

# EPA FIFRA-Endangered Species Act Implementation

Farmers, applicators, and other users rely on access to pesticidal tools to protect crops, preserve infrastructure, advance public health efforts, maintain conservation practices, among other benefits. To ensure the legal defensibility of pesticide registrations and continued user access to these tools, it is essential EPA ensures its pesticide program is compliant with all the agency's legal obligations, including the Endangered Species Act (ESA).

Ensuring the pesticide program is compliant with ESA and other statutory requirements should not effectively prevent farmers and other users from meaningfully using pesticides. However, we are concerned that could be the result of recent ESA proposals. While we appreciate efforts by EPA, USDA, FWS, and other coregulators to address some challenges related to these proposals, more efforts are needed to revise EPA's approach to ESA implementation, especially in several core areas of concern that largely remain unaddressed.

## 1. ESA Risk Assessment Refinement

- EPA's models for evaluating the predicted exposure and effects of pesticides on species are overly conservative and do not rely on evidence and sound science.
- Although quality scientific and commercial data exists to refine risk assessments (pesticide usage rates, existing conservation data, real-world spray drift and water concentration data, etc.), the agency opts to use overly conservative assumptions which vastly overstate impacts on species. This concern was the topic of a 2013 report by the National Academies of Sciences.
- Unless revised, this flawed risk assessment will result in restrictions on farmers and pesticide users that are unnecessary to protect species; inflate regulatory workloads; and misalign with legal obligations to use the "best scientific and commercial data available."<sup>1</sup>
- If conducted under FIFRA, it is also vital that any proposed restrictions consider the costs and benefits of pesticide uses, as is required by that statute.

## 2. Flexible and Feasible Mitigations

- EPA's efforts to increase the number of compliance options and alignment with other established practices is greatly appreciated (e.g. EPA-NRCS MOU), however more action is required before these proposals can become workable for agriculture and pesticide users.
- Many practices available are not suitable for certain types of operations (e.g., specialty crops, non-ag uses) and could prevent many from being able to use pesticides. Many practices are prohibitively expensive to install and maintain, which may jeopardize the financial viability of pesticide user operations or run into other challenges (e.g. field modifications prohibited by rental contracts).
- Additional practices should be made available for users, focusing on those that have wide applicability to diverse user operations (e.g. education/training, drift reduction adjuvants), are not financially prohibitive to implement, and may already have been adopted and have a protective effect.
- EPA should also provide greater clarity and expand upon proposed conservation exemptions, including the scope of conservation plans that may already meet the agency's runoff and erosion mitigation objectives.

## 3. Clear, Simple Implementation Approach

- There remains significant concern with the complexity of proposals to date (e.g. point systems), which may be difficult for users and applicators to understand and comply with legal obligations. Unnecessary complexity poses risks and burdens for users and may not have the intended effect of protecting species.
- The complexity of these proposals also poses a challenge for state regulatory agencies, which may lack resources to implement unnecessarily complex and onerous proposals.
- EPA should adopt a clear, simple implementation approach that will not impose unnecessary burdens on users and state agencies, while enhancing intended protections for species.

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<sup>1</sup> 16 U.S.C. § 1536(a)(2)

#### **4. Further Map and Biological Evaluation (BE) Process Improvements**

- Efforts by EPA, FWS, and academics to develop a pesticide use limitation area (PULA) map refinement process are greatly appreciated and should be advanced quickly. Upon completion, this will hopefully result in refined PULAs that will alleviate burdens for users not near species habitat while maintaining protections for species in essential geographical areas.
- EPA should further improve its regulatory system to expedite both the registration and ESA consultation process. Consistent with the ESA processes for other federal agencies, registrant applicants should be permitted to develop BEs, which could result in efficiencies in EPA's workload and regulatory timeframes.

Agricultural Retailers Association  
AmericanHort  
American Farm Bureau Federation  
American Soybean Association  
American Sugarbeet Growers Association  
Biological Products Industry Alliance  
California Specialty Crops Council  
Council of Producers & Distributors of Agrotechnology  
International Fresh Produce Association  
Minor Crop Farmer Alliance  
Mississippi Vegetation Management Association  
National Agricultural Aviation Association  
National Association of Landscape Professionals  
National Association of State Departments of Agriculture  
National Association of Wheat Growers  
National Christmas Tree Association  
National Corn Growers Association  
National Cotton Council  
National Onion Association  
National Potato Council  
National Sorghum Producers  
Oregonians for Food & Shelter  
Society of American Florists  
U.S. Apple Association  
U.S. Beet Sugar Association  
U.S. Canola Association