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Environmental Protection Agency

1200 Pennsylvania Ave. NW

Washington, DC 20460-0001

*Submitted via regulations.gov*

**RE: EPA-HQ-OPP-2022-0908**

**ESA WORKPLAN UPDATE: Nontarget Species Mitigation for Registration Review and Other FIFRA Actions**

Dear Ms. Biscoe:

Established in 1933, CropLife America (CLA) represents the developers, manufacturers, formulators, and distributors of pesticides and plant-science solutions for agriculture and pest management in the United States. CLA’s member companies produce, sell and distribute nearly all the pesticide and biotechnology products used by American farmers. CLA appreciates the opportunity to provide comments on the U.S. EPA’s Endangered Species Act (ESA) Workplan Update (Workplan Update or Update).

The Workplan Update is a major step in EPA’s strategy to improve the ESA review process and reflects EPA’s new direction of using ESA mitigations in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)-portion of pesticide review (FIFRA Interim Ecological Mitigations), and in particular, EPA’s “interim decisions” (IDs) during the registration review process. The Workplan Update is complex, introduces a new approach with respect to advance mitigation, and requires the consideration and review of experts and stakeholders familiar with the subject matter. The Update also presents mitigations to protect species listed under the ESA and their habitat that, taken together, may disrupt how farming is done today. Thus, it is incumbent upon the Agency to ensure that all parties can understand the proposed changes and how they will affect all stakeholders, including those stakeholders who will be required to implement any new mitigation measures added to product labels.

To that end, while CLA generally supports EPA’s efforts to provide interim protections for species while EPA discharges its duties under both FIFRA and the ESA, EPA must be able to justify the mitigation measures with the best available science, and must make plain the link between the measures required and benefits to species. Importantly, CLA must also be open to feedback on whether some measures included in the Update might be more conservative than the science supports, and to refining those measures going forward. So although EPA only invites public comment on the Appendix to the Update, the Workplan Update informs the Appendix; therefore, comments on the Update itself may inform any necessary changes to the Appendix.

**General Policy Recommendations**

The following broadly applicable principles provide the foundation for CLA’s more detailed comments:

* **Broad mitigation measures should not undermine appropriate risk assessment.** While interim mitigation measures can serve as a bridge to full ESA compliance, they should not supplant product-specific risk assessments that could confirm the need for a particular measure or reveal that less stringent mitigations are necessary. As such, broad mitigation measures should not automatically be incorporated into risk assessments as baseline conditions, which appears to be under consideration, such as where EPA states: “Another way to view these measures is that EPA is raising the baseline for ecological mitigation measures….” Workplan Update at 9. While EPA is correct that “if early mitigation significantly reduces or eliminates the probability of a future jeopardy or adverse modification finding, formal consultation is simplified *and* listed species receive earlier protection,” *id.* at 6, EPA must actually be able to connect the dots between mitigation efforts and salutary effects at the conclusion of the consultation process, rather than assume that whatever early mitigation is adopted is necessary to a no jeopardy or adverse modification finding.
* **Consider advances in chemical technology when grouping pesticides.** When evaluating whether to group certain pesticides together, it cannot be assumed that the entire class of pesticides is expected to have uniform effects on listed species. Newer chemistries, even if in the same class as some older chemistries, may behave very differently—and may be more likely to have a narrower spectrum of activity—than older chemistries. EPA must not, therefore, group pesticides together without evaluating and accounting for these distinctions. [ELABORATE FURTHER?]
* **Findings from existing biological evaluations (BEs) developed using the jeopardy/adverse modification (J/AM) approach need to be applied at the early mitigation stage.** EPA and the Services have put much time and effort into preparing science-supported BEs, and have developed a new approach to evaluating whether J/AM may occur. This process has revealed, for example, that county-level bans are ineffective. Indeed, county-level bans are inefficient, overly broad measures that discourage growers from proactively engaging on avoiding exposure to nontarget species. Thus, they should not be an option going forward, so that all parties can focus on appropriate and effective solutions. Likewise, other lessons learned from preexisting analyses and evaluations—and feedback from on-the-ground implementation—must be reflected in any label revisions going forward. [ANY SPECIFIC EXAMPLES WE WANT TO EMPHASIZE?]
* **Incorporate stakeholder inputs to determine feasibility of mitigation measures along with providing flexibility to growers.** Put simply, when EPA is considering mitigations, growers must be involved. Without specific education on both *what* the new provisions are and *why* they are being implemented, including how the science supports the requirements, grower support is unlikely to be robust. It is incumbent on *EPA* to ensure that engagement occurs. CLA and its members are well positioned to provide scientific expertise, novel tools (e.g., models), agricultural knowledge, farmer/applicator interaction information, and other relevant information to help EPA establish the scientific foundation for Agency findings during the entire registration and consultation process. Relevant stakeholders should have meaningful opportunities to participate in a manageable, efficient, defensible, and transparent process to share information to protect vulnerable species, provide regulatory certainty, and support agriculture and pest control.
* **EPA and the Services must establish efficient processes to complete the entire registration/consultation process.** CLA agrees that “EPA must adopt more efficient approaches to meeting its ESA obligation,” Update at 5, and appreciates that early mitigation may be one way to achieve some efficiencies. Another efficiency that EPA should adopt is allowing registrants to quickly provide input on how best to refine upfront mitigation measures based on additional data. It is important for EPA and the Services to keep in mind that, as ESA applicants, registrants must be involved every step of the way. *See, e.g.*, 50 C.F.R. § 402.10-.14. EPA cannot simply add mitigation measures to a label without consulting registrants, because such changes alter the action under consultation—the registration request that the *applicant* has put forward. EPA is absolutely correct that “[e]ach round of label amendment submission, review, and approval creates additional work for both EPA, pesticide registrants, and state agencies to register amended pesticide products.” Update at 14. That is precisely why it is so important that the Services and the registrants be included in discussions with EPA at Steps 1 and 2 of the 3-Step ESA consultation process[[1]](#footnote-2) to finalize mitigations *before* finalizing labels.
* **Prioritize development of programmatic consultations.** All parties to the pesticide registration process, from registrants to regulators to end-users, would be well-served by developing programmatic consultations on a pesticide-class basis (herbicides, insecticides, etc.) that formalize practices that could avoid jeopardy for all species.

