



NATIONAL POTATO COUNCIL

50 F Street, NW, Suite 900

Washington, DC 20001

(202) 682-9456 phone

www.nationalpotatocouncil.org

September 23, 2024

Jan Matuszko, Director
Environmental Fate and Effects Division
Office of Pesticide Programs
Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

Submitted electronically via Federal eRulemaking Portal

RE: Draft Insecticide Strategy to Reduce Exposure of Federally Listed Endangered and Threatened Species and Designated Critical Habitats from the Use of Conventional Agricultural Insecticides (Docket No. EPA-HQ-OPP-2024-0299)

Dear Ms Matuszko:

These comments regarding the Environmental Protection Agency's ("Agency" or "EPA") *Draft Insecticide Strategy Framework to Reduce Exposure of Federally Listed Endangered and Threatened Species and Designated Critical Habitats from the Use of Conventional Agricultural Insecticides* ("draft IS") are submitted on behalf of the National Potato Council ("NPC") members and supporters.¹

The grower members of NPC and the listed affiliated organizations are responsible for the production of more than 95 percent of the potatoes grown in the United States. The [economic contribution](#) to the U.S. of that production is more than \$10.8 billion dollars at farm gate. Further processing, distribution, domestic and international sales and related activities increase that economic contribution to the U.S. economy by \$100.9 billion annually, supporting over 714,000 domestic jobs.

The draft IS reflects an approach that will impact potato producers. Insect pests are some of the

¹ The Agency originally provided a 60-day comment period for the draft IS. Because of the size and complexity of the IS and the associated documents provided by the Agency relating to it (totaling more than 700 pages of material), as well as the fact there are other open concurrent actions affecting agricultural stakeholders for which the Agency was requesting comments on or about the same time, on August 9, 2024, NPC joined more than 240 stakeholders, in requesting a relatively brief 90-days extension of the comment period. The Agency devoted all of three days to considering the request, denying it on August 12, 2024. Certainly, on its face it calls into question how seriously the request was considered. Regardless, NPC was certainly disappointed by the Agency's denial. The request was submitted by the affected agricultural community who in good faith believed additional time was needed to digest and meaningfully comment on the IS. Accordingly, while we prepared these comments for submission within the prescribed comment period, we reserve the right to supplement them.

most devastating threats facing potato crops. If finalized as proposed, the draft IS will likely impact potato growers throughout the country due to the needed to address restrictions including in some cases, being unable to use the necessary insecticides need to address crop infestations due to the inability to achieve necessary mitigations specified in the draft IS.

Insecticides are essential tools on U.S. potato operations where our growers face numerous insect threats, including psyllids, aphids and Colorado Potato Beetles, to name a few. Without meaningful access or the ability to use insecticides, these insect pests can quickly destroy an entire crop. Many of these pests can also transmit secondary pests, including bacteria, viruses, or fungal infections, risking further crop damage and the industry's seed source for future years. We are concerned with the draft IS's direct impact on our ability to use tools to control these pests; if producers cannot adequately protect their crops or fields, insect pests can quickly spread throughout an entire region, placing other crops and producers at risk of significant negative economic consequences for their operations.

NPC's members are extremely interested in the development and safe use of pest management tools including crop protection chemicals that are environmentally sound, safe for applicators, workers and the public, and do not represent an unreasonable adverse risk to the environment, including humans and non-target organisms such as pollinators.

The Agency has not provided adequate time for stakeholders to review all the documents that were released as part of the draft IS. It is unreasonable to expect stakeholders to read the draft IS and its supporting documents, consult within the industry and draft substantive comments in only 60 days.

While we understand that EPA wants to quickly implement its new endangered species workplan, the Agency's haste to implement the new strategy is compromising its stakeholders and the important public comment process. The proposals are complex, and growers will need time to comprehend the proposed new requirements and understand how they will affect their pest control decision making to comprehensively comment.

