



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

March, 27 2026

Refer to NMFS No: OPR-2026-00516

Sarah Dunham
Director, Office of Transportation, Office of Air and Radiation
United States Environmental Protection Agency
120 Pennsylvania Ave NW
Washington, DC, 20460
VIA EMAIL: Dunham.Sarah@epa.gov

RE: Concurrence Letter for the Environmental Protection Agency's (EPA) Renewable Fuel Standard (RFS) Set Rule 2

Dear Ms. Dunham:

On March 20, 2026, the National Marine Fisheries Service (NMFS) received your request for a written concurrence that the Environmental Protection Agency's (EPA) rulemaking for the Renewable Fuel Standard (RFS) Set Rule 2 for 2026-2027 (RFS Set Rule 2) is not likely to adversely affect species listed as threatened or endangered or critical habitats designated under our jurisdiction under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.). This response to your request was prepared by NMFS pursuant to section 7(a)(2) of the ESA, implementing regulations at 50 CFR Part 402, and agency guidance for preparation of letters of concurrence.

This response is based on NMFS's review of EPA's Biological Evaluation of the Renewable Standard (RFS) Set 2 Rule dated March 20, 2026, and included attachments (subsequently referred to as BE; EPA, 2026). The information provided was determined to be sufficient for consultation and considered best available for assessing the request for concurrence.

As of the date of this consultation, the 2024 ESA regulations remain in effect, and we are applying the 2024 regulations here. For purposes of this consultation and in an abundance of caution, we considered whether the substantive analysis and conclusions articulated in this letter would be any different under the 2019 regulations or pre-2019 regulations. We have determined that our analysis and conclusions would not be any different.

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with agency guidelines issued under section 515 of the Treasury and General Government Appropriations Act of 2001 (Data Quality Act; 44 U.S.C. 3504(d)(1) and 3516). A complete record of this informal consultation is on file electronically at NMFS Office of Protected Resources in Silver Spring, Maryland.

Background

A Consultation History specific to the RFS Set Rule 2 consultation can be found in Section II of the BE.



In 2023, NMFS consulted with EPA on a RFS Set Rule covering the years 2023-2025 (RFS Set Rule 1). EPA provided a Biological Evaluation (2023 BE; EPA, 2023) and requested concurrence on a not likely to adversely affect determination. NMFS provided a letter of concurrence in response to the request (2023 LoC; NMFS, 2023). Both the 2023 BE and 2023 LoC established approaches to assessing the effects of the RFS Set Rule 1 and included detailed discussions of the data, assumptions, and uncertainties involved in the assessments.

For the current consultation on the RFS Set Rule 2, EPA's 2026 BE relied on the same approaches used in their 2023 BE. Similarly, to assess the RFS Set Rule 2, NMFS is using the same approaches as used in the 2023 LoC to respond to EPA's request for concurrence.

Action Agency's Effect Determinations

EPA identified 73 ESA-listed species and 57 designated critical habitats (including proposals for each) under NMFS jurisdiction that potentially occur in the action area (see Table IX.C-1 of the BE). Experimental populations (ESA section 10(j)) present in the action area are considered as a single listed entity within ESA-listed species' populations for the purposes of this consultation rather than discussed separately. EPA concluded that the action may affect, but is not likely to adversely affect all of the species in Table IX.C-1 of the BE. Additionally, EPA concluded that the action may affect, but is not likely to adversely affect any of these species' designated critical habitats.

Proposed Action

The RFS Set Rule involves numerous EPA authorities, requirements, and regulatory changes. EPA provided a detailed description of the program in the BE. Very briefly, the RFS program places an obligation on producers and importers of gasoline and diesel (hereafter simplified to "refiners") to utilize certain amounts of renewable fuel to replace fossil-based transportation fuels. While the RFS Set Rule does not specify how refiners are to meet their RFS obligations for years 2026-2027, domestically-grown crops for production of renewable fuel have played a role in the RFS program since it was established in 2005 as one option used by refiners to meet their volume obligations. The predominant feedstock for renewable fuel production was crop-based feedstocks consisting of corn, soybean, and canola.

The anticipated change in agricultural practices is likely to increase the quantity of fertilizer, pesticides, and sediment in waterways that are close to or downstream of land used to produce these crops. Any resulting changes in water quality due to changes in crop production may affect species that live in or near the impacted waterways.

Important to NMFS's assessment of the RFS Set Rule 2 is that the annual volume requirements for the years 2026-2027 differ very little from those of RFS Set Rule 1 for years 2023-2025 (see Table ES.1 of the 2023 BE and Table IV.A.2-1 of the 2026 BE). Corn volumes actually decreased from 0.71-0.84 billion gallons (2023-2025) to 0.231-0.245 billion gallons (2026-2027). Soybeans volumes were similar at 1.92-1.95 billion gallons (2023-2025) and 1.864-2.267 billion gallons (2026-2027). Canola volumes did increase from 0.24 billion gallons (2023-2025) to 1.224-1.380 billion gallons (2026-2027). However, for reasons discussed in the BE and 2023 LoC, increases in canola production are not a substantial concern for NMFS species.

