



October 20, 2023

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Environmental Protection Agency  
1200 Pennsylvania Ave NW  
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*Submitted to Docket* **EPA-HQ-OPP-2023-0365-001**

**RE: Request for Comment: "Draft Herbicide Strategy Framework to Reduce Exposure of Federally Listed Endangered and Threatened Species and Designated Critical Habitats from the Use of Conventional Agricultural Herbicides"**

The Pesticide Policy Coalition (PPC) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA or the Agency) Office of Pesticide Program's *Draft Herbicide Strategy Framework to Reduce Exposure of Federally Listed Endangered and Threatened Species and Designated Critical Habitats from the Use of Conventional Agricultural Herbicides* and the accompanying draft technical support documents.

The PPC represents agriculture, food, fiber, public health, pest management, landscape, environmental, and related industries, including small businesses/entities, which are dependent on the availability of pesticides. Our coalition supports the development and implementation of public policies and laws that utilize the best available science and technology to ensure protection of human health and the environment.

PPC members include national and regional trade associations; commodity, specialty crop, and silviculture organizations; cooperatives; food processors and marketers; pesticide manufacturers, formulators, and distributors; pest and vector-control applicators and operators; research organizations; state departments of agriculture; equipment manufacturers, and other interested stakeholders. The PPC serves as the unifying voice for the review, discussion, development and advocacy on pest management regulation and policy that is based on the best available science.

The public is increasingly confronted with pest pressure, resistance management concerns and disease threats introduced into the United States via trade, weather, and other factors. It is through pest control products, used by farmers, ranchers, public health officials, and other

pesticide applicators; and produced by pesticide manufacturers, that we can address and mitigate these threats. These products are essential tools for users to protect not only America's food, fiber, and biofuel; but also, to protect public health from vector-borne disease, safeguard our infrastructure from the damage caused by pests, and mitigate the increasing threat to the environment from invasive species.

### **Broad mitigation measures should not supplant appropriate risk assessment.**

The PPC appreciates the updates the Agency has made in the Endangered Species Act (ESA) process over the past few years. The predictive Jeopardy/Adverse Modification (J/AM) analysis is a step in the right direction. While the Agency has relied upon the use of early mitigation measures in the ESA process, EPA should not ignore or abandon product-specific risk assessments that could confirm the need for a particular measure or reveal that less stringent mitigations are necessary. Overly conservative assumptions will drive unworkable mitigations with no environmental benefit for listed species. For a proper risk assessment of a particular registered use, it is important to take toxicity and exposure (usage) into account, otherwise proposed mitigations may be unnecessary to protect species and detrimental to agriculture and unduly restrict access to essential pesticides to protect the health and safety of families, pets, and homes. Relatedly, it is imperative that EPA right-size mitigations early on in this process. The review of a specific pesticide product registration needs to remain open to adjusting the default mitigations as the Agency proceeds through the stages of the registration process.

### **Industry Conducted Biological Evaluations.**

Given the resource intensive nature of the ESA risk assessment, the Agency should set a timeline to develop a process to allow registrants to develop a biological evaluation (BE) that includes a predictive J/AM assessment. EPA has made improvements in the ESA process; reviewing a BE instead of developing a BE will allow EPA to meet its legal and regulatory obligations under ESA in a timelier fashion. Registrants have expertise in conducting risk assessments for the U.S. and globally. For example, Europe has guidance documents for conducting risk assessments that registrants follow to submit a dossier<sup>1</sup>. If EPA were to create a voluntary pathway for registrants to conduct risk assessments according to updated EPA guidance, efficiencies would be gained. The PPC requests that the Agency publishes an ESA predictive J/AM guidance document like the 2020 publication of the draft Revised Methods for national level BEs.<sup>2</sup> The Agency should allow stakeholders to comment on the predictive J/AM analysis to help fashion an approach that can be used by registrants to submit BEs with predictive J/AM analysis for EPA's review. This would

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<sup>1</sup> Birds and Mammals: Guidance Document on Risk Assessment for Birds and Mammals on request from EFSA. EFSA Journal 2009; 7(12): 1438; Aquatics Organisms: EFSA PPR Panel (EFSA Panel on Plant Protection Products and their Residues), 2013. Guidance on tiered risk assessment for plant protection products for aquatic organisms in edge-of-field surface waters. EFSA Journal 2013;11(7):3290, 186 pp. doi:10.2903/j.efsa.2013.3290; Bees: European Food Safety Authority, 2013. EFSA Guidance Document on the risk assessment of plant protection products on bees (*Apis mellifera*, *Bombus spp.* and solitary bees). EFSA Journal 2013;11(7):3295, 268 pp., doi:10.2903/j.efsa.2013.3295; Non-target Arthropods, Terrestrial Plants: Guidance Document on Terrestrial Ecotoxicology", as provided by the Commission Services (SANCO/10329/2002 rev.2 (final), October 17, 2002), and in consideration of the recommendations of the guidance document ESCORT 2 (2001)

<sup>2</sup> Revised Methods – <https://www3.epa.gov/pesticides/nas/revised/revised-method-march2020.pdf>

allow registrants to provide supporting information as part of the assessment to expedite the Agency's ESA evaluation and potential mitigation development.

