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Alexandra Dapolito Dunn, Assistant Administrator
Office of Chemical Safety and Pollution Prevention
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460-0001

Re: Comments of the Minor Crop Farmer Alliance on the Carbaryl and Methomyl
Registration Review; Draft Endangered Species Act Biological Evaluations.
Docket Identification Number: EPA-HQ- OPP-2020-0090.

Dear Assistant Administrator Dunn,

On March 17, 2020, the Environmental Protection Agency (“EPA” or “Agency”) published a notice in the Federal Register announcing the availability for comment of the subject draft Endangered Species Act Biological Evaluations (“BEs”) for Carbaryl and Methomyl.¹

These comments are submitted on behalf of the Minor Crop Farmer Alliance (“MCFA”) and its members. MCFA is an alliance of national and regional organizations and individuals representing growers, shippers, packers, handlers and processors of various agricultural commodities, including food, fiber, turf grass, nursery and landscape crops, and organizations involved with public health pesticides. MCFA’s members are extremely interested in the development and safe use of pest management tools including crop protection chemicals that are environmentally sound, safe for applicators, workers and the public, and do not represent an unreasonable adverse risk to the environment, including humans and endangered and threatened species. While our commodities are often called “minor crops” or “specialty crops,” they contribute to the diverse and highly nutritious diets available for the global population, and to

¹ 85 Fed. Reg. 15168-70.

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safe and aesthetic surroundings for our homes, schools, and places of business. These U.S. farmers grow more than 500 types of fruit, vegetable, tree nut, flower, ornamental nursery and turf grass crops in addition to the major bulk (row) commodity crops. Specialty crop production accounts for more than \$60 billion, or approximately 40%, of total U.S. crop receipts.

Many members of MCFA use Carbaryl and Methomyl. These products are important in helping them to produce their crops. These products have been registered and used for over 40 years and we are not aware of any significant incidents associated with them as it relates to endangered or threatened species. These products provide very effective control of a variety of insects on a host of crops including field crops, vegetables, fruits, nuts, nursery/greenhouse crops and forest/rangelands. Restrictions on the availability of these products would result in higher crop production costs, negatively impact grower pest resistance management strategies frequency in the use of alternative chemicals to mitigate pest damage, and potentially reduced yields for some crops.

MCFA was disappointed with the draft BEs. The evaluations were unduly conservative, representing a worst-case estimate of potential effects of these two pesticides on endangered and threatened species and their critical habitats. The summary of the Agency's conclusions make this apparent. Specifically, it concluded that for Carbaryl:

Table 1. Summary of Species Effects Determinations for Carbaryl (Counts by Taxon).

Taxon	Step 1 Effects Determinations		Step 2 Effects Determinations		Totals
	No Effect	May Affect	Not Likely to Adversely Affect	Likely to Adversely Affect	
Mammals	1	93	27	66	94
Birds	1	94	26	68	95
Amphibians	0	34	0	34	34
Reptiles	0	47	16	31	47

Taxon	Step 1 Effects Determinations		Step 2 Effects Determinations		Totals
	No Effect	May Affect	Not Likely to Adversely Affect	Likely to Adversely Affect	
Fish	0	187	11	176	187
Plants	0	935	68	867	935
Aquatic Invertebrates	0	204	22	182	204
Terrestrial Invertebrates	2	149	29	118	149
Total	4	1741	199	1542	1745
Percent of total*	0%	97%	11%	86%	

* Represents % of all species on list including the 50 species for which effects determinations were not made (1795)

Table 2. Summary of Critical Habitat Effects Determinations for Carbaryl (Counts by Taxon).

