



# Update on EPA's Endangered Species and Pesticides Initiatives

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Jake Li  
Deputy Assistant Administrator for Pesticide Programs

Jan Matuszko  
Director, Environmental Fate and Effects Division  
Office of Pesticide Programs

It's déjà vu all over again. EPA comes before this court once more because of **its failure to abide by the law**....EPA cannot flout the will of Congress—and of the people—just because it thinks it is too busy or understaffed.

Center for Food Safety v. Regan, Dec. 2022, 9<sup>th</sup> Circuit

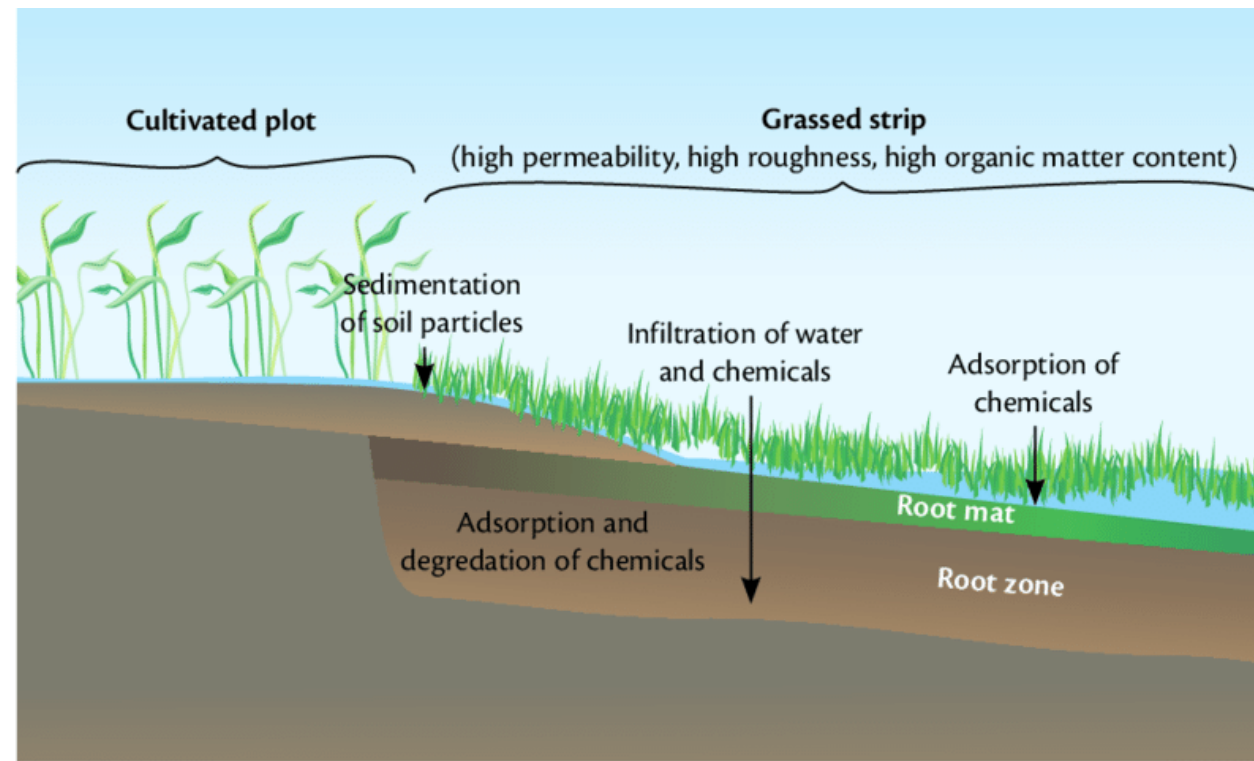
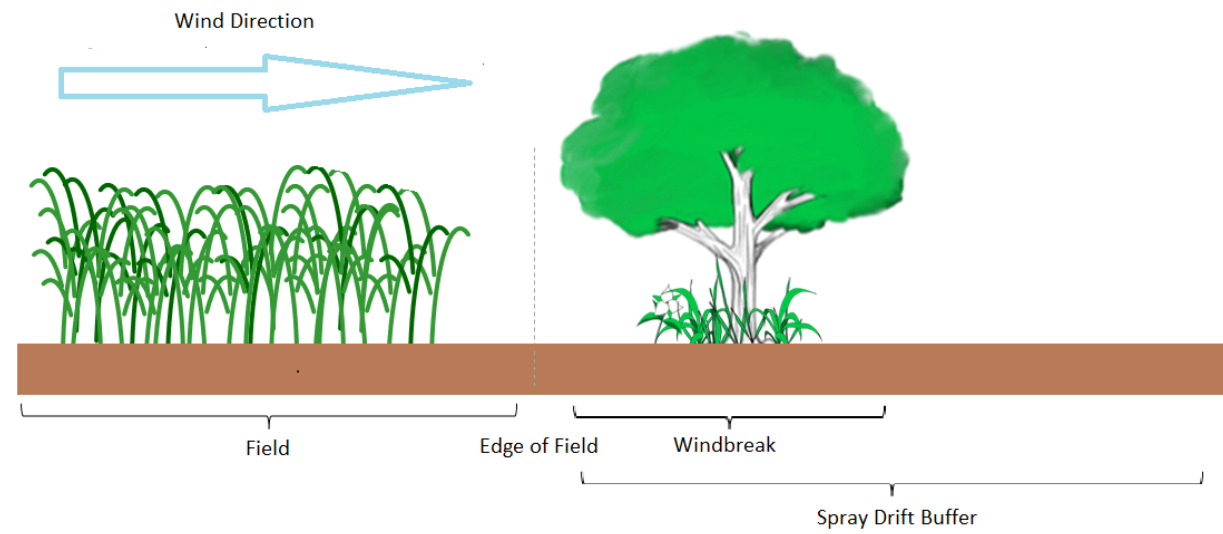
“Before registering a pesticide, EPA must consult with the statutorily specified agencies that have expertise on risks to species’ survival. **But for decades EPA routinely skipped that step when it registered pesticides**....”