### **Early Coordination with Registrants.**

The PPC wants to emphasize to the Agency that registrant/applicant-submitted data and information has an essential role in supporting the development of robust risk assessments and manageable and meaningful mitigations. During all stages of the registration and consultation processes, pesticide registrants have a role to play in completing a pragmatic ESA process. This is particularly important when EPA is making predictive J/AM determinations for individual species/critical habitats. PPC members are well positioned to provide scientific expertise, tools (e.g., models), agricultural knowledge along with information specific to different use sites, farmer/applicator interaction information, and other relevant information to assist EPA in establishing the scientific foundation for Agency findings during the BE process and to assist the Services with developing the biological opinion (BiOp) and potential mitigations. EPA, in its recent workplan update<sup>3</sup> document, highlighted that review and approval of product registrations and label amendments create additional work for the Agency, pesticide registrants, and state agencies. That is why early collaboration and coordination with registrants, growers, and applicators at every step of the registration process is so important. The Services should also be included in those aspects impacting consultation.

The PPC strongly encourages greater collaboration with individual registrants as ESA applicants, along with growers, agricultural retailers, applicators, and other pesticide users, as part of this process in the future. As described in EPA's own Stakeholder Input Enhancement Plan<sup>4</sup> for Pesticide Registration Review and ESA consultation, relevant stakeholders must have meaningful opportunities to participate in a manageable, efficient, defensible, and transparent process to share information to protect vulnerable species, provide regulatory certainty, and support agriculture and pest control.

### **Stakeholder Engagement.**

The rapidly changing ESA regulatory environment requires an increased focus on communication, transparency, the use of the best available data, and collaboration with registrants/applicants. The PPC recognizes the importance, and legal obligation as codified by the 2018 Farm Bill<sup>5</sup>, of collaboration among EPA, the US Department of Agriculture (USDA), and the Services on the ESA conservation programs, including pilots and strategies. Further, these ESA programs, including pilots and strategies, must be science-based and reasonable, taking into consideration actions that growers, agricultural retailers, applicators, pesticide users, and landowners are already taking to limit off-target pesticide movement, and must allow for the continued economic use of private lands. USDA is underutilized in this regard, and we encourage its broader engagement in this process, especially in defining regionally appropriate conservation mitigations tailored to specific cropping systems.

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<sup>3</sup> Workplan Update – <https://www.epa.gov/pesticides/epa-advances-early-pesticides-protections-endangered-species-increases-regulatory>

<sup>4</sup> Stakeholder Engagement - <https://www3.epa.gov/pesticides/endanger/2012/regreview-esa.pdf>

<sup>5</sup> 2018 Farm Bill Sec. 10115. FIFRA interagency Working Group pp. 435-438

Several members of the PPC have submitted thoughtful and substantive comments expressing their views on the feasibility of proposed mitigation measures in the draft Herbicide Strategy, the overly conservative nature of underlying assumptions, and their frustration at the lack of meaningful communication on issues such as implementation, exemptions, and enforcement. EPA proposes to start implementing the draft Herbicide Strategy once finalized to apply upfront mitigations early in the ESA-Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) process potentially prior to completing a full consultation process. It is still unclear how the previous comments on this point submitted in past comment periods have been addressed or whether the Agency has a plan to integrate these considerations into the final strategy. The PPC strongly encourages the Agency to carefully review and consider these grower and user stakeholder comments and incorporate the recommendations as the Vulnerable Species Pilot Project (VSPP<sup>6</sup>), and Herbicide Strategy are finalized and implemented.

The PPC offers technical comments below that will be elaborated in comments submitted by our members. In brief, the following items need to be considered by EPA:

- *Additional Mitigation Measures and Exemption Options:* The Herbicide Strategy proposes certain mitigations on all product labels but does attempt to provide flexibility to growers, agricultural retailers, applicators, and other pesticide users by providing a menu of mitigation options based on a points system, and exemption scenarios. The PPC is encouraged by the Agency's perceived willingness to add other exemption options and mitigation measures in the future, particularly to incorporate emerging technology or new information on the effectiveness of additional measures used by growers, agricultural retailers, applicators, and other pesticide users. Such additional mitigation options include precision agriculture, adjuvants, and soil binding agents. For example, modern agricultural equipment's ability to deliver herbicide with a level of precision only achievable through advanced technologies deploying data-driven decisions has tangible and measurable environmental benefits. As American agriculture experiences a technological revolution, the Herbicide Strategy needs to take these proven and widely available technical advances into consideration.
- *Credit for Conservation Practices:* EPA must consider in the Herbicide Strategy, and in upcoming strategies, that many growers, agricultural retailers, applicators, and other pesticide users already follow well-established conservation practices, such as state good agricultural practices or Natural Resources Conservation Service (NRCS) practices, to protect biodiversity on their land and limit off-target pesticide movement. While the herbicide strategy was developed for agricultural uses, the PPC requests that EPA consider and give credit in upcoming strategies for the well-established Best Management Practices (BMPs) that have been developed and widely used by the different segments of the specialty pesticide industry. These practices are based on science and are protective of species and protect against off-target movement of pesticides.

