

# Minor Crop Farmer Alliance

*Via Electronic Docket Submission* <http://www.regulations.gov>

Carolyn Smith  
Chemical Review Manager  
Risk Management and Implementation Branch III  
Pesticide Re-evaluation Division  
Office of Pesticide Programs  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave NW  
Washington, DC 20460-0001

May 2, 2022

Re: Docket ID EPA-HQ-OPP-2022-0172 – National Marine Fisheries Service Draft Revised Biological Opinion on Chlorpyrifos, Diazinon, and Malathion.

Dear Ms. Smith:

The following comments are submitted on behalf of the Minor Crop Farmer Alliance (“MCFA”) and its members in response to the request for comments by the U.S. Environmental Protection Agency (“EPA” or “Agency”) regarding the National Marine Fisheries Service (NMFS) subject draft revised Biological Opinion (BiOp) as it relates to the use of Malathion.

MCFA is an alliance of national and regional organizations and individuals representing growers, shippers, packers, handlers and processors of various agricultural commodities, including food, fiber, turf grass, nursery and landscape crops, and organizations involved with public health pesticides. MCFA’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 threatened or endangered species, non-target organisms, the environment, or humans. While our commodities are often called “minor crops” or “specialty crops,” they contribute to the diverse and highly nutritious diets available for the global population, and to safe and aesthetic surroundings for our homes, schools, and places of business. These U.S. farmers grow more than 500 types of fruit, vegetable, tree nut, flower, ornamental, nursery and turf grass crops in addition to the major bulk (row) commodity crops. Specialty crop production accounts for more than \$60 billion, or approximately 40% of total U.S. crop receipts.

Malathion is a broad-spectrum insecticide used on many commercial agriculture crops. These include: alfalfa, apricot, asparagus, avocado, barley, bean (succulent and dry), beets (table), birdsfoot trefoil, blackberry, blueberry, boysenberry, broccoli, broccoli raab, Brussels sprout, cabbage (including Chinese), carrot, cauliflower, celery, chayote, cherry, chestnut, clover, collards, corn (field; sweet; and pop), cotton, cucumber, currant, dandelion, date, dewberry, eggplant, endive, escarole, potato, fig, garlic, gooseberry, grape, grapefruit, guava, hay grass, hops, horseradish, kale, kohlrabi, kumquat, leek, lemon, lettuce (head and leaf), lime, loganberry, macadamia nut, mango, melon, mint, mushroom, mustard greens, nectarines, oats, okra, onion, orange, papaya, parsley, parsnip, passion fruit, pea, peach, pear, pecan, pepper, pineapple, pumpkin, radish, raspberry, rutabaga, rye, shallot, sorghum, spinach, spring wheat, squash,

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strawberry, sweet potato, Swiss chard, tangelo, tangerine, tomato (including tomatillo), turnip, vetch, walnut, watercress, watermelon, wheat (spring, and winter), and yams. Other uses include, for example, commercial ornamental nursery stock. It also has important quarantine uses either by itself or in combination with other products. These uses include for example, to treat for the cherry fruit fly as well as controlling the spotted winged drosophila in various commodities including sweet and sour cherries, blueberries, caneberries and strawberries. It is a very cost-effective product with relatively short re-entry and pre-harvest intervals. Clearly the product is important to many of our members.

MCFA is very concerned about the quality of the subject draft BiOp, particularly the information underpinning its conclusions and the process that has been used in its development. The NMFS determination that the use of malathion may result in jeopardy to the continued existence of 37 listed species and cause destruction, or adverse modification (DAM) in 36 designated critical habitats under NMFS jurisdiction, is unduly conservative and not a realistic representation of the risk associated with the use of this product. Throughout the review of malathion involving listed species, including by the US Fish and Wildlife Service (FWS), the US Environmental Protection Agency (EPA) and NMFS, important data and other information has been presented by the applicant FMC Corporation to help refine the assessment associated with the potential risk to listed species from exposure to the chemical. Fortunately, the FWS did ultimately consider that information in helping to refine its assessment that underpins its final Malathion BiOp. Before it finalizes its BiOp for malathion, we strongly encourage NMFS follow-up with FWS to learn what can be reasonably done to help refine the NMFS assessment. MCFA believes that NMFS can refine its assessment in a manner that will be protective of the listed species while being as minimally disruptive as possible to the agricultural community that relies on this product.

Substantial scientific and technical comments are being submitted by the applicant, FMC Corporation, including its scientific consultants, and by CropLife America regarding the subject draft BiOp. In the interests of time, those comments will not be repeated. MCFA incorporates by reference those comments. In addition, we particularly highlight the following:

- In the draft BiOp, NMFS asserts that “there are hundreds of insecticide products currently registered for use in the United States that do not require any mitigation specific to the species covered by this RPA.” No basis is provided to substantiate this assertion. There is no detailed review provided by NMFS of these “hundreds of insecticide products” as they relate to labeled uses, rates, geographies, or efficacy. MCFA believes if NMFS conducted such a detailed review, it would determine that many of these products are in fact not labeled for use on malathion-labeled crops nor do they adequately control the same pests as malathion, nor have the same use profile (*i.e.*, pre-harvest and re-entry intervals). NMFS’s unsubstantiated assumption fails to consider that there are regional and crop-specific pest pressures that substantiate the use patterns and needs for malathion. Decades of use of malathion have led to a refined understanding of how, when, and where to use the product for both optimum performance and optimum non-target protections. These historical product use specificities associated with malathion’s use have generated clearer understandings on the best ways to precisely use this product.

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- The best available data are not being considered by NMFS regarding the locations of malathion use. The subject draft BiOp relies on data from EPA's malathion Biological Evaluation for many aspects, including information related to the location and extent of malathion use sites. The applicant had repeatedly made clear to EPA that it was relying on out-of-date and incorrect data. Updated information was submitted to EPA. Unfortunately, apparently because of time pressures, EPA did not incorporate these best available data in its Biological Evaluation. When NMFS relies on the EPA Biological Evaluation to support its draft subject BiOp, the Service is merely perpetuating reliance on substantially flawed information rather than using the best available data.
- In the draft revised BiOp, NMFS notes that the RPA only applies to uses that are within 300 meters of listed species habitat, thereby insinuating there will be limited production and economic consequences. MCFA believes this assumption is substantially in error. Establishing buffer zones of 300 meters around species habitat will potentially have substantial negative consequences for the agricultural community. There is an overlap in several instances between the malathion agricultural production areas and species habitat such that if the BiOp is finalized essentially in its current form, it would significantly impact access to the chemical.

The foregoing is not an exhaustive list of issues associated with the subject draft BiOp. MCFA strongly encourages NMFS to review the best available information, consult with its fellow Service as well as EPA and the US Department of Agriculture to appropriately revise its BiOp before it is finalized. MCFA appreciates that NMFS is operating under a court-imposed deadline. However, the answer to this situation is not to short-circuit its analysis, but rather inform the court of the situation and request the time necessary to produce a BiOp based on the best available information.

MCFA appreciates the opportunity to comment on the subject draft BiOp. Please let us know if you have any questions regarding these comments.

Sincerely,



Michael Aerts  
Technical Committee Co-Chair