

***EPA's  
Endangered Species Protection Program***



**Frequently Asked Questions &  
State/Tribal Perspective**

**Jaslyn Dobrahner, EPA Region 8**

**Jim Gray, ND Dept. of Agriculture**

**Robin Powell, Pyramid Lake Paiute Tribe**

*2006 Western Region Pesticide Meeting, Whitefish, MT*



# Objectives

1. Increase your knowledge of the new Endangered Species Protection Program (ESPP).
2. Provide a state/tribal perspective of the ESPP.



# What's new with EPA's ESPP?

- EPA published final approach to **field implementation** of the ESPP
  - November 2, 2005

**Voluntary**



**Enforceable**



# What are we enforcing?

## Endangered ~~Species~~ Act

- ✓ Administered by 'the Services'

## Endangered ~~Species~~ Protection Program

- ✓ NOT a legally binding regulation

## FIFRA

- ✓ Endangered species product labeling



# What will pesticide labels say?

## Pesticide label language:

This product may have effects on federally listed threatened or endangered species or their critical habitat in some locations. When using this product, you must follow the measures contained in the Endangered Species Protection Bulletin for the county or parish in which you are applying the pesticide. To determine whether your county or parish has a Bulletin, and to obtain that Bulletin, consult <http://www.epa.gov/espp/>, or call 1800 xxx-xxxx no more than 6 months before using this product. Applicators must obtain and use Bulletins that are in effect in the month in which the pesticide will be applied. New Bulletins will generally be available from the above sources 6 months prior to their effective dates.



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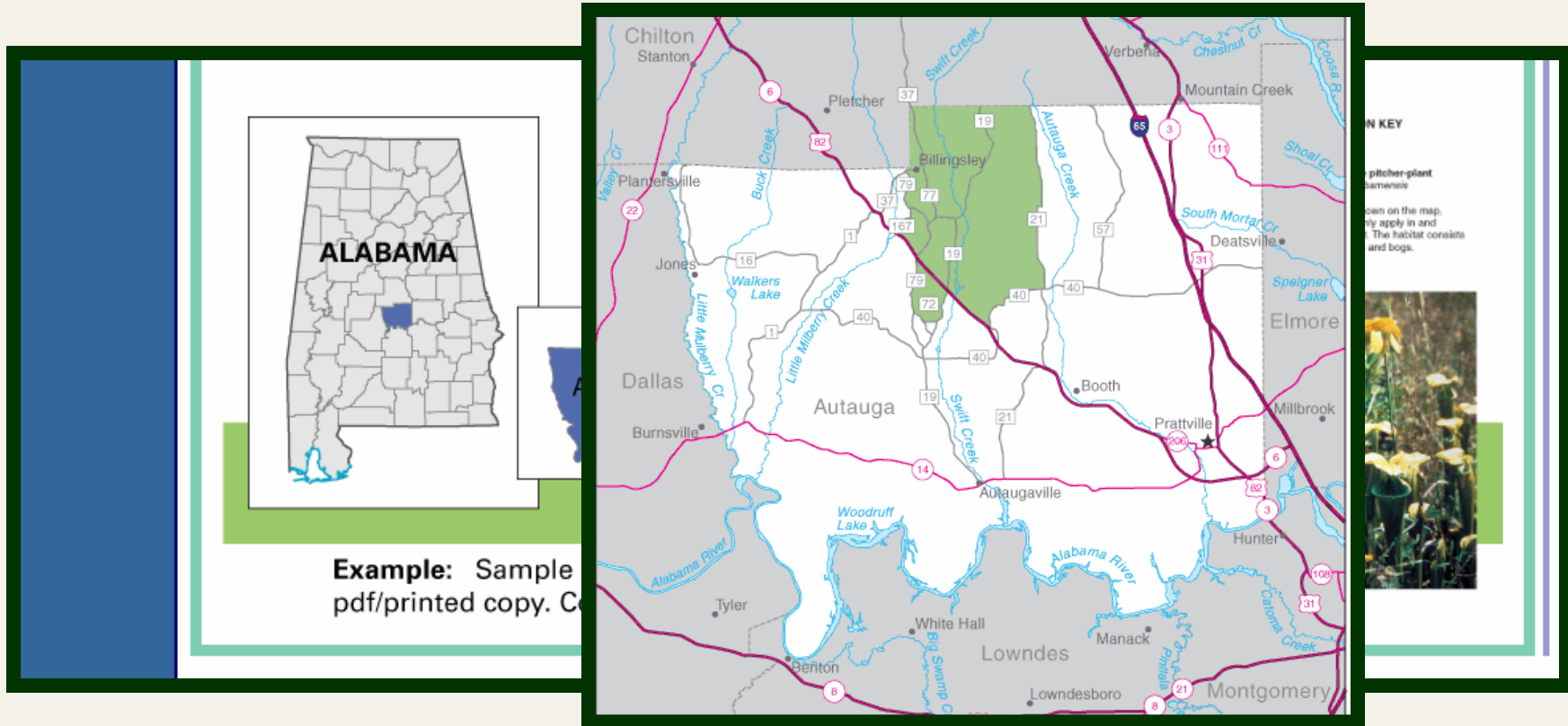