Overview

To the Agency's credit, directionally, there are aspects of the draft IS that represent improvements over the two other draft ESA pesticide strategy frameworks that the Agency previously issued. It does reflect some lessons learned from EPA's draft herbicide strategy framework. These include increasing the number of potential mitigation options that may be available to an affected grower, as well as modifying some of the mitigations originally proposed in that draft strategy. For example, the Agency has identified instances where runoff and soil erosion mitigation may not be needed such as seed treatments, chemigation applied to the subsurface and soil injection and treatments that are less are less than a tenth of an acre and spot treatments that are less than 1,000 square feet. Additionally, the Agency has recognized the role reservoir tillage can play as an effective mitigation. Similarly, the Agency has recognized that a field which has a slope of 3% or less is a flat field and the need for runoff and soil erosion mitigation is lessened for such fields. EPA has also adjusted the application rate reductions to be based on the maximum annual application rate. NPC agrees that these adjustments will help assist growers in addressing label conditions that ultimately attach to insecticides as a result of the Agency adopting these conditions either as part of the registration

process for new chemicals, or as an outcome of the registration review process.²

There are also areas of the draft IS that require more consideration and work. For example, the Agency has retreated from the concept of the potential for conservation plans to be structured in a way that should obviate the need for any further mitigation. Under the draft, such qualified conservation programs can qualify for just two (2) mitigation points. NPC recognizes that qualifying a conservation plan requires extra work by the Agency. However, this is an area that we believe the States can assist the Agency. Because ultimately, impacts to listed species and their habitats involve local conditions, the States are in an ideal position to opine on the sufficiency of a conservation plan to meet the objectives of providing reasonable assurance that the application of an insecticide in a field is not likely to result in runoff or erosion that are likely to cause population effects to listed species or their designated habitat.

The draft IS continues to reflect a precautionary based approach. The alleged risk or harm to listed species at the population level has not been sufficiently identified or substantiated by the Agency. Its approach essentially presumes that insecticides applied in accordance with current labeling, are likely to harm listed species or adversely modify their designated critical habitat. It is not relying on the best scientific and commercial data available in its analysis. Among other things, the Agency is overestimating the potential insecticide residue exposure to listed species. As discussed below, there are additional reasonable refinements that can be made to the Agency's approach that would provide greater clarity regarding the potential effects of the use of insecticides on listed species populations. The program's approach should focus on identifying likely population-based impacts from insecticide use, and then developing appropriate responses to obviate those impacts.

The Agency has made clear that a central driver of the strategy is to help avoid future lawsuits. We appreciate that for a variety of reasons there is a substantial legal vulnerability for the Agency regarding the application of the ESA to pesticide approval decisions. Nevertheless, the impacts from the Agency's proposed solution to its dilemma will essentially fall on the pesticide user community. The draft IS if finalized will likely result in requiring growers to implement various mitigation measures, thereby changing their agricultural operations and practices to reduce potential exposure of listed species and their habitats to insecticide residues. In some cases, because of the grower's inability to meet the point threshold required, they will not be able to use certain preferred insecticides, particularly those that require nine (9) points. In other cases, the preferred insecticide will not be able to be used at all based on the mapping of Pesticide Use Limitation Areas (PULAs).

As the Agency has repeatedly been advised, some growers, including potato growers, will not be able to adopt the listed mitigation measures. Significant economic impacts on their operations will likely occur. The potential mitigations will affect the potential productivity and profitability of affected growers' operations, thereby also affecting potential land values. Producers who farm on rented land

² The Agency continues to downplay the immediacy of the impact from the measures and approaches reflected in the draft IS by emphasizing that by itself, the draft IS does not require anything. Actual regulatory requirements will not be imposed until sometime in the future when an actual registration or registration review decision is made on a specific chemical. With all due respect to the Agency, while technically correct, its position belies reality. We believe the Agency will be less likely to revisit the application of these framework principles in the context of an individual chemical review, whether involving an application for a new registration or an existing chemical. Consequently, while the effect from these framework approaches may not yet be experienced by affected growers, we know that day will be arriving, and when it does arrive, we believe the Agency will have little enthusiasm for revisiting the framework conditions in the context of an individual chemical.

will also face increased challenges in trying to meet the additional label mitigation measures. The landowner may not agree to mitigation measures that affect their land.

The Agency needs to analyze what those impacts may be before proceeding in requiring additional ESA mitigation restrictions on the insecticide labels.

