

Endangered Species Enforcement Issues

Jim Gray

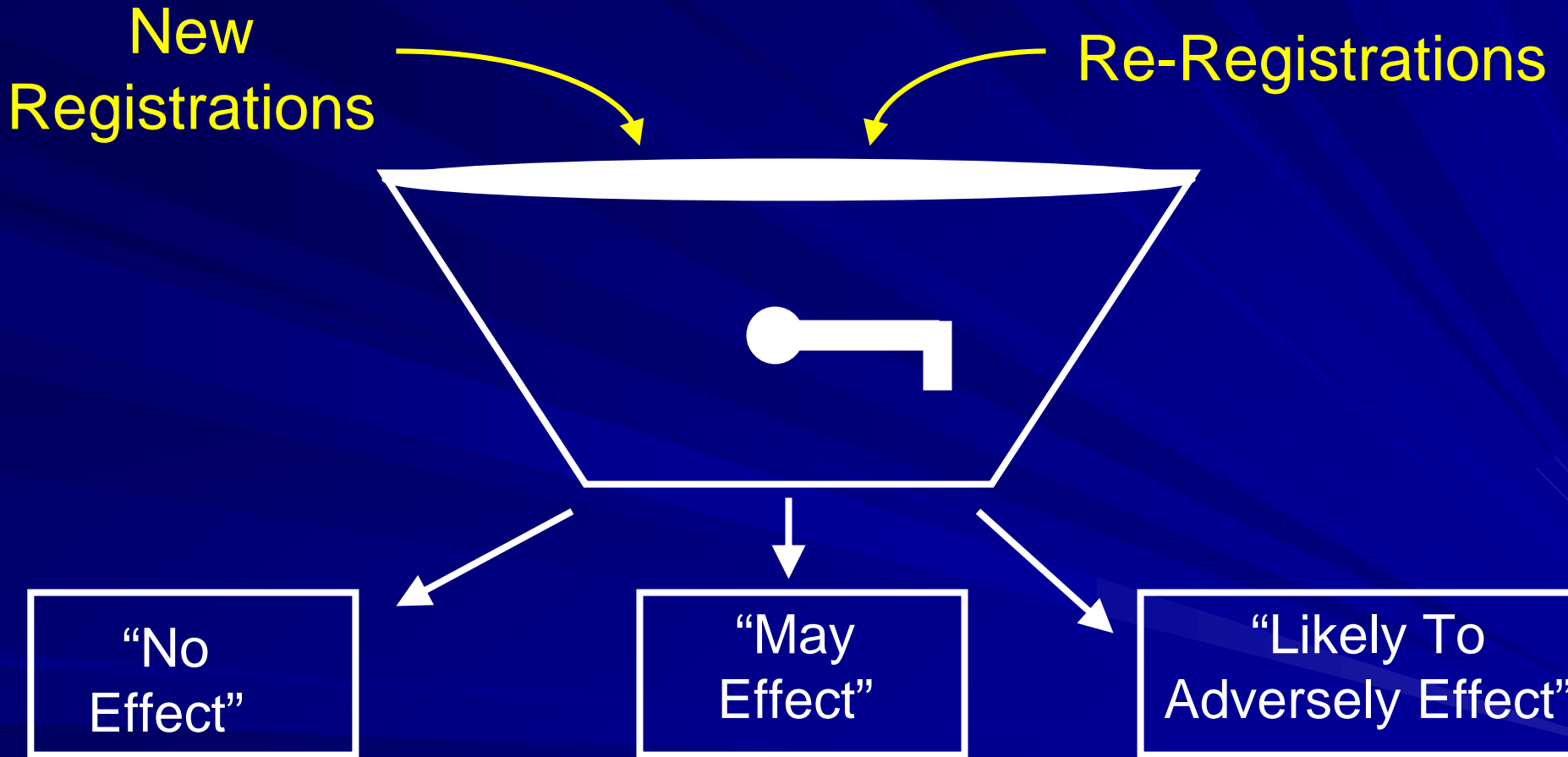
SFIREG WC/POM Meeting

April 3, 2006

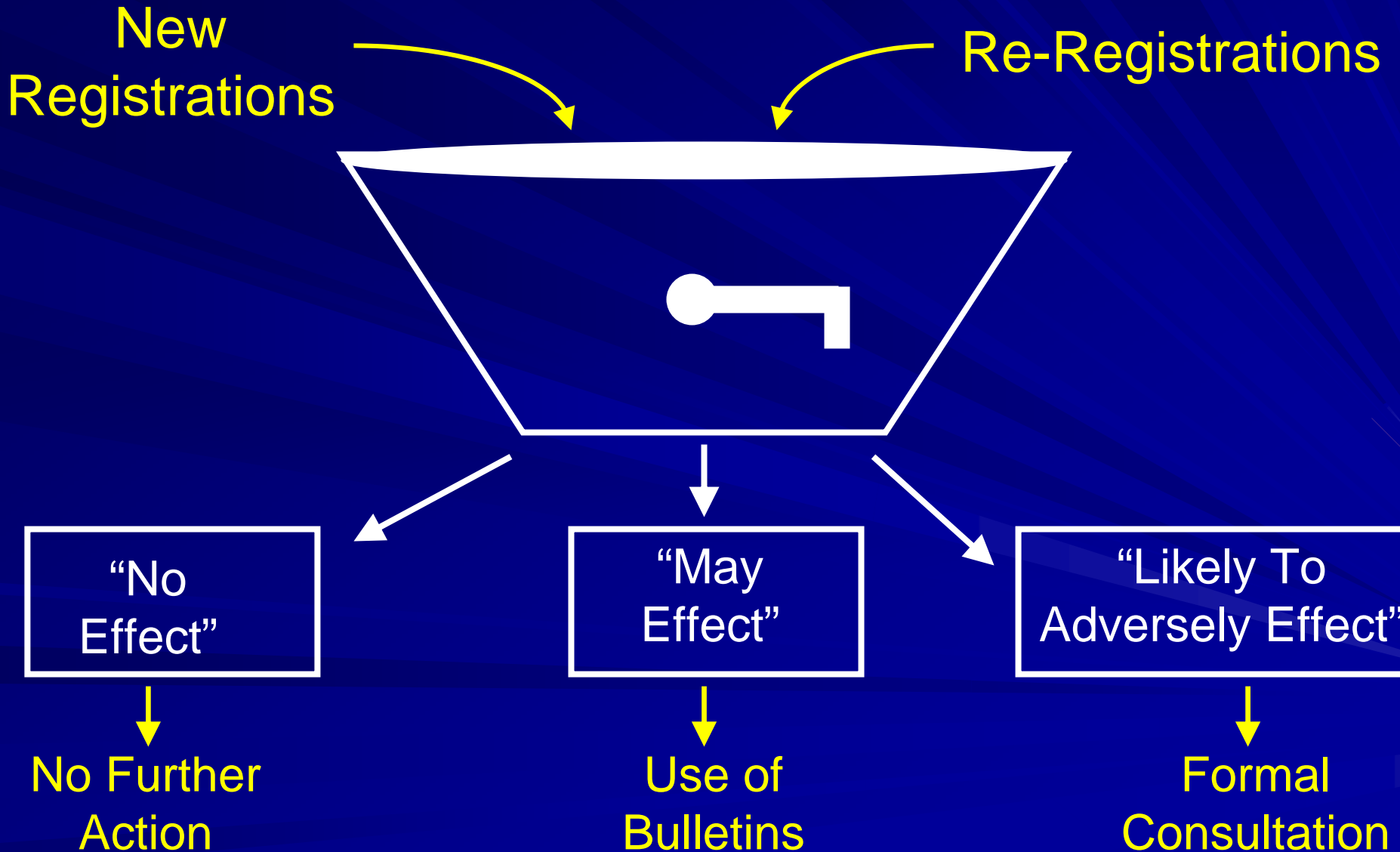
EPA Strategies to Comply with ESA

- Revised consultation process to comply with Section 7 of ESA
- Use of county bulletin approach to mitigate risk of pesticide use to listed species in certain areas
 - Use restrictions in situations when a pesticide use could adversely effect listed species
 - Bulletin reference language on pesticide label to make bulletin use restrictions enforceable (“labeling”)

ES Risk Assessments



ES Risk Assessments



More on Bulletins

- Pesticide label language will reference users to local Bulletin if one is available

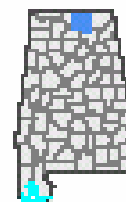
Example: “In addition to all restrictions, precautions, and directions found in this labeling, users are also bound by any restrictions found in their local Endangered Species Protection Bulletin (‘Bulletin) if one is available.”

- Bulletins then become “labeling” & therefore enforceable



Protecting Endangered Species

Madison County, Alabama



The information in this pamphlet is similar to what the U.S. Environmental Protection Agency (EPA) expects to distribute soon on Endangered Species Protection Program in its effort. The limitations on pesticide use are not set at this time, but are being provided at this time for your use in voluntarily protecting endangered and threatened species from harm due to pesticide use. We encourage you to use this information. We also welcome your comments.

The Endangered Species Act is intended to protect and promote recovery of animals and plants that are in danger of becoming extinct due to the activities of people. Under the Act, the EPA must ensure that use of the pesticides it registers will not result in harm to the species listed as endangered or threatened by the U.S. Fish and Wildlife Service, or to habitat critical to those species' survival.