# What is an ESPB?

- ***Enforceable Endangered Species Protection Bulletins* (ESPB) replace *voluntary County Bulletins***
  - ✓ **Species of concern**
  - ✓ **Applicable pesticides**
  - ✓ **Use limitations**
  - ✓ **Geographical map**
  - ✓ **Picture and info of species, where possible**

*Bulletins = Endangered Species Protection Bulletins*

# What will ESPBs look like?



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2

Look at the table of *Pesticide Active Ingredients*. This column lists the active ingredients in a pesticide for which there are use limitations to protect certain species. Locate the active ingredient(s) in the pesticide you intend to apply.

3

Look in the *Pesticide Limitation Codes* column to the right of your active ingredient(s). Locate the code(s) within the colors or patterns that match where on the map you intend to apply the pesticide. These codes indicate the specific limitation(s) necessary to protect the species.

Pesticide Active Ingredients	Pesticide Limitation Codes
	<a href="#">pitcher-plant, Alabama canebrake</a>
Amitrole	29
Ammonium Sulfamate	29
Atrazine	29
Cadodylic Acid	29
Dazomet	29
Dichlobenil	29
Dichlorprop (2, 4-DP)	29
EPTC	29
Enquik	14b
Fosamine-Ammonium	29
Glyphosate	29



# What will ESPBs look like?

Atrazine	29
Cadodylic Acid	29
Dazomet	29
Dichlobenil	29
Dichlorprop (2, 4-DP)	29
EPTC	29
Enquik	14b
Fosamine-Ammonium	29
Glyphosate	29
Hexazinone	29
Paraquat	29
Picloram (all forms)	29
Simazine	29

- 4** The limitations that apply to each code are described in Codes and Limitations. When using the pesticide, follow the limitations indicated by those codes. If you are applying a pesticide that contains more than one listed active ingredient, or applying a listed active ingredient in an area with more than one species (color and pattern overlap on the map), then multiple codes may apply. If so, follow the most restrictive limitation.

## Codes and Limitations

- 14b** Do not apply this pesticide in the species habitat (described under the Species Protection Key), nor within 100 feet of the habitat.
- 29** Do not apply this pesticide in the species habitat (described in the Species Protection Key). For ground applications do not apply within 20 yards of the habitat, or within 100 yards for aerial applications.



# What will pesticide labels say?

## Pesticide label language:

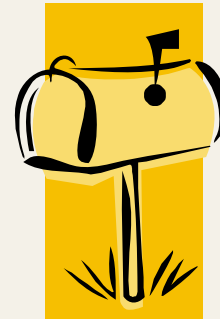
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Applicators must obtain and use Bulletins that are in effect in the month in which the pesticide will be applied. New Bulletins will generally be available from the above sources 6 months prior to their effective dates.



# How can we obtain Bulletins?

- Available online or by phone request **ONLY**
  - No mass paper printings





# How can we obtain Bulletins?

“....no more than 6 months before using this product”



Wants to apply a pesticide in July.

Cannot check for Bulletin  
before January





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# What will ESPBs look like?

**Bulletins Live!**

**Valid For: FEB 2006**

**Note:** Bulletins are enforceable as part of pesticide label requirements that require that you have a copy of the Bulletin applicable to your possession. While not a federal requirement, EPA requires you to print the Bulletin for your records. To print an official copy, use the print button located below.



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# When can we obtain Bulletins?

