

# Row Crop Short Course Pesticide Regulatory Update

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# Endangered Species Act (ESA) Is Bringing Change!

- ▶ EPA is highly focused on reducing litigation.
- ▶ EPA is working on changes in their review process with considerations of Endangered and Threatened Species.
- ▶ EPA has already created Bulletins Live! Two, a web based tool to allow location specific requirements to be relayed to pesticide user.
- ▶ EPA has already started requiring Endangered Species label instruction that instruct users to consult Bulletins Live! Two within 6 months of the application date for location specific requirements, if any.

# Endangered Species Act vs. FIFRA

## ESA

- ▶ Mandates any Federal Action that may affect endangered species requires consultation with National Marine Fisheries Service (NMFS) and Fish and Wildlife Services (FWS)
- ▶ Develop Biological Opinions
- ▶ No Risk/Benefits or Economic Consideration
- ▶ Lawsuits

## FIFRA

- ▶ Mandates timely review of pesticide safety - deadline dates
- ▶ Drinking Water, Dietary, and combined; Human Health Risk Assessment; Ecological Risk Assessment based on data; Terrestrial, Aquatic, Pollinators
- ▶ Risk/Benefits mandate
- ▶ Consultation failure with the Services -deadline dates for review
- ▶ Lawsuits

# ESA Consultation Is A Legal Obligation For EPA Pesticide Registration/Registration Review Actions

- ▶ *Washington Toxics*, filed in 2001 resolved the question of whether EPA had to comply with both FIFRA and ESA. That case involved EPA's failure to consider effects of 54 pesticides on salmonid species in CA and Pacific Northwest.
- ▶ "Megasuit," filed in 2009, claimed EPA had failed to consider the effects of 382 pesticides on a list of over 200 species. (Fourth amended complaint filed in 2018)
- ▶ A growing number of court mandates and settlement agreements to complete the ESA Consultation by specific dates and a history of failure to meet court mandated/settlement agreement deadlines.
- ▶ Exposed the inadequacy of an existing process between EPA and the Services to respond. They are swamped.
- ▶ Less than 5% of pesticide registrations have completed ESA Consultation which requires Biological Opinion from FWS and NMFS
- ▶ The conflict of FIFRA and ESA
  - ▶ FIFRA - any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide
  - ▶ ESA - likely to adversely effect, or may adversely effect triggers Section 7 consultations. Costs/benefits are not considered under ESA

# Recent Activity Open For Comment



## **ESA WORKPLAN UPDATE:**

### **Nontarget Species Mitigation for Registration Review and Other FIFRA Actions**



# This Update

(Meeting EPA's FIFRA goals)

- ▶ 1. Moving forward, EPA will prioritize the issuance of interim decisions (IDs) based on opportunities to reduce a pesticide's risk to human health or the environment and to efficiently complete its registration review cases (e.g. reviewing similar pesticides simultaneously).
- ▶ Include interim mitigation measures that will reduce exposure to non-target species, including listed species; can include ones designed specifically to address ecological risk and any human health protection that also reduces pesticide exposure to listed species.

# This Update cont.

- ▶ 2. EPA proposes a menu of mitigation measures that can be used across a range of pesticides to reduce pesticide exposure to non-target species - “Interim Ecological Mitigation”
- ▶ Includes measures to reduce spray drift, surface water runoff, transport of pesticide through erosion, pollinator protection
- ▶ EPA will decide which measures from the menu of mitigations will be proposed based on the risks and benefits of the pesticide but also consistent mitigation that could be used across similar pesticides.

# This Update

(Meeting EPA's ESA goals)

- ▶ 3. EPA will use Bulletins Live! Two (BLT) to post geographically specific mitigation for individual listed species.
- ▶ Pesticide labeling will refer to BLT when applicable.
- ▶ NOTE: Bulletins Live! Two is considered an extension of the label and thereby a legal obligation. It is recommended that when the label requires BLT be consulted, users print the pdf output (or save electronically) to verify legal requirements of the particular use!
- ▶ Future Bulletins for comments:
  - ▶ Carbaryl
  - ▶ Methomyl
  - ▶ Rodenticides
  - ▶ Neonicotinoids