**Section-Specific Comments**

**Section II**: **Overall Approach to Registration Review**

In general, CLA supports approaches to registration review that aid EPA in efficiently managing its workload and backlog. CLA also supports EPA’s recognition that measures adopted under FIFRA’s environmental risk assessment (ERA) and human health risk assessment (HHRA) processes should be credited in and may help expedite the ESA process. Update at 7. At the same time, CLA requests clarification on certain aspects of EPA’s updated approach, such as the process EPA intends to use to identify “similar pesticides” for grouping as set forth on page 7 of the Update. What information does EPA plan to consider in determining whether pesticides have “similar exposure pathways, uses, and ecological risk profiles”? *Id.* at 9. If EPA has already developed a methodology in this regard, it should make such methodology publicly available so that all stakeholders may comment on it. If EPA has not yet developed a methodology, it should include all stakeholders in that process. Either way, CLA looks forward to working with the agency on developing a grouping methodology that is both supported by the science and that supports further development of knowledge of the products.

Appropriate and considered grouping of pesticides, if EPA plans to continue that approach, is crucial because mitigations adopted for an entire group could result in unnecessarily burdensome measures for certain chemistries. In this regard, CLA reiterates the importance of right-sizing mitigations early on in this PID/ID process more generally, and being open to adjusting the default mitigations as EPA proceeds through the stages of the registration process, because adopting an overly conservative approach early on can hinder the eventual development of more appropriate and product-specific mitigations. Indeed, EPA states that finalizing ESA obligations associated with registration review might include “incorporating any *additional* mitigation the Services deem necessary,” Update at 7 (emphasis added), suggesting that EPA might not intend to revisit measures required in a proposed ID (PID) or ID, even if they prove to be unnecessary.

Overall, one of the most important concepts CLA would like to emphasize through these comments is that the Services have an important role to play, even early in EPA’s process, and it behooves everyone to be transparent in their interactions and feedback on lessons being learned as the agencies undertake their reviews.

**Section III**: **FIFRA Interim Ecological Mitigation and Other Proposed Label Language**

CLA appreciates EPA’s recognition that proceeding on a chemical-by-chemical and species-by-species basis when it comes to product registration and ESA consultation “creates an unmanageable workload.” Update at 8. CLA believes that EPA’s attempt to make progress in addressing ESA obligations through the PID/ID process is directionally correct.

That said, grouping multiple pesticides together may not result in the most appropriate outcomes at the end of the process, so it is imperative that EPA keep lines of communication open with registrants as it considers such groupings. On the other hand, CLA fully supports and would encourage attempts to develop groups of ESA-listed *species* that may respond in similar ways to chemical exposure, so that they can be addressed at the outset and narrow the range of listed species for which individual consultation is required.