“...be available 6 months prior to their effective dates.”



Wants to apply a pesticide in July.

Cannot check for Bulletin  
before January





Do applicators need a copy of the Bulletin with them?

- No, FIFRA only requires pesticide users to *follow* the Bulletin/label
  - State/tribal law may require users to have copies of supplemental labels
  - Best interest of pesticide user to maintain copies of labeling



## How will inspectors know if the Bulletin was followed?

- Inspectors should treat ES compliance like any other aspect of a use inspection/label compliance determination

### **Did the pesticide user follow the label?**

- Inspectors will have access to a secure database for all historical Bulletins



# How will inspectors know when to start enforcing Bulletins?

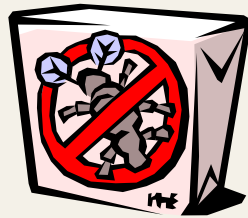
- Bulletins **MUST** be referenced on the label before they are enforceable!

This product may have effects on federally listed threatened or endangered species or their critical habitat in some locations. When using this product, you must follow the measures contained in the Endangered Species Protection Bulletin for the county or parish in which you are applying the pesticide. To determine whether your county or parish has a Bulletin, and to obtain that Bulletin, consult <http://www.epa.gov/espp/>, or call 1800 xxx-xxxx no more than 6 months before using this product. Applicators must obtain and use Bulletins that are in effect in the month in which the pesticide will be applied. New Bulletins will generally be available from the above sources 6 months prior to their effective dates.

