

**Statement of the American Farm Bureau Federation
to the
House Committee on Agriculture and House Committee on Natural Resources**

**Joint Public Hearing to Review the Costs of Federal Regulatory Dysfunction
to American Jobs, Agriculture, Health and Species**

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**Presented By:
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Chairman Lucas, Chairman Hastings, Ranking Member Peterson and Ranking Member Markey, thank you for holding this important hearing today.

My name is Barry Bushue. I am here as a farmer, and am privileged to represent Oregon Farm Bureau as President and American Farm Bureau as Vice President.

My farm is located approximately 20 miles East of Portland, Oregon. I am the third in my family's history to own and operate the farm. My wife and I started a diverse horticultural operation where we raise ornamental nursery stock, bedding plants, flowering baskets, vegetable starts, strawberries, raspberries, tomatoes, various vegetables and pumpkins that are destined for both retail and wholesale markets. We farm less than 70 acres and our primary retail operation, including an on-farm market, is on the "home farm" that is comprised of fewer than 14 acres. We are also involved in our local Farmers Market.

Our retail operation has been successful because of our commitment to our local community and the environment, our attention to detail, and most importantly, a consistently high quality product.

Quality does not come easily. Nutrients, water and other inputs must be monitored regularly. The environment in the greenhouses must be monitored and regulated. Managing for pests is constant and critical.

We use a variety of pest management tools on our farm, including mechanical, biological and chemical methods, and our strategies for different commodities vary depending on their needs and market. Crop rotations, watering schedules, cover crops and cultivation methods are all important. In addition, recycling of water in our nursery container yard and grass strips for water control are all integral to our farm, and, as a member of the Local Advisory Committee, I participated in the development of the Agricultural Water Quality Management Plan for the

Clackamas River Basin for the Oregon Department of Agriculture. My experience is typical of many farms in Oregon and the Northwest.

We have a tremendous capital investment in plants, greenhouses, equipment, personnel, irrigation systems, land and buildings. We have clearly made a commitment to sustainability and to the future of our farm for generations to come. There is nothing more sustainable than a productive farm that supports generation after generation.

Our markets are far from certain and are impacted by competition and the overall state of the economy, but nothing is more costly or devastating than a crop loss.

There are times when the only way we can save or protect a crop is by using crop protection products. The availability of these products is important not only to my farm but to agriculture in general. The farm community relies on the judicious use of these products based on labeled rates as determined under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), which is administered by the Environmental Protection Agency (EPA). The label is the law.

It is incumbent on the pesticide registrant to provide data sufficient for the EPA to make the scientific evaluation that the product may be used for its intended purpose (according to the label) without presenting any unreasonable adverse effect on humans, the environment or non-target species, including species listed under the Endangered Species Act (ESA).

Tremendous amounts of money and time have gone into the development of these products and the scientific data utilized to register these products. This includes not only toxicological studies on vertebrates and invertebrates but also environmental risk assessments.

Farm Bureau has concerns with the Biological Opinions (BiOps) resulting from the consultation between EPA and the National Marine Fisheries Service (NMFS), which is part of the National Oceanic and Atmospheric Administration (NOAA Fisheries of the U.S. Department of Commerce). The BiOps were prepared as a result of litigation brought by activist groups against EPA, alleging that EPA's registrations of pesticides under FIFRA violated the ESA, because the pesticides had allegedly adversely affected 26 "evolutionarily significant units" of salmon in the Pacific Northwest, including in Oregon, where our farm is located. I attended a meeting in Portland, Oregon hosted by NOAA to discuss the BiOps and the methods used to make its determinations. There were representatives from Oregon, Washington, California and Idaho, including Departments of Agriculture, individual farmers and commodity groups.

After a lengthy presentation from the NOAA scientists who developed the BiOps and the ensuing discussion with them and the larger group, it became clear that our concerns about the hypothetical and inaccurate data used in the BiOps were justified. I was stunned by the reluctance and even refusal to utilize the actual use data available from Departments of Agriculture and other sources in the development of the BiOps. Scenarios using maximum rates for the maximum number of applications for all crops listed on the label clearly do not reflect real-world conditions or an accurate picture of use data for a study area. Assumptions were incorporated for crops not raised in the Northwest. Some assumptions were made based on superseded labels that weren't even accurate at the time of the studies. Perhaps even more egregious was the use of a static pond model for drift and exposure data. A six-inch deep static

pond is a far cry from the moving streams that salmonids inhabit. These extremely conservative worst-case scenario assumptions and flawed modeling do nothing to help agriculture or salmon. In a follow up meeting with James Lecky, Director, Office of Protected Resources in NOAA, my concerns were not abated by his assertion that NOAA needed to use the most conservative assumptions and modeling in order to forecast all possible use scenarios 15 years out. Forecasting based on flawed assumptions instead of actual use and real life data puts my farm, and our entire industry, at risk. They are certainly not compatible with farm sustainability.

Additionally, the modeling did not appear to incorporate any appreciation or consideration for the huge investment from farmers, departments of agriculture, soil and water conservation districts and USDA, through NRCS and FAS, in on-the-ground conservation work and riparian area work already done to improve water quality and conditions on the land that impact it.

The Oregon Department of Agriculture has active water quality programs to address pesticide issues, and, in conjunction with the Oregon Department of Environmental Quality, coordinates successful Pesticide Stewardship Partnerships with growers.

