0654

Dear Administrator Jackson:

Thank you for the opportunity to comment on the Environmental Protection Agency's proposed implementation of the National Marine Fisheries Service's (NMFS) draft Biological Opinion (Bi-Op), included in docket number EPA-HQ-OPP-2008-0654.

As written, the bi-op would place unworkable restrictions on the use of certain pesticides, including Azinphos Methyl, Bensulide and Dimethoate, which are invaluable tools for growers, and have been approved for safe use after a comprehensive scientific review by the EPA. I represent one of the most important and productive agricultural regions in the nation, and I am concerned both with the process and substance of this Bi-Op and the adverse impact it will have on the Fourth District of Washington and the entire Pacific Northwest. I would like to offer several general concerns.

First, with the NMFS Bi-Op being re-written over several years, resulting in such significant regulatory impact on thousands of my constituents and other Northwest stakeholders, I find it deeply troubling that a notice for public comment was not sought until just a month ago. Federal agencies have a responsibility to ensure that the people most affected have an adequate opportunity to comment on a rule that so greatly affects their livelihoods—and more than 30 days should be provided.

Second, I am concerned that NMFS did not adequately consider the most up-to-date data in its Bi-Op, and thus, the Bi-Op is not based on sound science. Specifically, NMFS failed to consider recent comprehensive water monitoring data compiled by the Washington State Department of Agriculture on the prevalence of pesticides in bodies of water where these species migrate, as well as their impact on the salmon themselves. It defies common sense that NMFS completely ignored scientifically-collected data from a

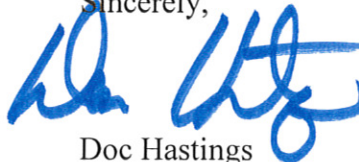
government agency on the very topic, and in one of the states of the very region, that the Bi-Op is intended to cover.

Third, NMFS concludes in its Bi-Op that the continued use of the twelve pesticides addressed by the Bi-Op, which have been used for years after being deemed safe by EPA, would cause jeopardy to endangered salmon. There is not empirical evidence to show that pesticides have been a significant factor in the decline of endangered fish populations since they were listed. Salmon runs in many areas this year are the highest they have been in four decades—even before many of these pesticides were registered.

A bipartisan letter signed by me and twelve other Members of Congress that was sent to you earlier this year, cited EPA's own Office of Prevention, Pesticides, and Toxic Substances, which, in 2008, stated that NMFS's Bi-Op "lacks a level of transparency necessary for EPA to understand NMFS's rationale for its opinion that the use of an of these pesticides will jeopardize the continued existence" of endangered species. It is deeply troubling that EPA is choosing to move forward with the implementation of this Bi-Op when the basic assumption of why additional action is needed has not been satisfactorily established.

I urge you to fully recognize the flawed process by which the Bi-Op itself was drafted and re-initiate the consultation process between EPA and NMFS relating to the use of these pesticides. Thank you for the opportunity to comment. I look forward to working with you to find more workable solution to this serious issue.

Sincerely,



Doc Hastings
Ranking Republican Member