Action Area

Based on an assessment of the action, EPA determined that any potential effects of the action on ESA-listed and proposed species and designated and proposed critical habitats would be due to changes in crop production in response to the RFS Set Rule. EPA based the action area on the footprint of the continental United States where corn, soybean, and canola are currently grown and could be grown in response to the RFS Set Rule and included regions downstream of crops. Details are available in the BE. For example, Figure IV.B.4-1 of the BE shows the action area.

Affected ESA-listed Species and Designated Critical Habitat

ESA-listed and proposed species and designated and proposed critical habitats under NMFS jurisdiction that are present in the action area are listed in Tables IX.C-3 (species) and IX.C-2 (critical habitats). Details can be found in the BE and 2023 LoC (NMFS, 2023)

Effects Analysis

EPA assessed the effects of the RFS Set Rule 2 using the same approach as used for their RFS Set Rule 1 BE (EPA, 2023). EPA did use an improved method for estimating increases in crop production within species ranges and critical habitats that incorporated probabilities and assessed all crops combined rather than separately (described in the BE).

In assessing the effects of the RFS Set Rule 2 and making a concurrence determination for this consultation, NMFS applied the approach used for the LoC for the RFS Set Rule 1 (NMFS, 2023). Details of the assessment, therefore, can be found in the 2023 LoC and will not be repeated here.

Important to NMFS's assessment of the RFS Set Rule 2, and similar to the comparison of volume requirements, is that the estimated increases in crop acres for the years 2026-2027 differ very little from those of the RFS Set Rule 1 for years 2023-2025 (see Table ES.1 of the 2023 BE and Table IV.A.2-2 of the 2026 BE). The increase in crop acres across the three crops changed from 2.22-2.65 million acres (2023-2025) to 2.264-2.705 million acres (2026-2027). So, overall the estimated impact of the RFS Set Rule 2 on crop production is not markedly different from that of the RFS Set Rule 1.

Also important is that a similar result exists for the estimated percent increases in crop acres within a species range or critical habitat due to the RFS Set Rule 2. For the RFS Set Rule 1, the highest percent increase was 0.139 for soybean expansion within Chesapeake Bay Atlantic sturgeon range (Table 11 of the 2023 LoC). For the RFS Set Rule 2, percent increases were somewhat larger with the highest percent increase being 0.418 for Upper Willamette River Steelhead critical habitat (Table IX.C-2 of the BE). The highest percent increase in a range was 0.281 for Upper Willamette River Steelhead (Table IX.C-3 of the BE). The slight increase in estimates between the RFS Set Rule 1 and Set Rule 2 may be due in part to the new method that involves a probabilistic analysis of all cropland (not just corn or soybean separately). Nonetheless, overall, the estimated impact of the RFS Set Rule 2 crop expansion on the ranges and critical habitats of NMFS species is quite small and, given uncertainties discussed in the BE and 2023 LoC, not markedly different from those of the RFS Set Rule 1.

Conclusion

Following the same approach used for the 2023 consultation on the RFS Set Rule 1, NMFS determined that: 1) the RFS Set Rule 2 action is not markedly different from RFS Set Rule 1; 2)

the effects of the RFS Set Rule 2 are not anticipated to be markedly different; and 3) the same conclusions as for the RFS Set Rule 1 are appropriate. Based on the applicable standard, NMFS deemed all the effects of the RFS Set Rule 2 to be insignificant or discountable.¹

Therefore, based on an analysis of the available information, NMFS concurs with EPA that the effects of the proposed action may affect, but are not likely to adversely affect the ESA-listed and proposed species and/or designated and proposed critical habitats identified in Table IX.C-1 of EPA's BE.

Reinitiation of Consultation

Reinitiation of consultation is required and shall be requested by the federal agency, or by NMFS, where discretionary federal involvement or control over the action has been retained or is authorized by law and if (1) new information reveals effects of the action that may affect an ESA-listed species or designated critical habitat in a manner or to an extent not previously considered; (2) the identified action is subsequently modified in a manner that causes an effect to the ESA-listed species or designated critical habitat that was not considered in this concurrence letter; or (3) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR §402.16).

Please direct questions regarding this letter to Dr. David Baldwin, Consulting Biologist, at david.baldwin@noaa.gov, or by phone at (301) 427-8412, or Tanya Dobrzynski, Chief, ESA Interagency Cooperation Division, at tanya.dobrzynski@noaa.gov, or by phone at 240-723-6321.

Sincerely,



Kimberly Damon-Randall
Director, Office of Protected Resources

cc: Natasha Vatalaro (vatalaro.natasha@epa.gov)

Literature Cited:

EPA. 2023. Biological Evaluation of the Renewable Standard (RFS) Set Rule. May 19, 2023.
Available via <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0427-1102>

EPA. 2026. Biological Evaluation of the Renewable Standard (RFS) Set 2 Rule. March 20, 2026.

¹ Not likely to adversely affect is the appropriate conclusion when effects on listed species are expected to be discountable, insignificant, or completely beneficial. Beneficial effects are contemporaneous positive effects without any adverse effects to the species. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur. See Endangered Species Consultation Handbook, Procedures for Conducting Consultations and Conference Activities under Section 7 of the Endangered Species Act (March 1998) at xv.

NMFS. 2023. Concurrence Letter for the Environmental Protection Agency's (EPA) Renewable Fuel Standard (RFS) Set Rule. July 27, 2023.

USFWS and NMFS. 1998. Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act. March 1998.