

Minor Crop Farmer Alliance

Via *Electronic Docket Submission* <http://www.regulations.gov>

August 15, 2019

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

Re: Comments Concerning *Draft Revised Method for National Level Endangered Species Risk Assessment Process for Biological Evaluations of Pesticides*. Docket Identification No. EPA-HQ-OPP-2019-0185.

Dear Assistant Administrator Dunn:

On May 16, 2019, the Environmental Protection Agency (“EPA” or “Agency”) published the subject notice in the Federal Register announcing the availability of the *Draft Revised Method for National Level Endangered Species Risk Assessment Process for Biological Evaluations of Pesticides* (the “Draft Revised Method”), 84 Fed. Reg. 22120-22. The Minor Crop Farmer Alliance (“MCFA”) is submitting these comments on the Draft Revised Method.

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. Our 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 and workers, and do not represent an unreasonable adverse risk to the environment, including humans or other animals including endangered or threatened species. While our commodities are often called “minor crops” or “specialty crops,” they contribute to the diversity and highly nutritious diets available for the global population and to safe and aesthetic surroundings for our homes, schools, and places of business. 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.

The Endangered Species Act (“ESA”) can significantly affect our members’ access to critical pest management tools. For many years, on behalf of our members, MCFA has been involved in addressing a variety of issues associated with the applicability of the ESA to pesticide registrations. We have not only participated in prior rulemaking involving these issues, but also have held collaborative ESA workshops to consider implementation issues. Our members strongly support the use of the administrative process to help develop a satisfactory implementation program. That is why we are encouraged by the availability of the Draft Revised

Method.

It is apparent that the Agency expended a significant amount of time, effort and resources in developing the Draft Revised Method. The issues and approaches being proposed warrant serious review and consideration. Admittedly, the Draft Revised Method is somewhat complex, employing new risk assessment approaches and refinements, and involving important scientific considerations.

By way of background, it is widely acknowledged that implementation of the ESA as it relates to pesticides has been extremely difficult. There have been substantial legal challenges against the EPA and the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (collectively, the “Services”) involving among other things, the substantially flawed ESA risk assessments that have been conducted. Those assessments, including the biological evaluations and biological opinions, typically have relied on gross hazard based assumptions and conservative models, thereby contributing to EPA and the Services substantially overstating the potential risk to endangered and threatened species from potential pesticide use. Whereas conservative risk assessments conducted as part of national efforts to protect endangered and threatened species may be justified, the excessively conservative assessments resulting from the process to date do not come close to reflecting actual usage by farmers, and can result in unrealistic and unjustified label restrictions that might eliminate or severely restrict uses, adversely affecting national food security.

MCFA has long advocated that under current law, refinements be adopted to make the ESA assessment review process better, thereby leading to assessment conclusions that more accurately assess risk. Those refinements have included for example, simply encouraging the incorporation of actual pesticide usage data such as pesticide survey information, that can reflect the actual rates the products are being applied as opposed to maximum label rates. Those data have long been available and used by the EPA for other risk assessment purposes. If additional data are needed, MCFA and its members would work with growers and federal and state agencies to help obtain it.

MCFA has also advocated that the Agency and the Services use probabilistic risk assessment modeling in evaluating the potential impacts of pesticide use on endangered and threatened species. EPA has used such modeling for many years in better defining the potential dietary risk to humans from consuming foods treated with pesticides. If these techniques can be used to protect human health from dietary exposure to pesticide residues, it would seem that these modeling techniques should similarly be incorporated in analyzing the risks posed to endangered and threatened species from potential pesticide uses.

MCFA is very pleased that the Draft Revised Method reflects the adoption of usage data as well as probabilistic risk assessments. These substantial positive refinements can readily be justified and quickly incorporated into the evaluation process. MCFA also supports the application of a weight-of evidence framework in determining the likelihood that an endangered or threatened species could be exposed to or if exposed, affected by a potential pesticide exposure.

Without EPA adopting the changes reflected in the Draft Revised Method, the ESA biological

evaluations that the Agency has to conduct will continue to result in outcomes that are not realistic and reliable and will likely result in continuing litigation. MCFA encourages EPA to finalize the refinements reflected in the Draft Revised Method as soon as possible.

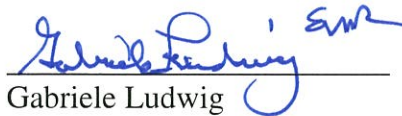
We appreciate your consideration of these comments.

Sincerely,



Michael J. Aerts

and



Gabriele Ludwig

MCFA Technical Committee Co-Chairs

CC: Richard Keigwin
Marietta Echeverria
Tracy Perry