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October 20, 2023

Jan Matuszko, Director
Environmental Fate and Effects Division
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460-0001

RE: EPA-HQ-OPP-2023-0365

Dear Ms. Matuszko:

The National Cotton Council (NCC) appreciates the opportunity to provide comments to the Environmental Protection Agency's (EPA's) "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."

The NCC is the central organization of the United States cotton industry. Its members include producers, ginner, cottonseed processors and merchandizers, merchants, cooperatives, warehousemen, and textile manufacturers. A majority of the industry is concentrated in 17 cotton-producing states stretching from California to Virginia. U.S. cotton producers cultivate between 10 and 14 million acres of cotton with production ranging from 12 to 20 million 480-lb bales annually. The downstream manufacturers of cotton apparel and home furnishings are located in virtually every state. Farms and businesses directly involved in the production, distribution, and processing of cotton employ more than 115,000 workers and produce direct business revenue of more than \$22 billion. Annual cotton production is valued at more than \$6.0 billion at the farm gate. Accounting for the ripple effect of cotton through the broader economy, direct and indirect employment surpasses 265,000 workers with economic activity of almost \$75 billion. In addition to the cotton fiber, cottonseed products are used for livestock feed and cottonseed oil is used as an ingredient in food products as well as being a premium cooking oil.

The NCC's diverse membership shares the common interest for the successful production and sale of U.S. cotton products. Imbedded in that interest is the ability (both in operational practice and affordability) to economically produce cotton when challenged by forces of nature, utilizing crop protection tools, when necessary. The NCC's membership are collectively impacted by EPA's actions, including agency actions regarding ESA compliance. The NCC appreciates the opportunity to provide the following comments from the perspective of the agricultural pesticide product user community. The NCC respects the role of EPA as well as the Services as prescribed by FIFRA and ESA.

The NCC understands that the EPA is under considerable pressure to comply with ESA in a timely manner and recognizes the incredible burden that has been placed on both EPA and the Services due to potential legal battles stemming from ESA non-compliance. Nevertheless, we must be reminded of the necessity to produce food and fiber for a growing population, and the current necessity of pesticide products to accomplish the vast demand. The NCC feels that the 50+ years of non-compliance with ESA cannot be remedied in a matter of a few years and with only limited time periods for public comment. Therefore, the NCC would suggest that EPA return to the courts and ask for a new, extended deadline. Comments from recent EPA actions should serve as sufficient evidence and an explanation for the courts as to why such actions and decisions cannot be rushed.

The NCC believes that the Herbicide Strategy, as it is currently written, has the potential to do considerably more harm than good when it comes to conservation of the environment, endangered and threatened species, and the U.S. agricultural sector. Considering that multiple strategies will follow to address other pesticide types, it is imperative that we consider the implications of such regulatory action outside of the assumed protection of endangered and threatened species. Ultimately, NCC has concerns that the Herbicide Strategy and other ESA initiatives are passing the liability of ESA compliance to the producers.

The NCC recognizes that the Herbicide Strategy is not in itself putting mitigations and restrictions on pesticide labels but instead serves as a framework for how future pesticide registrations and re-registrations will take shape. Accordingly, the NCC believes that the framework should be scientifically sound, practical, and able to be implemented on a general level. The NCC understands that future comment periods will be open for proposed interim decisions that will allow stakeholders to comment on individual pesticide products, but again, the framework should serve as a strong foundation for future registration decisions.

FIFRA's Requirements for a Comprehensive Risk-Benefit Analysis.

The NCC reminds EPA of their commitment to FIFRA which includes the consideration of unreasonable risk to man or the environment and the economic, social, and environmental costs and benefits of the use of any pesticide. The costs and benefits of mitigation measures on the pesticide user must be considered. It is imperative that EPA upholds their FIFRA duties by conducting risk-benefit analysis on all of EPA's actions, including the mitigation strategies that EPA has proposed through various actions to comply with ESA. NCC believes that EPA will find that in some areas mitigation menu items are not applicable or practical and in areas where they could be implemented, they may not be economically feasible for a producer to implement. The risk-benefit analysis on the cost of mitigation measures on the producer may not be relevant to ESA activities but, they are relevant to FIFRA actions and should be documented and understood by EPA.

