STATE OF WASHINGTON

DEPARTMENT OF AGRICULTURE

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March 3, 2003

U.S. Environmental Protection Agency
OPP Public Regulatory Docket (7502C)
Docket for Comments on Endangered Species Protection Program Field Implementation
Docket ID Number OPP-2002-0311
Ariel Rios Building
1200 Pennsylvania Ave., NW
WDC, 20460

To Whom It May Concern:

The Washington State Department of Agriculture (WSDA) would like to thank EPA for the opportunity to comment on EPA's Endangered Species Protection Program Field Implementation Federal Register Notice (FRN), published December 2, 2002 (Volume 67, Number 231).

WSDA is the state lead regulatory agency for pesticides in Washington; registering pesticides for distribution and regulating their use in the state. Washington State has a very diverse and strong agricultural base. It is a minor crop state that leads the nation in production of hops, apples, pears, cherries, raspberries and several other commodities. Major crops such as corn, wheat, alfalfa, barley and oats are also grown in the state.

Presently, greater than 70% of the landmass of the State of Washington is covered by Endangered Species Act (ESA) listings-predominantly for salmonids. Therefore, the WSDA is well aware of the potential impacts on pesticide use resulting from implementation of the ESA. Further, the WSDA is aware of the potential impacts that pesticide use may have on ESA-listed species. Since March of 2000, WSDA has been involved in a state and federal, multi-agency effort to address methods for attaining ESA compliance for pesticide applications in and adjacent to salmonid habitat. This effort has resulted in an approach that the WSDA believes can be formulated into a model State-Initiated Plan that will lead to ESA compliance.

**Specific Comments:**

WSDA's comments fall into two categories, those that address the risk assessment methodologies identified in the background section of the FRN, followed by those which address implementation of EPA's ESPP and the role of the States and other interested parties in the process. WSDA acknowledges that EPA provided background information in the FRN to provide a context for the reader, WSDA's comments regarding implementation of EPA's ESPP cannot be addressed without addressing the single most important issue to WSDA: the use of site-specific data in the risk assessment process.

*Unit II. Background Information on the Endangered Species Protection Program*
*Section D. Effects Determinations and Consultations*
*Subsection: 1(e): Effects Determinations: Species Specific Assessments*

While WSDA is aware of the effects determinations posted on EPA's ESPP web site, and the previously released ESA determinations, WSDA is unaware of the development of a Species-Specific risk assessment formulated as described for ESA determinations in this FRN. WSDA strongly supports the incorporation of site-specific as well as species-specific information into ESA effects determinations. WSDA feels that providing site-specific data is a role that the states can provide for EPA. In particular state agencies are more likely to have the most accurate information for where crops are grown, the rates and frequencies of actual pesticide usage, and the proximity of crops to T/E species habitat.

*Unit III. The Endangered Species Protection Program-Field Implementation Proposal*
*Section A (1). Scope of the ESPP: Indoor Products*

WSDA concurs that products used exclusively indoors will not result in exposures to T/E species and therefore will likely not effect listed species. WSDA is concerned regarding the 'exemption' greenhouse uses will receive under the proposed FRN. WSDA would support the greenhouse exemption as long as there is label language preventing irrigation water from being discharged directly into natural water bodies.

*Unit III. The Endangered Species Protection Program-Field Implementation Proposal*
*Section B. Completing and Upgrading County Bulletins*

Completing and upgrading county bulletins is an essential component of this program. Unfortunately, there are no county maps available on EPA's web site for the State of Washington. WSDA is concerned about EPA's ability to develop county bulletins for Washington State in a timely manner. WSDA believes accurate county bulletins detailing T/E habitat and local agricultural practices can only be developed in cooperation with State Agencies that are familiar with local conditions. For example, WSDA has developed a geo-spatial database that includes current cropping patterns, the location of T/E species habitat and other data that will enable WSDA to develop and produce maps that incorporate natural and man-made landmarks with township-range-section, as well as GPS coordinates. The combination of these

mapping features will provide pesticide applicators the most accurate identification of where protective measures will be required.

*Unit III. The Endangered Species Protection Program-Field Implementation Proposal*
*Section C. Bulletin Distribution Procedures*

WSDA believes the ease in which bulletins and other ESPP material can be obtained by the pesticide user is critical. WSDA supports electronic distribution of county bulletins as proposed by EPA for nationwide publication on their web site, as well as regionally/locally by the States, Regions, and the field offices of the Services.

*Unit III. The Endangered Species Protection Program-Field Implementation Proposal*
*Section D. Amending Pesticide Labels to Reference County Bulletins*

WSDA strongly supports label language which requires applicators to follow county bulletins. WSDA believes that this will provide the greatest likelihood for protective measures to be effective. WSDA also contends that this provides a 'level playing field' for all pesticide applicators whereby economic/agronomic advantage or disadvantage is not provided to one grower over another based on their decision to protect listed species. This also provides certainty for the Services for ESA compliance.

*Unit III. The Endangered Species Protection Program-Field Implementation Proposal*
*Section F. Enhanced Monitoring Programs*

WSDA strongly supports enhancing monitoring programs to ensure that measures put in place are in fact reducing pesticide exposure to listed species. Following the classical risk assessment paradigm, when exposure is reduced the risk is reduced as well. In order to enhance monitoring programs WSDA supports using third party technical services such as USGS and/or state programs to ensure that the greatest value for each dollar spent will be gained. Further, monitoring programs are very expensive. WSDA believes that registrants, or other private entities, may be burdened by attempting to develop monitoring programs for a single chemical. Whereas pooled resources could result in the generation of more data for each dollar spent.

*Unit III. The Endangered Species Protection Program-Field Implementation Proposal*
*Section G (4). Role of the States and Tribes: Develop Alternative Approaches to Protect Listed Species*

WSDA strongly supports the mechanism EPA is proposing to allow states to protect listed species. The WSDA will propose a State-Initiated Plan to EPA where WSDA will provide data to EPA to use for effects determinations. This data will include geo-spatial data, which identifies the proximity of listed species habitats to cropping locations, as well as pesticide-use information. If EPA determines that a bulletin is needed to protect listed species from the

pesticide in question, WSDA would then develop county bulletins in coordination with stakeholders and EPA. Bulletins would be distributed via EPA, WSDA, pesticide dealers and distributors, as well as all other previously identified mechanisms. WSDA strongly believes that incorporation of site-specific data will allow EPA to develop accurate species-specific risk assessments.

As a mechanism to provide certainty to the Services, WSDA has designed and is beginning to implement a surface water monitoring program to 'adaptively manage' strategies put in place. This monitoring program will provide weekly measurements of pesticides during the pesticide application season to evaluate the effectiveness of protective measures, as well as to provide EPA with current detection data tied to agricultural practices.

Thank you again for the opportunity to comment on the EPA's ESPP Field Implementation Proposal. If there is a need for future information or clarification please contact Bridget Moran at 360.902.1936 or bmoran@agr.wa.gov.

Sincerely,

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