April 10, 2018

The Honorable Ryan Zinke
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The Honorable Wilbur Ross
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The Honorable Scott Pruitt
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The Honorable Sonny Perdue
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Via Electronic Mail

Re: January 31, 2018 Memorandum of Agreement Implementation

Secretaries Perdue, Ross and Zinke and Administrator Pruitt:

We write to present a unified voice on the opportunity to address one of the most challenging issues facing the intersection of federal pesticide regulation and endangered species conservation: the need for an efficient regulatory process for aligning federal pesticide registration decisions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) with the requirements of the Endangered Species Act (ESA). We believe these thoughts are both specific and timely as you implement the January 31, 2018 Memorandum of Agreement on Establishment of an Interagency Working Group to Coordinate Endangered Species Act Consultations for Pesticide Registrations and Registration Review (MOA), which we support. For too long, this issue has been marked by divisiveness and conflict as to possible product effects on endangered species and regulatory uncertainty for pesticide manufacturers, farmers, and other users. Your agencies can redouble their efforts from the last four years to move past these conflicts by prioritizing a series of administrative improvements to how pesticides are evaluated. The recent MOA can further this goal considerably.

As a group of diverse stakeholders who care deeply about harmonizing endangered species conservation with agriculture and pest control, we believe that your agencies can and should make further administrative improvements, consistent with the collaborative approaches they have announced, and with their engagement with stakeholders during recent years. There are numerous ways to improve the process of assessing potential impacts to endangered species associated with pesticide registrations. The recommendations here are ones that we mutually support, that we believe are feasible to implement, and that can meaningfully improve the

process. And in pursuing these recommendations, we urge you to engage stakeholders in an open and transparent manner, as contemplated by the MOA.

1. Develop interagency processes on pesticide consultations that enable the EPA, Services, and USDA to make the best use of each agency's expertise and limited resources

The expertise needed to complete robust pesticide consultations already exists within the agencies and should be leveraged to its fullest extent. The U.S. Environmental Protection Agency (EPA) has expertise in ecological risk assessments for pesticides, including risk assessment methods needed to evaluate the potential risks of pesticides to non-target wildlife, such as exposure modeling and probabilistic tools, and requires significant amounts of data for pesticide registrations. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service (collectively, the Services) have substantial expertise on threatened and endangered species, including species biology, distribution, threats, and recovery needs. And the U.S. Department of Agriculture (USDA) has expertise on how pesticides are used in agriculture, including the timing and location of pesticide applications. This use information can be shared with other agencies in ways that do not compromise landowner privacy or specific species locations.

To make better use of limited agency resources, EPA should play a larger role in assessing the potential effects of pesticides on endangered species, including at the population and species levels. For the EPA to play such a role, and other agencies to leverage their existing data and resources, your agencies should start by assessing the effectiveness of existing interagency agreements and guidance on how to complete pesticide consultations. This effort should help ensure that all four agencies have a common understanding of their own responsibilities, the key scientific and policy assumptions that underlie an ESA pesticide consultation, including risk-assessment endpoints, and the data and analyses needed to achieve those endpoints. This assessment would also provide stakeholders with the transparency and accountability that should allow them to support this proposed approach.

New guidance could identify clearer roles for each agency based on expertise and available and reliable data. For example, USDA could be relied on for the cropping and pesticide use data it already collects; EPA for quantitative risk assessment tools and uncertainty analysis; and the Services for defining species ranges and evaluating effects at the species level. At the same time, guidance could also identify ways for the agencies to continue improving collaboration so that one agency is not "handing off" its analysis to another agency, but rather coordinating with that agency throughout the consultation process. An improved approach could also allow stakeholders to provide more information and data during the process, similar to how other endangered species reviews under the ESA are completed.

Your agencies can build additional guidance today and implement it as a living document that can be updated easily to reflect improved methods your agencies develop in the future. If successful, the guidance will help ensure that capable agency scientists—whether sitting at the

EPA or the Services—can share and implement a common understanding of how to perform pesticide consultations, facilitating their collaboration.

2. Use more refined species location maps and better pesticide use data

By using more refined data on where species are likely to occur, the EPA and the Services can improve the occurrence maps of many species compared to some of the maps the Services currently use, many of which are county-level. Refined range maps, which could be produced using species distribution models and other robust scientific approaches, would more accurately depict the true distribution of species and may result in fewer overlaps with areas affected by pesticide use, allowing for a better understanding of potential exposure to those species. This should expedite endangered species review for pesticides, improving the EPA's and the Services' ability to meet statutory timeframes under FIFRA and the ESA.

