



# Department of Pesticide Regulation



Brian R. Leahy  
Director

Edmund G. Brown Jr.  
Governor

January 14, 2015

PML 15-01

TO: County Agricultural Commissioners

SUBJECT: FEDERAL ACTIONS RELATED TO PESTICIDES AND PROTECTION OF  
ENDANGERED AND THREATENED SPECIES

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## Summary

Recently, the U.S. Environmental Protection Agency (U.S. EPA), U.S. Department of Agriculture (USDA), the U.S. Fish and Wildlife Service (U.S. FWS), and the National Marine Fisheries Service (NMFS) developed guidance for enhancing stakeholder input on protection of threatened and endangered species (also known as listed species) during U.S. EPA's registration review process and Endangered Species Act (ESA) consultation process. The goal is to improve stakeholder involvement in these processes and to improve the agencies' understanding of how pesticides are used, the ways in which pesticides may affect listed species, and how risks to listed species can be mitigated while preserving the beneficial uses of pesticides to the extent possible. DPR tracks federal notices related to pesticides and listed species protection and will forward them and other relevant information to county agricultural commissioners for their consideration.

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## ESA Overview

Under the ESA, the federal government protects listed species and the habitats they depend on. The ESA requires federal agencies, including U.S. EPA, to ensure that any action they authorize, fund, or carry out, including the registration of pesticide products, will not likely threaten the survival of any listed species or destroy or adversely modify any of its habitat. All pesticide products that U.S. EPA determines "may affect" a listed species or its habitat may be subject to additional review and referral to U.S. FWS or NMFS for consultation. Such consultation concludes with the issuance of a biological opinion, which is a document that states the opinion of U.S. FWS or NMFS on the proposed federal action and whether the action is likely to

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**ESA Overview,  
Continued**

jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its habitat. A biological opinion also includes alternatives or measures to mitigate potential adverse effects to a listed species or its habitat.

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**ESA  
Consideration  
in EPA's  
Pesticide  
Registration**

U.S. EPA is more completely fulfilling its responsibility to protect listed species by integrating new elements into its procedures for registering new pesticide products and uses and reevaluating existing registrations. U.S. EPA's obligations related to reevaluation include the registration review program, which intends to review each pesticide registration at least once every 15 years and determine whether it continues to meet Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) standards for registration, including standards related to protecting listed species. U.S. EPA also more routinely solicits appropriate consultations with U.S. FWS and NMFS and plans to act on the resulting findings and recommendations.

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**National  
Academy of  
Sciences'  
Review of  
Procedures to  
Protect  
Endangered  
Species**

However, U.S. EPA recognized that its efforts need to harmonize with those of other agencies charged with environmental protection, and it needed to reconcile differences in how the agencies assess environmental risk. It, along with U.S. FWS, NMFS, and USDA, requested the National Research Council of the National Academy of Sciences to conduct a neutral, third-party evaluation of their procedures for assessing risks from pesticides to listed species. The Council's Committee on Ecological Risk Assessment under FIFRA and ESA issued its report in April 2013, and since then agency scientists have been working together to develop shared scientific approaches that reflect the advice provided in the report. U.S. EPA, U.S. FWS, NMFS, and USDA are committed to realize the goal of developing a unified interagency approach for all phases of the assessment process, and they recently submitted to the U.S. Congress a report, available at <[www.epa.gov/oppfead1/endanger/2014/esa-reporttocongress.pdf](http://www.epa.gov/oppfead1/endanger/2014/esa-reporttocongress.pdf)>, that summarizes actions carried out by the agencies since receiving the 2013 report.

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**Enhanced Opportunities to Comment on Proposed Federal Actions**

U.S. EPA is offering earlier and more frequent opportunities to review and comment on actions related to pesticide registration review. The intent is to add to their understanding of potential risks and benefits of the actions, promote discussion of protective measures, and help assure future label requirements are necessary, effective, and feasible.

