

Congress of the United States
Washington, DC 20515

June 23, 2011

The Honorable Gary Locke
Secretary
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

The Honorable Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250

The Honorable Ken Salazar
Secretary
U.S. Department of Interior
1849 C Street, NW
Washington, DC 20240

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection
Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington, DC 20460

The Honorable Jane Lubchenco
Administrator
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Dear Secretary Locke, Secretary Vilsack, Secretary Salazar, Administrator Jackson, and Administrator Lubchenco:

We understand that, on behalf of the five federal agencies you represent, you have requested the National Research Council (NRC) of the National Academy of Sciences (NAS) to provide independent advice on various scientific and technical issues surrounding the Endangered Species Act and biological opinions relating to the impact of certain crop protection tools on endangered salmon species in Washington, Oregon, Idaho, and California. As you know, through correspondence and at a recent joint hearing of the Committee on Agriculture and Committee on Natural Resources, we have repeatedly raised serious questions regarding the validity of the science utilized to justify jeopardy findings and mitigation measures within these biological opinions, as well as concerns about the lack of consideration for the serious economic impact these biological opinions would have on communities in the impacted states.

Correspondence dated April 4, 2011 that was signed by both the Assistant Administrator for the Office of Chemical Safety and Pollution Prevention at the U.S. Environmental Protection Agency (EPA) and the Assistant Secretary for Conservation and Management of the National Oceanic and Atmospheric Administration (NOAA), outlines six specific areas your agencies are asking NRC to

review relating to the scientific quality and accuracy of the consultation processes associated with the registration of products under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

As mentioned during the joint congressional oversight hearing on May 4, 2011, and to ensure that this study truly addresses the concerns raised by Federal agencies, Members of Congress, state agriculture departments, mosquito control districts, growers and others, the following scientific questions must be included for the NRC to answer in its report along with the scope of work request submitted by the agencies. Otherwise, taking a narrow view in relation to the scope of work posed to the NRC will cast immediate doubt on the utility of this work.

Additional Congressional Scientific and Procedural Questions

- The NAS recently provided guidance on evaluation of data quality for EPA Integrated Risk Information System (IRIS) evaluations. What criteria should the EPA and the Services be using in evaluating data for acceptability and relative quality in regulatory decision-making? How should decisions on data acceptability be documented?
- A well defined weight-of-evidence framework would provide some structure and transparency to the objective assessment of information relied upon for regulatory decision-making. Is there a recommended framework for a “weight-of-evidence” approach for evaluation of all relevant available data and how should that framework be applied?
- Were apparent incongruities or inconsistencies in available data appropriately addressed and clearly described in the Services’ biological opinions? Were the implications of the inconsistencies considered in describing the uncertainty in the assessment?
- Were the rationales used to support jeopardy or adverse modification determinations well-grounded in empirical observations? Have the Services clearly articulated the limitations and uncertainties associated with the effects determinations?
- When worst-case assumptions are made, how should they be documented to make the level of conservatism apparent, consistent with Presidential memoranda?
- Should uncertainty factors be reduced or eliminated as more recent empirical data are made available? If so, have the Services adopted this principle in their effects determinations conducted to date?
- Were the assumptions used to fill data gaps supported by empirical data, reasonable and clearly articulated?
- Were the specific assumptions and inferences used to support jeopardy and adverse modification determinations plausible? That is, did the Services include an assessment of the *a priori* likelihood that critical assumptions and inferences would prove true if tested?

- Where in the assessment process should the Services involve the expertise of other federal and state agencies, as well as non-federal entities such as growers and other stakeholders, in the risk assessment process?
- The problem formulation includes a description of the different stressors that are influential on species survival. How are considerations of key stressors for endangered and threatened species and the relative significance of their known or potential impacts incorporated into a jeopardy finding as part of the Biological Opinion?
- How should consideration of key stressors inform the Reasonable and Prudent Measures (RPMs) or Reasonable and Prudent Alternatives (RPAs) suggested at the end of the consultation process? For example, if habitat loss is identified as the predominant factor impacting a species in question, how will measures to lessen impact include consideration of mitigation options that increase or improve habitat?
- How should the Services consider the human health implications of the impact of proposed mitigation measures on mosquito population control efforts?