To implement the Endangered Species Protection Program, labels of certain pesticides will direct users to limitations similar to this pamphlet. This program will protect endangered and threatened species from harm due to pesticide use.

EPA requests your comments regarding the information presented in this publication. Please let us know whether the information is clear and correct. Also tell us to what extent following the recommended statement would affect your typical pesticide use or productivity. This information will be considered by EPA during the final stages of program development.

About This Publication

This publication contains a county map showing the areas within the county where pesticide use should be limited to protect listed species. These areas are identified on the map by shaded patterns. Each shaded pattern corresponds to a species in need of protection.

The map explanation shows the name of the species that each shaded pattern represents, and often describes the shaded area. This area may be described in terms of township, range and section, or by giving details about the habitat of the species.

The first column of the table of "Pesticide Active Ingredients" lists the active ingredients for which there should be limitations on use to protect certain species. The second column are headed by the shaded pattern of the species, with codes listed underneath them.

The code indicates the species' limitation that is necessary to protect the species. The section titled "Codes/Limitations" explains the code.

Does This Information Apply to You?

To determine whether this information applies to your use of a pesticide, review the questions below:

- + Do you intend to use pesticides within or near the shaded areas on the county map?
- + Are any of the active ingredients listed on the front panel of your pesticide product listed under the table of "Pesticide Active Ingredients"?

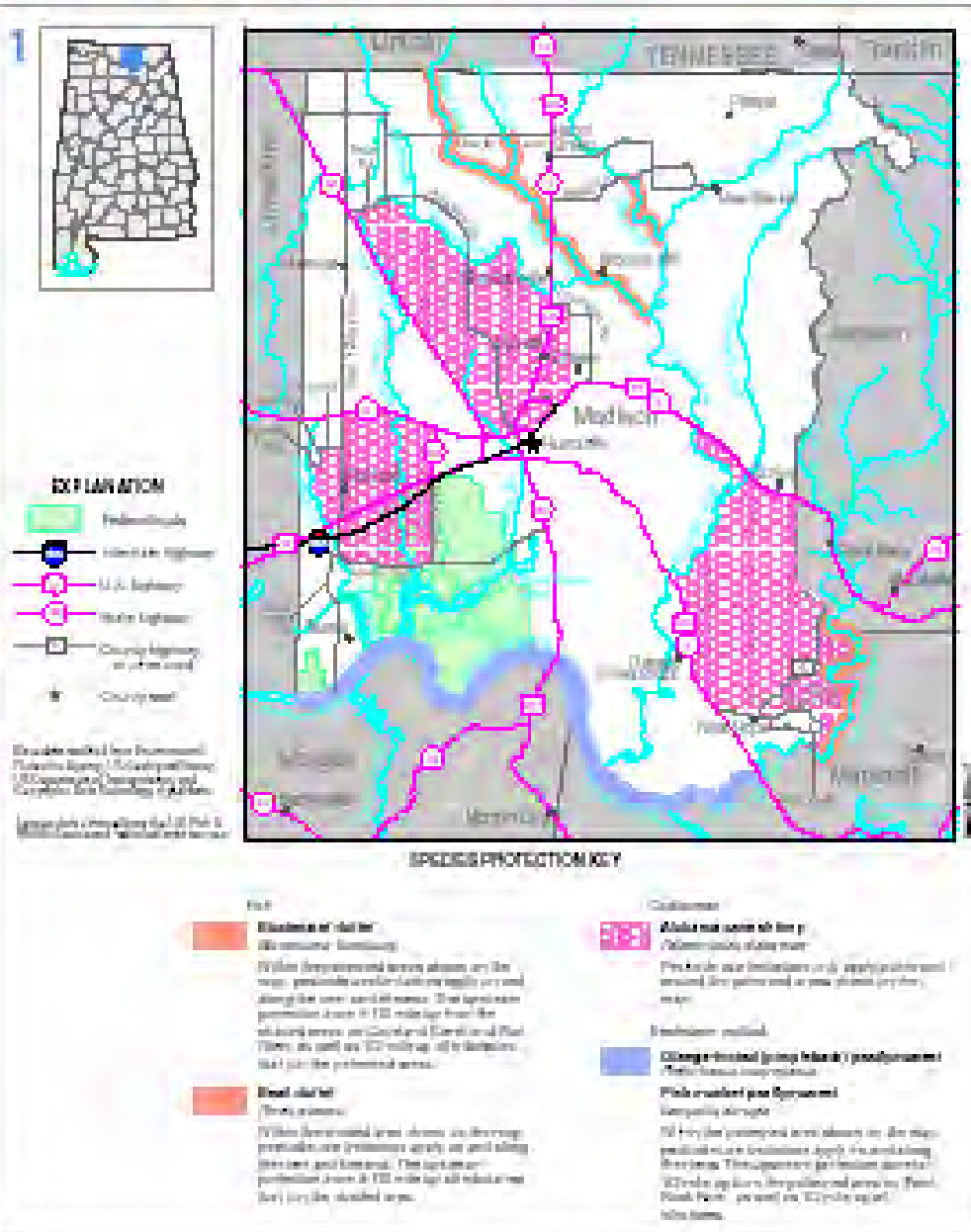
If you answer "yes" to both questions, you should follow the instructions on "How to Use County Labels" to determine if you should limit use of the pesticide to help protect listed species.

