Message

From: McDavit, Michael W. [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4CB54848E7F641BF90E7CBBFEDB28971-MICHAEL W. MCDAVIT]
Sent: 8/19/2019 5:15:59 PM
To: Hurld, Kathy [Hurld.Kathy@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Weiler, Katherine [Weiler.Katherine@epa.gov]
Subject: RE: Action Needed: Request Info: Potential ESA Counterpart Reg Exercise (due COB Wed, Aug 14)

I'm good with Kathy's contribution.

Mike

From: Hurld, Kathy
Sent: Monday, August 19, 2019 1:03 PM
To: Frazer, Brian <Frazer.Brian@epa.gov>; Weiler, Katherine <Weiler.Katherine@epa.gov>
Cc: McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: Action Needed: Request Info: Potential ESA Counterpart Reg Exercise (due COB Wed, Aug 14)

Katherine et al:

Sorry for the delayed response. I do not have access to sharepoint so had to get the document from OST as an attachment. Anyway, I've attached the document here, but I've also cut and past the 404(g) section here for easy review and so Katherine can add it to the summarized response. Brian, if you want, I can provide court case citations, but did not think that was needed at this time. Again, sorry for the delay. - Kathy

404 assumption

- Program description: CWA Section 404 requires a permit be issued before dredged or fill material can be discharged into the waters of the US. 404(g) of the CWA enables tribes and states to assume the administration of the program for certain waters. Assumption – which is different from delegation – means that a state or a tribe assumes the authority to issue state- or tribe-issued permits and the Corps suspends permitting. EPA approves state and tribal requests to assume administration of the program which are consistent with the Act and implementing regulations and has oversight responsibilities.
- Federal action: Approval or denial of a state or tribal request to assume the CWA section 404 program.
- Current position on ESA consultation:

Ex. 5 Deliberative Process (DP)

From: Frazer, Brian <Frazer.Brian@epa.gov>
Sent: Friday, August 16, 2019 8:34 AM

To: Weiler, Katherine <Weiler.Katherine@epa.gov>
Cc: McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Hurld, Kathy <Hurld.Kathy@epa.gov>
Subject: Re: Action Needed: Request Info: Potential ESA Counterpart Reg Exercise (due COB Wed, Aug 14)

Monday will be fine.

Thanks, Katherine, for taking the lead on this. Let me know when you have all of our information before submitting.

bf

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Brian Frazer, Director
Oceans, Wetlands and Communities Division
Office of Wetlands, Oceans and Watersheds
US Environmental Protection Agency
202-566-1652

Sent from my iPhone

On Aug 15, 2019, at 8:21 AM, Weiler, Katherine <Weiler.Katherine@epa.gov> wrote:

> Hi Mike,
>
> I should have included you as well as Russ yesterday, my apologies. Please see request below for an ESA exercise.
>
> I know Kathy is out until Monday and I would say this can wait but I defer that decision to the big boss Brian. ☺
>
> Katherine
>
> ---
>
> **From:** Weiler, Katherine
> **Sent:** Wednesday, August 14, 2019 10:01 AM
> **To:** Russell Kaiser <Kaiser.Russell@epa.gov>
> **Cc:** Frazer, Brian <Frazer.Brian@epa.gov>; Valente, Betsy <valente.betsy@epa.gov>; Redford, David <redford.david@epa.gov>
> **Subject:** Action Needed: Request Info: Potential ESA Counterpart Reg Exercise (due COB Wed, Aug 14)
>
> Russ,
>
> Danielle identified 3 programs for OWCD. Are there any others that we need to add? I will fill out the UNDS but obviously need other folks to fill out the Ocean Dumping and 404 Assumption. I can upload the information to the sharepoint, if you can reach out to the correct staff POC to fill out the information below. Does that work?
>
> Katherine
>
> 404 assumption
> - Program description:
> - Federal action:
> - Current position on ESA consultation:

- Existing/anticipated consultation challenges:
- Potential solutions (weighing potential difficulties in resolving issues, include recommendation to codify something in rule or not to pursue rulemaking):

Uniform national discharge standards rulemaking
- Program description:
- Federal action:
- Current position on ESA consultation:
- Existing/anticipated consultation challenges:
- Potential solutions (weighing potential difficulties in resolving issues, include recommendation to codify something in rule or not to pursue rulemaking):

