

**U.S. House of Representatives**  
**Committee on Natural Resources**  
**Washington, DC 20515**

March 26, 2018

The Honorable David Bernhardt  
Acting Secretary  
Department of the Interior  
1849 C Street, NW  
Washington DC 20240

Dear Acting Secretary Bernhardt,

Today documents from the U.S. Fish and Wildlife Service (FWS) obtained by the media conclusively show that 1,400 threatened and endangered species are being put on a path towards extinction by the pesticide chlorpyrifos, an insecticide that has been shown to impair neurological development in children. Many more threatened and endangered species will be put on a similar path because of diazinon and malathion, two insecticides with similar toxicological mechanisms. These documents show that efforts to address the impacts of this pesticide were indefinitely delayed shortly after you were personally briefed on the scientific conclusions of the experts at the Fish and Wildlife Service. We are writing to request that you immediately provide us the FWS biological opinions in full.

In 2016, after years of scientific review, the Environmental Protection Agency (EPA) determined that the insecticide chlorpyrifos exceeded safety standards. In order to protect against possible neurological development impacts to children, it proposed that all food tolerances for that pesticide be revoked.<sup>1</sup> While these efforts were occurring, the EPA, FWS and the National Marine Fisheries Service (NMFS) spent nearly four years working toward the first nationwide assessment of the impacts to endangered species from chlorpyrifos, in addition to malathion and diazinon.

In April 2016, the EPA released its initial analysis of these pesticides, concluding that both chlorpyrifos and malathion are likely to adversely affect 97 percent of all species listed as threatened or endangered under the Endangered Species Act — which includes more than 1,740 threatened and endangered wildlife and plant species — while diazinon is likely causing harm to 79 percent of all species listed under the ESA.<sup>2</sup> The nationwide assessments — the product of years of collaborative interagency work — were groundbreaking in their complexity and scientific rigor. After a period of public comment and additional review, the assessments triggered the beginning of the formal consultation process by the two wildlife agencies.

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<sup>1</sup> 80 Fed. Reg. 69,080 (Nov. 6, 2015) (proposed rule to revoke all tolerances for chlorpyrifos).

<sup>2</sup> 81 Fed. Reg. 21,341 (April 11, 2016) (announcing availability of draft biological evaluations for registration reviews of all uses of chlorpyrifos, diazinon, and malathion for public review and comment). EPA's final biological evaluations available through three links on this EPA webpage: <https://www.epa.gov/pesticides/epa-releases-final-biological-evaluations-three-chemicals-impacts-endangered-species>

In December 2017, the NMFS released its biological opinion, which concluded that the Puget Sound resident killer whale and several dozen species of salmon and sturgeon along both coasts were jeopardized by chlorpyrifos, malathion, and diazinon.<sup>3</sup> Unfortunately, to date, FWS has not released any biological opinion on these three chemicals. This delay is especially concerning considering FWS stated in May 2017 at the Pesticide Program Dialogue Committee that the draft biological opinions were nearly complete and would be ready for public review and public comment in the summer of 2017.<sup>4</sup>

Shortly before the Pesticide Program Dialogue Committee meeting, Dow Chemical and other registrants sent letters to the Department of the Interior, Department of Commerce, and the EPA requesting that the consultation process be halted and that the EPA assessments be withdrawn, claiming the science used was too uncertain and that stakeholders' concerns were ignored. However, these national assessments were the product of years of work, including multiple stakeholder meetings and public comment opportunities to address any flaws in these assessments. Considering that for nearly all other biological opinions completed under the ESA the public does not have the ability to view draft biological opinions — let alone comment on them — the level of transparency and engagement with the public was unprecedented.

While NMFS completed its biological opinion on time,<sup>5</sup> FWS has still not released its biological opinion. The documents recently released pursuant to the Freedom of Information Act show that you were personally briefed on October 27, 2017, on this issue, and in the week that followed had five additional meetings with FWS career staffers. It is concerning that after receiving such important information about the harm caused by chlorpyrifos, FWS has not acted to implement conservation actions to address the threats these pesticides represent.

It has now been over two years since the EPA sent its formal request to FWS to consult under Section 7 of the ESA, and it has been nearly 18 months since you were briefed on the impacts of these pesticides. It is the Committee's understanding that FWS does not plan to produce a biological opinion during this administration with respect to malathion. The timing for the completion of the biological opinion for the other two chemicals is unclear, but it is not expected to occur until at least 2021.<sup>6</sup>

The ESA requires action within strict timeframes to give endangered species their best chance to recover. Allowing a consultation to drag on indefinitely under the guise of scientific refinement

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<sup>3</sup> Biological Opinion on the Environmental Protection Agency's Registration of Pesticides containing Chlorpyrifos, Diazinon, and Malathion (Dec. 29, 2017) available at: <https://repository.library.noaa.gov/view/noaa/16997>

<sup>4</sup> Endangered Species Act: Section 7 Consultations and Next Steps, PPDC Meeting, May 3, 2017, Session 4e at 2, available at: <https://www.epa.gov/sites/production/files/2017-04/documents/session-4e-esa-implementation.pdf> See also U.S. Environmental Protection Agency Pesticide Program Dialogue Committee Meeting (May 3, 2017) Transcript at page 176, lines 20-22 (EPA statement of Anita Pease expecting release of the draft biological opinions "in the beginning of summer.") available at: <https://www.epa.gov/sites/production/files/2017-07/documents/may-3-2017-ppdc-meeting-transcript.pdf>

<sup>5</sup> NMFS completed its biological opinion on December 29, 2017, as promised and as required by court order. See *Nw. Ctr. for Alternatives to Pesticides v. Nat'l Marine Fisheries Serv.*, No. 07-cv-1791-RSL (W.D. Wash. Dec. 29, 2017) (Notices, ECF Doc. Nos. 69-70).

<sup>6</sup> Frazer, G. (2018, October 12). FWS to Registrants Requesting Delay on Malathion to 2021 [Letter to Drexel Chemical Company]. Washington, DC.

merely compounds harm to the endangered animals and plants most impacted. It is important for the Committee to understand if and how these delays are justified, considering the fate of hundreds of endangered species hangs in the balance.

To assist the Committee's oversight of these issues, please provide the following documents and information as soon as possible, but no later than April 15, 2019:

1. Biological opinions for chlorpyrifos, malathion, and/or diazinon. The Committee requests the most complete versions of the biological opinions, rather than early drafts.
2. Documents [or a detailed written explanation by the Fish and Wildlife Service] sufficient to show estimated completion dates for the three biological opinions.

Please contact the Water, Oceans, and Wildlife Subcommittee staff at (202) 225-6065 with any questions about this request. Thank you for your attention to this matter.

Sincerely,



Raúl M. Grijalva  
Chairman  
Committee on Natural Resources



Jared Huffman  
Chairman  
Subcommittee on Water, Oceans, and Wildlife



Nydia M. Velázquez