Additionally, much remains to be explained with regard to the “menu of FIFRA Interim Ecological Mitigation measures” EPA has developed. Update at 8. EPA states that its risk managers will consider the risks and benefits of a pesticide in determining which measures are appropriate, but has not identified what assumptions and risk assessments will be used to justify a specific mitigation. Whether the Agency is developing criteria (which CLA would support[?]) or is proceeding on an ad hoc basis, all stakeholders must be able to understand the connection between mitigation measures and effects on species. Additionally, EPA must give meaning to its promise to consider the benefits of a pesticide’s use in the mitigation analysis.[[2]](#footnote-3) This process must be predictable and science-based, so that all stakeholders can plan accordingly. More detailed comments regarding the four categories of measures identified in Section III. are provided in the comments to the Appendix, *infra*.

CLA is also concerned with the lack of detail surrounding EPA’s intent “to adapt this process to FIFRA decisions not covered by this workplan update, in particular conventional pesticide new use registrations.” Update at 8. Because the Workplan Update is directed specifically at the registration review process, EPA must make clear precisely how EPA proposes to adapt this process to other actions under FIFRA, including, importantly, how EPA will involve registrants. EPA should consider carefully whether it should focus first on applying this process to registration review and learning from the process and results before incorporating this early mitigation framework into other FIFRA decisions.

[COMMENTS ON THE FOUR CHEMISTRIES WITH NEW PIDS? NOT NECESSARILY AS TO SUBSTANCE BUT AS TO HOW EPA IS INCORPORATING THIS NEW APPROACH – IS EPA PROVIDING SUFFICIENT JUSTIFICATION, EXPLAINING METHODOLOGY, ETC.?]

**Section IV**: **Endangered Species Protection Bulletins**

CLA appreciates EPA’s efforts to limit certain pesticide use restrictions to particular geographic areas where they are found necessary, and acknowledges that Bulletins Live! Two (BLT) is EPA’s chosen method to convey these restrictions. However, as EPA recognizes, “there may be applicators who are unfamiliar with this system.” Update at 13. EPA does not explain how it plans to familiarize applicators with this system beyond including language on labels directing them to BLT. While of course applicators know that they must carefully review all label requirements, it is important that EPA educate applicators on any label changes that may be unfamiliar to applicators. CLA recommends that EPA provide additional explanation regarding how it intends to announce these changes and that EPA involve stakeholders in determining what will be most effective.

Also critical to this location-specific approach is EPA’s use of the best available data on overlap between pesticide use and species range to generate a relevant and reliable representation of risk that effectively justifies a need for mitigation. This should include using the most up-to-date species range maps, regional and landscape relevant product use, species natural history, and spatial relationships between likely habitats and potential product use sites. Refining this data will also help develop practical and implementable mitigations in Bulletins Live! Two.

EPA has recognized in prior ESA consultations (e.g., methomyl) that large portions of many defined ranges include areas within which species are highly unlikely to occur (e.g., waterbodies for land-dwelling species, urbanized areas for most species, elevation/climate preferences, etc.). As a result, further refinement to identify specific areas requiring protection is necessary. CLA supports EPA and the Services using potentially suitable habitat as one determinant in identifying where listed species are mostly likely to occur, and therefore to inform specific mitigations in those areas.

As with other aspects of the Workplan Update, though, EPA provides little detail regarding how it will determine appropriate language for BLT. EPA suggests that stakeholders should comment on future Bulletins through EPA’s pilot chemicals project, but again provides no methodology for how it will evaluate what language is most relevant and effective.

Finally, while CLA appreciates EPA’s concern that “[a] physical label cannot feasibly accommodate … lengthy mitigation instructions,” Update at 12, if EPA nevertheless “expects that including Bulletins language is necessary for most outdoor use pesticide labels,” *id.* at 13, EPA may want to consider whether an alternative approach to notifying applicators of these requirements may be more effective and efficient. For instance, electronic digital label updates and other emerging technologies may be worth exploring.

**[ANYTHING ELSE FROM COORDINATION WITH RODENTICIDE TF?]**

**Section V: Additional Strategies to Expedite Progress on ESA Workplan Initiatives**

*Herbicide & Rodenticide Strategy*

CLA appreciates the additional information EPA has provided regarding its approach to developing an herbicide strategy—including developing multiple suites of mitigation measures and applying criteria to determine when mitigation is needed based on physical-chemical-fate properties and potential effects. EPA should not wait until summer 2023, however, to take suggestions from stakeholders; rather, EPA should be open to receiving feedback leading up to the proposal, so that the proposal can be better-informed from the start. EPA can also incorporate what it is learning as it prepares the rodenticide PIDs where they translate to herbicides.

