



OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION

WASHINGTON, D.C. 20460

September 4, 2024

Mr. Kyle Kunkler
Director of Government Affairs
American Soybean Association
1 M Street SE, Suite 200
Washington, DC 20003

Dear Mr. Kunkler:

Thank you for your letter sharing your concerns about the ecological assessment process to evaluate potential impacts of pesticides to endangered species and their critical habitats. In your letter, you assert that EPA's methods are overly conservative, often relying on unrefined models and very conservative assumptions in lieu of relevant and reliable data. Your overarching concern is that because the assessments can significantly overstate impacts to listed species, EPA would identify mitigations that are not needed to protect listed species. You also noted EPA's willingness to discuss risk assessment improvements and requested a dialogue by September for that purpose.

EPA shares the goal of using an assessment process that limits mitigations to those necessary to protect listed species. That is why EPA and the other members of the FIFRA Interagency Workgroup Group (IWG)¹ have spent significant time and resources over the last several years refining and improving on the process, including seeking feedback from the public and scientists on risk assessment approaches, on analyses for individual chemicals in each biological evaluation, and on each biological opinion. Many aspects of EPA's current approach incorporate suggestions from that input. And EPA agrees there is always room to improve every type of risk assessment. For example, and as suggested in your letter, the strategies used the refined Tier 3 methods (that were used to assess runoff for the Enlist products) to provide mitigation relief for growers in areas with lower runoff vulnerability.

With that said, EPA disagrees with the overly broad or inaccurate assertions in your letter about the agency's methodology for various reasons.

¹ Section 10115 of the Agriculture Improvement Act of 2018 (2018 Farm Bill) (Pub. L. 115-334), amending FIFRA section 3(c)(11) (7 U.S.C. § 136a(c)(11)), established the IWG to provide recommendations regarding, and to implement, a strategy for improving the consultation process required under ESA section 7 (16 U.S.C. § 1536) for pesticide registration and registration review. The IWG consists of five federal agencies: The White House Council on Environmental Quality, Department of Agriculture, Department of Commerce, Department of the Interior, and Environmental Protection Agency

- The approach described in the final Herbicide Strategy² and the draft Insecticide Strategy³, which are part of the EPA ESA Workplan⁴, incorporates refined methods (Tier 3) that minimize the number of unrealistic assumptions, rather than unrefined methods (Tier 1) that use more precautionary assumptions. In other words, it incorporates real world data on pesticide usage and species biology, it accounts for variability in exposure across the country, and it considers more realistic and less conservative toxicity endpoints that represent impacts to plant populations than a Tier 1 approach.
- EPA's use of surrogate species is consistent with how other countries assess risk and with the 2013 recommendations of the National Academies of Sciences on how to assess impacts to listed species and other non-target organisms. Further, there is no ability to test pesticides on listed species, so surrogate species are the only option for risk assessments.
- The strategies account for available information on differences in the sensitivities among species to pesticides (*e.g.*, looking at how an insecticide impacts beetles rather than all insects).
- In both strategies, EPA interprets the potential for population-level impacts (not likely, low, medium, or high) by accounting for differences in pesticide exposure throughout the US. This is a refinement to EPA's screening level assessments that assess risks using more conservative field-level exposures.
- The strategies identify mitigations based on a listed species' habitat and thus do not use overly conservative assumptions about the habitat of all listed species.
- EPA used the best maps available on where species occur but knows that many of those maps can be improved. Even though neither the ESA nor FIFRA require EPA to develop better maps, the Agency is voluntarily devoting significant resources to developing those maps to limit the regulatory impacts of its mitigations.
- The strategies reduce the level of mitigation needed when pesticide applicators use precision agriculture, use less pesticide than allowed on the label, or treat only a portion of their field.
- EPA used pesticide usage data in developing both strategies. For example, the Agency used the data to identify areas where pesticide use overlaps with species habitat. Between the draft and final Herbicide Strategy, EPA identified over a hundred species with low overlap with pesticide usage. EPA then excluded these species from the list of species that could need a greater level of mitigations through pesticide use limitation areas (PULAs), thus limiting unnecessary impacts on growers.

EPA has committed to finding time in 2024 to expand the dialogue about improving its listed species assessment process. For example, EPA is meeting with pesticide manufacturers in the fall to hear their recommendations for process improvements. And EPA will host a meeting this October (date to be announced) targeted at growers to explain how the Agency currently assesses potential impacts to listed species. EPA thinks this meeting will help you understand how it is incorporating many of the recommendations in your letter.

² Final Herbicide Strategy (EPA-HQ-OPP-2023-0365); [Regulations.gov](#)

³ Draft Insecticide Strategy (EPA-HQ-OPP-2024-0299); [Regulations.gov](#)

⁴ [EPA's Workplan and Progress Toward Better Protections for Endangered Species | US EPA](#)

EPA looks forward to discussing these and other points with you in the October meeting and will soon share more information on registering for it.

Sincerely,

Jake Li
Deputy Assistant Administrator