

Report to SFIREG (December 2024): Activities of the Endangered Species Strategy Implementation (ESI) Working Committee.

- **Kevin Kern, Chair, Michigan Department of Agriculture & Rural Development**

Submitted December 5, 2024, by Kevin Kern, Chair, ESI Working Committee

The ESI Working Committee is focused on the implementation of EPA's strategies to support ESA compliance. The committee identifies issues affecting SLAs related to ESA strategy implementation which need further discussion and works with EPA to address these concerns.

The ESI committee met virtually 4 times prior to the 2024 Fall SFIREG JWC Meeting. The committee identified 4 priority areas (identified in the concurrent session information below) to concentrate discussion prior to the fall JWC meeting and broke out issues of concern requiring further discussion within each of these priority areas. Committee members contributed to identification and discussion of the effects of these issues within their states and regions, and suggestions for improvements were provided to EPA prior to the meeting to promote a prepared discussion on the priority areas.

The Fall Joint Working Committee (JWC) meeting was held in hybrid format on September 16-17, 2024, in Philadelphia, PA. The POM, EQI, and ESI committees met together and had breakout sessions to discuss issues in detail within each committee. ESI Committee members in attendance were Kevin Kern, Chair (MI) (2026), Daleena Blair (WA) (2027), Beth Dittman (NC) (2027), Daniel Duer (PA) (2027), Stephanie Ende (MN) (2027), Tom Gere (SD) (2027), Ryan King (OH) (2027), Polo Moreno (CA) (2027), Kathryn Rifenburg (OR) (2027), Craig Romary (NE) (2027) and Harris Walters (FL) (2027).

ESI Topics Discussed at the Fall 2024 JWC Meeting:

Please refer to the meeting materials for the agenda, papers and presentations from the September JWC meeting on the [AAPCO website](#) compiled by Amy Sullivan, AAPCO Executive Secretary. A summary of the ESI breakout sessions is included below:

- 1. Priority: Bulletins Live! Two** – Discussion of priorities and issues surrounding BLT identified by the ESI committee
(Amy Adams, EPA/OPP/EFED, Brian Anderson, EPA/OPP/EFED, Melanie Biscoe, EPA/OPP/PRD, Kevin Kern, ESI Chair)
 - Issues Identified
 - A. Accessibility for Applicators - *SLAs must verify if an endangered species bulletin is accessed within 6 months of an application, and many applicators are unable to access BLT due to poor internet availability, personal beliefs, or technology challenges. Since there is no recordkeeping requirement, SLAs must also trust that this information has been accessed. Ease of accessibility and alternatives to digital reliance are necessary to get applicators to consult endangered species bulletins in the absence of an enforceable component of this requirement.*
 - Suggestions for improvement:
 - EPA provides hard copies of endangered species bulletins for pesticide users who need to access bulletins but may not have reliable internet or cell phone service

- More timely responses to requests for assistance called into the EPA 800 number if that process is to continue
 - Direct users to product registrant stewardship programs to assist applicators in obtaining a bulletin
 - Develop incentives for ag retailers to provide onsite computers with access to BLT
 - Direct users to USDA NRCS offices to assist applicators in obtaining a bulletin and provide guidance on how to implement BLT and/or IEM mitigations
 - Direct users to USFWS / NMFS offices to assist applicators in obtaining a bulletin and provide guidance on how to implement BLT and/or IEM mitigations
 - Direct users to university extension personnel to assist applicators in obtaining a bulletin and provide guidance on how to implement BLT and/or IEM mitigations
 - Develop a mobile app that allows applicators to obtain mitigation information in the field
- Additional Committee Comments:
 - Suggested label language change to product labels directing applicators to resources who can provide bulletins
 - EPA Responses:
 - EPA recognizes that there is a potential issue with accessibility of BLT and endangered species bulletins for some members of the agricultural community
 - Resource limitations will probably not allow more EPA personnel to be available to provide copies of bulletins when requested
 - EPA strives to return phone calls to answer questions in a timely manner, but resource limitations will probably not allow more staff to be dedicated to this either
 - Resource limitations will probably not support EPA development of a mobile app
 - EPA suggested exploring a method to having bulletins available and provided by ag retailers is probably the most feasible method for fixing this issue

B. Improved bulletin language/format to make more understandable - Growers and SLAs need more readable text and format to be able to interpret requirements outlined in endangered species bulletins. In its current format, SLAs have a difficult time discerning/verifying bulletin requirements. The BLT system must be updated if SLAs are expected to hold applicators responsible for requirements.

