Marietta Echeverria  
Director, Environmental Fate and Effects Division 
Office of Pesticide Programs 
Division Mail Code 7507P 
U.S. Environmental Protection Agency 
1200 Pennsylvania Ave. NW 
Washington, D.C. 20460 

Dear Ms. Echeverria, 

On January 18, 2017, the U.S. Fish and Wildlife Service (Service) received the Environmental Protection Agency’s (EPA) draft Biological Evaluations (BEs) on the effects of reregistering chlorpyrifos, malathion, and diazinon under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and request to initiate formal consultation under section 7 of the Endangered Species Act of 1973, as amended (ESA). As you are aware, this effort was one of the most complex section 7 consultations ever attempted. While we appreciate the collaboration with the Service and others that informed the development of these BEs, after further review and lessons learned in consideration of the BEs the Service is requesting additional information necessary to complete formal consultation. (See interagency consultation regulations at 50 CFR §402.14). Specifically, we request: 

- A revised effects analysis for each chemical that reflects the best scientific and commercial data that is currently available or which can be obtained during the consultation – the standard for information required under 50 CFR §402.14(d) for an action agency when seeking formal consultation – regarding actual use, including extrapolation to areas where actual use data does not exist or cannot be obtained. The revised effect analyses should also seek to predict effects from future usage that is reasonably certain to occur during the time period of the label authorization but is not reflected in current actual use data. 

- A revised effects analysis for each chemical that eliminates from analysis geographic areas identified by EPA where these pesticides are not used and where such use is not likely during the time period of the label authorization, or where listed species or designated critical habitats would not otherwise be exposed to use of the pesticide (e.g., certain states, high elevation areas, uninhabited islands).
In addition, the Service also suggests that the EPA monitor available use and usage information to determine if the manner of actual use remains consistent with assumptions of use and usage considered in the consultation process.

Under the regulations, indirect effects are “those that are caused by the proposed action and are later in time, but are reasonably certain to occur.” 50 C.F.R. 402.02. The effects analysis determines the action area, which is “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.” 50 C.F.R. 402.02. We must keep in mind the ESA regulations when considering the action description and effects analysis.

In the course of developing the draft and final biological opinions and associated incidental take statements, the Service requests that EPA facilitate coordination with the registrants and user groups to develop, if necessary, any reasonable and prudent alternatives to avoid violation of section 7(a)(2) of the Act and any reasonable and prudent measures necessary or appropriate to minimize the impact of your action on listed species.

This letter also serves as a request to extend the consultation, in accordance with 50 C.F.R. 402.14(e). Upon receipt of the above requested information, the Service will work with EPA to establish a schedule to complete consultation on the proposed actions.

If you have any questions or concerns about this request or the consultation process in general, please feel free to call me at 202-208-4646 or Deputy Assistant Director Gina Shultz at 703-358-1985.

Sincerely,

Gary Frazer
Assistant Director - Ecological Services
Mr. Gary Frazer  
Assistant Director  
U.S. Fish and Wildlife Service  
Ecological Services  
5275 Leesburg Pike  
Falls Church, VA 22041-3803

Dear Mr. Frazer,

Thank you for your letter requesting additional information to complete formal consultation on the Biological Evaluations (BEs) for chlorpyrifos, malathion, and diazinon, which were finalized on January 18, 2017.

As you are aware, the BEs were developed with Services oversight and included all information and analyses as requested by the National Marine Fisheries Service (NMFS) and Fish and Wildlife Service (FWS) during their development. We understand, however, that in the course of our consultation, FWS has indicated that additional information regarding use and usage information could be of value in the development of the FWS biological opinions (BiOps). We will treat your letter as a request for additional information as described in section 402.14(f) of the FWS regulations and not a request to revise the EPA BEs with additional information under section 402.46(b). This is consistent with the regulations that require requests from FWS for additional information to be submitted within 45 days of EPA providing the BE to FWS (50 CFR Part 402). Accordingly, any agreement from EPA to supplement the consultation should not be viewed as EPA’s agreement to either revise or withdraw its final BEs.

We are pleased that the utility of the use and usage information is being reconsidered, and we anticipate being able to provide this information within approximately 6 months. Use information (e.g., maximum application rate, number of allowed applications, etc.) is extracted directly from product labels whereas usage information describes where, when, and how a pesticide is actually being used based on survey information. In order to provide the requested use and usage information, staff from EPA’s Biological and Economic Analysis Division (BEAD) must compile and summarize label information, appropriately aggregate complex use directions, and develop associated usage statistics. The number of registered use sites for these active ingredients is extensive with more than 100 active registered products for
chlorpyrifos and diazinon. Additionally, this work would need to be completed concurrently with BEAD’s existing workload to provide use and usage information supporting EPA’s registration review program.

Your letter also requests to extend the consultation in accordance with 50 C.F.R.402.14(e). We agree that consultation should continue and be extended as necessary, and that any required consent from any applicants be obtained.

Sincerely,

[Signature]

For Marietta Echeverria
Director, Environmental Fate and Effects Division
Office of Pesticide Programs