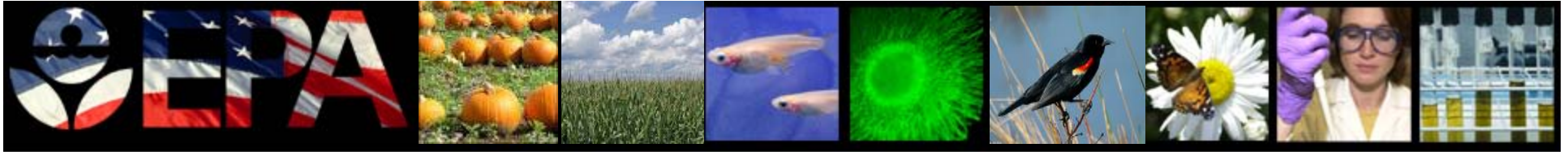


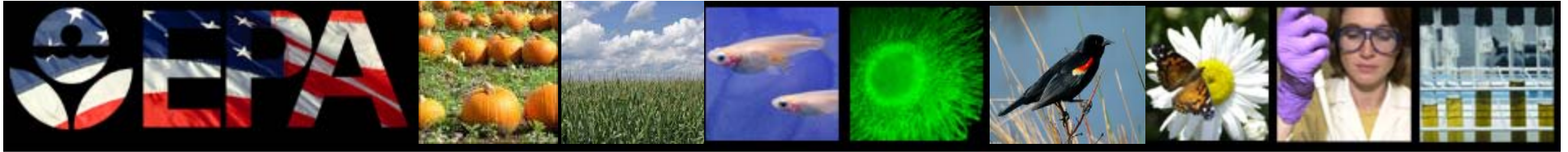
Endangered Species Act: Pesticide Consultations and Public Outreach

Background Material for MCFA Workshop
May 24, 2011



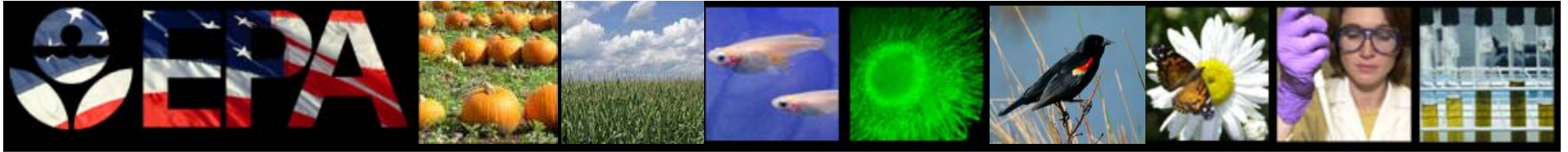
ESA & Implementing Regulations

- **ESA**
 - Passed in 1973 (amended in '78, '82, & '88)
 - Purpose is to:
 - Provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved
 - Provide a program for the conservation of such endangered species and threatened species
- **Implementing regulations**
 - USFWS and NMFS (the Services) joint regulations and
 - Services operate under combined handbook on conducting consultations.



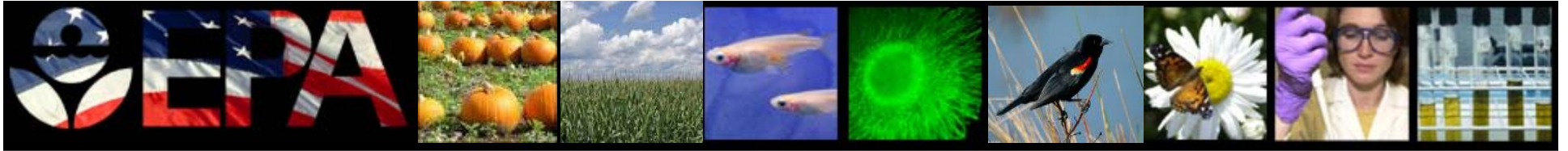
ESA/FIFRA Nexus

- ESA 7(a)(1) – federal agencies (action agencies) must use their authority to carry out programs for the conservation of listed species
- ESA 7(a)(2) – federal agencies, in consultation with the Services must ensure that any *action* they authorize, fund or carry out is not likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of habitat designated by the Services as critical
- ESA 9(a) – among other things, prohibits “take” of a listed threatened or endangered species
- FIFRA - “action” subject to the section 7(a)(2) consultation provisions of the ESA is the registration of a pesticide according to its labeling