Center for Biological Diversity v. EPA, Dec. 2022, DC Circuit

EPA has long had a **fraught relationship with the ESA**. It has made a habit of registering pesticides without making the required effects determination.

In re: Center for Biological Diversity and Center for Food Safety, Nov. 2022, DC Circuit





Source: Long et. al (2010).



# EPA Resolves Longstanding Litigation to Protect Endangered Species, Ensure Pesticides That Feed and Fuel America Remain Available

## Released on September 14, 2023

This week, the U.S. Department of Justice, on behalf of the U.S. Environmental Protection Agency (EPA) resolved longstanding litigation covering over 1,000 pesticide products, allowing EPA to fulfill its obligations to protect endangered species while conducting reviews and approvals of pesticides in a safe and protective manner.

In 2011, the Center for Biological Diversity and Pesticide Action Network (Plaintiffs) filed a complaint in Federal Court in California against EPA alleging that it was violating the Endangered Species Act (ESA) when it registered or reevaluated the registration of 382 pesticide active ingredients, which was ultimately reduced to 35 active ingredients covering over 1,000 pesticide

# Vulnerable Species Pilot Project



American burying beetle



Attwater's greater prairie-chicken



Buena Vista Lake ornate shrew



Palmate-bracted bird's beak



Poweshiek skipperling



Rusty patched bumble bee



Four freshwater mussels



Leedy's roseroot



Madison Cave isopod



Seven Lake Wales Ridge plants



Taylor's checkerspot



Two vernal pool fairy shrimp



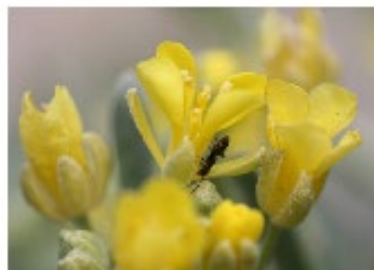
Mead's milkweed



Okeechobee gourd



Ozark cavefish



White Bluffs bladderpod



Wyoming toad

# Washington slams EPA pesticide pilot project

By DON JENKINS Capital Press Aug 8, 2023



A Taylor's checkerspot butterfly, found in isolated pockets in Western Oregon and Western Washington.