- Suggestions for Improvement:
 - Consider bullet points, if-then statements, and/or flow charts instead of long blocks of text
 - More concise, itemized, and user-friendly distribution of the “Limitation” requirements

- Create standardized BLT and mitigation language so products with the same mitigation needs have the same bulletin language
 - Where the bulletins require a certain number of mitigation points to prevent risk from runoff and erosion, the bulletins should include a link to the mitigation menu website
 - Work directly with SLAs and/or state wildlife divisions when designing bulletins to ensure bulletins are usable and that restrictions make sense for individual states
- Additional Committee Comments:
 - Has this been reviewed for compliance with the Americans with Disabilities Act?
 - EPA Responses:
 - EPA acknowledged that bulletin language can be difficult to follow in some situations
 - The current BLT system is very limited in adjustment of format
 - Resource limitations currently restrict a change in system to allow for more flexibility in formatting of bulletins
 - Additional limitations on changing formatting or language used in bulletins due to work with agencies (USFWS, NMFS) which provide language for restrictions

C. Ability for an SLA to access information for compliance/enforcement purposes - *SLAs need to be able to access BLT information to answer questions, conduct investigations, and provide guidance for issues that arise as a result of BLT requirements on product labels. States need expanded BLT functionality and abilities to see a list of currently active bulletins and past bulletins, as well receive updates specific to additions to BLTs.*

- Suggestions for Improvement:

- Create a function in BLT, or a separate system/program available only to SLAs, that would allow an SLA to see a list of all active bulletins in the state or in regions of the state without entering a specific address
- Create a function in BLT, or a separate system/program available only to SLAs, that would allow an SLA the ability to print out bulletins from past dates
- Maintain a history of bulletins SLAs can access which contain past and present bulletins for specific areas or products
- Send quarterly updates with an overview list of new PULAs (products, AIs, and states that are affected), similar to quarterly registration action updates that the states currently receive
- Listserv for regular updates to SLAs on which products currently have bulletins within BLT

- Additional Committee Comments:
 - Timeliness is key in obtaining historical bulletins to allow for SLAs to effectively and efficiently conduct day-to-day work

- SLAs need timely communication and directed information when additions or changes are made to requirements on bulletins within BLT

- EPA Responses:

- Historical BLT data is retained by EPA and is available to SLAs if requested
- EPA staff currently provide past bulletins on an individual request basis
- The BLT system is not designed to allow past bulletins to be stored and/or retrieved
- Resource limitations currently restrict a change in system to allow for providing historical bulletins
- EPA is open to considering a list serv for communicating updates to BLT

D. PULA Clarity - *Search parameters and PULA boundaries/layers need to be enhanced to decrease complexity. SLAs and growers need the ability to clearly identify requirements.*

- Suggestions for Improvement:

- Allow search by active ingredient and product name
- Develop different layers / shades / colors to differentiate overlap in PULA boundaries
- PULAs need to be clearly defined and delineated on maps generated by BLT
- Allow printing of all bulletins applicable to a specific geographic area
- Functionality within BLT for pesticide users who use multiple products at once that would allow them to see all relevant bulletins and if any mitigation measures for different products in their tanks overlap, or identifies the product with the highest level of mitigation needed
- Automatically incorporate runoff credits that appear on the mitigation website
- Ensure that BLT system is ADA compliant

- Additional Committee Comments:

- Has this been reviewed for compliance with the Americans with Disabilities Act?

- EPA Responses:

- EPA acknowledged that maps and PULAs can be difficult to follow in some situations
- Search parameter changes are being considered
- Functionality of accessing a list of PULAs in place in a specific map area is available by selecting the PULA (clicking on the applicable shaded area on the map)
- Functionality for tank mix mitigations currently being worked on

- Limitations on the formatting within the program does not allow incorporation of runoff credits or mitigation menu links into the program
- Resource limitations currently restrict a change in system to allow for making some of the suggested changes

2. Priority: Education & Training – Discussion of priorities and issues surrounding education and training needs for ESA-related changes identified by the ESI committee (Nicole Zinn, EPA/OPP/PRD, Steven Peterson, EPA/OPP/PRD, Kevin Kern, ESI Chair)

○ Issues Identified

A. Training for SLA Staff - *SLAs need field staff training on the recognition of ecological mitigation measures, interpretation of Endangered Species Bulletins, how to navigate multiple bulletins / tank mixtures, interpretation of the Mitigation Menu website, resources to determine soil types/groups, resources for definitions of terms used in ESA-related labeling, how to determine slope of land, how to determine soil saturation conditions, and how to identify and define sensitive habitat. Additionally, SLAs need examples of documentation / record of how compliance was achieved/tracking.*

▪ Suggestions for improvement:

- Solicit input from state partners to determine the best use of resources for training SLA staff.
- Regular updates on what states can expect so that work is not duplicated.
- Engagement with extension/PSEPs/industry to determine training resources needed for effective applicator outreach
- Required BLT training for applicators, similar to dicamba training requirement?
- If not provided by EPA, then the agency must identify acceptable training, coordinate with affected groups, and communicate where this training will come from in order to ensure consistent messaging and desired outcome.
- Opportunities for PREP training?

