Endangered Species Act Update

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EPA Consultation on OPs

- 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 Consultation on OPs (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
- EPA has initiated a public comment period requesting comment on:
  - The scientific approaches and data sources used to support the BiOp
  - The RPAs and RPMs
  - National- and state-level use and usage data and information

EPA Consultation on OPs (cont.)

- The U.S. Fish and Wildlife (FWS) also agreed to issue a BiOp for these three pesticides by December 31, 2017, but the terms of the settlement agreement gave them flexibility to not meet the date
  - EPA is compiling additional data for the three chemicals
  - The Agencies are collaborating on appropriate use of the information in the consultation process

EPA NMFS 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 identified to avoid jeopardy
- Reasonable and Prudent Measures (RPMs) are intended to minimize "take"

EPA NMFS 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 in the BiOp intended to reduce exposure:
  - 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 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

Deliberative Process / Ex. 5

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