Endangered Species Act: Section 7 Consultations and Next Steps PPDC Meeting Update
October 31, 2018

The EPA has continued to work with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) (collectively referred to as the Services) to develop shared interim scientific methods for use in pesticide consultations, based on recommendations from the 2013 National Academy of Sciences' report "Assessing Risks to Endangered and Threatened Species from Pesticides".

ESA Assessment for Chlorpyrifos, Diazinon, and Malathion

Pursuant to a consent decree, NMFS was required to issue a final Biological Opinion (BiOP) for chlorpyrifos, diazinon, and malathion by December 2017. In November of 2017, NMFS requested a time extension from the court because:

- The final BEs had been delayed by approximately 9 months from original milestones established by the agencies because of the scientific complexity, and scope of the assessments being the first ever nation-wide analyses;
- The scientific issues to complete the Step 3 analyses (Biological Opinions) were more complex than had been anticipated and to fully resolve those issues would require more time;
- There was additional collaborative work that was still needed.

Status of NMFS Biological Opinion

- NMFS issued a final BiOp on December 29, 2017. The BiOP found "jeopardy" to 38 species and "adverse modification" to 37 critical habitat units. For species with jeopardy determinations, Reasonable and Prudent Alternatives (RPAs) and Reasonable and Prudent Measures (RPMs) are included. RPMs are non-discretionary, are intended to minimize take, and they include the requirement for EPA to develop ESPP Bulletins to conserve listed species and develop a user education program and incident tracking and reporting system.
- The RPAs (which are Service recommendations intended to avoid jeopardy) include elements to minimize exposure including: limiting the frequency of application to once per year; limiting the area of application for mosquito control and wide area uses; allowing options in a point system intended to provide flexibility in reducing runoff and drift through a combination of use deletions, no spray buffers, drift reduction technology, enrollment in approved stewardship programs and use of vegetative filter strips and other best management practices.
- In order to continue the ongoing discussions on the BiOp, EPA initiated informal consultation on the three OPs and opened a public comment period in March 2018 specifically requesting comment on: (1) the scientific approaches and data sources used in the BiOp; (2) the feasibility of the specific RPAs and RPMs and whether other measures should be considered that achieve similar protection, but may be less burdensome; and (3) the availability of additional national and state usage data. After several stakeholder requests, EPA extended the public comment period for two months until July 23rd, 2018.
- EPA is currently evaluating the comments received to inform next steps. EPA has provided the comments to NMFS for consideration.
    - Approximately 19,000 comments were received; however, most of those were from a mass mailing campaign.

- 126 unique public comments were received from a variety of commenters including registrants, NGOs, states and tribes, various levels of government, mosquito control districts, agricultural stakeholder groups, and academia.
- Some submissions were extensive and included comments on: scientific and assessment methods, feasibility of the RPAs and RPMs, availability of usage data, and additional public engagement opportunities.

Status of FWS BiOp

- FWS had agreed to a December 2017 due date for their OP BiOp. They concluded, however, that more time was needed to collect, review and incorporate additional information on pesticide usage. EPA (our Biological and Economic Analysis Division) compiled and provided additional usage data on chlorpyrifos, diazinon, and malathion. Because the FWS settlement agreement provided for more flexibility than NMFS', they did not issue their BiOp in December and are continuing to work with EPA to incorporate usage data into the consultation.

Memorandum of Agreement between EPA, DOI, and DOC.

- On January 31, 2018 an MOA was signed by EPA, DOI and DOC establishing an interagency workgroup, which is charged with reviewing statutory requirements, regulations and case law and making recommendations to improve scientific and policy approaches. Additionally, the MOA invites participation on the working group from USDA, the Council for Environmental Quality; and the Office of Management and Budget.

Other Biological Evaluations in Development

- The agency is committed to meeting the statutory mandates under both FIFRA and ESA. We continue to collaborate with the Services to develop interim scientific approaches and create a sustainable process for completing consultations that meet requirements of both statutes. We aim to streamline the process to a point where it is protective of species, timely for FIFRA registration review decisions, feasible within the agencies' resource constraints, and transparent to the public.
- Upcoming nationwide BEs as part of the pilot process are carbaryl, methomyl, atrazine, simazine, propazine, and glyphosate. Consultation has not yet been initiated on these pesticides; however, we have begun our work on and planning for these BEs.

Additional Work that Benefits Listed Species

- EPA continues to implement a three-pronged strategy that is intended to protect threatened and endangered species and designated critical habitat by focusing resources on areas where we can achieve the most protections. In addition to the ongoing efforts described above regarding the nationwide consultations, we continue to assess new herbicide tolerant crop uses with methodology consistent with the *Overview Document* for endangered species assessments, which will allow EPA to continue to work with USFWS regional-based field offices when necessary to make effects determinations for these registrations. In addition, through the assessment processes supporting registration and registration review activities, we make No Effect findings where appropriate for conventional, biochemical, and antimicrobial pesticides. We also continue to compare potential hazards of new pesticides to the registered alternatives to allow stakeholders to compare the relative risks of the proposed registration to available alternatives, which often have the potential to pose greater risks to ESA-listed species than do the newer, generally lower-risk pesticides being introduced into the marketplace today.