If you answer "no" to either question, you should follow the usage directions on the pesticide product label.

Please send comments to:

**Endangered Species Protection
Program (588C)
U.S. EPA
600 Peachtree Ave., NW
Washington, DC 20460**

Madison County, Alabama



Codes and Limitations

- 1 Within the indicated area shown on the map, do not apply this pesticide the following distances from the edge of the water: 20 yards for ground applications, **100 yards for aerial applications.**
- 1c Within the indicated area shown on the map and within the upstream protection zone (described in the *Species Protection Key*), do not apply this pesticide within the following distances from the edge of the water: 20 yards for ground applications, **100 yards for aerial applications.**
- 2c Within the indicated area shown on the map and within the upstream protection zone (described in the *Species Protection Key*), do not apply this pesticide the following distances from the edge of the water: 40 yards for ground applications, **200 yards for aerial applications.**
- 7 Within the indicated area shown on the map, do not apply this pesticide within the following distances from the edge of all caverns, sinkholes, and surface waters: 20 yards for ground applications, **100 yards for aerial applications.**
- 10 Do not apply directly to water within the indicated area shown on the map, nor within 1 mile up all streams from the indicated area.
- 20 Do not apply this pesticide directly to water within the indicated area shown on the map.
- 20b Do not apply this pesticide directly to water within the indicated area shown on the map, including streams at the boundary of the indicated area.
- 41 Within the indicated area shown on the map, do not apply this pesticide the following distances from the edge of the water: 1/4 mile for ground applications, **1/2 mile for aerial applications.**
- 43 Within the indicated area shown on the map, do not apply this pesticide the following distances from the edge of the water: 100 yards for ground applications, **1/4 mile for aerial applications.**
- 60 Do not apply this pesticide within the indicated area shown on the map.
- 297 Within the indicated area shown on the map or the upstream protection zone as described in the *Species Protection Key*, do not apply this pesticide above the indicated threshold application rate (TAR) within 40 yards from the edge of water for ground applications, nor **within 200 yards from the edge of water for aerial applications.**

Enforcement Issues

- How often will Bulletins be updated?
- How will pesticide users know when a new Bulletin has been published?
- How does this impact enforcement?

Enforcement Issues

- How often will Bulletins be updated?
 - New Bulletins will be prepared on an as-needed basis whenever a “may affect” determination is made
 - Bulletins will only be published online to reduce monetary and logistic impacts of new Bulletins

Enforcement Issues

- How will pesticide users know when a new Bulletin has been published?
 - Users & dealers will need to check <http://www.epa.gov/espp/> to look for updates

Enforcement Issues

- How does this impact enforcement?
 - Bulletins treated as supplemental labeling
 - Most users access supplemental labeling to expand uses to the labeling
 - Bulletins restrict uses

Enforcement Implications

Scenario: Grower goes online on February 1st to look for Bulletin restrictions prior to buying pesticides for upcoming season. Finding no Bulletin or restriction for the desired pesticide, he purchases it.

- Bulletin published March 15 with restrictions
- Grower uses pesticide May 15.

LABEL VIOLATION?

Potential Fixes

1. Enforce Bulletin in place at time of pesticide use, regardless of recent updates
 - Users would be responsible for checking for Bulletin updates immediately before use
 - Plain & simple
 - Hinders pre-season planning

Potential Fixes

2. Publish new Bulletins annually based on calendar year
 - Users would be able to use a given Bulletin for entire year
 - Easier on enforcement staff
 - Would require EPA to update all Bulletins with new year each January 1
 - Risk unmitigated in the interim

Potential Fixes

3. The “Six Month Rule”

- Users could legally follow a Bulletin for Six months after download, regardless if updates have been made since
- Bulletins may have preparation date, but how do you prove download date?
- What if Bulletin viewed by not downloaded?
- Sets troubling precedence of users choosing which Bulletin they want to follow

Summary of Potential Fixes

1. Enforce Bulletin in place at time of application
2. Publish Bulletins annually based on calendar year
3. “Six month rule”
4. Others?