



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



In Reply Refer To:
FWS/AES/059942

The Honorable Rob Bishop
Chairman, Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Chairman Bishop:

Thank you for your letter of April 2, 2015, regarding the Environmental Protection Agency's (EPA) recent proposals of two rules implementing the Clean Air Act. As discussed at the March 19, 2015, joint hearing before the Subcommittees on Water, Power, Oceans and Federal Lands, EPA has not initiated consultation with the U.S. Fish and Wildlife Service (Service) on these two proposed rules, pursuant to section 7 of the Endangered Species Act of 1973, as amended (ESA).

Section 7(a)(2) of the ESA requires that federal agencies ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened or endangered species or destroy or adversely modify designated critical habitat for such species. The role of the Service is to assist federal agencies in carrying out that responsibility, and our implementing regulations set forth procedures for consultations between the Service and federal agencies on actions that may affect listed species or designated critical habitat.

You correctly note that those regulations give the Service the authority to request that a federal agency enter into consultation if we identify an action that would warrant consultation but for which no consultation has occurred. The Service typically uses that authority when we believe that a federal agency may not be aware of their section 7 responsibilities or may not know that their actions may affect listed species or designated critical habitat, and when the nature of the action and its effect on listed species or critical habitat are clear.

The Service has not requested that EPA consult on these two Clean Air Act rules, and we do not intend to do so, because we know from past experience that EPA has full knowledge of their Section 7 responsibilities. EPA, as the expert agency on the Clean Air Act, is best positioned to understand if their rules will affect listed species or designated critical habitat; the Service does not have the technical expertise in the Clean Air Act to be able to independently do so. In this case, EPA understands their obligations under the ESA. The Service understands that EPA will determine whether promulgation of these two rules will affect listed species or designated critical habitat, and thus warrant consultation under Section 7 of the Act, as part of their rulemaking process.

With regard to your questions concerning the Big Bend Power Station, my response to your questions at the March 19 hearing concerned a hypothetical scenario involving effects of a change in plant operations on manatees. However, making a determination about a causal

connection between an EPA action and any potential effects on listed species or designated critical habitat is not a hypothetical exercise, but is instead reliant upon a thorough understanding of the facts and of the effects of Clean Air Act implementation. EPA's Clean Air Act expertise makes it best suited to determine whether such a causal connection exists.

Thank you for your concern about endangered species conservation and proper implementation of the ESA. If you have any questions about this response, please feel free to contact me personally or have your staff contact Mr. Gary Frazer, the Service's Assistant Director for Ecological Services, at (202) 208-4646.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. O. M. Ashe". The signature is written in a cursive style with a large initial "L" and "A".

DIRECTOR