The conservative assumptions made throughout the Herbicide Strategy and other EPA programs and language related to ESA-compliance lead to a worst-case scenario viewpoint on the interaction between pesticide use and threatened and endangered species. Therefore, the worst-case scenario for the agricultural sector and producers should be presented as well. NCC urges EPA to consider the impacts ESA-compliance restrictions on pesticides and mitigation options will have on agricultural production systems.

From the mitigation menu, some potential impacts on crop production systems include economic costs related to implementation of mitigation options, yield loss, increased weed pressure and resistance; productivity costs related to the understanding and compliance with new regulations and problems with eligibility for insurance programs and/or farm loans; and societal costs related to relationships between producers and landowners, applicators, lenders, regulators, and the general public.

While many of the above listed implications are unintended, it is imperative that EPA considers the indirect impacts along with direct impacts. Depending on where a producer is located (inside a PULA or not), they might feel that there is no way that they can conform to the regulations and remain economically sustainable. Agricultural fields in the U.S. are lost to abandonment or development at an alarming rate, and NCC has concerns that the proposed strategy will exacerbate this problem. There is a serious need for protecting the American farmer and ensuring that they have the options needed to continue to produce food, feed, and fiber for the ever-growing global population.

Should entire fields not be abandoned, there is potential to lose a great deal of yield and productivity due to spray buffers that would be required to address spray drift. Based on FSA Certified Acres from September 1, 2023, Table 1 breaks down field size in cotton producing states along with the percentage of a field that would be left untreated based on various spray drift buffer distances. This data set does include all FSA certified acres reported for cotton producing counties which includes some fallow ground, timber or forestry land, and land in conservation programs but still provides an idea of individual field size and the implications of various buffer distances.

EPA should consider the cost of forfeiting a portion of a field to uncontrolled weeds. There is potential for greatly reduced or non-existent crop yields in buffer areas where no herbicides are to be applied. The uncontrolled weeds in buffer areas will undoubtedly spread to other areas of the field further complicating an already gruesome battle against weeds and herbicide resistance. These buffer areas will serve as host for many insect pests as well which not only will increase insecticide applications but also decrease yield from heavy insect pressure.

Ensuring Use of the Best Scientific and Commercial Data Available.

The concept behind the proposed herbicide strategy, to be a more efficient process, is appealing but the proposed plan is flawed. There is a gross overestimation of effect throughout the process – which presents as a ‘worst-case scenario’ in terms of pesticide

effect on threatened and endangered species. Although NCC understands that the group of species and such to develop PULAs makes for a more efficient process in assigning mitigation measures, this grouping likely inflates the impact of individual herbicides on individual species – leading to areas of agricultural production with mitigations or outright restrictions where they are not necessarily needed in order to protect listed species.

Based on previous consultations with the Services on individual pesticides, the actual impact of a specific pesticide on endangered or threatened species has been greatly refined, leading to a decrease in the overall mitigations or restrictions for that pesticide. Again, the NCC understands that ESA compliance has now become a ‘time-sensitive’ issue for the EPA and recognizes the need for efficiencies but not at the cost of unnecessarily losing access to pesticide products. NCC encourages EPA to consult with the Services and other regulatory agencies to develop a workable solution to address ESA concerns on an individual basis.

NCC appreciates that EPA acknowledges that species ranges are fluid in the sense that FWS is in the process of refining species range maps - which in the past has resulted in more refined areas. NCC understands that EPA is utilizing the best available information and data regarding species ranges and that EPA plans to update PULAs on a regular basis as FWS further refines species ranges. NCC has concerns that this adds an additional layer of confusion for pesticide users, could have negative implications from a supply standpoint, and could take agricultural fields out of production completely. The NCC suggests that EPA adds species range maps to PULAs in phases. EPA could work with the Services to phase in range maps for species in order of vulnerability to reduce unnecessary restrictions on pesticide users. NCC believes that this ‘blanket’ approach will greatly hinder the pesticide user community and urges EPA to not only update PULAs on a regular basis based on FWS updates but also refine maps based on results from chemical specific consultations. NCC urges EPA to be as specific as possible in every aspect of ESA compliance so that a producer is still able to grow the food and fiber needed while still protecting threatened and endangered species.

Mitigation Menu Options and Issues with Implementation

The NCC encourages EPA to further investigate the impacts of mitigation options and perhaps incorporate greater flexibility within the mitigation menu.