Chaotic Proposal Creates Regulatory Jeopardy

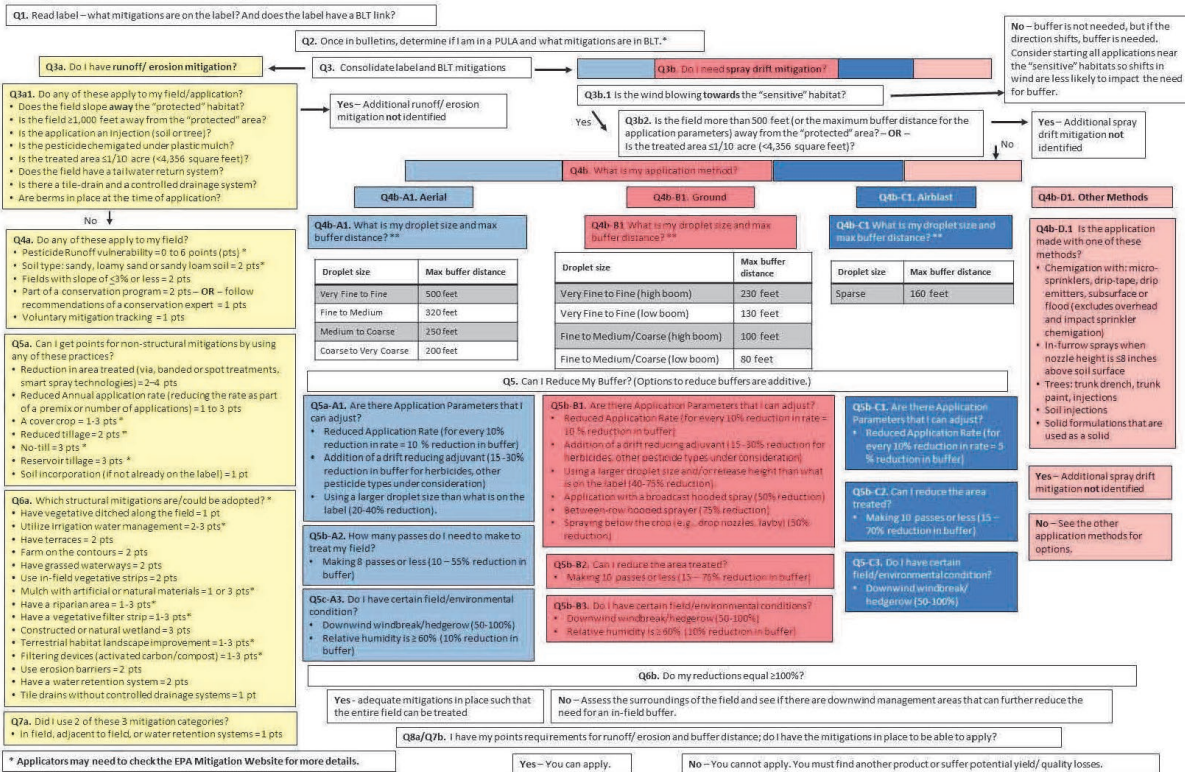
Beyond the overriding policy shift to the precautionary principle and the unreasonable timelines, this proposal is characterized by its chaotic nature and the potential jeopardy it places upon growers. This is best demonstrated by diagram 7.3 *Appendix C. Flow Chart of Managerial Decisions* in the Agency's "Application of EPA's Runoff and Erosion and Spray Drift Mitigations Through Scenarios that Represent Crop Production Systems in Support of Endangered Species Strategies" (EPA-HQ-Opp-2023-0365-1139) document that was made available with the final Herbicide Strategy on August 20, 2024 - almost 30-days into the 60-day comment period - and has significant implications for the draft IS.

A farmer would be mandated to work through this flow chart (including visit two different websites), for every application, of every chemical applied to every field on their farm throughout the growing season. On some farms, this could literally be hundreds or thousands of times that growers would need to work through the flow chart process.

The Agency has included nine representative insecticides in its case studies to demonstrate how the draft IS would be implemented. Seven of these products are registered for use in potato production. However, the case studies only provide possible insight into three of the products used in potato production. This lack of detail makes it difficult for growers to understand the full impact of the draft IS due to the inability to clearly understand its actual impact through implementation on farm.

This lack of clarity results in the assumption by the producer that **ALL fields, for ALL applications of ALL active ingredients** will need to be able to achieve the nine points for surface and water runoff and be able to achieve the maximum spray drift buffers.

