October 22, 2023

Docket No. EPA-HQ-OPP-2023-0365
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 (Herbicide Strategy)

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

Re: EPA-HQ-OPP-2023-0365

Dear Ms. Matuszko:

National Corn Growers Association (NCGA) appreciates the opportunity to comment on the *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 (Herbicide Strategy).* Founded in 1957, NCGA represents more than 36,000 dues-paying corn growers in all 50 states, and the interests of more than 300,000 farmers who contribute through corn checkoff programs in their states. NCGA and its 25 affiliated state associations work together to help protect and advance corn growers' interests.

NCGA acknowledges the Environmental Protection Agency's (EPA) legal requirements to meet its obligations under the Endangered Species Act (ESA) and reduce exposure of federally listed endangered and threatened species (endangered species) and designated critical habitats. While we also understand the workload the agency faces to comply with ESA, the timelines put forth in the megasuit settlement are not realistic and the impact to U.S. corn growers cannot be understated. The Herbicide Strategy exemplifies a fundamental change to the review of active ingredients (AIs) and the process by which chemistries are made available to growers. Associated mitigations will now be based on general assessments of risk of the herbicide and general assessments of the fates of these products on endangered species and critical habitats, resulting in a variety of mitigation measures that remain challenging, costly, and at times, impossible for farmers to implement. NCGA recognizes legal vulnerabilities if EPA is not able to find a path forward for ESA within the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) process – lawsuits, delays in registrations, and real threats to existing and new registrations.

Reviewing, digesting, and providing constructive feedback to something as monumental as this draft framework is a daunting task, in which there is an overwhelming amount of information and salient points that will impact the U.S. corn grower community, and agriculture as a whole. While NCGA will focus our comments below on areas top of mind to U.S. corn growers, NCGA strongly urges EPA to work with the stakeholder community in advance of proposed and/or any final decisions on all the proposed frameworks, processes and projects related to ESA. It is vitally important to gather upfront input from stakeholders, in particular farmers, to gain first-

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hand, real world, boots on the ground knowledge of how the intricate pieces of risk assessment, maps, geography, agricultural practices, and mitigation measures all fit together to best meet the objectives of ESA, while minimizing additional regulatory burden to agriculture.

NCGA has provided detailed comments on proposed mitigation measures submitted in October 2022 to EPA's Proposed Revision to the Atrazine Interim Registration Review Decision (Docket ID: EPA-HQ-OPP-2013-0266-1627), in February 2023 on EPA's ESA Workplan Update: Nontarget Species Mitigation for Registration Review and Other FIFRA Actions (Docket ID: EPA-HQ-OPP-2022-0908), and on the Vulnerable Listed (Endangered and Threatened) Species Pilot Project: Proposed Mitigations, Implementation Plan, and Possible Expansion (Draft Plan) (Docket No. EPA-HQ-OPP-2023-0327). The volume of information on mitigation measures contained in the Herbicide Strategy put forth without conscience consideration, response or purposeful dialogue based on previous comments by NCGA as well as other agriculture and grower organizations, continues to frustrate U.S. farmers.

Building the Foundation for an ESA Process for the EPA

NCGA acknowledges the agency's workload and its desire to chart a path forward to implement mitigations efficiently and effectively. While we are supportive of EPA's goal to streamline its process for assessing risks to endangered species from pesticides, the Herbicide Strategy needs a more practical approach that simplifies the strategy to reduce confusion and enable compliance; refines the pesticide use limitation areas (PULAs) for both species and geography; and providing more practical measures to growers, particularly for those in PULAs.

The EPA must consider the overall approach of finding efficiencies and unintended impacts. The Agency relies heavily on models, maps, and assumptions, which are all very technical. In the time spent by NCGA reviewing all the materials, questions remain on aspects of the data used, the assumptions made, and the models relied upon. As a science-driven agency, EPA needs to assess what improvements or gaps are needed before overly broad and conservative measures are taken with the singular goal of protecting listed species. Growers are impacted by these measures. EPA must be able to justify these measures with the best available science and must explicitly explain the link between the measures required and benefits to species. Further, if it is demonstrated that restrictions have no benefit to species, EPA needs to be proactive in removing these restrictions. Likewise, as new technologies change the impacts to species, EPA needs to review restrictions and adjust accordingly.

