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July 23, 2018

Office of Pesticide Policy  
Regulatory Public Docket (28221T)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**RE: Docket ID Number EPA-HQ-OPP-2018-0141**

Dear Tracy Perry:

The National Cotton Council (NCC) appreciates the opportunity to provide comments to the Environmental Protection Agency (EPA) regarding the National Marine Fisheries Services (NMFS) first ever nationwide evaluation of potential risks of pesticides to endangered species. The “NMFS Biological Opinion Issued under the Endangered Species Act (ESA): Chlorpyrifos, Diazinon and Malathion” lacks both scientific and legal credibility and should not be used for regulatory decision-making until both the consultation process and inclusion of the best available science are improved. The fact that NMFS stated “Unfortunately, NMFS did not receive the requested extension and was required to transmit the biological opinion which, given the time, cannot fully account for the need to coordinate on a different process for developing such opinions or to fully engage the public” (NMFS statement to EPA Jan. 9, 2018) further demonstrates the flawed consultation process and legal conflicts between FIFRA and ESA that have resulted in an opinion lacking scientific merit, and produced without consultation or engagement of public and private stakeholders. The NCC urges EPA to reject the recommended actions of the biological opinion (BiOp) and re-initiate the consultation process under the Endangered Species Act (ESA) Section 7.

The NCC is the central organization of the United States cotton industry. Its members include producers, ginner, cottonseed processors and merchandizers, merchants, cooperatives, warehousemen and textile manufacturers. A majority of the industry is concentrated in 17 cotton-producing states stretching from California to Virginia. U.S. cotton producers cultivate between 9 and 12 million acres of cotton with production averaging 12 to 18 million 480-lb bales annually. The downstream manufacturers of cotton apparel and home furnishings are located in virtually every state. Farms and businesses directly involved in the production, distribution and processing of cotton employ more than 125,000 workers and produce direct business revenue of more than \$21 billion. Annual cotton production is valued at more than \$5.5 billion at the farm gate, the point at which the producer markets the crop. Accounting for the ripple effect of cotton through the broader economy, direct and indirect employment surpasses 280,000 workers with economic activity of almost \$100 billion. In addition to the cotton fiber, cottonseed products are

used for livestock feed and cottonseed oil is used as an ingredient in food products as well as being a premium cooking oil.

The NCC has previously provided EPA with comments on the critical importance of malathion and chlorpyrifos to cotton production in the U.S., including the use of malathion to complete eradication of the boll weevil from the U.S. The NCC reminds EPA that cotton producers across the U.S. have funded approximately 70% of the costs to eradicate the boll weevil in partnership with the United States Department of Agriculture's Animal and Plant Health Inspection Service, Plant Protection and Quarantine (USDA APHIS PPQ). The boll weevil eradication program, initiated in the late 1970s, has removed the boll weevil from 98% of the U.S. cotton production area. The investment by producers, state legislatures, and the Federal government through Congressional appropriations has resulted in the significant reductions of pesticide use in cotton production. The cotton industry strives to continually improve sustainable U.S. cotton production, which significantly benefits the U.S. economy and continually improves the agro-ecosystem while simultaneously meeting the increased demands for food and fiber. However, the precedent setting decision being made by EPA and the Services (NMFS and the U.S. Fish and Wildlife Services {FWS}) in the present consultation process which includes EPA's Biological Evaluation (BE) and the NMFS BiOp jeopardizes the nearly 38 years of boll weevil eradication efforts which will undermine the future of cotton production in the U.S. The economic consequences and loss of 38 years of significant stakeholder investments in boll weevil eradication as well as sustainability of U.S. cotton is being put at risk without the engagement of the stakeholder community. Similarly, the Pink Bollworm Eradication Program, another partnership effort between USDA APHIS PPQ, Congress, and cotton producers, is preparing to announce the eradication of the Pink Bollworm from the continental cotton production areas of the U.S. As a part of that effort, the producer leadership (NCC Pink Bollworm Action Committee) has consulted with the USDA APHIS, USDA Agricultural Research Service, and representatives of the academic community (NCC Pink Bollworm Technical Advisory Committee) to develop future plans of continued monitoring for potential re-introductions of the pink bollworm and program response actions to respond in the event of a confirmed pink bollworm re-infestation in a U.S. cotton production area. Those actions include the use of the insecticide Chlorpyrifos in the field while laboratory rearing and release of sterile pink bollworm moths is initiated over a period of months. The lack of effective, efficacious crop protection products such as malathion and chlorpyrifos would significantly jeopardize both eradication programs.

It is commonly known that the ESA consultation process between EPA, attempting to meet FIFRA requirements, and the Services, attempting to meet ESA requirements, is broken. The NCC acknowledges that EPA and the Services have initiated efforts to improve the consultation process, but those improvements have not yet been completely formulated for implementation based on the best science available. The EPA's BE utilized conceptual models to derive Environmental Effects Concentrations. The conceptual models appear to be lacking in the representation of the best available science and essentially identified all endangered species as being at risk as well as the habitats for those endangered species. Therefore, EPA's BE, which was used as the foundation for NMFS' BiOp overstated initial risks. Pressured by a court ordered deadline to complete a BiOp for chlorpyrifos, diazinon, and malathion and being denied by the court an extension to the deadline, the NMFS process for the BiOp has been rushed in a manner that did not represent transparent scientific support, does not appear to represent the best

available science (public and commercial), and did not include public health officials and U.S. growers in the development of Reasonable and Prudent Alternatives (RPA) or Reasonable and Prudent Measures (RPM). NMFS admits it was not able to seek input as intended due to the court-ordered deadline. The EPA's BE and NMFS's BiOp claims risks that are not consistent with known environmental baselines. The BiOp does not account for the significant and positive measures growers, landowners, and fisheries biologists have implemented in recent years, such as integrated pest management, agricultural stewardship programs, habitat conservation measures, artificial propagation initiatives, and habitat restoration. This historic reality and the history of use of these products should be utilized to ground-truth new risk predictions. All these above facts document a rushed process completed in a closed manner lacking transparency, scientific merit, and stakeholder (other agencies, state governments, commercial entities, and producers) input. With these facts alone, EPA should reject the BiOp submitted by NMFS.

The acceptance of this NMFS BiOp and implementation of the RPA and RPM would be a major precedent setting action, and encourage continued omission of science, transparency, and dismissal of the public input. That action would set a path of division between EPA/NMFS federal decision-making process and the input of the public body of stakeholders. The precedent would place the future of America's agricultural production at risk. The NCC believes the implementation of the NMFS BiOp (aside from future implications) would have unprecedented adverse effect on America's agricultural community, the completion of the boll weevil eradication program, the re-infestation response plan of the pink bollworm eradication program, and all crop production capabilities in all coastal states.

The NCC urges EPA to not take any action or impose any restrictions or mitigations whether based from EPA's BE or the NMFS BiOp. The NMFS BiOp should be reworked under re-initiation of the formal consultation process. All deficiencies should be corrected and appropriate refinements made with the input from all stakeholders to ensure any actions taken are transparent, scientifically valid, and meet legal obligations.

Thank you for allowing the NCC to provide comments to this important precedent setting decision related to EPA's consideration of the "NMFS Biological Opinion Issued under the Endangered Species Act (ESA): Chlorpyrifos, Diazinon and Malathion".

Respectfully,

A handwritten signature in black ink that reads "Steve Hensley". The signature is written in a cursive, flowing style.

Steve Hensley  
Senior Scientist, Regulatory and Environmental Issues