By further involving pesticide registrants and the public, and considering available data, your agencies can make use of more realistic information on when and how pesticides are applied, thus enabling a more refined assessment. This information, when combined with refined species range maps, may enable the EPA and the Services to identify more instances where pesticide use does not overlap with species habitat. We see promising opportunities to work with USDA, state agencies, species expert organizations, growers, and registrants to improve data on pesticide use patterns.

3. Adopt better endangered species exposure assessments

Better exposure assessments can help the Services and EPA make defensible, science-based conclusions that pesticide exposure is low or absent. One approach is to develop and implement an interagency plan to refine hydrological and other exposure models that adopt more accurate assumptions about endangered species exposure to pesticides. We see opportunities to further refine commonly used models to distinguish between realistic and improbable exposure scenarios. More realistic scenarios would help ensure that conservation efforts focus on the species that are most likely to be affected by potential pesticide exposure.

4. Take advantage of avoidance and minimization opportunities to improve the efficiency and effectiveness of pesticide consultations

EPA's registration of pesticides currently includes requirements to avoid and minimize impacts to non-target organisms. To enhance endangered species review, pesticide registrants could choose to voluntarily adopt additional site-specific avoidance and minimization measures for endangered species as part of EPA's registration process or during consultations. Refined species occurrence data are important to these efforts because they may allow pesticide registrants, farmers, and other users to target protective measures to areas where species and their habitats are likely to occur. They may also result in more pesticide consultations being expeditiously resolved. Such an outcome would represent a win for conservation and for

regulated entities: fewer species potentially exposed to pesticides that could pose a risk to them, and quicker and more predictable pesticide registration decisions.

5. Support opportunities to use voluntary conservation in pesticide evaluations

In addition to avoidance and minimization, a pesticide registrant may choose to consider voluntary conservation efforts as an option to expedite, supplement, or simplify endangered species review for a pesticide. This type of conservation effort (similar to a concept known as compensatory mitigation in other contexts and referred to as "mitigation" below) can also conserve species while expediting or simplifying pesticide consultations. This approach has not played a prominent role in pesticide consultations to date. But if registrants choose to pursue this option, effective and timely conservation efforts consistent with mitigation goals could lead to more efficient consultations in some circumstances.

We urge your agencies to devote resources to help interested stakeholders establish voluntary conservation projects and to integrate those projects into pesticide consultations at the request of registrants. Specifically, we encourage the agencies to work with stakeholders to develop a regulatory framework that further incentivizes voluntary conservation to improve or increase habitat for endangered species.

6. Prioritize species-use combinations for formal consultation

We recommend that your agencies consider developing decision systems to help distinguish among situations that pose low, medium, and high likelihood of jeopardy or adverse modification (JAM) in formal consultation. In developing this system, your agencies could consider both species and pesticide use factors. For example, species factors could include abundance, biological status, and prey base. And use factors could include mode of action, route of entry, and areas of use.

Identifying low, medium, and high-risk scenarios will help your agencies apply the most efficient methods to complete JAM analyses. For many scenarios, proxy measures or general principles of conservation biology and ecotoxicology may be adequate to inform the JAM analysis. For other, higher-risk scenarios, more detailed species- and pesticide-specific analyses may be warranted. The goal should be to complete the JAM analysis for low risk scenarios using efficient yet defensible methods, so that agency staff can focus their limited resources on higher risk scenarios that required more detailed, resource-intensive methods.

We believe that these recommendations for managing endangered species review of pesticides will provide for a more efficient approach to species conservation while providing a sound basis for decisionmaking. We also understand that your agencies would need additional resources and funding to implement the recommendations effectively and expeditiously. We ask for a commitment at the highest levels within your agencies to prioritize these improvements to endangered species review of pesticides. With that commitment, we believe an enduring

solution is possible to the current concerns with the adequacy of endangered species assessments in pesticide consultations.

Sincerely,

CropLife America
Defenders of Wildlife
American Soybean Association
Minor Crop Farmer Alliance
National Association of Corn Growers
National Association of Wheat Growers

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