**[ANYTHING ELSE FROM COORDINATION WITH RODENTICIDE TF?]**

*Using EPA’s Vulnerable Species Pilot to Extend Mitigation from One Chemical to a Similar One or from One Vulnerable Species to Other Vulnerable Species*

CLA supports the efficiencies that may be gained by bridging mitigation strategies across chemistries and species. It is critical as EPA takes that approach, though, that the Agency establish clear guidelines to determine when such bridging is appropriate. It also goes without saying that stakeholder input is necessary every step of the way.

 **[ANYTHING ELSE FROM COORDINATION WITH RODENTICIDE TF?]**

*Regional Strategies*

As a general matter, CLA supports EPA’s efforts to achieve more “no effect” determinations for species and appreciates that the Hawaii strategy is one way the Agency is attempting to streamline the process.

In that regard, CLA has developed a pre-processing “step zero,” i.e., a path for “off-ramping” certain species and pesticide reviews through a shorter more efficient review where repeated analyses of the same species aren’t needed. (Step-Zero White Paper) [ATTACH?]. For example, EPA could incorporate existing site-specific and species-specific use protection measures and safeguards previously developed through Federal and State land and resource management plans to rule out the potential for exposure for certain species. EPA could also identify areas where pesticides are unlikely to be used, or areas where the species are not present—as EPA recognizes is already the case in Hawaii. This approach should be employed at the problem-formulation phase, as an initial triage step to remove species if there’s a reasonable certainty of no exposure or clear evidence of no anticipable adverse effects. To the extent EPA continues to evaluate strategies on a geographic basis, updated pesticide use and usage data—including from a methodology CLA has developed to quantify pesticide usage at the county level—will be key. In sum, the combination of off-ramping and more refined, granular use and usage data would go a long way to streamlining the consultation process, allowing EPA and the Services to focus resources where they are most needed, i.e. on the species where exposure and potential effect are most possible.[[3]](#footnote-4)

*Approaches for Specific Pesticide Use*

CLA appreciates the invitation to pesticide user groups to collaborate with EPA in developing strategies for certain non-agricultural pesticide uses.

* Malathion and mosquitocide: Support? – [Any decision?]
	+ Role of Offset? – [Not sure what this means as a sub-point here.]

*Programmatic Approaches to Consultation*

CLA supports the development of programmatic approaches to pesticide registration consultation. Such consultations must have clear goals and objectives defined so that the results are useful for individual pesticide registrations. As set forth above, CLA believes that programmatic approaches to consultation should have as broad a reach as the science can support, to maximize the efficiency of front-loading ESA analyses.

*Offsets*

CLA strongly supports EPA and the Services developing one or more programs to offset any impacts to listed species that may be anticipated even after the implementation of reasonable, scientifically supported avoidance, minimization, and mitigation measures. CLA recommends that EPA and the Services focus efforts on offset programs that “function as a programmatic approach to mitigation that cover[] multiple pesticides and even multiple species,” Update at 19, instead of expending resources on a species-by-species basis. CLA looks forward to collaborating with EPA and the Services to achieve programs that provide predictable, consistent results for all stakeholders while also benefitting the environment.

**APPENDIX COMMENTS**

Finding a balance between safe pesticide use and meaningful mitigation strategies is critical to government regulators, growers, and industry alike. Mitigations aim for avoidance, minimization, and/or offsets in general, but must be practical and operational so that growers have access to a robust toolset that allows them to appropriately address pest pressures. From a practical perspective, the easier mitigations are to communicate and put into place, the more species and habitat protection will occur.

Additionally, CLA supports proactive mitigations that are supported by ecological risk assessments of sufficient detail as to permit evaluation of the need for, and positive impact of, mitigations. Proposing mitigations in the absence of a detailed J/AM analysis has the potential to greatly diminish transparency with stakeholders, and EPA must avoid that to the greatest extent possible. It is also important to note that mitigations to support reduced exposure potential are already in place in many product labels (e.g., buffer zones from adjacent waterbodies and other spray drift prevention measures).