There are also two overarching concepts that are not clear in the Herbicide Strategy. The EPA states, "The proposed Strategy involves a substantial and necessary change in process to identify and mitigate potential impacts from agricultural uses of conventional herbicides even before EPA makes effects determinations or initiates/completes consultation." While this intent may be true in order to find efficiencies, the Herbicide Strategy framework must fit into the FIFRA regulatory process where appropriate risk is assessed and economic impact is considered. Second, the strategy focuses mainly on the use of mitigation measures but does not provide enough detail as to when a restriction would be imposed on an herbicide. Therefore, NCGA cannot accurately assess the potential impact on the grower community. For example, according to the National Agricultural Statistics Service 2022 State Agriculture Overview, a 10 percent yield loss of corn attributed to uncontrolled weeds would equate to a $147 million dollar loss in Illinois alone. Farmers would face additional economic loss because they need to farm every acre to be productive – loss of cultivated land impacts the bottom line. The magnitude of economic impact to U.S. corn farmers is potentially staggering.

Oversimplification of Complex Data Results in Serious Consequences

EPA outlines a process to focus on upfront protection for listed species. The approach takes complex and not well-refined species occurrences and habitats, coupled with dated cropping data maps, which has resulted in an over-estimation of land potentially impacted. U.S. corn growers have experienced the impact of this approach when endangered species restrictions were added to the Enlist/Enlist Duo herbicide labels.

In January 2022, the EPA announced seven-year registrations of Enlist and Enlist Duo, where 217 counties with ESA restrictions resulted in county-level prohibitions on these products. With the expeditious review of new data, EPA issued a label amendment in March 2020, lifting county-level bans on use of Enlist and Enlist Duo in 134 counties across multiple states, including those where the American Burying Beetle is alleged to be present. After an abundance of caution and thorough review by the EPA in its ecological risk assessment and consideration of additional evidence, the Fish and Wildlife Service offered its Biological Opinion (BiOp) that most listed species and critical habitats were determined to have no or no likely adverse effect as a result of labeled use of the Enlist products. So, as the consultation moved forward with the Services, we saw that science prevailed – and impacted species in question were very limited and as a result the mitigations were fairly limited. The county-wide bans were lifted. U.S. corn growers are hopeful that the BiOp will drive further refinement of the products' labels. Unfortunately, this has been nearly two years and counting of unnecessary restrictions on a valuable tool for growers.

The foundation of these use restrictions is based on the four Pesticide Use Limitation Area (PULA) maps developed by EPA. The Agency states, "To efficiently and effectively implement geographically specific mitigations for the Strategy, EPA is not proposing to develop single species PULAs and bulletins, but rather to produce four bulletins, each of which represents multiple species that have common taxonomy and habitats and thus need the same mitigations." This approach ignores scientific accuracy for the sake of simplicity and efficiency. Scientific evidence does not support the assumption that plants within similar taxonomy and habitats respond similarly to the same herbicide. NCGA assumes that by grouping 900 species into only four PULAs, the most conservative estimates would be used, and the most restrictive mitigation applied. Additionally, the land covered by the actual PULA would be exponentially greater than if an individual species was considered. While EPA will be tasked a higher burden, the most balanced approach to protect listed species and minimize impact and regulatory burden to agriculture is to use specific interactions between individual species and herbicide sensitivity to create the maps by which regulatory restrictions would be placed on the products used by growers in those areas.

It is alarming that 43.6 percent of corn acres would fall within one of the four PULAs. Better maps at a more regionally specific level coupled with refined and specific mitigations or habitat creation would be more effective in overall protection of these fragile species.