B. Training for Applicators - *Growers and commercial applicators need training on how to navigate BLT, interpretation of endangered species bulletins, how to navigate multiple bulletins/tank mixtures, how to navigate the mitigation menu website, how to determine soil types/groups, definitions of terms used in ESA-related labeling, how to determine slope of land, how to determine soil saturation conditions, how to identify and define sensitive habitat.*

▪ Suggestions for Improvement:

- Proper rollout of applicator training is critical to compliance efforts by applicators / SLA ability to enforce requirements
- Solicit input from state partners to determine the best use of resources for training of applicators to ensure understanding and compliance.
- Regular updates on what states can expect so that work is not duplicated.

- Engagement with extension/PSEPs/industry to determine training resources needed for effective applicator outreach
- Required BLT training for applicators, similar to dicamba training requirement?
- If not provided by EPA, then the agency must identify acceptable training, coordinate with affected groups, and communicate where this training will come from in order to ensure consistent messaging and desired outcome.

C. Training for Conservation Program Staff – *Conservation program staff need training on how to navigate BLT, interpretation of endangered species bulletins, how to navigate multiple bulletins/tank mixtures, how to navigate the mitigation menu website, how to determine soil types/groups, definitions of terms used in ESA-related labeling, how to determine slope of land, how to determine soil saturation conditions, how to identify and define sensitive habitat.*

- Suggestions for Improvement:
 - Identify who is training the "technical experts" so that SLAs are able to identify if label requirements are met.
 - Need training for conservation program staff about what they can expect to see from the ESA strategies (increased interest in participation in their programs?), what EPA is looking for in terms of implementing erosion control/runoff mitigations, how EPA sees them fitting into the strategy implementation, etc.
 - If not provided by EPA, then the agency must identify acceptable training, coordinate with affected groups, and communicate where this training will come from in order to ensure consistent messaging and desired outcome

D. Training for PSEP / Extension Staff – *PSEP & extension staff need training on how to navigate BLT, interpretation of endangered species bulletins, how to navigate multiple bulletins/tank mixtures, how to navigate the mitigation menu website, how to determine soil types/groups, definitions of terms used in ESA-related labeling, how to determine slope of land, how to determine soil saturation conditions, how to identify and define sensitive habitat.*

- Suggestions for Improvement:
 - If not provided by EPA, then the agency must identify acceptable training, coordinate with affected groups, and communicate where this training will come from in order to ensure consistent messaging and desired outcome

E. NRCS Resources – *Applicators, SLAs, conservation program staff, PSEPs and extension staff need training on what resources are available and where to find them, as well as how to use and interpret those resources.*

- Suggestions for Improvement:
 - Compilation and reference to USDA / NRCS tools that EPA finds acceptable and supports for the purpose of determining acceptable mitigation options
 - If not provided by EPA, then the agency must identify acceptable training, coordinate with affected groups, and communicate where

this training will come from in order to ensure consistent messaging and desired outcome

- Additional Committee Comments:
 - Communication and a roadmap of planned educational or outreach material should be developed
 - Process needed for making suggestions and filling gaps in training needs
 - Training and materials must be developed through a compliance & inspection lens
 - Survey of industry groups to determine their needs would be beneficial for developing useful tools
 - EPA regional involvement would be beneficial, as regional staff are familiar with dynamics in their respective regions

- EPA Responses:
 - ESA Outreach Workgroup developed, with secondary project groups focused on website creation, initial outreach materials and development of a decision tree for users
 - EPA has limited resources for outreach and education efforts
 - Need to be strategic; concentrate on 2-3 priority items and collaborate with states and other partners
 - Can only develop resources as ESA work is finalized
 - Currently focusing on outreach/training to applicators, growers, and trainers (consultants, extension, etc.); “train the trainer”
 - Initial priorities: Establishing webpage, providing initial materials for meetings/training, connecting with stakeholders to determine needs, creating a listserv for notifications
 - Not expecting states to take on all educational and training responsibilities

3. Priority: Label Language Clarity / Complexity – Discussion of priorities and issues surrounding the clarity and complexity of label language as a result of ESA-related changes identified by the ESI committee (Anne Overstreet, EPA/OPP/PRD, Tim Kiely, EPA/OPP/PRD, Melanie Biscoe, EPA/OPP/PRD, Kevin Kern, ESI Chair)