CLA also understands that upfront mitigations associated with regulatory actions may provide a more efficient evaluation process for the Agency. However, there remains a clear need to direct resources into assessments that are well supported, reduce uncertainly, and link the outcome of an assessment to specific mitigations. The value and implications of upfront mitigations should also be clearly trackable in EPA decisions so that registrants can directly evaluate the merits of proactively volunteering those mitigations in other contexts. CLA believes that registrant-submitted data and information continues to play an essential role in supporting this effort to develop robust risk assessments, as well as manageable and meaningful mitigations.

Overall, EPA should strive to provide growers with predictability and flexibility to ensure that they are able to make the most efficient use of their land and continue to provide food, fuel, and fiber that is so essential for our economy and our nation, while also taking reasonable steps to protect species. Below we provide some feedback regarding the feasibility of EPA’s proposed mitigation options.

**1. Bulletins Live! Two (BLT)**

Here CLA responds to EPA’s request for feedback on specific questions, based on discussions with grower groups and other stakeholders [?], and providing suggestions as requested where possible:

* Is the label language below on how to obtain Bulletins through BLT clear? Is it easy to understand what actions are required of users, and when?

**[INCORPORATE FEEDBACK FROM GROWER GROUPS]**

* Does 6 months give stakeholders enough time to plan for planting and other needs?

**[INCORPORATE FEEDBACK FROM GROWER GROUPS]**

**2. Interim Ecological Mitigation #1: Surface Water Protection Statements and Conservation Measure Pick List to Reduce Ecological Risks from Surface Water Runoff**

CLA agrees that surface water runoff should be avoided where possible, and recognizes that growers may be able to take reasonable measures to help avoid such runoff. However, some specific elements of EPA’s surface water protection requirements merit reconsideration:

* + **Precipitation:** While a directive not to apply product when it is raining is a commonsense, easily implemented mitigation, not applying “when a storm event likely to produce runoff from the treated area is forested … to occur within 48 ours following application” is not. Several issues are readily apparent: First, what qualifies as a “storm event”? Second, how are applicators supposed to determine when is a storm event “likely to produce runoff”? Third, the 48-hour time constraint is unreasonable, as it could rule out application during critical growing windows, even if no precipitation actually occurs. [IS THERE AN EXAMPLE WE CAN GIVE OF HOW OFTEN STORMS ARE FORECASTED VS. ACTUALLY OCCUR DURING GROWING SEASON?] EPA cites one of its own studies regarding the effectiveness of a 48-hour rain restriction (at 26), but does not provide any explanation regarding whether EPA considered or evaluated a different length of time or why specifically 48 hours are necessary. EPA should not force stakeholders to look elsewhere for the support for EPA’s action.
	+ **Runoff Mitigation Pick List**: Whereas with the 48-hour restriction EPA does provide some data regarding efficacy, EPA provides only general descriptions of how the different pick list measures work without directly explaining the scientific basis for or data regarding the efficacy of any one element of the pick list. Nor does EPA appear to recognize that growers do not necessarily own or control the land that would be necessary to implement these measures, and so may not have all necessary rights to do so. EPA also provides little in the way of instruction regarding what items may or may not be more effective in certain regions. In general, the lack of explanation makes it difficult to understand why the Agency has included these particular items in the list, as opposed to other options such as [EXAMPLES?]

Finally, EPA has not clarified how it intends to apply a risk/benefit analysis to these measures. EPA states merely that it will propose less stringent measures when benefits are higher, and vice versa, but that does not provide stakeholders with an understanding of how this approach will work in practice.

**3. Interim Ecological Mitigation #2: Surface Water Protection Statements and Conservation Measure Pick List to Reduce Ecological Risks from Soil Erosion**

Similar to Mitigation #1, EPA declines to specify how it will engage in a risk/benefit analysis for thee measures. Likewise, EPA again describes general attributes of pick list measures, but does not provide data regarding efficacy or necessity. CLA’s comments for the prior mitigation therefore apply equally here.

**4. Interim Ecological Mitigation #1 and #2: Runoff and Erosion Mitigation Pick List Descriptions**

**[ANY FEEDBACK FROM GROWERS OR OTHER GROUPS HERE?]**

As a general matter, CLA supports a pick-list approach to provide upfront mitigations for the ESA process while maintaining a certain level of flexibility for growers. However, some of the practices suggested on the pick list may not be viable in certain parts of the country or with certain agronomic practices. For example, the Update explains that “[t]he cover crop must be planted and remain on the field up to the field preparation for planting the crop.” Update at 31. This requirement does not consider various agronomic practices adopted by American farmers like [EXAMPLE?].

