



October 22, 2023

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,

The Minnesota Corn Growers Association (MCGA) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) *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)*. MCGA represents 7,000 dues-paying corn farmer members and the 24,000 Minnesota corn farmers who contribute to the corn checkoff program.

MCGA works closely with our national affiliate, the National Corn Growers Association (NCGA), to create and increase opportunities for corn growers. MCGA supports the comments submitted separately by NCGA and we include several of the important points raised by NCGA in our own comments.

MCGA 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 and meet timelines put forth in the megasuit settlement, the impact on 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. We recognize the 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.

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 to find efficiencies, the Herbicide Strategy

framework must fit into the FIFRA regulatory process so that appropriate risk is assessed, and the 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, we cannot accurately assess the potential impact on farmers. 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.

While we understand the urgency to deploy a strategy that can withstand litigation, the timelines put forward in the megasuit settlement are not realistic. MCGA would first like to recommend both a delay in publishing a final rule and a gradual phase in of the points system over several years to allow for needed updates to be completed and growers to have the ability to adjust. MCGA would like to see a revision to the published Pesticide Use Limitation Areas (PULA) to further refine geography and groupings of species. In addition, there needs to be more clarity provided on how frequently maps can and will be updated to reflect current sensitive areas to allow for farmers to make management decisions that align with their current system which in many cases is nine months or more before planting the next year's crop. We strongly encourage the agency to consider phasing in the point's system working up to the maximum needed points to allow farmers the time to implement practices that frequently involve a high cost, systems change to management, and long-time frames to receive the adequate technical assistance from understaffed and oversubscribed NRCS and SWCD programs. Finally, MCGA 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-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.

Pesticide Use Limitation Areas (PULA)

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.

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. We assume that a grouping of 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.

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. 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. 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. We request that EPA also consider the following:

- Explore ways to maximize the value of widely adopted practices farmers are most familiar with, such as conservation tillage, nutrient management, use of precision agriculture 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.
- Identify point values or offsets when growers establish additional habitat.
- 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 with buffers or other vegetative conservation practices. Establishment of weeds in these areas could be harmful to both local growers as well as potentially protected species and habitat.
- Implement safe harbor provisions that protect growers in compliance but experience unintended mitigation challenges out of their control, such weather variabilities including intense rain events, cover crop failure due to drought, 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.
- Consider not only a reduction in the application rate, but also the number of applications as a mechanism to achieve points. The Agency has a responsibility to ensure that growers' hands are not forced to swap good weed resistance management practices for point values. Therefore, it is critical to

have other highly acceptable mitigation measures for growers to choose from beyond reduction in herbicide applied.

The role of education to stakeholders, particularly growers or their applicators, should be considered by EPA as a viable mitigation measure. In Minnesota, commercial pesticide applicators are required to attend workshops and pass an exam to obtain a license. Workshops and trainings cover pesticide application Best Management Practices and the interaction between state-led efforts, whether voluntary or mandatory, must be considered as viable mitigation measures. Growers would gain a better understanding of the actual habitat of an endangered species and its proximity to fields potentially treated with an herbicide.

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 best suited to local considerations while also remaining in compliance with the label. Land located within a PULA may also face a decline in land 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, and other relevant stakeholders.

Precision Agriculture Technology

MCGA suggests putting a greater focus and positive value to precision agriculture technology. Employing technology like John Deere’s See & Spray™, Precision Planting’s Symphony Nozzle, or UAV application can reduce product amounts while still providing needed control and coverage. We also suggest EPA work with companies like Agvance who have a large footprint working directly with retail applicators. Being able to seamlessly incorporate more precise boundary shape files, digital labels, and the most current

label restrictions at the retail level where product sales, application, and personalized recommendations are being made can help make implementation more palatable. Again, acquiring this technology, updating systems, and being able to financially justify the changes all require time, another reason to support a delayed implementation.

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. 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

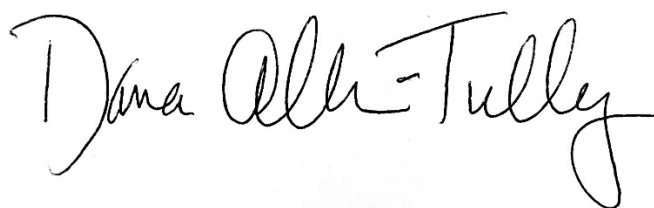
enough mitigation points required to utilize certain herbicides. In Iowa, the survey indicated an achievement of six points, in Indiana, a range of five to seven points, and in Illinois, a range of only three to seven points.

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 or undisturbed soil surfaces are less prone to erosion, and less soil disturbance or plowing also leaves greater amounts of crop residue on the surface and organic matter in the soil, all with beneficial effects including reducing erosion. 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.

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.

Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink that reads "Dana Allen-Tully". The signature is written in a cursive, flowing style with a large initial 'D' and a long, sweeping tail on the 'y'.

Dana Allen-Tully
President
Minnesota Corn Growers Association