- Issues Identified
 - A. Contradictions between label & bulletin language- *To be able to enforce label requirements, SLAs must have consistent and non-contradictory language between bulletins and label, as well as technical support from the agency. Applicators must have clarity to comply with label and bulletin requirements.*
 - Suggestions for improvement:
 - Bulletin language should only identify measures that are more restrictive than what is outlined on the product label.
 - Terms used in bulletin language should match terms used on the product label.
 - SLAs need access to technical assistance options for label interpretation when they come across conflicting language between the pesticide product label and corresponding Bulletins

B. Contradictions in general label language vs. IEM language- *To be able to enforce label requirements, SLAs must have consistent and non-contradictory language between bulletins and label, as well as technical support from the agency. Applicators must have clarity in order to comply with label and bulletin requirements.*

- Suggestions for Improvement:
 - Ensure IEM language offering points to apply products at less than label rate is not an option for products requiring a certain label rate.
 - Terms used in IEM language should match terms used in other parts of product label.
 - SLAs need clarification on the process to quickly resolve label language discrepancies, including who best to contact for timely corrections.

C. Consistent definitions and descriptions- *Clear and unambiguous definitions and descriptions are needed for SLAs to determine if label and bulletin requirements are being met., Consistent messaging if needed for applicators and the partners who will be assisting them.*

- Suggestions for Improvement:
 - Clearly define what constitutes "habitat", as many descriptions of drift mitigation areas may be considered habitat for generalist species.
 - "One stop shop" for all definitions? Mitigation Menu website?
 - Guidance on how conservation experts, SLAs and others interpret mitigation measure descriptions (Example - riparian area vs riparian forest buffer)

D. Simplified process for determining mitigation requirements- *Applicators will not be willing/able to navigate label and bulletin requirements if the process to determine requirements is not simplified. SLAs need to have clear and effective label and bulletin language and processes to be able to enforce those requirements.*

- Suggestions for Improvement:
 - Fewer steps to navigate requirements by placing link for BLT on mitigation menu website and vice versa.
 - Develop a BLT mobile app for users to access which provides more precise PULA information as well as factors such as runoff vulnerability credits.
 - "Cheat sheet" or how to comply guide outlining step by step process to determine correct mitigation requirements
 - Integrate point systems for FWS & NFMS mitigation options.
 - Continued collaboration with partners to ensure bulletins and mitigations become easier to navigate and implement.
 - Create focus groups to beta-test BLT updates and changes.
 - Simplify the "Flow Chart of Managerial Decisions".
 - Expand functionality within BLT for pesticide users who apply multiple products at once. Include the ability to see all relevant bulletins and whether any mitigation measures for different products in their tanks overlap, or identify the product with the highest level of mitigation needed

- Additional Committee Comments:
 - Label and bulletin language must be easier to understand and more straightforward
 - Very difficult / nearly impossible for SLAs to enforce when it is difficult to determine steps for compliance
 - Co-regulator focus groups concentrating on label language would help improve clarity
 - SLAs need a point of contact for interpretations of BLT and label language related to ESA requirements

- EPA Responses:
 - Increased options for growers leads to increased complexity
 - Realizes that the complexity can be overwhelming
 - Trying to come up with ways to decrease that complexity
 - Education and outreach opportunities will help increase user clarity
 - Growers should be encouraged to plan ahead to ensure that they find the tools they need for their operations

Recommendations for SFIREG:

- The ESI Committee recommends that SFIREG request from EPA an outlined path on how the agency plans to address the issues identified in the report above, and timelines for when they can be addressed. Each of the identified issues will likely prevent successful adoption of ESA-related requirements by growers and present an enforcement challenge for SLAs.
- The ESI Committee recommends that SFIREG request the following information from states to assist in adequately addressing education & training needs:
 1. What do SLAs think that EPA should prioritize for training & education?
 2. What do SLAs see as the role of EPA in outreach & education?
 3. What do SLAs see as the role of states in outreach and education?

Other Comments:

- The ESI committee plans to review the [EPA mitigation menu website](#), EPA's runoff points calculator, and [mitigation menu measure descriptions](#) in the near future, as discrepancies have already been identified by ESI committee members.
- The ESI committee would like to develop a more structured plan for roles and responsibilities of stakeholders involved in training/education/outreach of ESA-related requirements. This involves continued dialogue with EPA's ESA Outreach Workgroup, as well as feedback from states on identified needs.
- A white paper identifying issues related to Bulletins Live! Two has been developed by the ESI committee and is available on the AAPCO website. This document will be used to inform discussion during the BLT Improvement Requests topic listed on the agenda for December 10th.