Exemptions

EPA has proposed three separate qualifications by which growers are exempt from following the mitigation menu. The Agency should be aware that even these three provisions, which seem straightforward, truly are not. Stated in the strategy, "For example, EPA is considering exempting growers from certain runoff/erosion requirements in the proposed Strategy when they participate in conservation programs designed for that purpose such as the United States Department of Agriculture's (USDA) National Resource Conservation Service (NRCS) program." While NCGA appreciates EPA's understanding of the importance and the impact of these voluntary conservation program, U.S. corn growers would feel better informed if this was clearly explored and articulated so that growers may consider options to meet exemption requirements through national and state

programs which already exist. Other resources that should be considered by EPA include the role of Certified Crop Advisors (CCAs), and other conservation programs such as the partnership between NCGA and Pheasants Forever/Quail Forever which provides access to qualified field staff.

Conversations within the grower communities identified a variety of interpretation regarding the exemption, "Field has subsurface drainage or tile drains installed." The confusion was not in the exemption itself, but how a field would be categorized if no controlled drainage or saturation buffer zone was available for the effluent (water). While U.S. corn farmers do employ subsurface drainage or tile drains, very limited fields would have some sort of controlled drainage or buffer zone that would qualify. However, when EPA discusses the application of mitigations for fields with subsurface drainage or tile drains without these measures, there was confusion if these fields would even be eligible for mitigation and therefore herbicide application. While NCGA's final interpretation is that these fields would be treated the same as a field lacking this infrastructure, the EPA needs to be clear on their intent.

Mitigation Measures

EPA's attempt to provide growers flexibility is commended; however, as drafted, the Herbicide Strategy presents complicated mitigation measures, a weighted point system and both general label and PULA driven restriction requirements. While these requirements will not go into blanket effect, growers will need to navigate this new complex setting as an AI potentially has new restrictions applied as it is under review or part of a new registration. U.S. corn growers must be at the table with EPA to discuss the use of the AI, the potential endangered species or critical habitat, and any possible mitigation measures.

NCGA refers EPA once again to previous comments submitted in response to proposed mitigation measures as indicated above. Successful participation by U.S. corn growers requires that mitigation measures be simple, efficient, and practical. Grain production benefits from economies of scale, with high volume, low margin products. NCGA requests that EPA also consider the following:

- Explore ways to maximize the value of widely adopted practices farmers are most familiar with, such as no-tillage or conservation tillage and cover crops. While each of these examples are not applicable in all corn production situations, practices such as these can be a win-win for both the species and the soil health interests of the farmers. It is easier to encourage broader adoption of a known practice, especially when there is shared value.
    - EPA should also consider a more extensive review of practices widely adopted by growers as mentioned above to understand the full potential point value. Cover crops not only reduce soil erosion and improve water quality, but they also play an important role in weed suppression.
- Identify point values or offsets when growers establish additional habitat. For example, in 2021, NCGA established a partnership with Pheasants Forever and Quail Forever to support acres being planted into pollinator habitat with guidance provided by their vast network of field staff. Through these programs, NCGA provides resources and support to farmers who wish to establish pollinator habitat on their land and support a strong and healthy ecosystem across the corn belt.
- Establish phase in periods for growers based on the adoption of a mitigation measure, such as windbreaks which could take years to reach required qualifications.
- Outline specifically what maintenance can be performed within exempted fields, buffers, etc. Establishment of weeds in these areas could be harmful to both local growers as well as potentially protected species and habitat. EPA must also consider the noxious weed laws of individual states that may require use of an herbicide if the presence of a noxious weed is found.

