

information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action are the Agencies Taking?

The Fish and Wildlife Service (FWS) of the Department of the Interior and the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA), together with the Environmental Protection Agency (EPA), announce their intent to conduct rulemaking to make changes in the way that EPA

consults with FWS and NMFS (jointly referred to as "the Services") under the Endangered Species Act (ESA) on regulatory actions involving pesticides, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Services and EPA are issuing this ANPR, in consultation with the U.S. Department of Agriculture (USDA), to solicit public comment on a range of possible changes that are intended to better integrate the consultation process under section 7 of ESA with the process for pesticide regulatory actions taken by EPA under FIFRA, and to improve the efficiency and effectiveness of consultation on pesticide actions. Some of the possible changes would require modification of the Services' existing consultation regulations in 50 CFR part 402; a rule modifying the consultation regulations for a specific Federal agency is called a "counterpart regulation." See 50 CFR 402.04. Other possible changes in the current approach to consultations between EPA and the Services could be accomplished without rulemaking, for example through a Memorandum of Understanding or changes in policies and practices at EPA or the Services.

EPA and the Services are currently engaged in a number of separate, but related activities relative to EPA's responsibilities under ESA, in addition to the publication of this ANPR. First, under ESA section 7(a)(1), EPA and the Services are engaged in an ongoing Proactive Conservation Review. This review of EPA's Endangered Species Protection Program (ESPP) is intended to clarify for the involved Federal agencies EPA's approach to risk assessment, criteria that indicate a listed species may be at risk, and the requirements imposed on EPA by the ESA regulations governing consultation. The review will also identify areas or issues relative to risk assessment, criteria, and consultations that may require modification to enhance the effectiveness and efficiency of consultation among EPA and the Services. While this review is conducted under ESA section 7(a)(1), the outcomes of the review will likely be used to help focus discussions on technical and science policy issues that need to be addressed to carry out responsibilities under ESA section 7(a)(2) more effectively and efficiently. Second, on December 2, 2002, EPA published a Notice in the **Federal Register** (67 FR 71549) (FRL-7283-7) describing and requesting comments on implementation of its ESPP. The goal of the ESPP is to carry out EPA's responsibilities under FIFRA in

compliance with ESA, while at the same time not placing unnecessary burden on agriculture and other pesticide users.

Although this ANPR contemplates significant revisions to the Services' ESA regulations as they relate to EPA's pesticide regulatory programs under FIFRA, EPA will continue to address its ESA section 7(a)(2) obligations regarding pesticide actions under existing Service rules until such time as the changes contemplated by this ANPR are finalized. While EPA and the Services believe these revisions can greatly improve the efficiency and effectiveness of the consultation process, all three agencies believe that the work they will be doing under the existing regulations during this interim period will ensure that endangered species are protected as required by law.

EPA and the Services believe it is also important that the public and pesticide registrants and users understand that EPA has significant authority under FIFRA to protect endangered species and their habitats from potentially harmful exposure to pesticides, and that FIFRA provides EPA the exclusive statutory authority for modifying a pesticide registration. Accordingly, when regulatory action is determined to be appropriate to protect listed species or their habitat, EPA will use the authority and procedures set forth in FIFRA to undertake such action.

B. What are the Agencies' Authorities for Taking this Action?

This ANPR is issued under the authority of section 7 of the Endangered Species Act (ESA), as amended, 16 U.S.C. 1531 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* EPA's statutory authority and programs for regulating pesticides are discussed in Unit II.C., while Unit II.D., describes the applicable provisions of ESA and implementing regulations.

C. FIFRA and Pesticide Regulation

FIFRA is the primary statute under which EPA regulates the use of pesticides in the United States. 7 U.S.C. 136 *et seq.* FIFRA defines a "pesticide" as "... any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest..." FIFRA sec. 2(u). When a pesticide is sold or distributed, it is generally referred to as a "pesticide product." Pesticides contain both "active ingredients" and "inert ingredients." An "active ingredient" is "... an ingredient which will prevent, destroy, repel, or mitigate any pest..." FIFRA sec. 2(a). Ingredients which are not active are referred to as