Environmental Protection Agency



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The [Washington Department of Agriculture](#) criticized a federal pilot project that would restrict pesticides on more than 2 million acres in the Northwest to protect a rare butterfly, arguing the proposal was “in direct opposition to scientific literature.”



# Themes That Could Result In Mitigation Changes

- **PULAs** –Asked EPA to put resources into refining PULAs
- **Scope:** Clarify the scope of the VSP for non-agricultural uses
- **Exemptions** – Clarify potential exemptions to the proposed mitigation and whether additional exemptions are needed; Mitigations – commenters pointed out differences between HS and VSP and the need for more mitigation options for non-ag uses and specialty crops
- **Mitigations:** Revise some of the proposed mitigation and include additional mitigation options specific to non-agricultural uses and specialty crops; Develop a consistent approach for the various strategies to reduce pesticide exposure to listed species from spray drift and run-off
- **Pilot Species:** Revisit how EPA selected the pilot vulnerable species; and
- **Non-Risk Based:** Account for different impacts of pesticides



# Vulnerable Species Next Steps

- By December 2023: Provide update to public on VSP
- By September 2024: EPA intends to provide additional updates on the VSP, including a plan for potential expansion to other species.



# Draft Herbicide Strategy

- A **framework** to identify mitigation for over 900 listed species affected by **agricultural** uses of **conventional herbicides**.
- Addresses many but not all effects.

## 1. Mitigations needed?

- Assess impacts to species.

## 2. Identify Mitigations

- Runoff, erosion, and drift mitigations
- Prevent likelihood of “jeopardy” and minimize “take”
- Specific to use and rate

## 3. Implementation

- Mitigation needed over wide areas
- Allows for emerging technologies
- Programmatic

# How Much Mitigation?

UDL	2,4-D	Dicamba	Diuron	MCPA
Alfalfa	NA	NA	9	3
Citrus	3	NA	9	NA
Corn	6	6	6	NA
Cotton	NA	6	9	NA
Grapes	3	NA	9	NA
Other Crops	NA	NA	NA	3
Other Grains	6	3	9	3
Other Orchards	6	NA	9	NA
Other Row Crops	6	NA	NA	NA
Rice	NA	NA	NA	NA
Soybeans	6	6	NA	NA
VGf	6	6	9	3
Wheat	6	6	9	3

PULA = Pesticide Use Limitation Area

UDL = use data layer

VGf = vegetables and ground fruit

NA = not applicable because herbicide is not registered for uses within this UDL.

# Flexible Mitigation Menu

## Field Management

- Contour farming
- Cover crop
- Grassed waterways
- In-field vegetative filter strip
- Irrigation water management
- Mulching
- Residue Tillage Management
- Terrace farming

## Field Characteristics

- Application to sand, loamy sand, or sandy loam soil without a restrictive layer
- Flat or nearly flat field (<2% slope)
- Fields in western farmland