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**Examples of Recent Opportunities to Comment on Proposed Federal Actions**

In recent years, DPR has seen public notices requesting comments on several topics related to listed species protection that potentially affect county agricultural commissioners or their constituents:

- Biological opinions prepared by NMFS that highlighted risks of specific pesticides to listed salmon and steelhead species and prescribed protective measures,
  - Proposed county bulletins (U.S. EPA's county- and pesticide-specific, enforceable supplements to product labels) that implement protective measures prescribed in an NMFS biological opinion on protecting listed salmon and steelhead species from exposures to thiobencarb,
  - Proposed county bulletins that protect burrow-dwelling listed species from gas cartridge fumigants,
  - A proposed settlement agreement (Northwest Center for Alternatives to Pesticides vs. EPA) that protects listed salmon and steelhead species by reinstating interim no-spray buffer zones for chlorpyrifos, diazinon, malathion, carbaryl, and methomyl, and
  - Proposed interim registration review decisions based on conclusions in U.S. EPA ecological risk assessments.
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**PRESCRIBE Provides Interim Protective Measures**

As U.S. EPA moves forward with its efforts to validate, after thorough scientific and public review, regulatory approaches that affect the use of pesticides to protect listed species, use of interim protective measures is still justifiable and sensible. DPR encourages the use of PRESCRIBE (Pesticide Regulation's Endangered Species Custom Realtime Internet Bulletin Engine), DPR's Web-based database application, to access information on listed species that reside near prospective pesticide application sites and voluntary, product-specific protective measures. The measures are comprehensive and reflect the collective knowledge of diverse stakeholders, including county

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**PRESCRIBE  
Provides  
Interim  
Protective  
Measures,  
Continued**

agricultural commissioners, seeking practical, effective means to reduce exposures of listed species to pesticides. DPR recently expanded PRESCRIBE's capability with a mobile application, which uses a smart phone's geographic locator function to distinguish its location before product-specific protective measures are displayed. When you have the opportunity to comment on protective measures proposed by U.S. EPA or suggest those of your own, you may find it helpful to reflect on the measures included in PRESCRIBE. DPR remains ready to provide training on PRESCRIBE to county agricultural commissioner staff and other stakeholders on request.

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**Keeping  
Informed on  
Opportunities  
to Comment on  
Proposed  
Federal Actions**

County agricultural commissioners are encouraged to stay informed on issues related to protection of listed species from pesticides and comment on proposed federal actions as appropriate. If you would like to get notices directly from U.S. EPA, subscribe to their notification function (<[http://www.epa.gov/oppfead1/cb/csb\\_page/form/form.html](http://www.epa.gov/oppfead1/cb/csb_page/form/form.html)>). (These notices are not dedicated exclusively to listed species, ecological risk assessments, or pesticide-specific protective measures.) Regardless, DPR staff will continue to review public notices and forward those that are relevant to commissioners directly or via agricultural commission liaison updates and monthly reports.

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**Related Web  
Sites**

U.S. EPA's Endangered Species Protection Program:  
<<http://www.epa.gov/espp/>>.

DPR's Endangered Species Project:  
<<http://www.cdpr.ca.gov/docs/endspec/index.htm>>.

PRESCRIBE : <<http://www.cdpr.ca.gov/docs/endspec/prescint.htm>>.

PRESCRIBE mobile application (for access on mobile devices):  
<[mobile.cdpr.ca.gov/prescribe](http://mobile.cdpr.ca.gov/prescribe)>.

Compilation of Federal Register notices related to federally listed and proposed endangered species in California:  
<<http://www.cdpr.ca.gov/docs/endspec/frnotices/htm>>.

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County Agricultural Commissioners  
January 14, 2015  
Page 5

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**Contact**

For more information about DPR's Endangered Species Project and federal activities related to pesticides and protection of listed species, please contact Marshall Lee of my staff at 916-324-4269 or <Marshall.Lee@cdpr.ca.gov>.

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Sincerely,

**Original Signed by**

Nan Gorder, Ph.D., Chief  
Pest Management and Licensing Branch  
916-445-4038

cc: Mr. Joe Marade, DPR Agricultural Commissioner Liaison, Pesticide Programs Division  
Mr. George Farnsworth, Environmental Program Manager II, Enforcement Branch