



June 25, 2024

Jan Matuszko
Director, Environmental Fate and Effects Division
Office of Pesticide Programs
Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

RE: Update on Draft Herbicide Strategy; April 2024

Dear Ms. Matuszko:

CropLife America (CLA) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA or the Agency) Office of Pesticide Program's April 2024 Update on the Agency's Draft Herbicide Strategy (the DHS Update).

Established in 1933, CropLife America (CLA) represents the developers, manufacturers, formulators, and distributors of pesticides for agriculture and pest management in the United States. CLA's member companies produce, sell, and distribute nearly all the pesticide and biotechnology products used by American farmers. CLA represents the interests of its registrant member companies by, among other things, monitoring legislation, federal agency regulations and actions, and litigation that impact the crop protection and pest control industries and participating in such actions when appropriate.

CLA greatly appreciates the Agency's issuance of the DHS Update and the extent to which it reflects EPA's consideration of significant input from stakeholders on the DHS. As we have previously noted, as EPA's pesticide program continues to improve its review process under 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. We see the DHS Update as a promising recognition of that fact and look forward to continuing discussions as to how the DHS can be successfully finalized and implemented.

CLA applauds the stated objectives of the DHS updates – to make the strategy easier to understand, to increase mitigation flexibility for growers, and to reduce the amount of mitigation needed when growers have already adopted practices to reduce pesticide runoff or where runoff is minimal. CLA also appreciates the work being undertaken to improve other aspects of the DHS, for example, refining of maps where pesticide-related mitigations may be necessary to shrink the footprint of pesticide restrictions under the final strategy.



Risk Assessment Refinements Are Critical

While CLA appreciates the efforts made to improve flexibility in these mitigation measures, 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. Overly conservative assumptions will drive unworkable mitigations with no environmental benefit for listed species. As such, broad mitigation measures should not automatically be incorporated into the ESA process. Refinements should incorporate modification and modernization in exposure calculations and incorporation of all relevant effects data. Updating spray drift calculations for modern agricultural processes, adding realism to application assumptions through geo-spatial information, crop layer, and usage data to better account for exposure, are also needed refinements in the ESA process. Otherwise, proposed mitigations may be unnecessary to protect species and detrimental for agriculture in creating excessive economic impact for farmers. Relatedly, it is imperative that EPA right-size mitigations early on in this process and remain open to adjusting the default mitigations as the Agency proceeds through the stages of the registration process.

Adopting an overly precautionary approach, early on, can hinder the eventual development of more appropriate and product-specific mitigations. Such an overly conservative and precautionary approach has most recently been rejected by the US Court of Appeals for the District of Columbia Circuit. *Maine Lobstermen's Association et al. v. National Marine Fisheries Association et al.*, Case No. 22-5238 (D.C. Cir. June 16, 2023). We encourage the Agency, the United States Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (hereafter, the Services) to greatly refine their exposure and effects assessments to be more reflective of actual pesticide use and to allow a more reasonable and realistic determination of potential population level effects.

CLA members look forward to opportunities to expand on potential risk refinements and their incorporation into the ESA Workplan, and we stress that public events such as EPA Technical Briefing would help to build additional trust and goodwill with stakeholders in the ongoing development of the EPA ESA Workplan and final strategies.

Greater Flexibility and Recognition of Ongoing Conditions and Practices are Appreciated

We appreciate EPA efforts to provide growers and applicators more flexibility in mitigations, and understand the DHS Update to reflect EPA's increasing recognition of the conditions under which most growers operate – through the geography and topography of their farms, their compliance with state or local regulation, best practices or conservation programs, or simply as a means of getting the value of the pesticide products they paid for – growers are already taking measure to keep pesticides on the field where they are intended to perform. Many growers have been practicing these measures for decades, sometimes as part of state and local conservation programs. We appreciate EPA's recognition of these efforts and encourage the Agency to consider how to give growers credit for the practices they are already using.



We appreciate EPA's commitment to adjusting required mitigation for areas with little precipitation, as well as its plans to refine its description of runoff vulnerability, and to increase the relief from mitigation requirements for growers in areas with lower potential for runoff. We also appreciate the coordination of how EPA defines "flat" fields with the definition used by the U.S. Department of Agriculture (USDA). The additional mitigation practices that EPA has recognized in the DHS Update will also provide greater flexibility for growers.