# Bulletins Live! Two

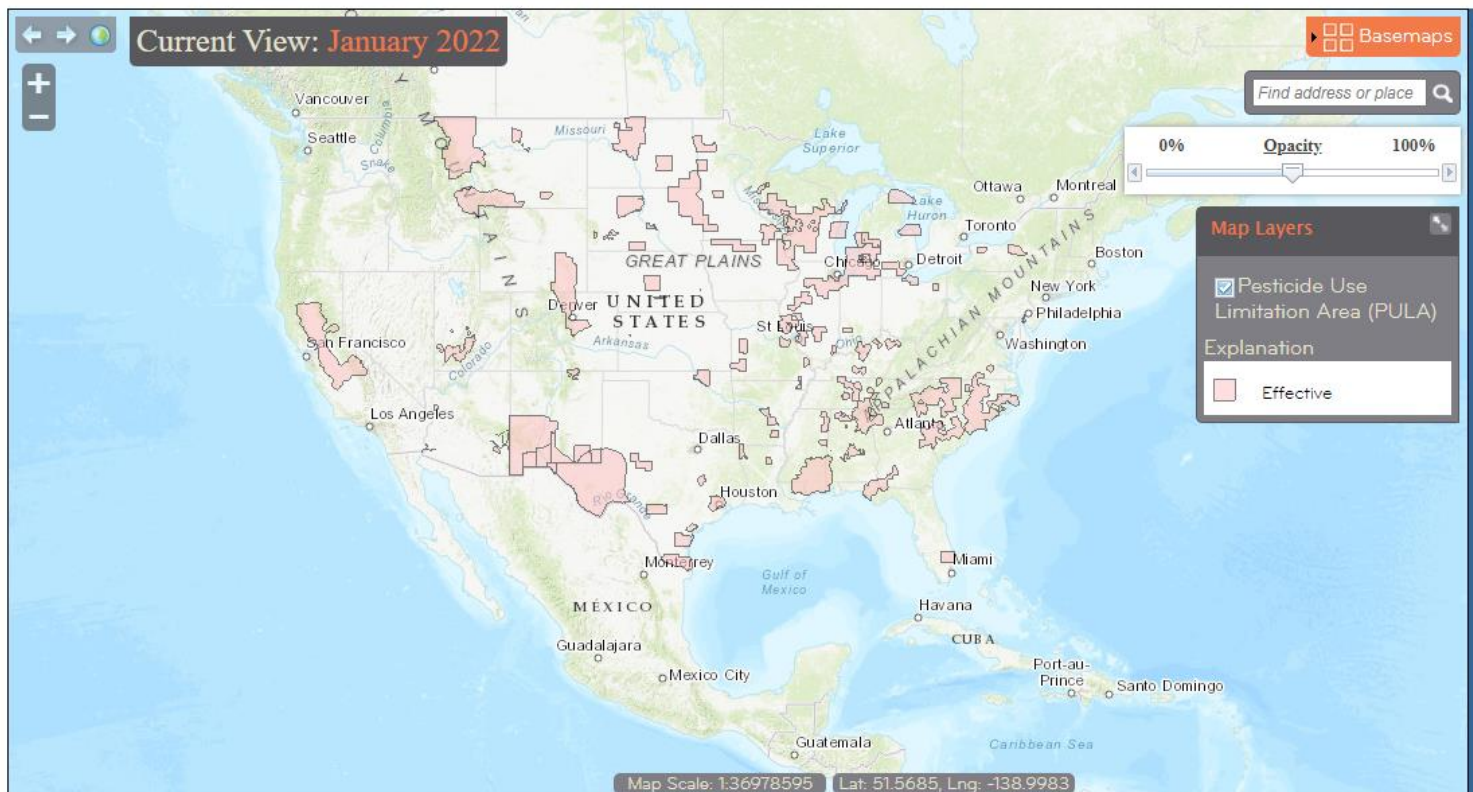
- ▶ Bulletins is an extension of the Label.
- ▶ Effects Determination is used to determine if Bulletin is needed.
- ▶ Informs mitigation options where Risk can not be precluded by information on the label.
- ▶ PULA - Pest Use Limitation Area
- ▶ Species location information overlap with potential use sites; where the limitation applies (Bulletin is potential mitigation)
- ▶ Pesticide applicators must obtain a Bulletin within 6 months of the application date.

Endangered Species

CONTACT US

Bulletins Live! Two -- View the Bulletins

For assistance in using Bulletins Live! Two, view the tutorial. Also see background, notes and a quick start guide for BLT.



INSTRUCTIONS RESULTS

Protecting Endangered Species

Directions: This search tool provides Pesticide Use Limitation Areas (PULAs) for pesticide active ingredients and products with active Bulletins. To access Endangered Species Protection Bulletins from this search tool:

- Zoom to your intended pesticide application area:
  - Manually zoom to a location by dragging the map to your location and using the "+" and "-" buttons to zoom in and out, or
  - Enter your intended pesticide application area into the Location Search Tool to automatically zoom to that location.
- Select your Application Month.
- Optional: Refine your search by entering a specific active ingredient or product and click the "Search" button. (Default is all active ingredients and products).
- Click on the PULA within your intended pesticide application area to activate the Results Tab with the associated limitations and print your Bulletin. If no PULA is present, click the "Search" button to activate the "No Limitations" dialog box and print your Bulletin.
- To complete an additional search, use the "Clear All" button to clear your current results.