The results of the BiOps are buffers that far exceed those incorporated on the labels by EPA. The existing buffers on labels were developed by a competent and experienced team of EPA scientists. The buffers on the label for Lorsban Advanced (chlorpyrifos) are 25 feet for a ground boom and 150 feet for aerial. In contrast NMFS has indicated that the buffer for this insecticide should be 500 feet for ground and 1000 feet for aerial. Similar scenarios run by the Pesticides Division of the Oregon Department of Agriculture show similar overzealous buffers for Diazinon at 575 feet and Malathion at 175 feet, both for ground application. Aerial applications are at 1000 feet.

To put this into perspective, my home farm is approximately 980 ft long. It borders an intermittent stream that is part of a basin system that supports salmonids. Every 67 feet is the equivalent of an acre. An acre represents approximately five tons of strawberries, two tons of raspberries, up to 7,500 trees, tons of tomatoes, beans, pumpkins and untold other crops. 500 feet is 7.5 acres or more than half of my retail production. If an aerial application is required, the BiOp would block the use of critical crop protectants on my entire farm. Economics has to be part of any sustainable farm. To put any farm at risk due to the use of flawed and inaccurate data is unforgivable.

No individual is more important to the protection and preservation of salmon habitat than the grower who manages the land. By imposing blunt-instrument restrictions that are so obviously flawed, unrealistic and unnecessarily conservative, you alienate the very people that are the most critical for salmon protection.

The BiOps stemming from this one lawsuit will eventually deal with 37 pesticides. To a minor crop producer in a state that raises more than 220 commodities, every tool is important. Rotation and resistance management are critical key to any successful operation.

Scenes like those occurring in Oregon and the Pacific Northwest have the potential to be played out throughout the United States.

The stark reality is that, although EPA has determined that each pesticide it registers will not cause unreasonable adverse effects on the environment, it has consulted with NMFS or the U.S. Fish and Wildlife Service (FWS) on only a very few crop protection registrations so far. EPA's alleged failure to comply with procedures under the ESA leaves the registrations exposed to legal challenge by groups bent on curtailing pesticide use.

In fact, the Center for Biological Diversity (CBD) has filed several lawsuits seeking to halt pesticide use due to EPA's alleged failure to comply with the procedural requirements of the ESA when it registers pesticides. Most recently, CBD filed suit in the Federal District Court for the Northern District of California alleging that EPA violated ESA §7(a)(2) by failing to consult with either the FWS or NOAA Fisheries (collectively, the Services) on registrations of at least 381 pesticide products used throughout the country for their possible effects on 214 species listed under the ESA. Neither EPA nor the Services have the money or the staff to conduct consultations for every registered crop protection product.

Many of the problems that have spawned this current regulatory quagmire stem from the fact that both FIFRA and the ESA require EPA and the Services, respectively but duplicatively, to conduct these reviews.

FIFRA¹ requires prospective pesticide registrants to provide voluminous data to the EPA before a product may be registered. Some of the data required by EPA are studies on the impacts of prospective products on species that are listed under the ESA². EPA conducts risk assessments on the possible impacts of proposed products on plant and animal species, including listed species, as one factor in its consideration whether and under what conditions to register a pesticide product. Once a product is registered, FIFRA provides for re-registration in order to assure the continued safety of the product.

Similarly, the ESA also contains a process by which a federal agency (such as EPA) consults with FWS or NMFS to ensure that any action the agency authorizes, funds or carries out is not likely to adversely affect wildlife species protected by the ESA. In the course of this consultation process, FWS and NMFS are supposed to conduct evaluations of the proposed agency action, very similar to the risk assessments already undertaken by EPA in the registration or re-registration of crop protection products.

Under any circumstances, risk assessments are expensive, time-consuming and data-intensive exercises. Current procedures are duplicative. They require that EPA and the Services both conduct essentially the same risk assessments for the same products on the same species. All three agencies conduct thorough and comprehensive assessments on listed species. All three agencies have the scientific expertise to perform their respective assessments. All three agencies have developed information and data that would be useful to the others, but which are not shared. EPA and the Services effectively duplicate each other's work. Having two or possibly three agencies repeating the same work is redundant, inefficient and a waste of taxpayer money. It

¹ 7 U.S.C. 136 et seq.)

² 16 U.S.C. 1531 et seq.

also leads to the regulatory gridlock confronting farmers and ranchers as a result of the failure of these agencies to reconcile their procedures.

President Obama's Executive Order 13563, "Improving Regulation and Regulatory Review," requires federal agencies to identify outdated, overlapping and redundant regulations and regulatory processes as a means to streamline government and make it work more efficiently. In times of fiscal constraint and tighter agency budgets, eliminating agency duplication and waste is even more important.

The duplication of the risk assessment requirements for crop protection registration by EPA and for section 7 consultation by the Services is a prime example of the duplication and waste that exists in our federal agencies. Both EPA and the Services have legitimate roles to play by virtue of the responsibilities that Congress has given them in the FIFRA registration process and in the ESA section 7 consultation process. Good government demands that EPA and the Services get together to determine how best to work with one another to satisfy the missions of both FIFRA and ESA through one, joint process.

Let us be clear. We are not proposing to strip away any protections from either FIFRA or the ESA. We are simply proposing that two redundant procedures be meshed into one. It is not a FIFRA issue or an ESA issue. It is a good government issue.

Because both FIFRA and the ESA specifically require EPA and the Services, respectively, to perform risk assessment procedures, we submit that legislation is needed to reconcile the roles of these respective agencies, and to mesh two risk assessment requirements into one. A starting point for discussion might be counterpart regulations that were promulgated in 2004 between the EPA and the Services that were partially set aside in another lawsuit brought by activist groups, because of their perceived inconsistency with the existing statutes.

Farm Bureau stands ready to assist you in finding a workable solution to this problem.