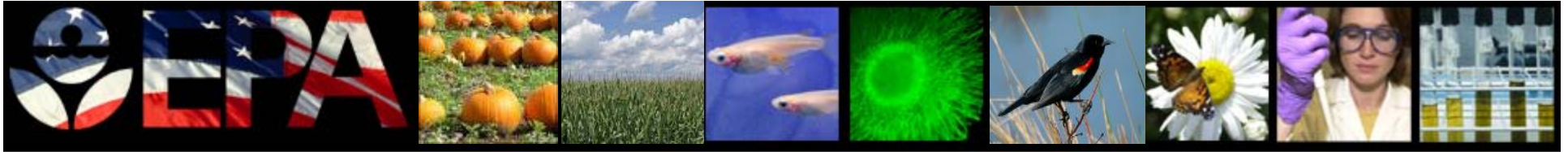
ESA Key Definitions

- **Endangered Species** – any species in danger of extinction throughout all or a significant portion of its range
- **Conservation** – use all means and methods and procedures to bring listed species to the point where protection under the ESA is no longer necessary
- **Jeopardize** (the continued existence of) – engage in an action that would reasonably be expected to, directly or indirectly, reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution
- **Take** - to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct



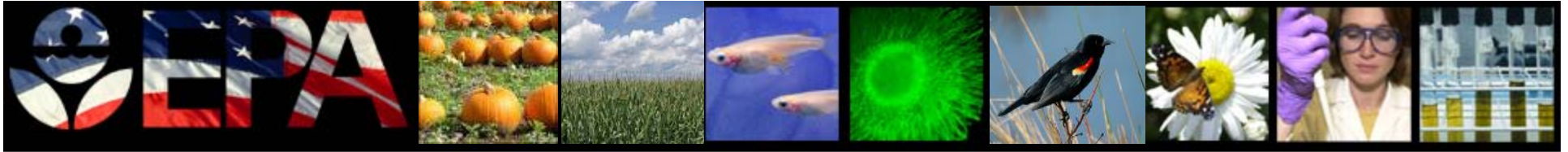
EPA/OPP Responsibilities

- No Consultation Required
 - If the action agency determines that their action will have **no effect** on a listed species or its designated critical habitat
 - If such a “no effect” determination is not possible, the agency must consult
- Consultation may be informal or formal



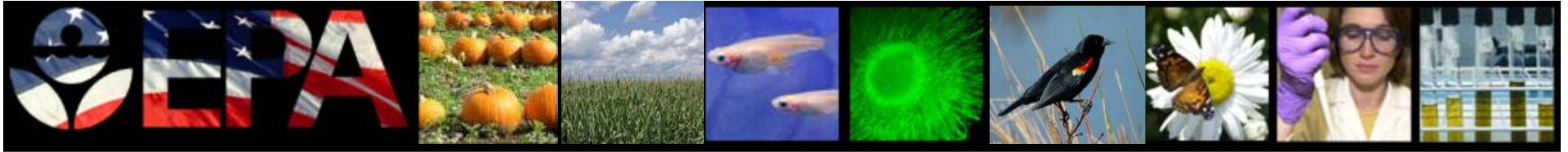
Informal Consultation

- Informal consultation is an optional process that includes discussions and correspondence between the Services and a Federal agency to determine whether a Federal action is likely to have an adverse effect on listed species or critical habitat.
 - During informal consultation the Services may suggest modifications to the action that a Federal agency could implement to avoid likely adverse effects to listed species or critical habitat.
 - Most often includes an Action Agency determination that the action is not likely to adversely affect a listed species and a request for the Services to concur in that finding
 - No time frames are mandated to conclude informal consultation



