



# PPC

**PESTICIDE POLICY COALITION**  
A Coalition Working for Sound Pest Management Policies

February 14, 2023

Melanie Biscoe  
Pesticide Re-Evaluation Division (7508P),  
Office of Pesticide Programs,  
U.S. Environmental Protection Agency,  
1200 Pennsylvania Ave. NW, Washington, DC 20460-0001

*Submitted via regulations.gov*

**Re: Comments on the Endangered Species Act (ESA) Work Plan Update: Nontarget Species Mitigation for Registration Review and Other FIFRA Actions, EPA-HQ-OPP-2022-0908**

Dear Ms. Biscoe:

The Pesticide Policy Coalition (PPC) respectfully submits comments on the U.S. Environmental Protection Agency's (EPA) November 2022 *ESA Work Plan Update: Nontarget Species Mitigation for Registration Review and other FIFRA Actions* (Work Plan Update).

The PPC is an organization of food, agriculture, forestry, pest management and related industries, including small businesses/entities, which are dependent on the availability of pesticides. PPC members include nationwide and regional farm, 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; equipment manufacturers and other interested stakeholders. PPC serves as a forum for the review, discussion, development and advocacy around pest management regulation and policy.

PPC members confront increasing pest pressure and disease threats introduced into the United States via weather, trade, and other factors. Pesticide manufacturers work diligently to ensure that pest control products are available through, among other entities, a web of seed, fertilizer, and pesticide distributors, transportation networks, and pesticide application services. These efforts help ensure farmers, ranchers, public health officials, and other pesticide applicators have the essential tools they need to continue to produce America's food, fiber, and biofuel and to protect our public health and infrastructure. Many of these members are small businesses reliant

on annual, time-sensitive sales and labor to support American agricultural production and small businesses.

The PPC agrees that EPA's Office of Pesticide Programs faces a decades-long challenge of meeting its ESA obligations for the actions taken under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). To address this challenge, EPA has developed over recent years attempts to comply with ESA as part of the registration and registration review process for pesticides. In April 2022, EPA released a work plan on how it will continue to address this challenge, including by incorporating protections for ESA listed species earlier in its FIFRA process. EPA has now released this first Work Plan Update, which describes EPA's efforts to reduce pesticide exposure to nontarget organisms, including listed species, during the FIFRA registration review process. Taken together, these steps are designed to move EPA toward fulfilling its ESA obligations by providing earlier protections for listed species, while attempting to increase regulatory certainty for growers, applicators, and pesticide registrants. The PPC agrees with these goals, and the Work Plan Update reflects a major milestone in EPA's journey to fully comply with ESA. We applaud EPA for developing steps to address this matter.

The PPC agrees that the status quo approach for managing ESA obligations under FIFRA is not sustainable in the long term. Still, the PPC has concerns with the Work Plan Update that warrant further refinement as part of its continued development.

The Work Plan Update is complex, introduces a new approach with respect to early mitigation, and requires the consideration and review of experts and stakeholders familiar with the subject matter. The Work Plan Update presents mitigations to protect species listed under ESA and their habitat that, taken together, may negatively impact how pesticides are used today. As a result, it is incumbent upon EPA to ensure all parties have certainty that any proposed mitigation actions are necessary and can be implemented in conjunction with modern pesticide application practices. EPA needs to recognize that any proposed changes affect all stakeholders, especially those stakeholders, including farmers and pesticide user groups, who will be required to implement any new mitigation measures added to product labels.

While the PPC generally supports EPA's efforts to provide interim protections for species as part of its duties under both FIFRA and ESA, EPA must be able to justify the mitigation measures with the best available science and must make the link between the measures required and species protection. Importantly, EPA must also be open to feedback on whether measures included in the Work Plan Update are more conservative than the science supports and incorporate refinements to more appropriately improve the mitigation measures going forward. While EPA only invites public comment on the Appendix, the Work Plan Update informs the Appendix; therefore, comments on the Work Plan Update itself may inform any necessary changes to the Appendix.

The PPC provides the following general policy recommendations that can serve as a foundation for what should result in a more detailed and ongoing dialogue among all stakeholders about several important elements of ESA mitigation plans going forward:

- **Broad mitigation measures should not undermine appropriate risk assessment.** While interim mitigation measures can serve as a bridge to full ESA compliance, they should not supplant product-specific risk assessments that could confirm the need for a particular measure or reveal that less stringent mitigations are necessary. As such, broad mitigation measures should not automatically be incorporated into risk assessments as baseline conditions, which appears to be under consideration in the Work Plan Update. EPA must be able to demonstrate between mitigation efforts and salutary effects at the conclusion of the consultation process, rather than assume that whatever early mitigation is adopted is necessary for a no jeopardy or adverse modification finding.
- **Consider advances in chemical and application technology when grouping pesticides.** When evaluating whether to group certain pesticides together, it cannot be assumed that the entire class of pesticides is expected to have uniform effects on listed species, as the Work Plan Update suggests. Newer chemistries, even if in the same class as some older chemistries, may have different ecotoxicological impacts on the environment than older chemistries. EPA must not, therefore, group pesticides together without evaluating and accounting for these distinctions.
- **Findings from implementation of existing biological evaluations (BEs) developed using the jeopardy/adverse modification (J/AM) approach need to be applied at the early mitigation stage.** EPA and the Services have put significant time and effort into preparing science-based BEs and have developed a new approach to reduce the likelihood of a future jeopardy/adverse modification finding. This new approach has revealed, for example, that county-level bans are ineffective, inefficient, and overly broad measures that discourage growers from proactively engaging on avoiding exposure to nontarget species. Thus, this type of overly broad measures should not be an option going forward, so that all parties can focus on appropriate and effective solutions. Likewise, other lessons learned from preexisting analyses and evaluations and feedback from implementation by stakeholders, such as growers and applicators, should be reflected in the Work Plan Update and in any label revisions going forward.
- **Incorporate stakeholder input to determine the feasibility of mitigation measures, along with providing flexibility to growers and applicators.** When EPA is considering mitigation measures, it is essential that grower and applicator groups are involved. Without specific education on both *what* the new provisions are and *why* they are being implemented, including how the science supports the requirements, widespread support from growers and applicators will be challenging. It is incumbent on EPA to ensure this engagement occurs. The PPC requests that relevant stakeholders should have ample opportunities to meaningfully participate in an efficient, defensible, and transparent process to share information with the goal of protecting vulnerable species, providing regulatory certainty, and offering a level of flexibility to growers and applicators.

- EPA and the Services must establish efficient processes to complete the entire registration/consultation process.** The PPC agrees that “*EPA must adopt more efficient approaches to meeting its ESA obligation,*” and appreciates that early mitigation may be one way to achieve some efficiencies. Another efficiency that EPA should adopt is allowing registrants and pesticide end-users with opportunities to quickly provide input on how best to refine upfront mitigation measures based on additional data. It is important for EPA and the Services to recognize that, as ESA applicants, registrants must be involved in every step of the way. The PPC agrees with EPA that each round of label amendment submission, review, and approval, creates additional work for EPA, state agencies and pesticide registrants, to register amended pesticide products. This is why it is critical that the Services and registrants are included in discussions with EPA at Steps 1 and 2 of the 3-Step ESA consultation process<sup>1</sup> to finalize mitigations *before* finalizing labels.
- Prioritize development of programmatic consultations.** All stakeholders in the pesticide registration process, including registrants, regulators, and end-users, would be well-served by developing programmatic consultations on a pesticide-class basis (herbicides, insecticides, etc.) that include practices that might avoid jeopardy for all species. As stated above, individual products, and especially newer chemistries may react differently in the environment; hence, have a narrower spectrum of activity than some older chemistries or otherwise present a different potential risk profile. So, while considering programmatic consultations, EPA assessments that group individual pesticide registration assessments may need to evaluate and account for these distinctions.
- EPA needs to consult with the specialty and nonagricultural pesticide industry segment as it works to improve ESA implementation:** The Work Plan Update has limited reference to non-agricultural uses of pesticides. The PPC requests EPA consult specifically with registrants and applicators of specialty<sup>2</sup> pesticides to ensure data that is unique to specialty applications is incorporated into EPA’s risk assessments and development, along with implementation, of early mitigation measures. Additionally, the PPC wants to emphasize that the mitigation measures in the Work Plan Update Appendix, which are for agriculture, are not appropriate and transferrable, with the exception of Bulletins Live Two! to specialty use applications. Rather, there needs to be a menu of mitigation measures developed specifically for specialty use applications and in consultation with registrants and applicators in the specialty pesticide industry.
- Need for additional information and training on Bulletins Live! Two.** PPC members acknowledge EPA’s efforts to limit certain pesticide use restrictions to geographic areas

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<sup>1</sup> See “Revised Method for National Level Endangered Species Risk Assessment Process for Biological Evaluations of Pesticides” (EPA, 2020), available at <https://www3.epa.gov/pesticides/nas/revised/revised-method-march2020.pdf>.

<sup>2</sup> Specialty pesticides include a wide range of products used in vegetation management, structural pest control, aquatic, vector control, forestry, and others. Specialty pesticides are not only critical in the protection against vector-borne diseases and in the maintenance of critical infrastructure but are an essential tool in the control of invasive species that may threaten the critical habitat of endangered species.

where necessary and acknowledge that Bulletins Live! Two is EPA's chosen method to convey these restrictions. As EPA recognizes, "*there may be applicators who are unfamiliar with this system.*" EPA does not explain how it plans to familiarize or train pesticide applicators with this system beyond including language on labels directing them to Bulletins Live! Two. While applicators know that they must carefully review and follow all label requirements, it is important that EPA educate applicators on any label changes that may be unfamiliar to applicators. The PPC further recommends that EPA provide additional explanation regarding how it intends to announce any updates to Bulletins Live! Two and that EPA involve stakeholders in determining what will be most effective.

Thank you for consideration of these 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 cursive script that reads "Steve Hensley".

Sincerely,  
Steve Hensley  
Chair, Pesticide Policy Coalition