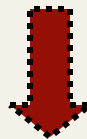


# When will Bulletins be enforceable?

## 1. Risk Assessment



Active Ingredient



Toxicity

+



Pesticide Use



+

+



Species Habitat

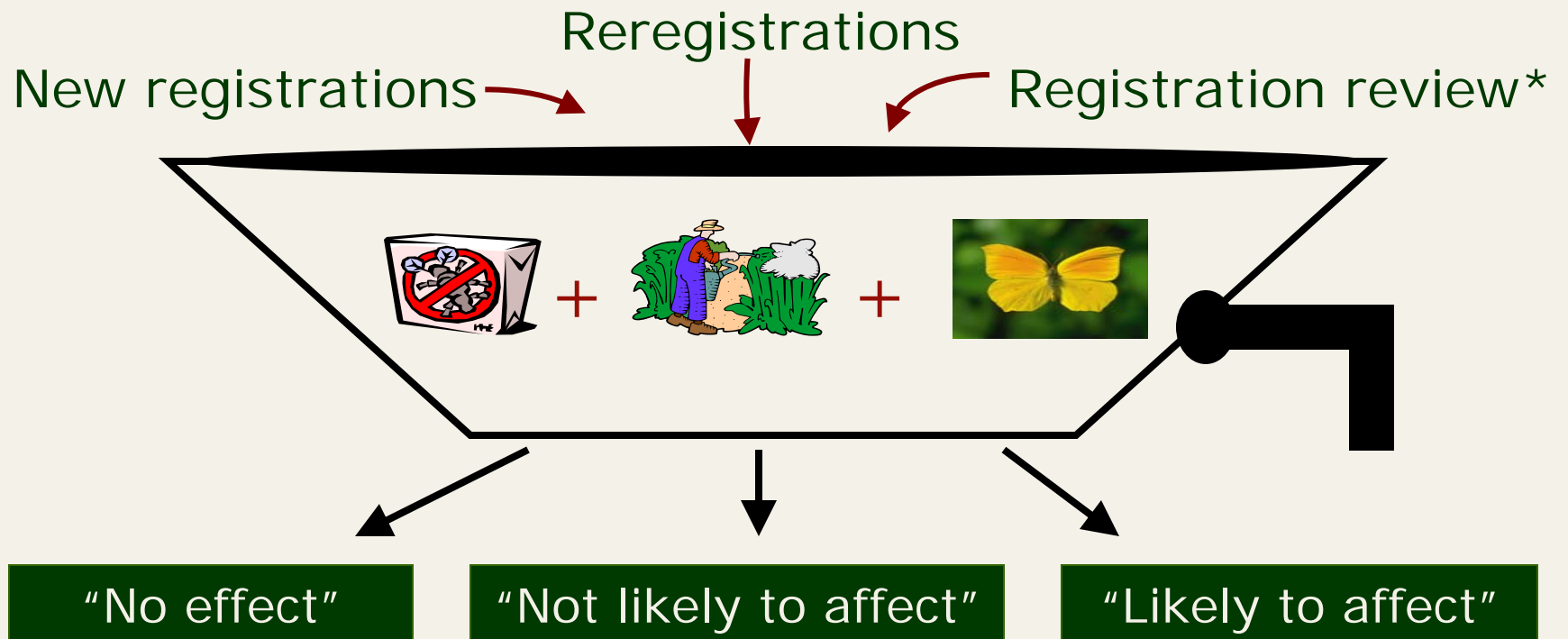


Exposure



# When will Bulletins be enforceable?

## 1. Risk Assessment



\* Primary mechanism

2006 Western Region Pesticide Mtg., Whitefish, MT



# When will Bulletins be enforceable?

## **2. Consultation/Mitigation Process**

- ✓ Change terms of pesticide registration
- ✓ Consult with Services
- ✓ Implement geographically specific use limitations  
– Bulletins!



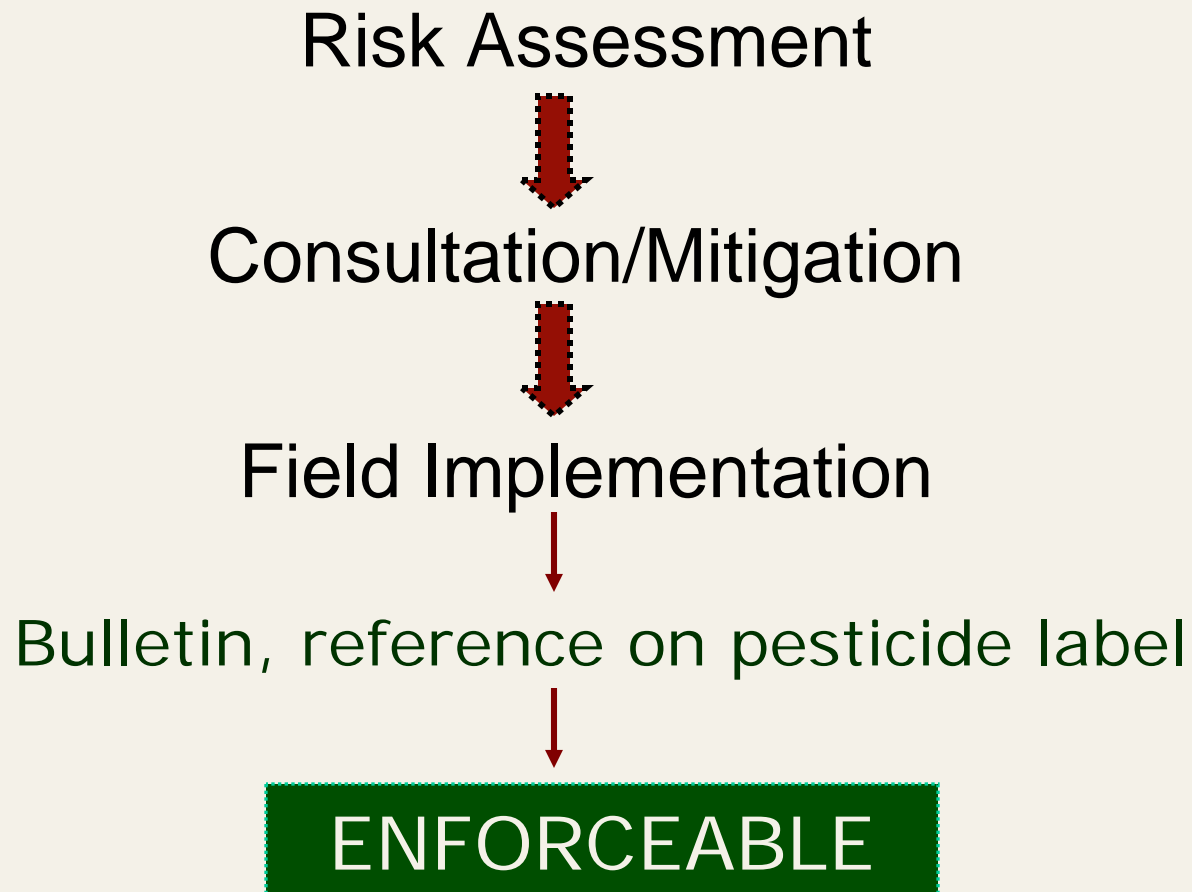
## When will Bulletins be enforceable?

