

FIFRA & ENDANGERED SPECIES ACT

ISSUE SUMMARY:

EPA has statutory obligations under the Endangered Species Act (ESA) when it registers and reevaluates pesticides. EPA conducts hundreds to thousands of FIFRA actions each year. Historically, EPA has not met its ESA obligations for most pesticide actions. The ESA consultation process can take years for a single pesticide action. In the past decade alone, EPA has faced over 20 lawsuits, covering over 1,000 pesticide products, challenging its failure to meet ESA obligations. EPA has lost or settled many of these lawsuits, costing EPA more than \$4,000,000 in attorney fees. Moreover, when courts determine EPA failed to meet its ESA obligations for a pesticide action, the courts are increasingly willing to vacate the registration. As recently as December 2023, the 9th Circuit vacated the registration of streptomycin for use on citrus because EPA failed to consult under the ESA before granting the amended registrations in January 2021.

- To make faster progress towards meeting its ESA obligations, [EPA released its first ever comprehensive ESA workplan for pesticides](#) in April 2022, which, among other things, describes several strategies that allow EPA to more efficiently incorporate protections for ESA listed species into pesticide activities. Two important concepts were included in the workplan: (1) incorporating protections for listed species for select actions before or during the multi-agency ESA consultation; and (2) developing strategies for groups of species or groups of pesticides to increase EPA's efficiency in evaluating and mitigating potential impacts to listed species. EPA finalized its herbicide strategy in August 2024 and released draft strategies for public comments for rodenticides and insecticides in December 2023 and September 2024, respectively. While these strategies are not a substitute for meeting EPA's ESA obligations, they will help get protections for listed species on registrations as quickly as possible and allow for more efficient ESA consultations with the Services. For the development of these strategies, EPA solicited and received considerable input from farmers, grower/commodity groups, pesticide registrants, USDA, environmental organizations, and many other groups to help ensure that the mitigations are effective, practical, and implementable.

UPCOMING MILESTONES:

- EPA intends to incorporate strategies and ESA mitigations for relevant pesticide registration and registration review decisions. In addition, EPA is working to formalize agreements with its federal partners regarding how these strategies fit into the ESA consultation framework across federal agencies.
- EPA intends to finalize a rodenticide strategy in November 2024 and an insecticide strategy in March 2025. The schedule for finalizing these strategies is incorporated into a court ordered settlement agreement.¹
- EPA continues to complete biological evaluations (BEs) for individual existing pesticide registration and registration review actions, including those it has committed to as part of various court settlement agreements. In calendar year 2024, EPA issued draft BEs for public comment for two pesticides and will be finalizing BEs for 13 pesticides. EPA is also scheduled to finalize an additional 13 BEs from 2025 through 2027. The pesticides for

¹ <https://www.epa.gov/pesticides/epa-resolves-longstanding-litigation-protect-endangered-species-ensure-pesticides-feed>

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which EPA is scheduled to complete BEs are outlined in settlement agreements that contain court-enforceable deadlines.

- EPA continues to complete BEs to meet its ESA obligations for registrations of products containing new conventional pesticides.
- EPA also continues to work with its federal partners, including USDA, Fish and Wildlife Service, and National Marine Fisheries Service so that the strategies described above work within the ESA consultation framework and help to make consultations more efficient.

BACKGROUND:

Under ESA section 7(a)(2), EPA has an obligation to ensure that its actions do not (1) jeopardize the continued existence of federally threatened and endangered species or (2) destroy designated critical habitats of those listed species. Where EPA's action "may affect" a listed species or designated critical habitat, EPA must consult with the Fish and Wildlife Service and the National Marine Fisheries Service (collectively referred to as the Services). For pesticide actions under FIFRA, this means EPA must consult in most cases. Historically, EPA's Pesticide Program has been unable to keep pace with its ESA workload, resulting not only in inadequate protections for listed species but also litigation against the Agency that has increased in frequency in recent years. As a result, EPA has prioritized its current ESA work almost entirely based on litigation settlements and other court-enforceable deadlines.

EPA and its federal partners have been confronted with a number of long-standing technical and policy issues related to evaluating listed species under two different statutes—FIFRA and ESA. EPA, the Services, and the U.S. Department of Agriculture (USDA) have been working together for years to develop an ESA consultation process that is effective in protecting listed species and practical for farmers and other pesticide users. In April 2022, EPA issued an [ESA Workplan](#) that began to outline approaches for evaluating the impacts of pesticide actions on ESA listed species more efficiently and the types of pesticide registration activities to prioritize for its ESA evaluations. As an outgrowth of the [2022 workplan update](#), EPA is developing strategies to evaluate the principal concerns associated with various classes of pesticides (e.g., effects to plants from herbicides). Once complete, EPA plans to formalize agreements with its federal partners regarding how these strategies fit into the ESA consultation framework across federal agencies. In addition, EPA plans to begin to consider the applicability of ESA mitigations into relevant pesticide registration and registration review decisions.

KEY EXTERNAL STAKEHOLDERS:

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| <input checked="" type="checkbox"/> Congress | <input checked="" type="checkbox"/> Industry | <input checked="" type="checkbox"/> States | <input checked="" type="checkbox"/> Tribes | <input checked="" type="checkbox"/> Media | <input checked="" type="checkbox"/> Other Federal Agency |
| <input checked="" type="checkbox"/> NGO | <input type="checkbox"/> Local Government | <input checked="" type="checkbox"/> Other: <u>Grower Groups</u> | | | |

Recent stakeholder interest has focused on ensuring that there are a sufficient number of mitigation measure options available to farmers to ensure that they can achieve the necessary level of mitigation and to make the ESA strategies as practical and feasible as possible.

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MOVING FORWARD:

EPA continues to work with our federal partners as we develop ESA strategies for herbicides, insecticides, and rodenticides according to timelines that are formalized in legal settlement agreements. EPA also continues to solicit, evaluate, and incorporate public input on these ESA strategies. Once final, EPA intends to begin to apply the strategies in regulatory decisions where appropriate.

LEAD OFFICE/REGION: OCSPP

OTHER KEY OFFICES/REGIONS: (OGC, OECA)