Endangered Species Act Update: Section 7 Consultations and Next Steps

May 8-9, 2019 Pesticide Program Dialogue Committee Meeting

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".

Ongoing Consultations for Chlorpyrifos, Diazinon, and Malathion:

- In order to continue discussions on the Biological Opinion from NMFS, 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 continuing to evaluate the comments received to inform next steps and discussing the comments with NMFS to inform their 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.

Interagency Collaboration Formalized in Farm Bill:

- On January 31, 2018 a 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.
- The workgroup was formalized in the most recent farm bill in December 2018, which tasked leadership responsibilities of the Inter-Agency Working Group to EPA. It requires regular progress reports starting in December 2019.
- The Farm Bill also directs the working group, as appropriate, to consult with stakeholders.

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 that will serve to further develop the interim methods are carbaryl, methomyl, atrazine, simazine, propazine, 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 when our screening level assessment demonstrates that the relevant taxa are not affected by the pesticide. 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.