



Endangered Species Act Update



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EPA BiOp Process

- EPA initiated consultation in January 2017 by issuing the first-ever nationwide Biological Evaluations (BEs) for chlorpyrifos, diazinon, and malathion
- Pursuant to a consent decree, NMFS was required to issue a final BiOp for these three pesticides by December 31, 2017
- NMFS sought a time extension by the court in November, it was not granted by the December, 2017 final BiOP due date

EPA BiOp Process (cont.)

- Time extension was sought by NMFS because:
 - BEs were delayed from original targets
 - Scientific issues are more complex than anticipated
 - Concerns were raised by EPA, FWS, and stakeholders that require lengthy and intensive inter-agency collaborative work
 - Additional time would have allowed for public comment on a draft BiOp as planned
- NMFS issued a final BiOp on December 29th
 - A draft BiOp was not released prior to the final
 - The timing did not allow for NMFS to engage with other agencies and the public
 - EPA is considering options to allow for collaboration
 - EPA is completing compilation of additional data for the three chemicals.
- The U.S. Fish and Wildlife (FWS) was also required to issue a BiOp for these three pesticides by December 31, 2017, but the terms of the settlement agreement gave them flexibility not to meet the date



BiOp summary

- The BiOP found “jeopardy” to 38 species and “adverse modifications” to 37 critical habitat units
- For species with “jeopardy” findings, Reasonable and Prudent Alternatives (RPAs) are recommended to avoid jeopardy
- Reasonable and Prudent Measures (RPMs) are intended to minimize “take”

BiOp summary (Cont.)

- RPMs are non-discretionary:
 - Develop relevant EPA Endangered Species Protection Plan Bulletins to conserve listed species
 - Develop user education program, and incident tracking and reporting system
- RPAs
 - Measures that are intended to reduce exposure that include:
 - Limit the frequency of application to once per year
 - Limit area of application for mosquito control;
 - Limit area of application for wide area use;
 - Employ an effectiveness monitoring plan to ensure that RPA(s) selected is feasible, effective as implemented;
 - Options in a new point system that are based on a European mitigation system;
- EPA had not previously seen some elements in the BiOPs, including the RPAs based on “points”

EPA Next Steps

- EPA is currently reviewing the BiOp from National Marine Fisheries
- A 60-day public comment period on the BiOp opened on March 23rd and will close on May 22nd.
 - <https://www.regulations.gov/document?D=EPA-HQ-OPP-2018-0141-0001>
- Although FWS had a similar date for completing BiOps, the terms of the agreement have given them flexibility to not meet the compliance date
- FWS requested use and usage data, which EPA is developing, to be included in their BiOp

EPA Next Steps (Cont.)

- The EPA is collaborating with the Services to refine interim scientific approaches and create a sustainable process for completing consultations that meet requirements of both statutes
- EPA, FWS, NMFS, and USDA are working together to determine the most appropriate method for incorporating available usage data
- The EPA aims 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

EPA ESA Interagency Working Group

- On January 31, 2018, a Memorandum of Agreement was signed by EPA, DOI (includes FWS), DOC (includes NMFS), establishing an Interagency Working Group
- The Working Group is charged with reviewing statutory requirements, regulations, and case law and making recommendations to improve scientific and policy approaches
- The Working Group will provide recommendations to EPA, FWS and NMFS leadership on improving the ESA consultation process for pesticide registration and registration review