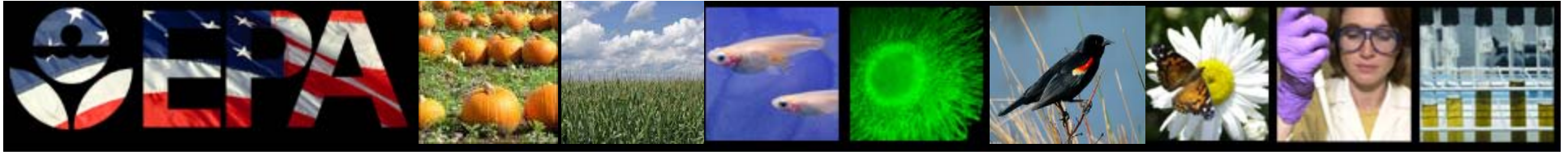
Formal Consultation

- Formal consultation is required if adverse effects are likely or if the Services have non-concurred during informal consultation on a finding that the action is not likely to adversely affect a listed species
 - EPA initiates formal consultation by sending a Biological Evaluation (a risk assessment) to the Services
 - The Services provide a Biological Opinion (BiOp) to EPA –finding either jeopardy or no-jeopardy for listed species
 - Reasonable and Prudent Alternatives and Measures (RPAs/RPMs) aka mitigation are included
 - The action agency prepares a response to the Services explaining how it will implement the RPAs/RPMs to ensure no likely jeopardy



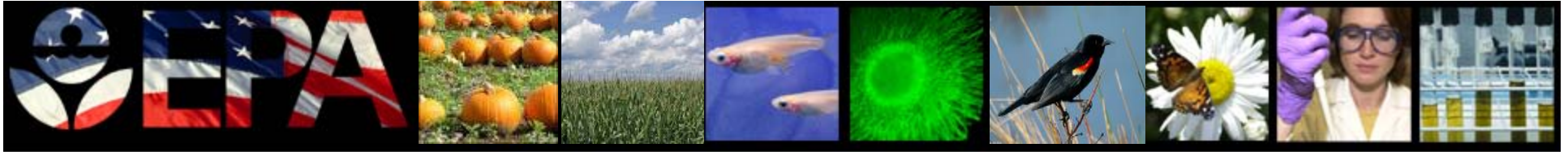
Scientific Challenges in Consultation

- Best Available Data
- Geographic Data Sources and Information
- Mixtures – in the product, in the tank, in the field
- Sublethal Effects
- Inert Ingredients



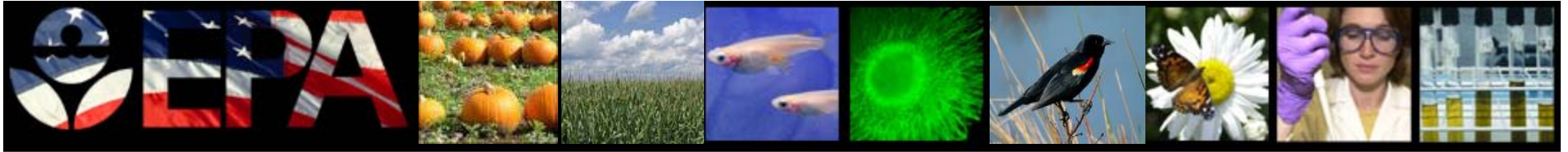
Administrative Challenges in Consultation

- Resource Considerations
 - The Services do not have the resources to complete consultations consistent with their statutory or regulatory timelines.
 - OPP is beginning to conduct national analyses for pesticides. These analyses will cover the whole country and potentially many listed species
 - The scope and complex scientific analyses exacerbate the resource issues.