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<sup>6</sup> Vulnerable Species Pilot Project - <https://www.regulations.gov/docket/EPA-HQ-OPP-2023-0327>

- *Implementation Plan Concerns:* The success of EPA’s improvements to the ESA process will depend on implementation by the growers, agricultural retailers, applicators, and other pesticide users. The PPC recommends the Agency formally incorporate education and training as one of the mitigation options into ESA pilots and strategies.
- *Strategies/Pilot Preemption and Inconsistencies:* The PPC believes that the Agency should provide greater clarification on how the varying compliance measures will be applied to an individual product (e.g., FIFRA mitigations, Interim Ecological Mitigations, Herbicide Strategy, J/AM analysis) and the intent of the “day forward” implementation approach.
- *Potential Unintended Consequences:* Significant rate reduction as a mitigation is a concerning proposal; reduced rates may not effectively control pests but are also likely to create resistance management challenges in pest populations. Furthermore, as subsequent ESA consultations and registration review actions proceed and labels are “tightened up,” it will be increasingly difficult to reduce application rates and maintain control when pest pressure is high. The PPC strongly encourages the agency to provide greater clarification on this proposed mitigation.
- *Offsets:* The PPC supports EPA and the Services exploring with stakeholders the use of compensatory mitigation measures as a tool to mitigate the potential impact to listed species.

Lastly, the PPC urges the Agency to issue a formal response to comments submitted to the docket for the Draft Herbicide Strategy. As EPA’s pesticide program continues to improve its review process under the ESA, incorporation of input from stakeholders and regulated entities as to how they will practically implement these proposals will be critical for long-term success. Feedback and specific direction to stakeholders and coregulators that have submitted questions and raised concerns with the Agency’s plans, such as during the Agency’s revised ESA Work Plan proposal comment period<sup>7</sup> and the recent VSPP, are essential to improve the quality of the program and to ensure the comments are used to inform the development of the finalized pilots, strategies, and whitepapers. We request that EPA provide a response to comments and reaffirm its commitment to work with stakeholders and coregulators to understand how it practically plans to implement its ESA proposals.

The PPC remains committed to support improvements to the ESA review for pesticide registration decisions. The PPC recommends that the Agency resolve the outstanding questions, requests for clarity and refinement, inconsistencies between parallel programs and collect adequate stakeholder input on the resolutions.

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<sup>7</sup> ESA Work Plan - <https://www.regulations.gov/docket/EPA-HQ-OPP-2022-0908>

Thank you for your consideration of our comments. If PPC members can be of assistance in any way, or if you have questions, please do not hesitate to contact me at [shensley@cotton.org](mailto:shensley@cotton.org) or (703) 475-7716.

A handwritten signature in black ink that reads "Steve Hensley". The signature is written in a cursive style with a large, stylized initial "S".

Steve Hensley  
Chair, Pesticide Policy Coalition

Attachment

### Attachment: Pesticide Policy Coalition Membership List

ADAMA	National Alliance of Forest Owners
Agricultural Retailers Association	National Alliance of Independent Crop Consultants
American Chemistry Council, Biocides Panel	National Association of Landscape Professionals
American Farm Bureau Federation	National Association of State Departments of Agriculture
American Mosquito Control Association	National Associations of Wheat Growers
American Mushroom Institute	National Corn Growers Association
American Seed Trade Association	National Cotton Council
American Soybean Association	National Council of Farmer Cooperatives
American Sugarbeet Growers Association	National Farmers Union
American Vanguard	National Onion Association
Association of Equipment Manufacturers	National Pest Management Association
BASF Corporation	National Potato Council
Bayer Crop Science	North Dakota Grain Growers Association
California Citrus Quality Council	Northwest Horticultural Council
California Dried Plum Board	RISE
California Farm Bureau	Scotts Miracle Gro
California Processed Onions Garlic Research Committee	Society of American Florists
California Specialty Crops Council	Syngenta Crop Protection
Corteva	U.S. Apple Association
Council of Producers & Distributors of Agrotechnology	U.S. Beet Sugar Association
CropLife America	U.S. Canola Association
Florida Fruit & Vegetable Association	U.S. Hop Industry Plant Protection Committee
FMC	United Fresh Produce Association
Golf Course Superintendents Association	USA Rice
Gowan	Valent U.S.A Corporation
ISK Bioscience	Washington State Potato Commission
Minor Crop Farmer Alliance	Western Growers
National Agricultural Aviation Association	