7.3 Appendix C. Flow Chart of Managerial Decisions



Determining how a pesticide user or applicator must comply includes considering numerous factors, several of which can change up to the time of application. These factors include, but are not limited to, whether a field exists in one or more of ten pesticide use limitation areas (PULA); implications to Generalist along with Threatened and Endangered species; and the runoff potential of the counties in which an application is being made; field characteristics, including slope, soil type, and distance to unmanaged areas; the type of application being made (foliar, soil, seed treatment, ground, aerial, etc.); weather conditions, including humidity, windspeed, and direction; pests being treated and the pesticidal active ingredients being used; droplet size and application rate needed to effectively treat pests; the crop type being grown; existing runoff/erosion or spray drift mitigations on a field or orchard; and whether on-field mitigation is required. Further, a producer or applicator would not need to consider these factors for just one field but could need to consider them for dozens or hundreds of fields under management. These complexities alone could make it difficult for many operations, especially smaller producers with limited resources, to continue using insecticides.

Another challenge is the cost and feasibility of many of the mitigations provided in the draft IS. While there are more compliance options compared with previous proposals, such as the draft Herbicide Strategy, many of the options presented will still create agronomical, economic, or pest management difficulties. For example, many of the runoff, erosion, or spray drift mitigations provided (riparian areas, filter strips, etc.) will require physical modifications to fields and would likely cost hundreds to thousands of dollars per field to install and maintain, including significant labor costs. Many may be prohibited by land rental contracts as well, further limiting

options for hundreds of millions of farmland acres. We continue to have concerns with others, such as rate reductions, which may lead to resistance management challenges if not revised. Edge of field practices, such as riparian areas, or significant downwind spray buffers could also leave large crop areas untreated and allow for swift pest reinfestation of treated areas, resulting in significant crop damage.

Under the draft IS, some producers will lack sufficient runoff/erosion and spray drift compliance mitigations to continue effectively using insecticides essential to their operations. EPA should add other options not contingent on geography or crop type, such as risk reduction training courses or use of drift reduction adjuvants.

The Agency needs to further develop the mitigation exemption process.

NPC believes that a mitigation exemption process related to a runoff and/or erosion plan or a pesticide loss mitigation plan implemented according to the recommendations of a recognized conservation program or expert, need to be as practical and expansive as possible. However, the acceptable parameters of such a program are not clear. NPC is in general agreement with the minimum characteristics of a conservation program that should be acceptable that EPA has identified in the draft IS.³ However, NPC believes that if a grower follows such plans, they should qualify for an exemption from additional mitigation, not just be eligible for two mitigation points. Several growers are following conservation plans that reflect limiting the ability of pesticide residues from moving offsite through runoff or erosion to non-target areas. For example, in California, there is the California Irrigated Lands Regulatory Program (ILRP). All commercial growers in California are required to conduct a farm assessment, and if necessary, develop an erosion management plan that is overseen by California's State Water Resources Board. The erosion management plan is certified by eligible experts that have been trained to conduct erosion management plans. It is believed that ILRP program clearly meets EPA's objective of preventing runoff and exposure to listed species.

Similarly in Florida, the Florida Department of Agriculture and Consumer Services (FDACS) Office of Agricultural Water Policy (OAWP) has a decades-long collaboration in place with Florida's agricultural landowners and producers to implement BMPs for limiting runoff of pesticides, nutrients, and sediment, while protecting water resources. Such runoff elimination practices should also be considered applicable for protecting threatened and endangered species. FDACS OAWP can document that during 2022 nearly 425,000 acres of citrus crops are already enrolled in and following these runoff prevention BMPs, as are more than 1,000,000 acres of row/field/vegetable crops. Cumulatively, more than 1.8 million agricultural acres are enrolled in

³ "The program has to provide advice from individuals who meet the same benchmarks provided above for technical experts; **And**

- The program provides site-specific guidance tailored to the grower/applicator's crop and/or location; **And**
- The program focuses on reducing or managing runoff and/or erosion (including for example, soil loss, soil conservation, water quality protection) from agricultural fields or other pesticide use sites; **And**
- The program provides documentation of program enrollment. EPA is **not** suggesting that this documentation be provided to EPA; **And**
- The program includes verification of implementation of the recommended measures or activities (measures were established and maintained). Verification can be done through the conservation program and provided to the program enrollee. Verification is **not** required to be submitted to EPA."

and adhering to Florida BMP programs.