The NCC believes that the point system for mitigation measures is confusing and could be improved upon. NCC would suggest that EPA seriously considers the comments to the Vulnerable Species Pilot made by the University of Georgia on this topic. They are as follows for reference:

“Rather than assigning mitigation points, is it possible to determine what percent of transport reduction is needed, and then assign percent reduction levels to each mitigation measures? For example, a 40% reduction in application rate would in theory reduce the potential transport by 40%. By the same process, a 20%

reduction in the use rate should also be included as a mitigation option, because in theory transport would be reduced 20%. Thus, if one needs to reach 90% reduction in transport, an option would be to implement a rate reduction of 20% and a cover crop with a level of biomass and stability reducing runoff at a level of 70%. This would offer a practical and effective solution to the mitigation measure confusion and lack of clarity. The literature provided in these documents could be used to develop a diverse array of classifications/categories within mitigation measures already defined, without additional resources required.”

Incorporating the above comment into the points system has a higher likelihood of being fully understood and implemented by pesticide users. The explanation of the points assignment for the mitigation menu options is explained in the proposed documents but when it comes to implementation of the program, utilizing a standard and consistent language would be helpful for comprehension.

The NCC previously shared with EPA references about a study regarding spray drift mitigations with hooded sprayers. The manuscript has since been published and the NCC wishes to share the results should they need to be included in the literature review for the benefits of hooded sprayers in reducing spray drift. The manuscript can be found at the following address: <https://doi.org/10.56454/LYEU7382>.

As for making the mitigation menu more flexible for producers, mitigation effectiveness is highly dependent on residue density for some mitigation options therefore the points awarded to such mitigation options should vary depending on plant density or height, whichever is more applicable. This would be the case for cover crops, grassed waterways, and any other vegetative filter strip or cover. This would allow for producers to receive appropriate credit for their specific management practices.

The NCC also recommends that EPA consider education as a mitigation menu option. There are numerous avenues for grower education regarding endangered species to occur, it would just be a matter of implementing a plan and point structure for growers to receive such credit. One avenue for reaching the grower would be to incorporate ESA training into pesticide applicator training and certification processes. There is a continuing education component to these programs which would ensure updated information is shared with growers and other pesticide applicators on a regular basis.

Pesticide labeling is confusing in its current state and the proposed strategy would add an additional layer of complexity. The Herbicide Strategy as written lacks an enormous amount of clarity for the reader. NCC believes there is far too much room for interpretation within the strategy which can be troublesome in some scenarios. Below are a few points that EPA should address before implementing a final Strategy:

- Non-productive agricultural land that is taken out of production and placed into conservation programs (not entire fields, but edges of fields) – would this area then be considered as new habitat for threatened or endangered species and have to be protected as such? If a threatened or endangered plant then begins to grow in

such an area – does this change the habitat maps and what are the implications on the producer/landowner?

- In scenarios that are exempt from mitigation options (i.e. flooded rice paddies), what would the outcome be if those fields are rotated to another crop that is not flooded? Is the field still exempt, or would a producer have to meet mitigation requirements in order to use pesticides when the field is not flooded? Have the implications of this been considered?
- With tile drainage systems, and the accompanying exemptions, it should be made clear the implications of not having a water retention system for the water that is removed from the field.
- The use of the BLT system requires some thought before mass implementation as the lack of broadband access across rural America is a major hindrance to producers and pesticide users. There are numerous pests and diseases that could cause issue throughout the cotton growing season that a producer may have to address. Lack of access to the BLT system should not be a reason for applications or treatments to be delayed.

The NCC requires a clear understanding of what a grower will be required to do in order to comply with the Herbicide Strategy. The current document does not clearly or fully explain what will be put on the label and the supplemental documents that provide examples are not necessarily applicable to real-world scenarios. We need to be able to articulate and communicate with the grower as to what he or she will be required to do if the Herbicide Strategy is put in place in its current state. Without clarity in the framework document, there will be a lack of clarity on the label.

Alternative Approaches.

EPA should consider a multi-stakeholder group tasked with the goal of producing a more practical solution for ESA compliance. Again, NCC understands the time-sensitive nature of ESA compliance, but NCC urges EPA to consider ‘phasing-in’ the Herbicide Strategy while also actively pursuing alternative approaches. Phasing in the strategy on a smaller scale would be incredibly helpful in working out the kinks in the system while still allowing for new approaches to take shape. This problem is too serious, and the consequences are far too large to rush implementation without fully understanding the implications of such action.