Ocean dumping permits
- Program description:
- Federal action:
- Current position on ESA consultation:
- Existing/anticipated consultation challenges:
- Potential solutions (weighing potential difficulties in resolving issues, include recommendation to codify something in rule or not to pursue rulemaking):

From: Anderson, Danielle <Anderson.Danielle@epa.gov>
Sent: Wednesday, August 14, 2019 9:34 AM
To: Soo-Hoo, Mimi <Soo-Hoo.Mimi@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>; Gutierrez, Sally <Gutierrez.Sally@epa.gov>; Behl, Betsy <Behl.Betsy@epa.gov>; Thompkins, Anita <Thompkins.Anita@epa.gov>; Gallagher, Kathryn <Gallagher.Kathryn@epa.gov>; Bains, Susanna <Bains.Susanna@epa.gov>; Weiler, Katherine <Weiler.Katherine@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Bates, William <bates.william@epa.gov>; Justice, JamesR <Justice.JamesR@epa.gov>; Ramach, Sean <Ramach.Sean@epa.gov>; Brennan, Ross <Brennan.Ross@epa.gov>; Wood, Robert <Wood.Robert@epa.gov>; Goo, Robert <Goo.Robert@epa.gov>; Latier, Andrea <Latier.Andrea@epa.gov>; Monschein, Eric <Monschein.Eric@epa.gov>; Guenzel, Lareina <Guenzel.Lareina@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Delehanty, Robyn <Delehanty.Robyn@epa.gov>
Cc: Hisel-Mccoy, Sara <Hisel-McCoy.Sara@epa.gov>; Siegal, Tod <Siegal.Tod@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; Schroer, Lee <schroer.lee@epa.gov>; Marshall, Tom <marshall.tom@epa.gov>; McConkey, Diane <Mcconkey.Diane@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Buffo, Corey <Buffo.Corey@epa.gov>
Subject: Request Info: Potential ESA Counterpart Reg Exercise (due COB Wed, Aug 14)

All, just a reminder to please populate Mimi's document (link and instructions included below) **by COB today, August 14th**. We will draw upon this information to populate a draft briefing document for the offices to review.

Please reach out to me or Mimi with any questions/concerns. We appreciate your assistance with this exercise.

Thanks,
Danielle Anderson

Danielle Salvaterra Anderson
Regional Branch, Team Leader
Standards & Health Protection Division
Office of Science & Technology

U.S. EPA, Office of Water

T: 202-564-1631
MC 4305T

From: Soo-Hoo, Mimi <Soo-Hoo.Mimi@epa.gov>
Sent: Thursday, August 08, 2019 5:15 PM
To: Frazer, Brian <Frazer.Brian@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>; Gutierrez, Sally <Gutierrez.Sally@epa.gov>; Behl, Betsy <Behl.Betsy@epa.gov>; Thompkins, Anita <Thompkins.Anita@epa.gov>; Gallagher, Kathryn <Gallagher.Kathryn@epa.gov>; Bains, Susanna <Bains.Susanna@epa.gov>; Weiler, Katherine <Weiler.Katherine@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Bates, William <bates.william@epa.gov>; Justice, JamesR <Justice.JamesR@epa.gov>; Ramach, Sean <Ramach.Sean@epa.gov>; Brennan, Ross <Brennan.Ross@epa.gov>
Cc: Hisel-Mccoy, Sara <Hisel-McCoy.Sara@epa.gov>; Anderson, Danielle <Anderson.Danielle@epa.gov>; Siegal, Tod <Siegal.Tod@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; Schroer, Lee <schroer.lee@epa.gov>; Marshall, Tom <marshall.tom@epa.gov>; McConkey, Diane <Mcconkey.Diane@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: Request Info: Potential ESA Counterpart Reg Exercise (due COB Wed, Aug 14)
Importance: High

Hi everyone,

My name is Mimi Soo-Hoo, and I work on ESA consultation issues for the water quality standards program within OST's Standards and Health Protection Division. Following up on a Division-level discussion earlier this week, I'm reaching out to you to help us gather information on various program areas in your office that might be subject to ESA consultation. This is in response to Dave Ross's interest

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) Please forward this request on to any other relevant staff who I've missed in this email chain.

