

March 25, 2024

The Honorable Michael S. Regan  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

Dear Administrator Regan:

As Members of Congress representing American farmers and ranchers who work tirelessly to provide consumers with a safe, abundant and affordable domestic food supply, we write today to express significant concerns with recent proposals from the U.S. Environmental Protection Agency (EPA, Agency) Office of Pesticide Programs. Specifically, we write about proposals stemming from the April 2022 Endangered Species Act (ESA) Workplan and the subsequent November 2022 update to the ESA Workplan, including the Vulnerable Species Pilot Program (Pilot Program) and the Draft Herbicide Strategy Framework (Herbicide Strategy).<sup>1, 2</sup>

As you are aware, producers rely on the science-driven and risk-based registration and registration review process established under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which is supposed to provide regulatory certainty surrounding the availability of critical crop protection tools. While we understand the EPA's intent to limit future litigation risk surrounding the historic conflict between the ESA and FIFRA, we question the approach the Agency is taking and believe these proposals will only create greater uncertainty in rural America, have severe economic impacts on producers, and have unintended negative consequences on the very species they are designed to protect.

The Pilot Program released on June 22, 2023, would force producers to comply with further restrictions on crop protection tools "before the EPA has made effects determinations or completed any necessary consultation."<sup>3</sup> While EPA recently updated the Pilot Program to include only species which may be affected or found likely to be adversely affected, this is essentially a distinction without a difference as these incredibly low impact thresholds will almost certainly include all the species in the pilot without considering jeopardy risks to the species.<sup>4</sup> Additionally, these restrictions apply to "all conventional outdoor-use pesticides, regardless of their differences in exposure or potential effects." While this approach is intended to bring FIFRA actions into compliance with the ESA, it is in direct conflict with the risk-based

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<sup>1</sup> [https://www.epa.gov/system/files/documents/2022-04/balancing-wildlife-protection-and-responsible-pesticide-use\\_final.pdf](https://www.epa.gov/system/files/documents/2022-04/balancing-wildlife-protection-and-responsible-pesticide-use_final.pdf)

<sup>2</sup> <https://www.epa.gov/system/files/documents/2022-11/esa-workplan-update.pdf>

<sup>3</sup> <https://www.regulations.gov/docket/EPA-HQ-OPP-2023-0327>

<sup>4</sup> <https://www.regulations.gov/document/EPA-HQ-OPP-2023-0327-0206>

approach under FIFRA that requires the EPA to take into account “the economic, social, and environmental costs and benefits of the use of any pesticide.”<sup>5</sup>

According to estimates from the U.S. Department of Agriculture (USDA), the Pilot Program would place over 784,000 acres of cropland in “avoidance areas” where use of pesticides would not be allowed. It would also place over 12,900,000 acres of cropland in “minimization areas” where use of pesticides is contingent on implementation of burdensome and costly mitigation measures.<sup>6</sup> In addition to the cropland impacted, the Pilot Program would also have a significant impact on forests, grasslands, pasture and shrubland by placing over 4,900,000 acres in “avoidance areas” and over 31,600,000 acres in “minimization areas.” While we appreciate that the recent update to the Pilot Program indicates intent to remove the “avoidance areas” for agricultural uses, we remain concerned about the impact the Pilot Program on producers located in these “minimization areas.”<sup>4</sup> Moreover, as written, the Pilot Program is focused on 27 listed species; however, the EPA has committed to expanding the program to additional species before September 30, 2024, which will undoubtedly increase the number of impacted acres.<sup>7</sup>

A month after rolling out the Pilot Program, the EPA published the Herbicide Strategy on July 24, 2023, which seeks to minimize ecological impacts of agricultural herbicides on listed species by forcing producers to implement costly, complex, and restrictive mitigation measures.<sup>8</sup> If finalized, this picklist of spray-drift and runoff/erosion mitigation measures would be implemented through a points system, with different mitigation measures being assigned “efficacy points” and producers being required to attain a certain number of points based on the herbicide they intend to use and the location of their operation. According to USDA, these mitigation measures “will be an obstacle to the continuing production of agricultural crops in some areas of the U.S.” and that “the collective impacts to agriculture of this fundamental change will be great.”<sup>9</sup>

Concerningly, many of the mitigation measures mandated by the Pilot Program and the Herbicide Strategy would not be suitable for certain producers. According to USDA’s comments on the Pilot Program, “specialty crop growers are likely to have a more difficult time complying with the menu options and qualifying for the menu exemptions.”<sup>6</sup> And even if the mitigation measures can be implemented, they would be incredibly costly and burdensome for producers to comply with. Lastly, many of the mitigation measures are practices encouraged by the voluntary, locally led, and incentive-based conservation programs authorized in the Farm Bill. By forcing producers to implement these measures in order to use herbicides to protect their crops from damaging weeds, we are concerned that the EPA will be mandating these USDA conservation practices through a top-down approach.

