

Member Minute

Senior EPA officials talk with MCFA about plan to accelerate ESA pesticide reviews

Minor Crop Farmer Alliance's (MCFA) Technical Committee met by video conference with high-level Environmental Protection Agency (EPA) officials Dec. 15, 2022, offering a rare chance for MCFA members to learn more about the agency's Endangered Species Act (ESA) [workplan update](#) released Nov. 16.

The update outlines how the agency plans to implement ecological mitigation measures that collaterally will also help impact ESA-mandated reviews of potential pesticide impacts on threatened and endangered species. The update comes at the same time the agency is facing growing pressure from courts to [remedy missed deadlines](#) for FIFRA-mandated safety reviews of pesticides registered before 2007. *(See next story for more details.)*

Guests at the Dec. 15 meeting included EPA's Deputy Assistant Administrator for Pesticide Programs **Jake Li**, Pesticide Re-evaluation Division Director **Elissa Reaves**, and Environmental Fate and Effects Division Acting Director **Jan Matuszko**. Li highlighted portions of the ESA workplan update, and the pressures driving its development. He and his team then fielded MCFA participants' questions.

Public comments on the proposed ESA workplan update are due Jan. 30; an MCFA subcommittee is drafting comments. **MCFA members are urged to provide comments and questions** on the workplan update to Technical Committee co-chair [Mike Aerts](#).

For more information, review MCFA's unofficial [meeting notes](#) or contact [Mike Aerts](#). **END**

ESA poses a serious hurdle affecting pesticide access

Ask U.S. specialty crop producers to identify barriers to continued access to safe, effective crop protection tools. They are likely to cite Dirty Dozen-fueled consumer fears, or other nations' protectionist efforts that would limit U.S. agricultural exports. Few growers will point to the 50-year-old Endangered Species Act (ESA) – but they should, says MCFA.

How have well-meaning efforts to protect threatened and endangered species become a serious hurdle to U.S. ag production? It comes down, largely, to a culmination of court decisions involving challenges to pesticide registration actions by EPA over many years, alleging the agency is not meeting its ESA obligations.

Also playing a role are differences of approach across the federal agencies charged with implementing ESA.

First, some background. EPA is responsible for approving, or "[registering](#)", new pesticides – and [periodically re-evaluating registrations](#) of existing pesticides – per the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Meanwhile, ESA requires that in making those registration decisions, EPA must not jeopardize the continued existence of endangered or threatened species, or adversely affect their critical habitat. In short, [EPA must protect listed species](#) and

their critical habitats from harm caused by pesticides.

While ESA was enacted in 1973, EPA only began meaningfully focusing on its role in ESA pesticide safety decisions in the last 10 years. If EPA stays on its current path, it will take about 18 years to complete only 5 percent of ESA-required pesticide reviews.

Meanwhile, the agency has been making registration and re-registration decisions without consider-

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ESA poses pesticide access hurdle *(continued)*

ing impacts on listed species and their habitats.

Then lawsuits brought by environmental activists forced EPA to reconsider its approach of making registration actions without conducting an ESA assessment. In one recent case, in September 2022, a federal appeals court ruled that EPA had violated ESA in conducting its registration review of the herbicide glyphosate. After determining it could not complete an ESA review in time to meet that court's deadline, EPA [withdrew its interim registration review decision of glyphosate](#) while it considered its options.

In 2021, EPA began developing [a new approach](#) to fulfilling its ESA obligations; on Nov. 16, 2022, the agency announced an [ESA workplan update](#). EPA says the update would allow the agency to pursue protections for non-target plants and animals earlier in its pesticide registration and registration-review process. These early protections in turn should help EPA comply with ESA, and subsequently reduce its legal vulnerabilities, while also providing farmers with more predictable access to pesticides.

As for the agency differences of approach: Should an EPA ESA

review determine that a pesticide "may affect" an endangered or threatened species, then the agency must consult on possible solutions with the Department of the Interior's Fish and Wildlife Service and the Department of Commerce's National Marine Fisheries Service (collectively referred to as "the Services"). The Services and EPA differ in their approaches and resources to evaluate pesticide impacts. This is in part due to differences in the laws they each administer.

MCFA's ESA work plan

Concerned that overly conservative ESA pesticide evaluations could result in needless loss of access to crop protection tools *without* offering meaningful additional protection of threatened or endangered species, **MCFA has been seeking several refinements to ESA assessments** as outlined in MCFA's annual [Work Plan](#):

- taking a more data-driven approach to ESA biological evaluations and biological opinions;
- refining the mapping of species habitats to the sub-county level, to identify where the species and their habitats are located juxtaposed against actual agricultural

production locations, thereby potentially reducing the actual agricultural production areas that are impacted;

- considering growers' existing conservation practices;
- involving growers in discussions about potential mitigations, and in mitigation pilot programs; and
- developing incentives to encourage grower participation in ESA habitat maintenance and restoration.

MCFA is also planning a workshop with EPA and the Services, to explore for example, how they could use more refined modeling and/or actual grower use data to improve their ESA evaluations, and to help inform the potential feasibility of mitigation measures.

Your input is needed

Specialty crop growers and grower groups are urged to review EPA's proposed [ESA workplan update](#), and **share your comments and questions with MCFA as soon as possible in January**. An MCFA subcommittee is drafting comments to EPA on the industry's behalf.

For more information, contact MCFA Technical Committee Co-Chair [Mike Aerts](#) with Florida Fruit & Vegetable Association. **END**

MCFA goes on record on OP review process

MCFA [strongly urged EPA Sept. 23, 2022](#), to deny a recent petition from environmental groups requesting that the agency revoke registrations and tolerances for 15 organophosphates (OPs).

"The Earthjustice petition ... is a blatant attempt to short circuit the administrative regulatory review process that Congress and the [EPA] have established to assess pesticide chemicals," wrote MCFA. "Granting the

request of the petitioners would call into question the Agency's commitment to the public participation process, and the science underlying its risk assessments and ultimately its proposed and interim registration review decisions."

MCFA's comments were developed through the alliance's Technical Committee, which is composed of and led by industry volunteers. **END**

About Minor Crop Farmer Alliance

MCFA advocates for use of sound science in government minor-use pesticide policies, so that growers have access to safe, effective, affordable crop protection tools. Founded in 1991, we are funded and led by fruit, vegetable, nut, ornamental plant and other specialty crop producer organizations from across the United States. To learn more, visit us [online](#).