- Implement safe harbor provisions that protect growers in compliance but experience unintended mitigation challenges out of their control, such as an unexpected deluge of rain, cover crop failure, or harm to a species despite mitigations.
- Define a clear process by which the agricultural community can add mitigation measures.
    - This is required to quickly identify and add valid options for growers to choose from. The reality is that mitigation picklist options may be significantly reduced for a grower based on the topography of a field, neighboring fields or landscapes, or the simple fact that several proposed options are not a useful or feasible practice for corn growers.
    - The process needs to be streamlined, transparent, and fast enough to keep up with technological progress.
- Consider the intent of pesticide reduction and how to best implement this approach. The EPA has used maximum application rates allowed by the label for their risk calculations. However, growers often use lower rates for effective weed management balanced with the economics and time associated with higher applications or passes over the fields. If EPA's intent is to account for this conservative estimation by the Agency, reduction of pesticide exposure could be achieved both by the proposed reduction in the application rate as well as the number of applications as a mechanism. However, EPA has a responsibility to ensure that growers' hands are not forced to swap good weed resistance management practices for point values. In many cases, pure reduction of herbicide application can have a negative effect on farmers and the environment. In some cases, a reduction in application rates may lead to more herbicide resistant pests that present additional long-term challenges. The growers must have clear information on the label to understand the minimum effective application for weed resistance management purposes. Additionally, it is critical to have other highly acceptable mitigation measures for growers to choose from beyond reduction in herbicide applied.
- Recognize that any significant reduction in available farmland is simply not sustainable at the farmer level (such as infield buffers).
- Outline and implement educational programs for growers and applicators. Consider educational "credit" toward mitigation points.
    - The role of education to stakeholders, particularly growers or their applicators, should be considered by EPA as a viable mitigation measure. Supported by data available from the University of Georgia (Using Pesticides Wisely program), education of applicators and pesticide users has influenced and reduced pesticide movement more than any other mitigation approach in Georgia. Growers would gain a better understanding of the actual habitat of an endangered species and its proximity to fields potentially treated with an herbicide.
    - EPA could utilize existing relationships with state Land Grant Universities and the Extension Services to conduct webinars, in-person meetings, etc.
    - This proposed overhaul of the pesticide application system after decades will certainly need significant education to farmers so that they understand how to comply.

Other Considerations for Implementation

EPA should consider several aspects where the Herbicide Strategy intersects with on-farm operations.

Leased Land

Few growers operate only on land wholly owned by them. Therefore, many growers will have to contend with an additional cost for operating on land they do not own and likely do not have the opportunity to lease in perpetuity. Landowners may or may not be willing to support that investment or a

cost-share approach, leaving growers with few options to proceed with growing a crop in the way they believe best while also remaining in compliance with the label. Ultimately, the improvements necessary for a mitigation measure, like a buffer or a windbreak, may not be possible at all on leased land. Land located within a PULA may also face a decline in value.

Cost
Several of the proposed mitigation measures have significant costs associated with them. Growers will inevitably need access to funding or cost share in order to implement these measures that would work on their farm if they are not already in place.

Phased In Approach
The Agency has historically utilized a "phase in" approach when monumental changes or policies have been instituted, such as the Worker Protection Standards. EPA should consider a similar approach over the course of eight years with ESA related changes. EPA has an incredible responsibility to create and disseminate educational materials and training. This time could be used to continue refinement to reasonable, practical implementation of a very clear process, tools developed as well as educational materials and training to all levels of stakeholders, including registrants, growers, CCAs, extension service, states, etc.

A Tool Other than Bulletins Live Two is Necessary
Acres are farmed in a cropping system which not only preserves the soil and water on that land, but also suppresses pests, all while bringing the best economic return to the grower through quality and yield. Generally, this system includes a rotation of two or more crops, the least amount of tillage necessary, and where appropriate, the use of cover crops. Growers rely on herbicide technologies to manage these systems, utilize conservation and no till practices, and need to plan out when and how these products will be used within this multi-year system based on the land, the AIs available, and the crops in the rotation.

The use of a table listing the number of mitigation points for different herbicides will not be sufficient for a grower, crop consultant, or applicator to develop a season long pest control program. Bulletins Live Two, as it exists, is also not a viable option as it is not easily accessible on a phone, cumbersome, unintuitive, and time consuming to go chemical by chemical, location by location.