Scope of Work Must Cover Direct and Indirect Economic Impacts.

We share the strong bipartisan opinion expressed by a number of Members of Congress during the May 4, 2011 hearing “*At Risk: American Jobs, Agriculture, Health and Species – the Costs of Federal Regulatory Dysfunction*” held jointly by the House Natural Resources Committee and the House Agriculture Committee, that the scientific questions are only one component of what must be reconsidered as the process to re-evaluate these biological opinions moves forward. The EPA and NOAA, together with the U.S. Fish and Wildlife Service (USFWS) and the U.S. Department of Agriculture (USDA), must also review and take into account the direct and indirect economic impacts that the mitigation measures and so-called “reasonable and prudent measures” (RPMs) and “reasonable and prudent alternatives” (RPAs) outlined in these biological opinions would have on individual growers and landowners, small businesses and local communities.

Therefore, it is imperative that any review of these biological opinions be comprehensive in nature and address the following issues pertaining to economic feasibility, consistent with 50 C.F.R. § 402.02 before moving forward with implementation of any pending or future biological opinions related to FIFRA registered products:

- What factors should the Services consider to make the determination that proposals are “consistent with the intended purpose of the action considered in these biological opinions”?
- What factors should the Services consider to make the determination that proposals are “technologically feasible”?
- What factors should the Services consider to make the determination that the proposals are “economically feasible”?

- Can you recommend an appropriate framework for conducting a benefit-cost analysis (BCA) for determining and documenting economic and technical feasibility?
- In addition to a BCA, a cost-effectiveness analysis (CEA) can provide a rigorous way to identify and evaluate options that achieve the most effective use of the resources available. Can you recommend an appropriate framework for conducting a CEA to evaluate a range of possible alternatives under consideration?
- For both BCAs and CEAs how should the Services document and analyze important uncertainties associated with proposed RPAs? Furthermore, to what extent is it recommended that the Services provide a sensitivity analysis to reveal whether, and to what extent, the results of the analysis are sensitive to plausible changes in the main assumptions and inputs?
- To what extent is it recommended that the Services identify and consider important ancillary benefits and countervailing risks related to proposed RPAs? (For example, potential reduction in habitat resulting from changes in land management practices in response to proposed restrictions.)

As we have communicated to you, as well as the Chairman of the White House Council on Environmental Quality in the past, we strongly question the validity of the science behind the jeopardy findings in these biological opinions, as well as the necessity of the mitigation measures that are provided, which would have a devastating impact on agriculture in the Pacific Northwest and California. We request that you direct your agencies to provide explicit written responses to each of the aforementioned questions as you work with NAS to review the four pending biological opinions. We also request that no implementation or enforcement of pending or future biological opinions by your agencies be allowed until the strongest, and most current data and scientific information available has been used and all economic implications have been fully considered and incorporated into the mitigation measures.

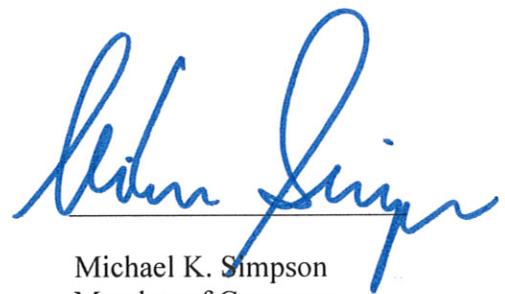
Sincerely,



Doc Hastings
Member of Congress



Frank Lucas
Member of Congress



Michael K. Simpson
Member of Congress

CC: President Ralph Cicerone, National Academy of Sciences