### 3. Field Implementation (*geographically specific use limitations*)

- ✓ Bulletin
- ✓ Reference on pesticide label



# When will Bulletins be enforceable?





## When will Bulletins be enforceable?

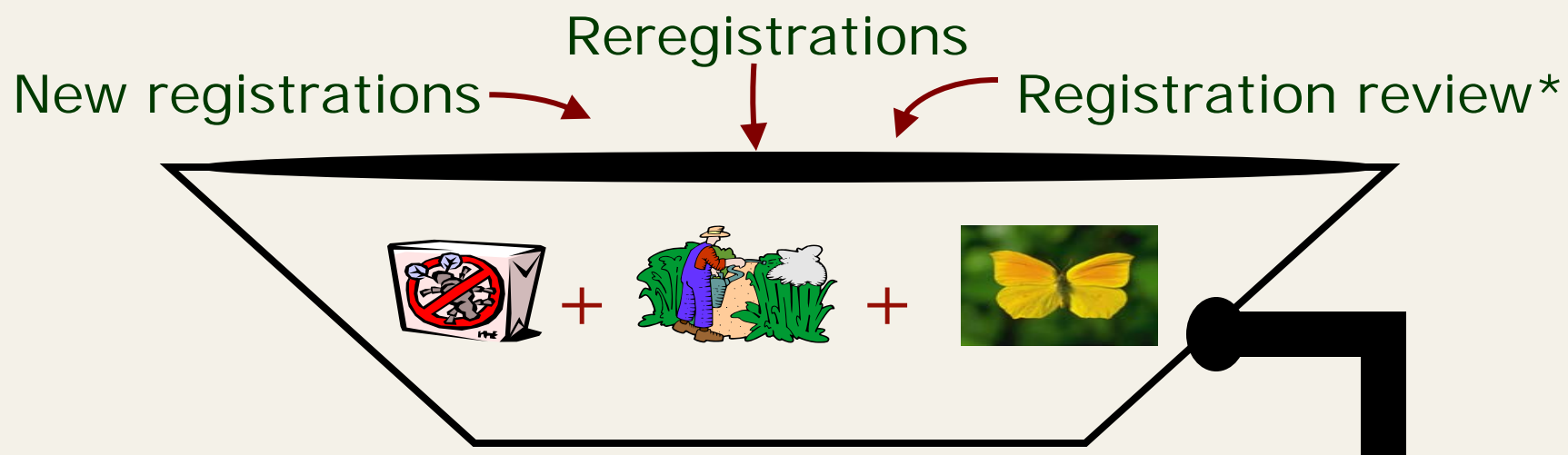
- Currently reviewing:
  - Aldicarb
  - Carbofuran
  - 9 rodenticides

[www.epa.gov/oppsrrd1/registration\\_review/draft\\_schedule.htm](http://www.epa.gov/oppsrrd1/registration_review/draft_schedule.htm)

- Difficult to predict date...
  - probably not this growing season
  - Bulletins Live! may be available as soon as July



# When will my state/tribe get Bulletins?



- Bulletins prepared by active ingredient NOT by state/tribe/EPA region.
  - Will have advance notice through review process



## Will states/tribes be required to perform targeted ES inspections?

- No, states/tribes should incorporate endangered species compliance determinations into routine use inspections



## Will states/tribes be required to enforce species take under ESA?

- No, states/tribes/EPA enforce FIFRA. The 'Services' enforce the ESA.



## Are pesticide users liable for species take even if they follow the label?

- Yes. Unless an incidental take statement is issued by the Services, pesticide users maintain liability under ESA even if the label/Bulletin is followed.



## Will states/tribes get more money?

- No, at this time EPA does not anticipate the availability of additional funds for state/tribal endangered species activities.

# What if...

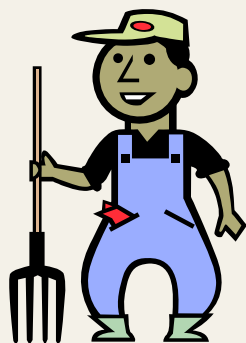


**Has 100 bags of product, 20 have ES-labeling.**

*Can user choose to follow the less-restrictive requirements by keeping one of the labels from the 80 less-restrictive bags?*

No, the user must follow the label for each individual product.

