

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 402**

RIN 0648-AQ69

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 402**

RIN 1018-A195

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Chapter I**

[OPP-2003-0010; FRL-7287-3]

RIN 2070-AD72

Endangered Species and Pesticide Regulation

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; and Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This Advance Notice of Proposed Rulemaking (ANPR) announces the intention of the Fish and Wildlife Service (FWS), a bureau of the Department of the Interior, and the National Marine Fisheries Service (NMFS), an Agency of the National Oceanic and Atmospheric Administration (NOAA), jointly referred to as "the Services," in cooperation with the U.S. Environmental Protection Agency (EPA), to conduct rulemaking to promulgate "counterpart regulations" under the Endangered Species Act (ESA). Specifically, this ANPR focuses on regulations and policies affecting the process for consultation between EPA and the Services regarding EPA actions in its pesticide regulatory program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and does not address processes among the Services and any other office within EPA. Throughout this rulemaking process, the Services and EPA will work with the U.S. Department of Agriculture (USDA) to implement the purposes of ESA and to effectuate the intent of the Congress that ESA compliance for EPA's FIFRA program be designed to "minimize the impacts to persons engaged in agricultural food and fiber commodity production and other affected pesticide users and

applicators." This ANPR also seeks public comment on possible approaches to changing the current regulations, policies, and practices of EPA and the Services to better integrate the FIFRA and ESA processes and to improve the efficiency and effectiveness of consultations on pesticide actions to enhance protection of species that are Federally listed or proposed as threatened or endangered and their proposed or designated critical habitat. The agencies are specifically requesting comments that focus on developing solutions to the extremely complex issues surrounding these consultations. In addition, this ANPR seeks comment on ways to improve public involvement and understanding of these processes and the decisions that result from them.

DATES: Comments, identified by docket ID number OPP-2003-0010, must be received on or before March 10, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: For FWS: Richard E. Sayers, Jr., Endangered Species Program, U.S. Fish and Wildlife Service, ARL SQ42, 1849 C St., NW., Washington, DC 20240; telephone number: (703) 358-2106; fax number: (703) 358-1735; e-mail address: Rick_Sayers@fws.gov.

For NOAA: Laurie Allen, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Rm. 13821, Silver Spring, MD; telephone number: (301) 713-2322, fax number: (301) 713-0376; e-mail address: Laurie.Allen@noaa.gov.

For EPA: Arthur-Jean Williams, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5239; fax number: (703) 308-3259; e-mail address: williams.arty@epa.gov.

SUPPLEMENTARY INFORMATION: This ANPR is organized into four Units. Unit I. contains "General Information" about the applicability of this ANPR, how to obtain additional information, how to submit comments in response to the request for comments, and certain other related matters. Unit II. provides background information on the pesticide regulatory program and the process by which Federal agencies consult or confer with the FWS and NMFS to ensure appropriate protection

of Federally listed and proposed, threatened and endangered species ("listed species") and their proposed and designated critical habitat ("critical habitat"). It also explains why EPA and the Services are considering changing the current approach to consultation for EPA's pesticide regulatory program and the goals of any future changes. Unit III. of the ANPR identifies specific aspects of the existing consultation process followed by EPA and the Services and seeks public comment on how these aspects might be modified to improve the consultation process for EPA's pesticide regulatory program. Finally, Unit IV. discusses regulatory assessment requirements.

I. General Information

While this ANPR is being issued jointly by EPA and the Services, because EPA has an electronic docket system that allows distribution of materials more easily to interested persons, EPA has agreed to take responsibility for all of the administrative duties related to publication of this document, including the creation of a public docket, receipt of public comments, and other related matters. EPA will share all comments it receives with the Services, and all three agencies will work together to compile and analyze public comments and on any future steps.

A. Does this Action Apply to Me?

This action is directed to the public in general and may be of particular interest to persons who manufacture, sell or use pesticides or who are part of a State or Tribe engaged in the regulation of pesticide products and to groups interested in environmental regulation. The Agency and the Services have not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult Arthur-Jean Williams at the telephone number/ e-mail address listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2003-0010. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is