There are various programs in other states like the California ILRP and Florida's OAWP BMPs. The Agency in consultation with the States should review each of these programs and hopefully concur that if the programs are applicable to the region, site, and cropping system, and if growers are following the mandates of such programs, they should qualify for the exemption. It is also recognized that some existing conservation programs are not designed to address pesticide runoff or erosion specifically or the geographic growing regions and crop diversity, so NPC would like to engage with the Agency as it further develops the parameters associated with the exemption process. A viable exemption process can serve as a significant mechanism for reducing the potential burdens on the affected grower stakeholders. We also believe the involvement of the Agency with USDA's Office of Pest Management Policy (OPMP) as well as the National Association of State Departments of Agriculture (NASDA) would be very helpful in further developing the exemption process.

The Agency needs to reconsider its mitigation menu.

As noted above, for some potato growers, the menu of mitigation options does not present practical or economically feasible choices. The Agency should reconsider some of the parameters of the existing potential mitigation measures as well as add to the menu of potential mitigation options.

The mitigation point system needs to be reconsidered. There are growers who simply will not be able to meet the nine-point mitigation requirement. This will result in their having to change their crop protection program. Such changes may result in unintended consequences such as increase in pest resistance, the disruption of existing IPM programs and could result in growers altering the crops grown. Crops with products triggering lower point requirements will become preferred options with the unintended consequence of altering US food, fiber, and feed markets.

As drafted, it is difficult at this stage for growers to understand the full impact of the draft IS because the assigned point values for many insecticides are not identified. Not only is this information needed for a grower to determine if he can secure enough points via mitigations to use the most effective insecticide, but it is also a significant factor to growers when they are determining the chemical rotation for their resistance management plans. It also becomes a significant financial consideration in determining if the grower should invest additional funds into potential mitigations to be eligible to use a "9" mitigation point insecticide. Again, if these growers do not fall under an exemption, they may incur significant costs in changing their agricultural operations in trying to incorporate the mitigations necessary to use insecticides requiring nine mitigation points.

Some specific concerns related to the Ecological Mitigation Support Document to Support Endangered Species Strategies, Version 1.0 (July 2024) are included in Appendix A.

The Agency needs to revisit the spray drift provisions.

The potential spray drift requirements reflected in the draft IS are of particular concern to NPC's growers. Overall, we believe the Agency is being unduly conservative in its analysis regarding potential population impacts to listed species from pesticide use, as well as how it

calculates spray drift buffers. In some instances, it appears confusing and inconsistent.⁴

Like many parts of the draft IS, the spray drift provisions are not easily understood. For example, understanding the scope of managed areas has proven to be particularly challenging.⁵ The Agency appears to not fully appreciate the complexity of the draft IS, including the spray drift provisions. There will need to be a very effective communication effort developed by the Agency to explain in a very simple straight forward way the requirements that are ultimately established and the steps that the affected grower needs to take to comply with them.

It is believed that for some specialty crop growers, particularly those located in a PULA, the spray drift buffers are so large that they will not be able to apply the insecticides in such a way as to fully address all their pest problems. These growers will be left with few viable options and may have to reduce the size of the treated field, which can significantly impact them economically. In such a case, if they are not able to effectively address their insect pest problem, they can anticipate economic impacts due to quality or quantity issues associated with their inability to effectively protect their crop. The Agency should fully consider the economic impacts to these growers who may be adversely impacted due to the potential spray drift requirements.

For some growers, reducing application rates can have its own unintended negative effects on disrupting effective Integrated Pest Management (IPM) programs, facilitating pest resistance as well as potentially requiring a grower to use more alternative pesticides and potentially requiring them to enter into their field more frequently to try and control an insect pest. This is certainly not the result we think the Agency wants.

Additionally, there are some potential mitigation options the Agency should consider applicable to the spray drift requirements. These include mitigations related to:

- Adjuvants – The Agency needs to thoroughly consider the impact on drift if a grower employs adjuvants that are intended to reduce drift. It is understood the Agency has been reviewing this over the past year. If the data establish the effectiveness of employing adjuvants as part of a drift reduction strategy, then some mitigation reductions should be recognized.
- Application Height – A question has been raised regarding whether the treated crop can effectively serve as a “hedgerow” such that if the application is made at the crop height (basic) or half the crop height (advanced), a mitigation reduction would be appropriate.