To help hone in on what a counterpart rule for OW would contain, Dave asked us to frame our thinking in 3 'buckets': Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) We anticipate speaking to each of these 3 'buckets' at a follow-up briefing with OW in the coming weeks, to provide context for presenting options and recommendations to OW on how to proceed.

As an initial first step, we've set up a document to gather basic information on each of the program areas within OW (please add/subtract where we might have missed or misnamed any program areas!), what you see as your current challenges, any ideas for potential solutions and your recommendations for what to include (or not include) in a counterpart regulation. Given the schedule we have to flesh out options (see below), **we ask that you populate responses using the OneDrive version of the document by COB next Wednesday, August 14.** The information you provide us will be used to formulate buckets #1-2 (we will work within OST to identify any cross-cutting problems or solutions that crop up in multiple responses). We will work with OGC to fill in bucket #3.

Click here to access the summary document.

Please feel free to call me or my ESA team lead (Danielle Anderson, CC'd), if you'd like to discuss this request. We really appreciate your time and attention especially given the quick-turnaround nature of this request.

Thanks in advance for your help,
Mimi

Mimi Soo-Hoo
Office of Science & Technology
Soo-Hoo.Mimi@epa.gov
(202) 566-1192

From: Hisel-Mccoy, Sara <Hisel-McCoy.Sara@epa.gov>
Sent: Thursday, August 08, 2019 12:02 PM
To: Frazer, Brian <Frazer.Brian@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>; Gutierrez, Sally <Gutierrez.Sally@epa.gov>; Behl, Betsy <Behl.Betsy@epa.gov>; Schroer, Lee <schroer.lee@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; McConkey, Diane <Mcconkey.Diane@epa.gov>; Thompkins, Anita <Thompkins.Anita@epa.gov>; Soo-Hoo, Mimi <Soo-Hoo.Mimi@epa.gov>; Gallagher, Kathryn <Gallagher.Kathryn@epa.gov>
Cc: Bains, Susanna <Bains.Susanna@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Weiler, Katherine <Weiler.Katherine@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Marshall, Tom <marshall.tom@epa.gov>; Siegal, Tod <Siegal.Tod@epa.gov>; Flaherty, Colleen <Flaherty.Colleen@epa.gov>; Bates, William <bates.william@epa.gov>; Justice, JamesR <Justice.JamesR@epa.gov>; Ramach, Sean <Ramach.Sean@epa.gov>; Brennan, Ross <Brennan.Ross@epa.gov>; Anderson, Danielle <Anderson.Danielle@epa.gov>
Subject: ESA Counterpart Potential Rule

Hello, All.

Thanks much for the helpful, level-setting discussion yesterday on ESA consultation and our water programs. I appreciated the robust dialogue and look forward to begin identifying cross-cutting and program-specific 'pain points', force ranking programs, and weighing risks/rewards of pursuing certain options in rule consistent with our discussion and my understanding of Dave Ross' expectations.

As I indicated yesterday, I expect Deborah Nagle will be letting Dave Ross know at the next OD Brown Bag (August 14) that she will be submitting a meeting request to follow up from OST's 7/24 discussion with him on ESA. You may want to make your Office Directors aware of this effort as they are likely to be at that discussion with Dave. You and your staff also will soon receive an email from Mimi Soo-Hoo from my staff requesting information regarding your programs and ESA consultation per our discussion. Please prioritize providing this information and involving appropriate staff.

Here are our initial next steps based on yesterday's discussion. Please let me know if you have any questions.

- **By August 14**, we'll have a skeleton rule schedule outlined that hits all of the major milestones leading to a Spring 2020 proposal.
- **August 14 Brownbag with ODs** – Deborah to communicate to Dave R. OST's plan to submit a meeting request to present ESA counterpart rule options to him in the coming weeks
- **Week of August 30** – staff discussions amongst OST/OWOW/OWM/OGWDW and options briefing paper finalized
- **Week of September 2** – Pre-brief for DD's
- **Week of September 9** – Pre-brief for OD's

- **Week of September 16** – Briefing for Dave and Anna

Do you have any concerns with the plan laid out above? If there are any other considerations you think we should be weighing as we move forward, we are all ears.

Sara

Sara Hisel McCoy
Director, Standards and Health Protection Division
OW/Office of Science and Technology
(202) 566-1649