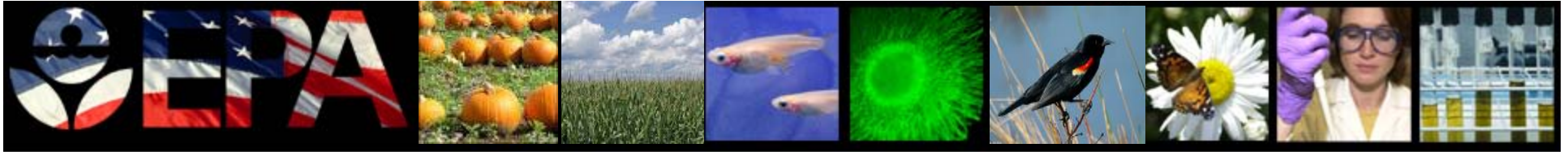
Administrative Challenges in Consultation

- Transparency and Administrative Process
 - OPP's work typically involves multiple opportunities for public participation
 - Scientific processes are subject to peer review
 - Scientific basis for conclusions is made public
 - Analyses are available for public input and in most cases this input is overtly sought.
 - Our response to input is made public.
 - Services have a different administrative process that does not normally include public participation in the development of biological opinions
 - EPA and the Services have committed to developing mechanisms to be more transparent and better consider public input



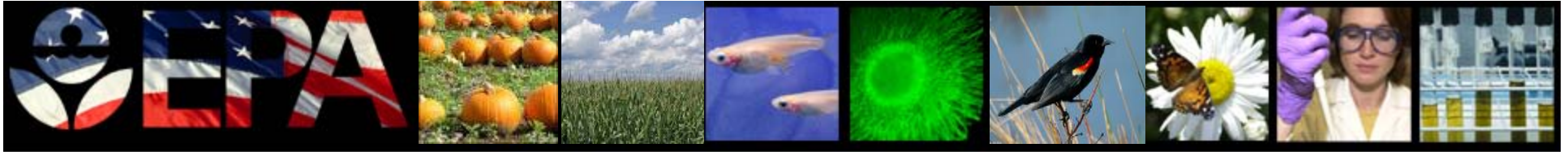
OPP's Overall Desired Approach

- Assess potential risks to listed species during course of overall ecological risk assessment for registration review (program mandated by statute to review all currently registered pesticide on a 15 year cycle – over 600 active ingredients and nearly 20,000 products)
- During this process, EPA conducts a pesticide-specific ecological risk assessment resulting in a determination as to whether the pesticide's use according to its label will have “no effect” or “may affect” any listed species or destroy or adversely modify designated critical habitat.



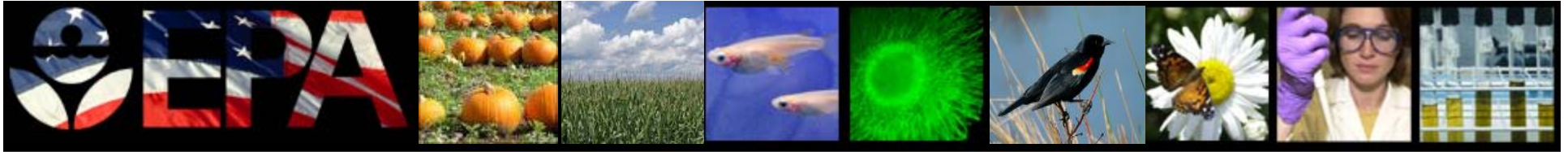
Implementation of Protections

- By their nature, limitations to protect listed species are anticipated to be geographically specific. All such limitations will be contained in Endangered Species Protection Bulletins
- Bulletins are linked to pesticide labels and contain enforceable use limitations intended to reduce species' exposure and ensure no likely jeopardy



Public Participation

- EPA considers any timely information received relevant to an ongoing risk assessment
- EPA seeks broad public input when identifying potential mitigation measures if such measures are being sought prior to consultation
- EPA publishes draft Biological Opinions for purposes of obtaining input to Draft Reasonable and Prudent Alternatives (RPAs) and Measures (RPMs)
 - EPA may use this input in its response to the Services
 - Input received on other aspects of the BiOp is provided to the Services for their consideration



Recent Efforts to Increase Public Participation

- Growers want more involvement in the process
- EPA is proactively providing early notification to all stakeholders of when draft biological opinions are expected
- EPA is continuing to meet with all interested parties
- Participation in workshops
 - NOAA-sponsored meetings in California and Pacific Northwest
 - Spring 2011 MCFA Workshop
 - Others as appropriate