# What if...



**Buys product in April. Bulletins become more restrictive in June. Uses product in July.**

*Can user follow the April Bulletin because it was purchased in April?*

No, the user must follow the Bulletin for the month in which the product is applied not purchased.



# Objectives

1. Increase your knowledge of the new Endangered Species Protection Program (ESPP).
2. Provide a state/tribal perspective of the ESPP.

# Endangered Species Protection Program (ESPP): State/Tribe Roles & Responsibilities

Jim Gray

Pesticide Registration Coordinator

ND Dept. of Agriculture



# Introduction

- States and tribes can play as large or small a role in ESPP as they want to
- Level of involvement and roles will depend on:
  - Resources
  - Technical expertise
  - Political & policy implications
  - Desired level of control of output



# Think of it as a Continuum...





# Think of it as a Continuum...





# State and Tribal-Initiated ESPPs

- States and tribes can choose to develop their own plans to protect T&E species from pesticide use
- Must meet criteria and submit proposal to EPA



# Criteria & Expectations for State-Initiated ESPPs

- Need to be able to be implemented through label reference language approach
- Any risk mitigation measures may need to be deemed protective by the Services
- It is expected that Bulletins would be updated periodically to reflect changes in pesticide registrations & species distributions



## Other State/Tribal Roles in ESPPs

- Review of draft Bulletins
  - Review of maps
  - Review of pesticide use limitations
- Providing state- and tribal-specific data and recommendations
  - Pesticide use data and use patterns
  - Risk assessments based on local use patterns, soil types, weather, etc
  - Pesticide monitoring data



# State & Tribal Roles in ESPPs

- Assistance in determining effectiveness of the ESPP through enforcement & inspections
  - Will be enforcing FIFRA and label compliance, not ESA
- Public outreach and education
  - Should be near-term focus
- Evaluating potential ES effects for Section 18s and 24(c)s
  - “Credible effort”



# The Discussions in ND...

## First, in case you didn't know...

- Agriculture in #1 industry in ND
- We have 8 listed species in the state
- NDDA is a very small SLA
- North Dakotans are conservative & independent



# Options for Bulletins

Option 1: Have EPA prepare them as they would for most other states

- Less work for us
- Less control over risk mitigation language
  - Large use buffers?
  - Consistency with local cropping practices & pesticide use patterns?
  - Use of surrogate data to save resources



# Options for Bulletins

## Option 2: ND develops its own Bulletins under a state-initiated plan

- More control over risk mitigation measures
  - Could develop use restrictions that are both protective and reasonable
  - Could reflect local cropping practices, pesticide use patterns, etc.
- More work for us



# Options for Bulletins

## Option 3: Hybrid Approach

- “Have a seat at the table” approach
- EPA develops the Bulletins
- ND makes recommendations on draft Bulletins and provide counterarguments based on:
  - More refined risk assessments
  - Species distribution maps
  - Pesticide use data
  - Cropping data
  - Pesticide monitoring data



# Summary of Options

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Option 1: EPA develops Bulletins

Option 2: ND develops Bulletins under state-initiated Plan

Option 3: Hybrid approach where ND provides recommendations and counterarguments



# ND Discussions to Date

- Have developed budget and resource need estimates for all 3 options
- Have met and discussed options with stakeholders:
  - EPA
  - FWS
  - Legislators
  - Growers
  - Pesticide dealers



# Future in ND?

- NDDA will enforce whatever Bulletins are published, regardless of who prepares them
- NDDA will continue to make credible effort to assess impacts of pesticide use under Sec 18s and 24(c)s to listed species
  - Providing info on overlap of intended use and listed species habitat
  - Obtaining input from FWS & other agencies
  - Performing exposure & risk assessments when needed



# Future in ND?

- We need to decide if benefits of state-initiated plan or hybrid approach are worth the investment of state dollars
  - If “No”, then we don’t have to do anything
  - If “Yes” then this will need to be addressed in upcoming legislative session



# Summary

- States and tribes can play as large or small a role as they want to

Larger role = More control of output

- States and tribes need to decide if benefits of state- or tribal-initiated plan are worth the investment of state & tribal dollars



# Contact Information

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