In addition to expanding the Pilot Program, the EPA has agreed to finalize the Herbicide Strategy by August 30, 2024, as part of a Stipulated Settlement Agreement as a result of litigation by

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<sup>5</sup> 7 U.S.C. 136(bb)

<sup>6</sup> <https://www.regulations.gov/comment/EPA-HQ-OPP-2023-0327-0140>

<sup>7</sup> <https://www.regulations.gov/document/EPA-HQ-OGC-2019-0478-0009>

<sup>8</sup> <https://www.regulations.gov/docket/EPA-HQ-OPP-2023-0365>

<sup>9</sup> <https://www.regulations.gov/comment/EPA-HQ-OPP-2023-0365-0176>

activists.<sup>7</sup> As part of that settlement, the EPA also alarmingly agreed to develop a Rodenticide Strategy, an Insecticide Strategy, and a Fungicide Strategy.

In response to the EPA repeatedly ignoring the advice of USDA, the *Consolidated Appropriations Act, 2023* instructed the EPA to “take into account the input received from the Secretary of Agriculture and other members of the interagency working group” when developing mitigation measures for pesticides.<sup>10</sup> Given the “substantial concerns” expressed by USDA on both the Pilot Program and the Herbicide Strategy, there is reason to believe that USDA was not meaningfully consulted in the development of these proposals.

Finally, neither of these proposals underwent interagency review through the Office of Management and Budget, despite the EPA considering the Herbicide Strategy a “major milestone in the Agency’s work to protect federally endangered and threatened (listed species).”<sup>11</sup> Moreover, the Agency issued short public comment periods—which occurred during the middle of the growing season for the majority of American agriculture. Interagency review and longer comment periods on such fundamental changes to the pesticide registration and registration review process would have afforded critical agencies and impacted stakeholders a greater ability to weigh in and have their voices heard.

Given the grave concerns surrounding these proposals—which are also shared by USDA and countless growers—we respectfully request that the EPA immediately: (1) withdraw the Pilot Program and Herbicide Strategy; (2) renegotiate the Stipulated Settlement Agreement to give the Agency additional time to rewrite these impractical proposals; and (3) utilize USDA and stakeholder expertise in production agriculture *before* proposing any future misguided actions that only create further uncertainty in rural America.

We look forward to hearing from you no later than April 30, 2024.

Sincerely,



James R. Baird  
Subcommittee Chairman  
Conservation, Research, and Biotechnology  
House Committee on Agriculture



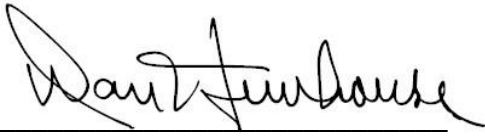
Bruce Westerman  
Chairman  
House Committee on Natural Resources

cc: The Honorable Thomas J. Vilsack  
Secretary  
U.S. Department of Agriculture  
1400 Independence Avenue SW  
Washington, D.C. 20250

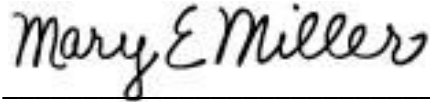
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<sup>10</sup> P.L. 117-328

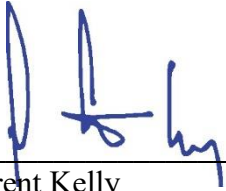
<sup>11</sup> <https://www.epa.gov/pesticides/epa-releases-draft-strategy-better-protect-endangered-species-herbicide-use>



Dan Newhouse  
Chairman  
Congressional Western Caucus



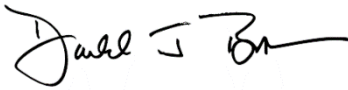
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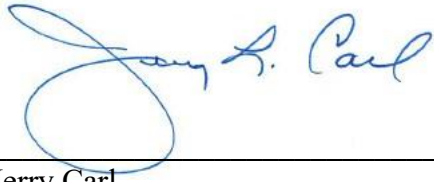
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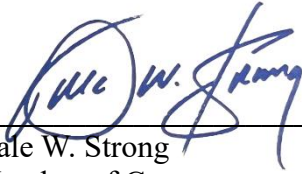
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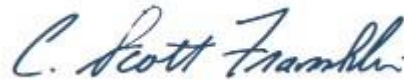
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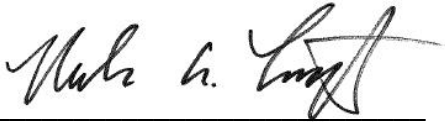
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David Rouzer  
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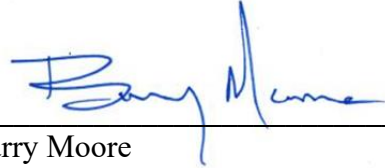
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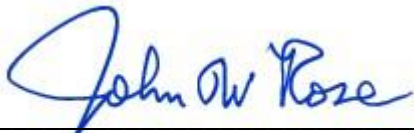
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