⁴ For example, on page 33 of the draft IS there is a table (Table 8) that provides spray drift buffer distances for aerial, ground, and airblast based upon their potential for population level impacts. Under the high potential row (bottom), aerial is designated 320 feet, ground at 230, and airblast at 160 feet. We cannot understand the basis for this. One would generally expect that the spray distance would be greater for airblast than for ground applications. Additionally, it is noted that in some instances, the maximum drift buffers being suggested by the Agency are significantly larger than those established for some chemicals such as malathion for which the ESA consultation with the Services has been completed. In such circumstance, the Agency should thoroughly explain why it believes it appropriate to apply a larger buffer in the draft IS versus what was concluded through the formal consultation process.

⁵ For example, while EPA provides a brief description and list of managed lands for spray drift on page 38 of the draft IS, it is suggested that there needs to be more clarity relative to runoff/erosion as well as further examples provided by the Agency.

- Windspeed monitoring – EPA requires applications be made when windspeed is below 15 mph. Some states such as California require that applications be made below 10 mph. The Agency should consider whether applications made at or below 10 mph should qualify for a buffer reduction.⁶
- Air Induction (venturi) Nozzles – This technology has been demonstrated to reduce drift ([Ohio State University Extension](#)). Consequently, the Agency should provide some mitigation points for growers employing that technology.

Some specific concerns related to the Ecological Mitigation Support Document to Support Endangered Species Strategies, Version 1.0 (July 2024) are included in Appendix A.

The Agency needs to develop a substantial educational outreach program.

The Agency will need to engage in a substantial additional education outreach effort with the agricultural community on various aspects related to implementation of the draft IS once finalized. Its implementation will not be easy for affected grower stakeholders.

Stakeholders will need training regarding the implementation of various aspects of the strategy. The Agency should elaborate further on future communication and training outreach efforts it is envisioning. As the Agency is aware, many in the agricultural community have little/no familiarity with Bulletins Live! Two (BLT) or the new Mitigation Menu. Affected growers will need to be trained in how BLT and the Mitigation Menu operate as well as what records they need to maintain to address any questions that regulatory authorities might have regarding compliance with label requirements.

We were heartened to learn that efforts are underway to develop a calculator for a grower to assist them in determining compliance with the insecticide strategy once finalized. However, the scope of such a calculator is unknown at this time. Will it apply to just drift mitigation, or will it include runoff /erosion as well? Also, what type of beta testing does the Agency intend to conduct to be assured that the calculator works as intended? In short, greater clarity is needed. We fully support the Agency taking steps that can help an affected grower comply with the provisions of the program, as long as what is offered is straightforward and can be practically used by the grower community.

It is believed that it will take additional time to implement an appropriate insecticide labeling program that recognizes the importance of minimizing the disruption to the affected agricultural community. To that end, it is recommended that the Agency consult with the settling plaintiffs in the Mega-suit and seek additional time for finalizing the draft IS. It is not clear that the scope of the effort involved in developing and then implementing such a strategy was appreciated by the parties at the time of the settlement. Clearly if they are objective in analyzing the situation, those settling plaintiffs must be satisfied that the Agency is committed to addressing its ESA responsibilities. It simply will take some additional time to develop a more robust approach, one that minimizes the disruption to the agricultural community and is appropriately narrowed to

⁶ In the draft Herbicide Strategy, the Agency recognized wind speed as a factor eligible for mitigation points and a reduction in spray buffer, specifically where aerial applications were made with wind speeds of 3 to 7 mph. In such a circumstance, there was a 25' buffer reduction at 75-175'. For some reason which is not readily apparent, the draft IS omits this mitigation adjustment. We urge the Agency to add it in the final IS as well as consider whether adjustments are also appropriate for applications where the wind speed is between 7-10 mph.

target instances where additional protections to listed species populations is needed.

Summary

While we support the protection of wildlife and our environment, we do not believe this complicated strategy and the costly restrictions it would impose are necessary to accomplish this goal or bring EPA into compliance with the Endangered Species Act. In determining risks to species, EPA continues to use unrefined models and does not incorporate real-world scientific and commercial data (pesticide usage data, percent of crop treated, etc.), which leads to overstating risks and pesticide users and applicators having to adopt more costly restrictions than are truly necessary to protect listed species. We strongly urge EPA to revise its process for considering risks to species to be more reflective of real-world pesticide uses and conditions, which in turn will result only in protections that are genuinely necessary and supported by the best available science.