The May 9, 2024, joint EPA/USDA Mitigation Workshop was especially appreciated, and it provided a much-needed public forum for discussion and problem solving. We look forward to participating in actions and further discussions generated by the workshop.

CLA is encouraged by the Agency revisiting the mitigation levels in the DHS Update to simplify the approach. We strongly encourage the Agency to move away from the point-based mitigation menu options and simplify the mitigation requirements by requiring a certain number of mitigation practices be based on location and crop. This will ensure that growers apply the most pragmatic approaches to reduce drift, and runoff/erosion given their specific location, crop, and field characteristics. It will also give growers the flexibility they need to comply with label requirements.

Clarification Requested

CLA appreciates the clarification the DHS Update offered on several fronts. First, EPA's recognition that references to reducing application rates should not jeopardize pesticidal efficacy is critical, and providing clarity on that point will be vitally important. Similarly, EPA's clarification of the relative effectiveness of various mitigations, such as cover crops, will add to the acceptance and understanding of the mitigation measures. Additionally, providing information on where spray buffers begin and end is greatly appreciated and will similarly add to confidence in the approach.

Furthermore, CLA member companies are encountering challenges with new product registrations as a 'preliminary strategy' is being applied while strategies are still in development and ESA requirements for older products used as pre-mix components are being applied. Clarity and certainty are appreciated to maintain efficiency and timeliness for new product registrations.

Expanded Public Engagement

CLA would like to recognize that expanded public engagement is needed. Recent examples such as the Oregon and Washington ESA Workshops are good examples of processes to help identify issues and solutions that will aid in successful implementation of the EPA ESA Workplan.

In addition to expanded grower/applicator engagement, CLA continues to see the need for enhanced and earlier registrant involvement in the development of the Herbicide and future ESA strategies, respectively.



Outstanding Issues

In addition to the need to improve the risk assessment process, EPA must continue to focus on other aspects of the implementation of these measures to help ensure that these ESA review improvements will be successful. Communication and outreach to growers will be critical, as will coordination and collaboration with state co-regulators. Improvements in the digital capabilities of Bulletins Live! Two, as well as training on how to use it will also be critical.

CLA continues to have concern that growers implementing certain mitigations described in the DHS update may have a potential negative impact on the grower's Integrated Pest Management (IPM) plan for controlling pests. For example, vegetative strips, whether as a vegetative filter strip (VFS) or employed in another runoff- reduction measure, such as a grassed waterway, may become habitat for pests the growers are trying to eliminate from their fields; potentially resulting in additional pesticide applications. Vegetative strips also present an additional concern for growers producing for the fresh produce market, as they must adhere to food safety requirements developed by, among others, the U.S. Food and Drug Administration (FDA). These rules include steps to ensure that produce does not become contaminated with, among other things, microbial pathogens from mammals, amphibians, and reptiles, which could inhabit vegetative strips. Food safety audits conducted by the FDA or retailers will cite farms that use vegetative/grassed ditch banks, because they may provide cover for species that can transmit microbial diseases and pathogens.

Engagement and training from certified crop consultants, extension agents and other trusted advisors should be an important part of the mitigation education process and recognized in the mitigation framework. Providing specific and recognized mitigation credit to growers who engage these trusted advisors in developing a mitigation approach would encourage the participation of these advisors in this process.

An additional improvement is to prioritize mitigation that will not change land use patterns, recognizing that much farming takes place on leased land where significant land use modifications are not practicable. According to the American Farm Bureau Federation, approximately 40% of farming occurs on leased lands. This issue should be further investigated to help ensure farmers will have adequate options to continue farming in these areas.

We understand that the current EPA ESA Workplan relies heavily on creating interim mitigations through FIFRA, but the issue of efficient ESA Consultations remains unaddressed. There is concern that the EPA ESA Workplan creates an interim solution that becomes permanent without addressing needed consultations. CLA members would appreciate additional efforts by EPA to ensure that a framework is created by the workplan that will provide a pathway for improved and efficient consultations.



Should you have any questions or comments, please feel free to contact me at mbasu@croplifeamerica.org or (202) 296-1585.

Sincerely,

A handwritten signature in black ink, appearing to read "Manojit Basu", with a horizontal line underneath.

Manojit Basu, PhD
Vice President, Science Policy CropLife America

CC: Ed Messina Director, EPA OPP
Gina Schultz, Deputy Assistant Director, USFWS
Lisa Marie Carruba, Acting Division Chief, NMFS Office of Protected Resources
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