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September 24, 2018

Ryan Zinke  
Secretary  
U.S. Department of Interior  
1849 C Street, NW  
Washington, DC 20240

Wilbur Ross  
Secretary  
U.S. Department of Commerce  
1401 Constitution Avenue NW  
Washington, DC 20230

***Re: FWS and NMFS' proposed rulemaking Regulations for Interagency Cooperation (FWS-HQ-ES-2018-0009)***

Dear Mr. Zinke and Mr. Ross:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on the U.S. Fish and Wildlife (FWS) and National Marine Fisheries Service's (NMFS) proposed rule, Revision of Regulations for Interagency Cooperation (FWS-HQ-ES-2018-0009) published in the Federal Register on July 25, 2018.

NACWA represents the interests of more than 300 publicly owned clean water and stormwater utilities across the country, that every day provide an essential public service managing billions of gallons of wastewater and stormwater to ensure the protection of human health and the environment.

Although our members most often deal with Clean Water Act (CWA) requirements, there are a variety of instances when municipal wastewater and stormwater utilities encounter Endangered Species Act (ESA) obligations. For example, under Section 7(a)(2) of the ESA, federal agencies must consult with either the FWS or the NMFS "to insure that any [agency action] is not likely to jeopardize the continued existence of federally listed endangered and threatened species, or result in the destruction or adverse modification of designated critical habitat."

Section 7(a)(2) of the ESA is triggered, and is particularly relevant for our utility members, when the U.S. Environmental Protection Agency (EPA) conducts triennial reviews of state and tribal water quality standards (WQS) and National Pollutant Discharge Elimination System (NPDES) permitting programs under the CWA. Unlike formal consultations with a 90-day regulatory deadline, these consultations between the agencies begin informally and can sometimes extend over several years, even when states have already approved the revised WQS. This delay can cause significant regulatory uncertainty for public clean water utilities.

The proposed rule considers establishing a 60-day deadline to complete informal consultations. NACWA supports this informal consultation deadline and believes it would be helpful in improving the review process by providing more certainty. Instances have occurred where there is a routine review of site-specific criteria, which often generates an FWS and/or NMFS informal

consultation. Consequently, the permitting authority cannot issue an amended state NPDES permit until the consultation is completed – meaning that the public utility CWA permittee must wait in limbo. To ensure an efficient and consistent process, it is important that these consultations have a specified timeframe for completion and are carried out in an expedited fashion whenever appropriate.

Additionally, the proposed rule seeks public comment on formal consultations. Specifically, the proposed rule aims to clarify and identify what information is necessary to initiate a formal consultation in order to mitigate time lost during the exchange of documents. NACWA supports increased transparency on what information is necessary to initiate a consultation. NACWA believes that, by providing clarity in what documents are required, the process of initiating a formal consultation will be less confusing and more systematic and straightforward.

The issue of ESA review continues to be an important consideration for clean water utilities, especially as our members face increased challenges with siting new facilities or expanding existing treatment plants. These challenges underscore the need for improved efficacy and clarity when implementing various provisions of the ESA.

NACWA looks forward to engaging FWS and NMFS in the future on meaningful efforts to improve upon the informal and formal consultation processes. Please do not hesitate to contact me at [eremmel@nacwa.org](mailto:eremmel@nacwa.org), with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily Remmel". The signature is fluid and cursive, with a large loop at the end.

Emily Remmel  
Director of Regulatory Affairs