



Submitted via Federal eRulemaking Portal

May 2, 2022

Office of Pesticide Programs

Environmental Protection Agency Docket Center

1200 Pennsylvania Ave. N.W.

Washington, DC 20460-0001

Re: **Docket ID No: EPA-HQ-OPP-2022-0172 - NMFS Draft Revised Chlorpyrifos, Diazinon, and Malathion Biological Opinion**

The National Association of State Departments of Agriculture (NASDA) submits the following comments on the NMFS Draft Revised Chlorpyrifos, Diazinon, and Malathion Biological Opinion Docket ID No: EPA-HQ-OPP-2022-0172.

NASDA represents the commissioners, secretaries, and directors of the state departments of agriculture in all 50 states and 4 U.S. territories. State departments of agriculture are responsible for a wide range of programs including food safety, combating the spread of disease, and fostering the economic vitality of our rural communities. Conservation and environmental protection are also among our chief responsibilities. In 43 states, the state department of agriculture is a co-regulator with EPA and is responsible for administering, implementing, and enforcing the production, labeling, distribution, sale, use, and disposal of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Crop protection tools are an essential component within many agricultural crop production systems and public health programs, and FIFRA establishes a rigorous, scientific evaluation and review process for these tools. NASDA supports the scientifically-sound development, registration, registration review, and consultation process for pesticide products and uses to enable growers to produce our nation's food, fiber, and fuel, as well as public health agencies to combat the spread of pests and disease. While much of EPA's review processes are the gold standard worldwide, the FIFRA/ Endangered Species Act (ESA) consultation process continues to frustrate producers and state regulatory officials.

EPA has discussed the agency's obligations pursuant to the ESA to ensure that the pesticide registrations do not jeopardize the continued existence of federally threatened or endangered (listed) species or adversely modify their designated critical habitats. The agency has further acknowledged that where EPA determines that a pesticide in the registration or registration review process "may affect" a listed species, EPA must consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the Services) as applicable.

EPA has recently stated that the agency faces several challenges that have made it challenging to implement timely and effective strategies that specifically address protecting listed species from possible pesticide effects. The agency has elaborated that in 2021, prompted by the escalating challenges of fulfilling its ESA obligations for pesticide decisions, EPA began developing a comprehensive, long-term approach to meeting those obligations. The outcome of much of EPA's outreach on this topic has been developing a workplan that reflects EPA's experiences, assesses its

future ESA workload, and describes administrative and other improvements that the EPA will pursue or consider pursuing.

It is not clear from the draft biological opinion whether the work under review reflects the knowledge and experiences EPA and the Services have gathered from the years of external litigation and internal conflict that ultimately led to EPA's recent announcement of the agency's plans moving forward.

To better protect listed species, EPA is now working to improve how regulatory agencies, including EPA and the Services, should assess the effects to listed species in pesticide evaluations and the consultation process. Until scientifically valid methods have been fully developed, validated, and implemented, it seems inappropriate to rush through these biological opinions based solely on arbitrary deadlines. EPA, in its recent announcement regarding its future work plan, has outlined a science-based process that, by virtue of its complexity, will take years to get right. Rushing through biological opinions before the underlying science is settled does not advance EPA's stated objective of minimizing litigation risk but instead likely aggravates it.

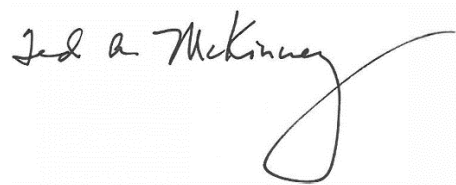
NASDA supports scientifically-sound development, registration, registration review, and consultation for pesticides to enable growers to produce our nation's food, fiber, and fuel. In this regard, we believe that arbitrary deadlines that have driven the development of this and other recent biological opinions have potentially sacrificed scientific validity in the name of expediency. Insecticides including chlorpyrifos, diazinon, and malathion are critical technologies for allowing farmers and public health officials to protect against pests and diseases and mitigate the effects of climate change. The public health, environmental, and agronomic benefits of using pesticide products must be weighed heavily in the registration, registration review, and FIFRA/ESA consultation process.

Growers face constant pressures ranging from weather conditions, pest stressors, resistance issues, and a myriad of other challenges. It is essential to American agriculture and other users of these critical tools that EPA and the Services execute a robust science-based registration, registration review, and consultation process with the best science available. Additionally, as the global supply chain suffers growing food shortages from military conflicts abroad, it is imperative that American farmers and ranchers have more tools not less.

As regulatory partners with EPA, NASDA stands ready to assist EPA in ensuring our growers and public health officials have access to a broad range of technologies and pesticides, reviewed and approved in a scientifically-sound and transparent manner.

NASDA appreciates the opportunity to comment on this critical issue. Please contact Zachary Gihorski (Zach.Gihorski@nasda.org) if you have any questions or would like any additional information.

Sincerely,

A handwritten signature in black ink that reads "Ted McKinney". The signature is written in a cursive style with a large, sweeping flourish at the end.

Ted McKinney

Chief Executive Officer
NASDA