Taxon	Step 1 Effects Determinations		Step 2 Effects Determinations		Totals
	No Effect	May Affect	Not Likely to Adversely Affect	Likely to Adversely Affect	
Mammals	0	32	7	25	32
Birds	0	28	3	25	28
Amphibians	0	24	0	24	24
Reptiles	2	14	4	10	16

Taxon	Step 1 Effects Determinations		Step 2 Effects Determinations		Totals
	No Effect	May Affect	Not Likely to Adversely Affect	Likely to Adversely Affect	
Fish	0	104	2	102	104
Plants	2	450	26	425	453
Aquatic Invertebrates	0	70	5	65	70
Terrestrial Invertebrates	1	48	11	37	49
Total	5	771	58	713	776
Percent of total*	1%	97%	8%	90%	

* Represents % of all species on list including the 16 critical habitats for which effects determinations were not made (792)

Regarding Methomyl, the draft BE concludes:

TABLE 1. Summary of Species Effects Determinations for Methomyl (Counts by Taxon).

Taxon	Step 1 Effects Determinations		Step 2 Effects Determinations		Totals
	No Effect	May Affect	Not Likely to Adversely Affect	Likely to Adversely Affect	
Mammals	1	93	31	62	94
Birds	1	94	25	69	95
Amphibians	0	34	2	32	34
Reptiles	1	46	21	25	47
Fish	0	187	26	161	187

Taxon	Step 1 Effects Determinations		Step 2 Effects Determinations		Totals
	No Effect	May Affect	Not Likely to Adversely Affect	Likely to Adversely Affect	
Plants	178	757	216	541	935
Aquatic Invertebrates	3	201	37	164	204
Terrestrial Invertebrates	32	117	57	60	149
Total	216	1529	415	1114	1745
Percent of total*	12%	85%	23%	62%	

* Represents % of all species on list including the 50 species for which effects determinations were not made (1795)

TABLE 2 Summary of Critical Habitat Effects Determinations for Methomyl (Counts by Taxon).

Taxon	Step 1 Effects Determinations		Step 2 Effects Determinations		Totals
	No Effect	May Affect	Not Likely to Adversely Affect	Likely to Adversely Affect	
Mammals	1	31	10	21	32
Birds	6	22	3	19	28
Amphibians	0	24	3	21	24
Reptiles	4	12	7	5	16
Fish	0	104	9	95	104

Taxon	Step 1 Effects Determinations		Step 2 Effects Determinations		Totals
	No Effect	May Affect	Not Likely to Adversely Affect	Likely to Adversely Affect	
Plants	201	252	156	96	453
Aquatic Invertebrates	1	69	8	61	70
Terrestrial Invertebrates	15	34	17	17	49
Total	228	548	213	335	776
Percent of total*	29%	69%	27%	42%	

* Represents % of all species on list including the 16 critical habitats for which effects determinations were not made (792)

For Carbaryl, the draft BE suggests that 1542 of the 1745 species (or ~86%) are likely to be adversely affected from the use of the chemical. Additionally, 713 of the 776 critical habitats (~90%) are likely to be adversely affected by the use of Carbaryl. In the case of Methomyl, the draft BE concludes 1114 of the 1745 species (~62%) would likely be adversely affected and 335 of 776 critical habitats (~42%) would be adversely affected by potential exposure to the chemical.

The draft BEs simply do not reasonably reflect the actual, real-life conditions associated with the use of these products. We are not seeing endangered species adverse effects anywhere near the scale suggested by the determinations. As such, the Agency’s draft BEs actually reflect a bounding exercise of the worst-case estimate that does not comport with the “reasonably likely to affect” standard established under the Endangered Species Act (“ESA”). As with previous BEs, the Agency continues to rely heavily on cascading worst-case default assumptions rather than actual data.

Additionally, the way in which the Agency presents these BEs does not show how the Agency arrived at its conclusions. It appears the Agency is grossly grouping use patterns. Therefore, it is extremely difficult to differentiate between individual use patterns and determine the potential impacts of each use pattern. In contrast, when the Agency conducts a dietary contribution analysis associated with the uses of a pesticide, the Agency presents the risk contribution from each food on which the chemical may be used. In such circumstance, interested stakeholders can see what the “risk drivers” are and where particular focus or mitigation should be placed. That is not the case with these draft BEs.