In conclusion, we have great concerns with and oppose the draft IS in its current form. Its immense complexity and lack of compliance options risks has the potential to impose significant regulatory burdens on U.S. farmers, producers, and applicators, all while exposing agricultural operations, conservation efforts, and rural communities to substantial damage from insect pests. We urge EPA to reconsider its approach to this onerous, complicated Strategy, including reducing its complexity, adding greater flexibility for compliance, and refining how the Agency determines risks to species. Failing to do so has the potential to inflict significant, irreparable harm to the producers of our nation's \$100.9 billion potato system.

Our industry continues to welcome the opportunity to engage with the Agency in a constructive manner to find workable solutions to bring the Agency into compliance with the Endangered Species Act.

Sincerely,

Michael R. Wenkel
Chief Executive Officer
National Potato Council

Joining affiliated organizations:

Colorado Potato Administrative Committee
Empire State Potato Growers
Idaho Potato Commission
Idaho Grower Shippers Association
Maine Potato Board
Northland Potato Growers Association
North Carolina Potato Association
Pennsylvania Cooperative Potato Growers
Potato Growers of Michigan, Inc.
Oregon Potato Commission
United Potato Growers of America
Washington State Potato Commission
Wisconsin Potato & Vegetable Growers Association

Appendix A. ***Specific concerns of U.S. potato industry of the draft Insecticide Strategy and associated documents.***

Inconsistency Related to “Release Height”

There is an inconsistency related to “release height” in the Ecological Mitigation Support Document to Support Endangered Species Strategies, Version 1.0 (July 2024).

Table 4-8. Decreases in distances associated with larger droplet size distributions than typically applied (page 27) the reference defining a “Low” versus “High” boom, is in regard to values greater than or less than/equal to two “feet above the ground.”

On page 29, the document states: *“Based on the available information and consideration of application parameters, EPA is basing the percent reduction for this mitigation on two factors: 1) the difference between crop height and release height is > 1 ft, and 2) there are more than 4 consecutive rows of crop on the field that meet the crop height vs spray release height parameter (> 1 ft).”*

On page 41, in the discussion on chemigation, the document states *“These systems have sprinkler heads along a boom that can have release heights near the crop canopy or ≥5 ft above the canopy. The primary purpose of these systems is to distribute water for irrigation. While it is anticipated that these irrigation systems with an end gun or impact sprinklers and/or those with higher pressure or release heights will not be commonly used to apply pesticides with the irrigation water, they may be used in certain situations (USDA, personal communication).”*

On page 45, the document states *“Increasing the length of drop nozzles is frequently done with chemigation systems to effectively reduce the release height within <5 ft of the crop canopy or soil surface.”*

The Agency needs to provide better clarity in the document. While for many herbicides the soil surface may be the appropriate surface for release height calculations, if there is a crop growing in the field at the time of an insecticide application, quite often the canopy of the crop will exceed a height of two-feet.

Scope of Ecological Mitigations Exceeding Endangered Species Strategies

In earlier draft of the mitigations associated with spray drift buffers reference was made to items a.-f. of *Table 4-11. Downwind managed areas that can represent spray drift buffers*. found on page 36 of the Ecological Mitigation Support Document to Support Endangered Species Strategies, Version 1.0 (July 2024). These items include:

- a. *Agricultural fields, including untreated portions of the treated field;*
- b. *Roads, paved or gravel surfaces, mowed grassy areas adjacent to field, and areas of bare ground from recent plowing or grading that are contiguous with the treated area;*
- c. *Buildings and their perimeters, silos, or other man-made structures with walls and/or roof;*
- d. *Areas maintained as a mitigation measure for runoff/erosion or drift control, such as vegetative filter strips (VFS), field borders, hedgerows, Conservation Reserve Program lands (CRP), and other mitigation measures identified by EPA on the mitigation menu;*
- e. *Managed wetlands including constructed wetlands on the farm; and*
- f. *On-farm contained irrigation water resources that are not connected to adjacent water bodies, including on-farm irrigation canals and ditches, water conveyances, managed irrigation/runoff retention basins, and tailwater collection ponds.*

The draft Insecticide Strategy revised the managed area to add a condition that people are not present in those areas (including inside closed buildings/structures). If people are present, the grower cannot consider the managed areas as part of the spray drift buffer. This would effectively eliminate the utility of the managed area serving as a buffer for many producers. Producers relying on the managed area as part of the buffer could find themselves suddenly ineligible to use and potentially being out of compliance with spray drift requirements because someone has entered the managed area, even if they are in an enclosed building or structure or otherwise will not come in contact with the drift.