
From: Dunham, Sarah
Sent: Friday, March 20, 2026 1:30 PM
To: Aubrey, Craig; tanya.dobrzynski@noaa.gov; nmfs.hq.esa.consultations@noaa.gov
Cc: Hengst, Benjamin; Burkholder, Dallas; Burch, Julia
Subject: Biological Evaluation of the Renewable Fuel Standard Set 2 Rule
Attachments: Biological Evaluation of the Renewable Fuel Standard (RFS) Set 2 Rule and EPA's Effects Determinations.docx; Attachment 1 - Table of All Listed Species from Set 2 BE.docx; Attachment 2 - Alternative Land Use Projections.docx; Attachment 3 - Attribution of Ethanol Production to the RFS Program.docx

Craig Aubrey
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Re: Request for Concurrence on the Not Likely to Adversely Affect Determinations to Listed Species and their Designated Critical Habitat Areas for EPA's Renewable Fuel Standard (RFS) Set 2 Rule

March 20, 2026

Dear Mr. Aubrey and Ms. Dobrzynski:

In accordance with Endangered Species Act (ESA) and 50 C.F.R. § 402.13, please find enclosed a revised Biological Evaluation (BE) for the *Renewable Fuel Standard (RFS) Program: Standards for 2026 and 2027, Partial Waiver of 2025 Cellulosic Biofuel Volume Requirement, and Other Changes* rulemaking, also known as the "Set 2 Rule." With this transmittal of the BE, EPA requests concurrence from the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) and the Department of Interior, Fish and Wildlife Service (FWS) (together, "the Services") on EPA's Not Likely to Adversely Affect (NLAA) determinations for listed species and their designated critical habitat areas associated with the Set 2 Rule.

Section 7(a)(2) of the ESA requires federal agencies to consult with the Services to ensure that federal actions are not likely to jeopardize the continued existence of any listed species or destroy or adversely modify designated critical habitat. EPA submits these effects determinations to the Services for the RFS

Set Rule pursuant to 50 C.F.R. § 402.13(c)(1) and, pursuant to 50 C.F.R. § 402.13(c)(2), EPA requests the Services' concurrence on EPA's Not Likely to Adversely Affect determinations for 731 listed species (821 populations) and their designated critical habitat areas for the Set 2 Rule. These species and our determinations are detailed in Attachment 1. Out of the 731 species within the action area, 699 species are FWS species, 40 are NMFS species, and 8 are both FWS and NMFS species.

The analyses of potential effects on ESA-listed species and designated critical habitat associated with this EPA action promulgating the RFS and other program changes for 2026 through 2027 are discussed in the enclosed BE. Based on these analyses, EPA has made the determination that the Set 2 Rule may affect, but is not likely to adversely affect, any of the 821 populations within the Set 2 Rule action area or their critical habitat. Any potential impacts would be insignificant or discountable due to the various uncertainties and conservative assumptions made in our analyses, together with minimal potential impacts identified for listed species and critical habitat from land use and water quality impacts.

We certify that EPA used the best scientific and commercial data available to complete our analyses. As such, we respectfully request the Services' concurrence with EPA's NLAA effects determinations.

We appreciate your continued engagement and assistance with bringing the consultation on the RFS Set 2 Rule.

If you require additional information, please contact Anita Wills (Wills.anita@epa.gov; (734) 214-4701) or Natasha Vatalaro (Vatalaro.natasha@epa.gov; (734) 214-4353).

Sincerely,

Sarah Dunham, Director
Office of Transportation and Air Quality
Office of Air and Radiation

Enclosures:

Biological Evaluation of the Renewable Fuel Standard (RFS) Set 2 Rule and EPA's Effects Determinations
Attachment 1 – Table of All Listed Species from Set 2 BE
Attachment 2 – Alternative Land use Projections
Attachment 3 – Attribution of Ethanol Production to the RFS Program