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# EPN Comments on the Endangered Species Act Section 7 Consultation Process

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## IMPLEMENTING ESA MITIGATION

To improve communication of ESA protections to users, EPA should require registrants to implement Web-Distributed Labeling. The current approach—imbedding a direction in labeling to consult the "Bulletins Live" website—probably won't work, and users won't know the steps needed to protect listed species. User surveys, as well as ample anecdotal accounts, report most users don't consistently read pesticide labeling. They rely instead on experts, friends, or their memory to tell how they apply products. Why don't they read labels? Labels are too long; many ag products are over 100 pages long. Labels are poorly organized; relevant instructions are not grouped in one place. Labels are often in small, barely readable print. It is unrealistic to expect users also to go to a website to get even more instructions.

The answer is Web-Distributed Labeling; it uses today's QR code technology to take users to websites that can quickly give the information—including any ESA restrictions—relevant to the way they intend to use the pesticide, without other unneeded information from the full product labeling. Tests showed that a user might need only 6 pages out of more than 100 pages of labeling text.

Users say they want to be able to get labeling text via the internet. EPA has policies for the use of WDL. Once ESA protections become common, EPA should mandate registrants give users this choice.

## OTHER ESA-FIFRA TOPICS

The government should make two changes to significantly improve the effectiveness and efficiency of efforts to protect listed species from pesticide risks.

1. First, EPA should focus on the pesticides posing the greatest risk to species by establishing a science-based, priority ranking of all active ingredients —both old and new pesticides. The priority scheme should consider: exposure, as evidenced by extent of use in areas where listed species are found, and hazard, as indicated by incident information and direct toxicity to animals and plants. Because such a scheme is likely to put many old AIs ahead of new, safer AIs, it will deliver more protection than EPA's current emphasis on new AIs.
2. Second, EPA's BEs should use information on actual pesticide usage whenever possible. The policy of "erring on the side of the protection of the species" has led EPA and the Services to use pesticide label directions as the basis for estimating exposure to species. But these estimates wildly overstate likely exposure and are not the "best available scientific information" required by sec. 7(a)(2). Many sources of reliable data on usage are available.

Employing actual usage data will result in fewer consultations and thus faster identification of real risks and implementation of needed protections.

3. EPA, the Services, and USDA should develop the ranking scheme and guidance for usage data with input from external stakeholders.

FUTURE STAKEHOLDER ENGAGEMENT IDEAS

The many commenters and attendees today—and the variety of organizations they represent—shows plainly the high level of interest in the government's implementation of ESA with respect to pesticides. This forum is a good start, but clearly insufficient. No one can convey complicated proposals in 90 seconds, much less have any in-depth meaningful discussion of them.

I recommend two types of efforts:
First, hold public meetings explaining in detail the data and methods EPA and the Services use to assess the risks to listed species, to determine whether pesticide use will likely jeopardize species, and to identify reasonable and prudent alternatives and reasonable and prudent measures. Stakeholder groups need to understand how these vital determinations are made to interact constructively with the government on both individual chemical decisions and systemic issues.

Second, conduct a neutrally facilitated, public policy dialogue with representatives from the range of interested government, private sector, and NGO stakeholders.