EPA must document the benefits from these mitigations with respect to the species and habitat protection goal(s). Mitigation evaluation should be based on reasonable and realistic assumptions, conducted using refined methods, and thus provide the means to focus on the most effective forms of mitigation. The focus should also be on operationalizing these practices and including what is already being accomplished by growers.

CLA has recently invested in the Mitigation Strategy Tool (MST, <https://mitigationstrategytool.org>) which was developed as a research guide to identifying mitigation practices and providing the best available practice data to help the user evaluate the effectiveness and potential application of various mitigations. This tool could be useful in helping growers evaluate which options on a pick list to choose.

**5. Interim Ecological Mitigation #3: Reducing Ecological Risks from Spray Drift**

Many growers and other pesticide applicators are accustomed to implementing measures to reduce spray drift, up to and including aerial application prohibitions. Typically, however, such measures are only implemented on labels after a full FIFRA registration process with interaction between registrants and EPA. It is no less important that, in the context of PIDs and IDs, registrants, growers, and all other stakeholders understand the justification for spray drift measures. It is also incumbent on EPA to document why it may make sense to apply these measures more broadly than it already has.

**6. Pesticide-Treated Seed: Proposed Label Language and Considerations for Future Ecological Mitigation**

[ANYTHING HERE? NOTHING IN THE OUTLINE]

**7. Promoting Pollinator Stewardship: Proposed Advisory Language**

[ANYTHING HERE? NOTHING IN THE OUTLINE]

**8. Ecological Incident Reporting Label Language**

CLA agrees that ecological incident reporting can play an important role in understanding the causes of and preventing future incidents, and encourages witnesses to such incidents to report them. However, it would be a mistake to assume that all ecological incident reports necessarily involve pesticide applications. As such, mere reporting is not sufficient; rather, it is necessary that ecological incidents actually be investigated to determine causes and develop appropriate responses. Anecdotal evidence without corroborating data should not be conflated with actual scientifically vetted and supported research. Moreover, when EPA is reviewing and aggregating information received from multiple sources, it is imperative that the Agency carefully evaluate the potential for duplication among reports, to prevent one incident from being counted multiple times.

**CONCLUSION**

CLA and its members remains engaged in the ESA assessment process as a representative of developers, manufacturers, formulators, and distributors of pesticides and plant science solutions for agriculture and pest management in the United States. We look forward to continuing to work with our federal partners on ESA issues, participating in the implementation of the Workplan and its updates, and helping facilitate more engagement with a broad range of stakeholders (e.g., industry, grower groups, other agricultural groups, applicator partners, and non-governmental organizations). The input from these stakeholders and organizations is crucial to achieving a process that is protective of species, efficient, transparent, and scientifically defensible. From the outset of the registration and consultation processes, pesticide registrants have a major role to play in developing pragmatic proactive mitigations. CLA thanks EPA for considering these comments, and looks forward to reviewing and commenting on future updates.

Thank you for consideration of these comments. If you have any questions, please feel free to contact me at mbasu@croplifeamerica.org or (202) 296-1585.

Respectfully,

[INSERT SIGNATURE]

Manojit Basu

Vice President of Science Policy

CropLife America

1. *See* “Revised Method for National Level Endangered Species Risk Assessment Process for Biological Evaluations of Pesticides” (EPA, 2020), *available at* <https://www3.epa.gov/pesticides/nas/revised/revised-method-march2020.pdf>. [↑](#footnote-ref-2)
2. EPA emphasizes in the Update (e.g., at 5, 7) that the ESA does not involve a risk-benefit analysis vis-à-vis mitigation measures. This is an overgeneralization that creates a false dichotomy between FIFRA mitigation and ESA mitigation. Mitigation analysis under the ESA—for example, when identifying reasonable and prudent alternatives—requires consideration of economic and technical feasibility. *E.g.*, *Dow Agrosciences, Inc. v. NMFS*, 707 F.3d 462, 473-75 (4th Cir. 2013); 50 C.F.R. § 402.02. While such consideration is not the same as the risk-benefit analysis incorporated into FIFRA, EPA should not be operating under the presumption that the potential negative effects or externalities of a particular alternative or mitigation measure are irrelevant to the ESA analysis. [↑](#footnote-ref-3)
3. The Step-Zero White Paper also includes a case study concerning aquatic species risk assessment, which may aid the development of a standard operating procedure for EPA biological evaluations under the ESA. [↑](#footnote-ref-4)