## Application Parameters

- Rate reduction
- Soil incorporation

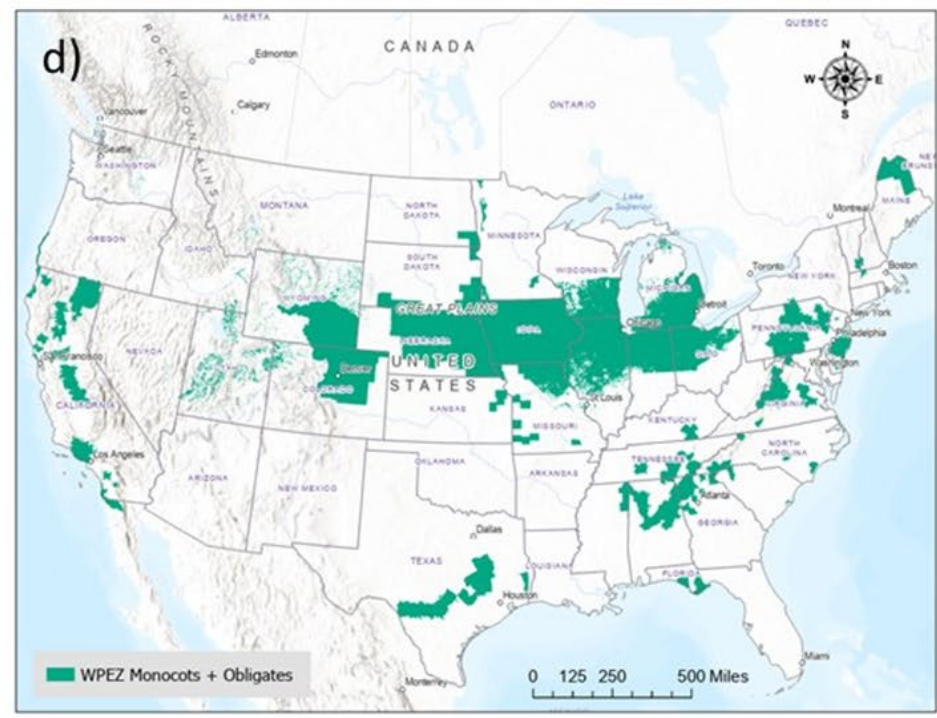
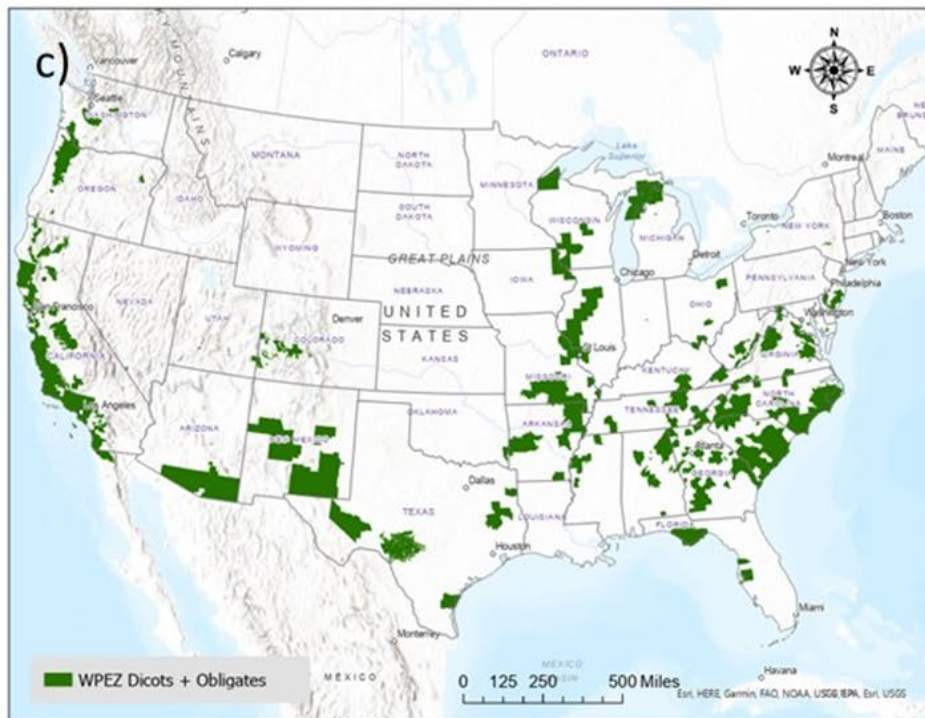
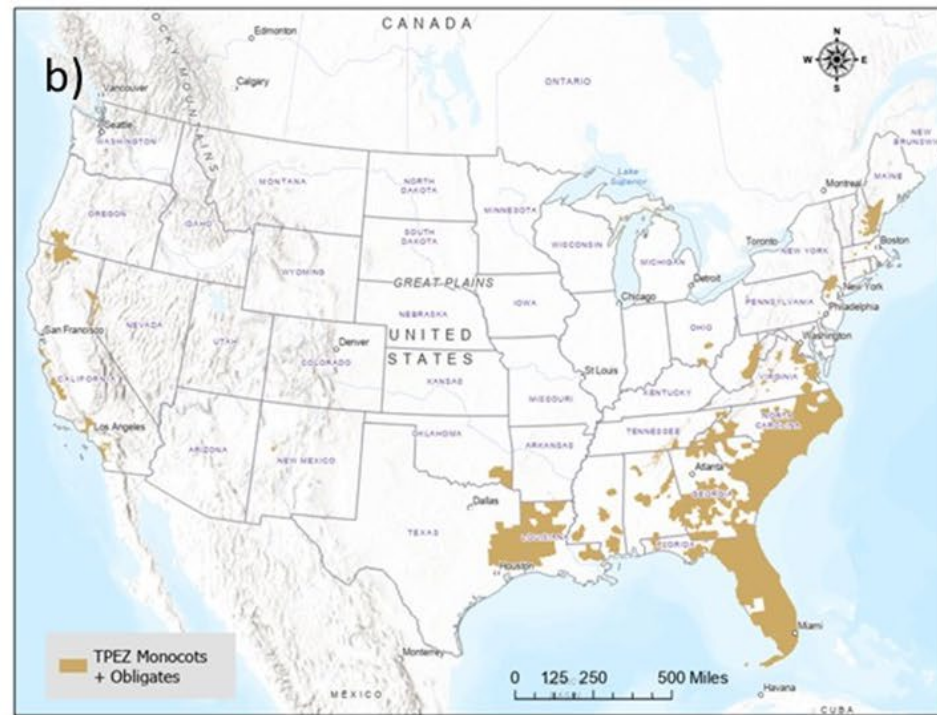
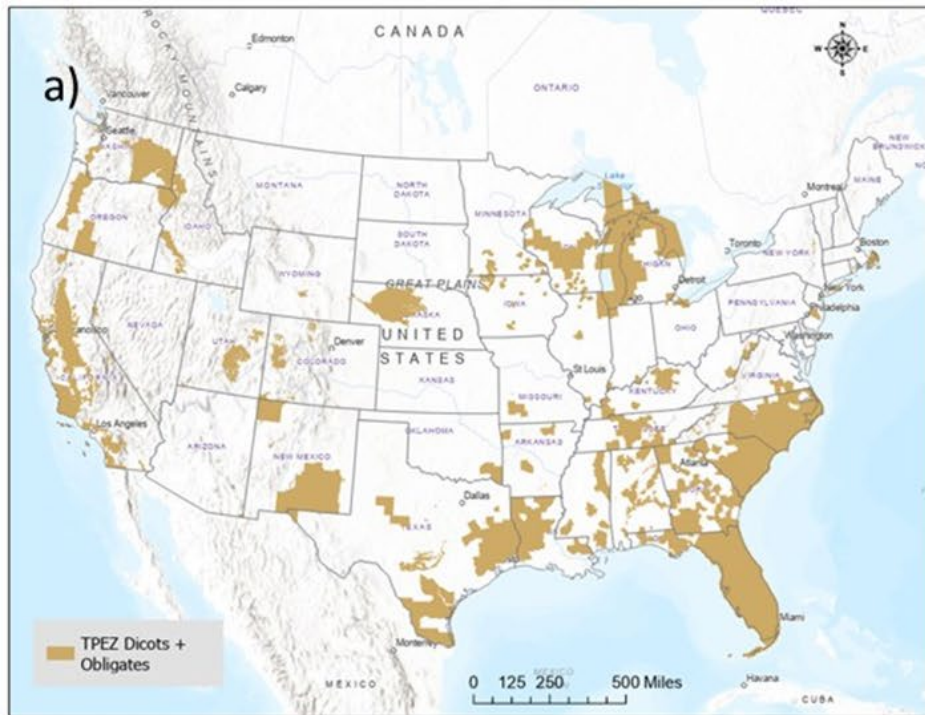
## Adjacent to the Field or In-between field and Protection Area

- 30-ft Vegetative Filter Strip
- Riparian area
- Vegetated Ditch

## Other Mitigations

- Water Retention System
- Use on- and off-field mitigation

# Where Mitigation Applies?





# Herbicide Strategy- Next Steps

- Team is currently working on reviewing and summarizing comments
- Expect the comments will cover many of the same themes as we heard in the vulnerable species
  - Impact to growers
- Final targeted for May 2024

# Other Strategies

- Insecticide strategy – Draft strategy by 7/30/2024; final strategy by 3/31/2025
  - Team is currently developing the draft
- Rodenticide strategy – Final strategy 11/2024
  - Draft strategy and single BE for 11 rodenticides targeted for this month
- Hawaii Strategy – Targeting March 2024 for workshop
- Fungicide strategy – Draft date TBD



Thank You!