Application Month:

Active Ingredient:

Product Name:

-- OR --

# This Update

- ▶ 4. EPA is proposing strategies to expedite implementation of the ESA workplan; prioritize mitigations for listed species vulnerable to pesticides; improve the efficiency and timeliness of the pesticide consultation process.
- ▶ Identify ESA mitigations for groups of similar pesticides (e.g. herbicides, rodenticides)
- ▶ Develop mitigations to protect all listed species of certain regions (e.g. Hawaii)
- ▶ Propose early mitigations for certain listed species as part of upcoming registration review: ESA specific mitigations in IDs.

# ESA WORKPLAN UPDATE

Comment period closing on January 30, 2023

- ▶ EPA requests that commenters here provide input on the following issues:
  - feasibility,
  - user impacts,
  - efficacy of the measures in reducing exposure or risk,
  - compliance or enforcement issues,
  - and improvements to clarify any label language.

# How to Submit Comments:

[www.regulations.gov](http://www.regulations.gov)

Docket ID No. EPA-HQ-OPP-2022-0908-0001

- ▶ Who should comment? Anyone, and you may comment anonymously.
  
- ▶ What should comments include?
  - ▶ How does this affect your operation/clients operation?
  - ▶ How will EPA address alternate products if they expect that similar product labels will contain similar mitigation measures?
  - ▶ Weather is beyond the control of the producer.
  - ▶ What if I purchase/plant a cropping systems prior to the issuance of mitigation measures and I'm now in a PULA?

# REMEMBER!

- ▶ These are EPA's early mitigation measures.
- ▶ Once EPA makes an effect determination, it goes to the Services (Fish and Wildlife Services, and National Marine Fisheries).
- ▶ They will develop Biological Opinions that may include additional mitigation measures.

# EPA's Priority Schedule

- ▶ All new active ingredients will go through ESA review.
- ▶ Pesticides with existing court-enforceable deadlines, combined with ongoing litigation and settlement discussions. EPA currently required to complete ESA review for over 50 pesticides. They estimate this filling the Agency's ESA workload beyond 2030.
- ▶ ESA review as part of the regular registration review process.

# Proposed Interim Decisions 2022

- ▶ 2, 4-D
- ▶ 4-Aminopyridine
- ▶ Atrazine
- ▶ Brodifacoum
- ▶ Bromadiolone
- ▶ Bromethalin
- ▶ Carbaryl
- ▶ Chlorflurenol
- ▶ Chlorophacinone
- ▶ Cholecalciferol
- ▶ DCNA
- ▶ Difenacoum
- ▶ Difethialone
- ▶ Diphacinone & salts
- ▶ Fipronil
- ▶ Metribuzin
- ▶ Norflurazon
- ▶ PCNB
- ▶ Strychnine
- ▶ Telone (1,3-D)
- ▶ Tetrachlorvinphos
- ▶ Triadimefon
- ▶ Triadimenol
- ▶ Warfarin & Na salt
- ▶ Zinc phosphide
- ▶ Anthraquinone
- ▶ Dicrotophos
- ▶ Etofenprox



# Interim Decisions 2022

- ▶ Aluminum phosphide
- ▶ Fenbutatin Oxide
- ▶ Ferbam
- ▶ Magnesium phosphide
- ▶ Methanearsonic acid, salts (MSMA)
- ▶ Methomyl
- ▶ Nicarbazin
- ▶ Oxyfluorfen
- ▶ Phosphine
- ▶ Tetraconazole
- ▶ Thiodicarb
- ▶ Thiram
- ▶ Captan
- ▶ Chlorpyrifos
- ▶ Fluometuron
- ▶ Furfural
- ▶ Iprodione
- ▶ Oxytetracycline
- ▶ Pronamide
- ▶ Propargite
- ▶ Spirodiclofen
- ▶ Streptomycin

# Proposed and Interim Decisions 2023

- ▶ 2,4-D
- ▶ 4-Aminopyridine
- ▶ Acetamiprid
- ▶ Anthraquinone
- ▶ Atrazine
- ▶ Brodifacoum
- ▶ Bromadiolone
- ▶ Bromethalin
- ▶ Carbaryl
- ▶ Chlorflurenol
- ▶ Chlorophacinone
- ▶ Cholecalciferol
- ▶ Clothianidin
- ▶ DCNA
- ▶ Dicrotophos
- ▶ Difenacoum
- ▶ Difethialone
- ▶ Dinotefuran
- ▶ Diphacinone & salts
- ▶ Etofenprox
- ▶ Fipronil
- ▶ Imidacloprid
- ▶ Metribuzin
- ▶ Norflurazon
- ▶ PCNB
- ▶ Strychnine
- ▶ Telone (1,3-D)
- ▶ Tetrachlorvinphos
- ▶ Thiamethoxam
- ▶ Triadimefon
- ▶ Triadimenol
- ▶ Warfarin & Na salt
- ▶ Zinc phosphide

# Questions?

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