



PPC

PESTICIDE POLICY COALITION
A Coalition Working for Sound Pest Management Policies

September 24, 2018

Mr. Craig Aubrey
U.S. Fish and Wildlife Service
Division of Environmental Review
5275 Leesburg Pike
Falls Church, VA 22041

Ms. Cathy Tortorici
U.S. Fish and Wildlife Service
ESA Interagency Cooperation Division
Office of Protected Resources
1315 East-West Highway
Silver Spring, MD 20910

Public Comments Processing
Attn: FWS-HQ-ES-2018-0009
U.S. Fish and Wildlife Service,
MS: BPHC, 5275 Leesburg Pike
Falls Church, VA 22041-3803

Submitted electronically via www.regulations.gov

Re: Proposal to Revise the Regulations on Interagency Cooperation Under the Endangered Species Act; Docket No. FWS-HQ-ES-2018-0009 (July 25, 2018)

Dear Mr. Aubrey and Ms. Tortorici:

The Pesticide Policy Coalition (PPC or “the Coalition”) is pleased to submit comments in response to the proposal of the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively, “the Services”) to amend their regulations on interagency cooperation under section 7 of the Endangered Species Act (ESA), 83 Fed. Reg. 35178 (July 25, 2018).

The PPC is an organization of food, agriculture, forestry, pest management and related industries, including small businesses/entities, which support transparent, fair and science-based regulation of pest management products. PPC members include: nationwide and regional farm, commodity, specialty crop, and silviculture organizations; cooperatives; food processors and marketers; pesticide manufacturers, formulators and distributors; pest and vector-control operators; research organizations; and other interested stakeholders. PPC serves as a forum for the review, discussion, development and advocacy around pest management regulation and policy.

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PPC members rely on the continued and timely availability of safe and effective pesticide products to produce food and fiber, and provide vital public health services, which benefit all Americans. Section 7 of the ESA requires the U.S. Environmental Protection Agency (EPA) to engage in consultation with the Services as part of EPA's registration review process under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Over the past several years, the protracted nature of the ESA Section 7 consultation process has created undue delays in finalizing registration review decisions. These delays directly impact PPC members and create uncertainty around the season-to-season availability of pesticide tools needed to support crop protection needs and sustainable pest management practices. The PPC applauds the Services for their commitment to improving the consultation process, and identifying and implementing process efficiencies.

The PPC encourages the Services to consider the following input as they finalize the proposal and identify ways to increase clarity and overall efficiency in the ESA consultation process. The Coalition also encourages the Services to consider more detailed comments submitted jointly by PPC members CropLife America and Responsible Industry for a Sound Environment (RISE), which includes additional recommendations for administrative improvements to the ESA consultation process.

COMMENTS

I. Increased Leveraging of EPA's Ecological Risk Assessments

The Services' proposal includes an optional collaborative consultation process, which furthers the ability of the Services to adopt information and analysis provided by EPA as a product of its own extensive ecological risk assessment activity under FIFRA. In doing so, the Services may adopt the initiation package provided by a Federal agency (EPA in this case) and supplement this information with additional analyses and an incidental take statement to satisfy ESA section 7 requirements.¹ Additionally, a related proposal allows the Services to adopt all or part of an initiation package in its biological opinion.² The PPC supports finalizing and applying both of these proposals. In the context of pesticide registration review, these proposals will allow the Services to better leverage EPA's expertise and extensive effort expended in the informal consultation process as part of the subsequent biological opinion. The PPC also recommends that the Services work with EPA to develop implementation guidance for the optional collaborative consultation process.

II. Options for Expediting the Consultation Process

The Services' proposal includes an expedited consultation process. Under this approach, a comprehensive initiation package "provides all the information needed to allow the Services to

¹ 83 Fed. Reg. at 35192

² *Id.* at 35188.

prepare a streamlined consultation response with mutually agreed-upon expedited timeframes.”³ The PPC supports pursuing this expedited approach where appropriate, and encourages the Services to work with EPA to determine the details of the requisite content for an initiation package that would serve as the foundation for an expedited consultation process.

The Services also include a unified consultation approach option in its proposal.⁴ This option provides for FWS and NMFS to collaborate on a single biological opinion rather than two separate opinions. This approach would uniquely benefit nationwide pesticide consultations as they are likely to involve both FWS and NMFS species. The PPC encourages the Services to make this option available to pesticide registrants as there may be some circumstances where a combined process may actually delay finalizing the registration process.

The Services also propose setting a 60-day deadline for informal consultations. Given the complex nature of pesticide registrations, this timeline may not be adequate in many cases. The PPC instead recommends that the consultation parties coordinate on setting a schedule and timeline expectations for certain milestones in the process. For example, parties should agree on a timeframe for the Services to reach a decision on a “not likely to adversely effect” finding or initiation of a formal consultation process following the receipt of EPA’s biological evaluation.

In general, the PPC recommends that the Services not apply a one-size-fits-all approach to achieving expedited consultation. Instead the parties should determine which option from the menu of possible approaches best fits their individual circumstances.

III. Refining Consultations to Better Reflect Real-World Pesticide Use

The current ESA Section 7 regulations and consultation handbook fail to clearly define the scope of the proposed action and its effects. As a result, the Services have often evaluated effects of a pesticide on a species based on pesticide label maximum allowable use rates. This extreme scenario does not accurately reflect actual use supported by data gathered on use patterns. The Services’ proposed definition of “effects of the action” requires that the effect or activity: 1) would not occur but for the proposed action; and (2) is reasonably certain to occur. The reasonably certain test better ensures that the scope of consulted-on “activities” are more closely tied to actual use patterns when sufficient pesticide use data is available. The PPC encourages the Services to better clarify its interpretation of the actions, activities and effects in any final revisions to the regulations, and consider adopting the interpretation provided in comments submitted by CropLife America and RISE in their joint comments dated September 24, 2018.

The PPC appreciates the Services’ consideration of the aforementioned comments. The Coalition looks forward to continued dialogue with Services as they work to address process inefficiencies and other improvements to the ESA consultation process.

³ *Id.* at 35188.

⁴ *Id.* at 35179.

Sincerely,

A handwritten signature in cursive script that reads "Renée Munasifi".

Renée Munasifi
Chair, Pesticide Policy Coalition

A handwritten signature in cursive script that reads "Beau Greenwood".

Beau Greenwood
Vice Chair, Pesticide Policy Coalition