The Agency’s analysis of spray drift potential is similarly flawed. The model used creates deposition levels higher than what is observed with the Ag-Drift model. Certainly the technologies for drift such as nozzle sizes, wind speed, etc., need to be refined. It appears that the assumptions relied on by the Agency in its evaluations of drift potential are not based on available data and it is not clear what their basis is. The source the Agency is using for these assumptions is not presented. These assumptions are unreasonable on their face. For example, the Agency essentially uses a “cone zone” for drift, with the idea that there is equal opportunity for drift to occur in all directions throughout the zone. That simply fails to consider things such as wind speed or direction at the time of application.

There also are issues associated with the distribution of species as used by the Agency in its analysis. In some circumstances, EPA apparently assumes equal distribution of a species throughout a geographic area, when that is not the case in the real world. In other situations, the analysis assumes the presence of species that have not been observed or recorded in the past 25 years, e.g., the Fresno kangaroo rat.

For the sake of accuracy, the Agency should revise the draft BEs. It needs to perform an evaluation that incorporates a weight-of-evidence (*e.g.*, available data) probabilistic approach. If it wants to perform a gross worst-case assessment, it certainly can do so. However, the Agency should also conduct and present a “reasonably likely” case as well, *i.e.*, whether an effect is reasonably certain to occur. MCFA appreciates that the U.S. Fish and Wildlife Service (“FWS”)

and the National Marine Fisheries Service (“NMFS”) (collectively, the “Services”) are the species experts. However, the EPA is the pesticide expert, with scientific expertise that has been developed over almost 50 years. Accordingly, the Agency needs to apply its expertise in considering the potential impacts on endangered and threatened species for these two chemicals as well as other chemicals it may evaluate in the future. Typically, EPA is very knowledgeable and comfortable conducting an analysis of potential environmental impacts associated with the potential exposure to pesticides of species that are not endangered or threatened species. For some reason, instead of using that knowledge and expertise, the Agency appears reluctant to apply that knowledge and expertise in matters involving endangered and threatened species. The Agency’s analysis in the instant situations is akin to that which one would expect from an entity (such as the Services) which lacks the substantial, substantive scientific expertise that the Agency’s experts have. In short, EPA did not add its full value to the BEs.

MCFA appreciates that these Agency BEs reflect its first application of its *Revised Method for National Level Listed Species Biological Evaluations of Conventional Pesticides* (“*Revised Method*”), which was finalized in March 2020. We were surprised in a number of changes that the Agency made from the draft to the final *Revised Method*. Rather than reflecting a refinement of the ESA evaluation process, the final *Revised Method* appears to take the Agency backward towards producing a less refined assessment, one that is certainly does not reflect potential realistic exposures to pesticides. The way in which the methodology is structured, it is substantially more likely than not that the outcome of the Agency’s BE will be a “likely to adversely affect a species” determination. Given the substantial, more than 40 years of use of these products, a “likely to adversely affect a species” determination does not comport with any observation or reliable data. As a result, such a determination is not reflective of actual conditions. Fundamentally, the Agency needs to focus on whether an effect is reasonably certain to occur in making a “may effect” determination. This would be consistent with the regulations for interagency cooperation that the Services issued last year. See 50 C.F.R. § 402.02.²

² *Effects of the action* are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed

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We recommend the Agency substantially revise the two draft BEs. The evaluations are simply overly conservative and unreliable. Data previously provided to the Agency should be relied on in performing the evaluations, not simply consigned to a disregarded appendix. MCFA supports an objective and realistic assessment of a pesticide's potential impacts on an endangered or threatened species. We will continue to work with the Agency to achieve that result.

MCFA appreciates this opportunity to provide its comments on the draft BEs.

Sincerely,

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action. **A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur.** Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action. (Emphasis added).

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