A database, with an associated phone-based app, needs to be developed to do the following:

- Easily identify any fields located in a PULA. This needs to be made as easy as possible with a state/county search.
- Select a crop and herbicide in that PULA and see what level of mitigation is required and what mitigation options are available to the grower.
- Generate a list of herbicides in a PULA for their crop and see the level of mitigation required to apply that herbicide or if application is restricted in some way.
- Provide information on individual herbicides should also be made available with crop specific general label mitigations, as well as listed species mitigations at the state and county level (with associated map if not).
- Address premix products.

This tool will not replace options for those lacking access to technology or internet. Rural connectivity and access to "smart" technology can be a limiting factor, and the Agency should also consider alternatives.

Corn Production Meets Herbicide Framework Implementation

Corn is grown on approximately 90 million acres across the U.S. every year. These acres stretch from North Dakota to southern Texas, from Maryland to California and everywhere in between. The growing conditions of these 90 million acres span a wide variety of weather patterns, soil types, geographic features and more. While EPA has committed to flexible options for farmers to choose from for mitigation, the list needs to be expanded to include more workable solutions for corn growers.

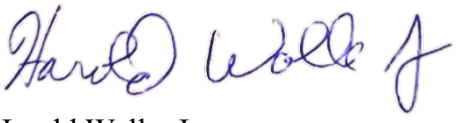
The reality of a point system as it stands (assigned values associated with the current list of measures) just does not add up, literally, to be a viable option for many U.S. corn growers. The Weed Science Society of America shared with NCGA the findings of a survey conducted by its Endangered Species Committee. Based on this survey, U.S. corn growers in corn belt states of Iowa, Illinois, and Indiana would all struggle to achieve enough mitigation points required to utilize certain herbicides. In Iowa, the survey indicated an achievement of six points, in Indiana, a range of five to seven points, and in Illinois, a range of only three to seven points.

Corn farmers are committed to being a part of the climate solution but cannot implement conservation practices without herbicides. Herbicides have made it possible to minimize, reduce and even largely eliminate the disturbance of soil while still economically managing or eliminating weed pressures. Less-tilled or undisturbed soil surfaces are less prone to erosion, and less soil disturbance or plowing also increases crop residue on the surface and organic matter in the soil. From 1980 - 2015, U.S. corn farmers reduced soil erosion by 58 percent, due in large part to conservation tillage enabled by herbicide use. Herbicides continue to be instrumental in enabling no-till farming, which offers numerous environmental benefits in the form of reduced soil erosion, reduced emissions due to fewer trips over the field, improved water quality and more. To be blunt, without workable options for exemptions and mitigation, farmers will need to return to tillage for weed management.

Ultimately, both growers and fragile environments benefit when pesticides remain where they are intended to be – on the field, combating weeds and defending against pests and diseases. Not only does this mitigate the risk to endangered species, but it also supports the sustainable agricultural practices which enable U.S. corn growers to deliver a safe and abundant crop for food, feed, fiber, and fuel. Science-driven, yet feasible and practical mitigation measures will be critical to on-farm adoption by growers. Therefore, NCGA requests further, ongoing engagement with the agency on pesticide registrations, in ESA consultations, and conveyance of the resulting impacts to corn growers who rely on these products to sustainably raise a corn crop every year. Onerous and overly burdensome mitigation measures will set neither growers nor listed species up for success. Additionally, the timeline for completion, implementation and expansion outlined by EPA seems inappropriate given the magnitude of the acres impacted both by the pesticide use limitation areas (PULAs) as well as the minimization measures proposed. We recommend drawing upon the expertise of registrants, appropriate and knowledgeable U.S. government agencies, as well as actual growers, to develop mitigation measures.

NCGA asks EPA to carefully consider our comments on how the proposed Herbicide Strategy will impact U.S. corn growers. We welcome the opportunity for future dialogue and discussion on this critical issue.

Sincerely,



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