Between the Herbicide Strategy and other ESA related activities introduced through the EPA, the NCC has concerns that there are too numerous initiatives being implemented concurrently that will cause even more confusion and uncertainty for the U.S. agricultural producer. There has not been enough education and outreach to make producers aware of any one of these initiatives and the implications that they will have on production of feed, fuel, and fiber.

The NCC believes that the grower groups and other stakeholders should be involved in the development of these strategies and other ESA-related initiatives. Grower involvement from the beginning of the process would aid in creating practical solutions

to these problems. NCC wishes to remind EPA that the ESA states “to conserve to the extent practical the various species of fish or wildlife and plants facing extinction ...”. Incorporating producer feedback into the development process could aid in ensuring that protections for threatened and endangered species remains practical.

The NCC appreciates the opportunity to provide these comments to the EPA’s Draft Herbicide Strategy Framework. Again, it is imperative that EPA considers the ramifications of the proposed strategy and that they recognize the potential negative impacts that the proposed strategy will have on agriculture, endangered and threatened species, and the general public as a whole. As previously stated, it should be noted that 50 + years of ESA non-compliance cannot be undone in a matter of a few years or with a few months of available comment periods for pesticide users and other stakeholders.

Regards,

A handwritten signature in black ink, reading "Steve Hensley". The signature is fluid and cursive, with the first name "Steve" and last name "Hensley" clearly distinguishable.

Steve Hensley
National Cotton Council

Table 1. Breakdown of FSA certified acreage in cotton producing counties and states across the U.S. in an effort to understand individual field size and the impacts of various buffer distances proposed in the Herbicide Strategy to mitigate against spray drift. Field shape is assumed to be a square although field shape can greatly alter the amount of field that would be subject to a spray drift buffer.

State	Total Acres in Cotton Growing Counties	Total Farms in Cotton Growing Counties	Acres Farm ⁻¹	Total Cotton Acres	% Cotton Acres in Cotton Growing Counties	Percent Reduction in Treated Acreage per Field (assuming a square field) based on Buffer Distance (ft)						
						1,000	750	500	300	100	50	25
Alabama	3,437,625	44,324	78	378,209	11%	54%	41%	27%	16%	5%	3%	1%
Arizona	5,885,484	2,808	2,096	151,212	3%	10%	8%	5%	3%	1%	1%	0%
Arkansas	6,939,273	30,040	231	511,166	7%	32%	24%	16%	9%	3%	2%	1%
California	4,618,318	7,592	608	187,628	4%	19%	15%	10%	6%	2%	1%	0%
Florida	814,246	7,286	112	87,357	11%	45%	34%	23%	14%	5%	2%	1%
Georgia	4,917,429	41,198	119	1,100,387	22%	44%	33%	22%	13%	4%	2%	1%
Kansas	16,505,857	42,869	385	114,454	1%	24%	18%	12%	7%	2%	1%	1%
Louisiana	3,028,003	15,899	190	114,203	4%	35%	26%	17%	10%	3%	2%	1%
Mississippi	5,216,291	31,904	163	401,695	8%	37%	28%	19%	11%	4%	2%	1%
Missouri	2,639,966	14,443	183	331,736	13%	35%	27%	18%	11%	4%	2%	1%
New Mexico	12,230,705	6,205	1,971	56,100	0%	11%	8%	5%	3%	1%	1%	0%
North Carolina	4,318,548	61,563	70	376,496	9%	57%	43%	29%	17%	6%	3%	1%
Oklahoma	19,359,279	61,195	316	415,749	2%	27%	20%	13%	8%	3%	1%	1%
South Carolina	1,808,942	23,680	76	207,343	11%	55%	41%	27%	16%	5%	3%	1%
Tennessee	3,377,736	32,888	103	275,178	8%	47%	35%	24%	14%	5%	2%	1%
Texas	65,536,204	155,419	422	5,854,983	9%	23%	17%	12%	7%	2%	1%	1%
Virginia	535,994	6,480	83	79,465	15%	53%	40%	26%	16%	5%	3%	1%

Based on 2023 FSA Crop Acreage Data reported as of September 1, 2023. Dataset can be found online at:

<https://www.fsa.usda.gov/news-room/efoia/electronic-reading-room/frequently-requested-information/crop-acreage-data/index>. Total acreage includes all crops and crop types reported to FSA