fishes killed do not have to be listed salmonids. Salmonids appear to be more sensitive to these compounds, so that if there are kills of other freshwater fishes that can be attributed to use of these pesticides, it is likely that salmonids have also died, even if no dead salmonids can be located. In addition, if stream conditions due to pesticide use kill less sensitive fishes in certain areas, the potential for lethal and non-lethal takes downstream areas increases. A fish kill is considered attributable to one of these three ingredients, its metabolites, or degradates, if measured concentrations in surface waters are at levels expected to kill fish, if AChE measurements were taken of the fish carcass and correlate to fish death, if pesticides were applied in the general area, and if pesticide drift or runoff was witnessed or apparent.

NMFS notes that with increased monitoring and study of the impact of these pesticides on water quality, particularly water quality in off-channel habitats, NMFS will be able to refine this incidental take statement, and future incidental take statements, to allow other measures of the extent of take.

Reasonable and Prudent Measures

The measures described below are non-discretionary, and must be undertaken by the EPA so that they become binding conditions of any grant or permit issued to the applicant(s), as appropriate, for the exemption in section 7(o)(2) to apply. The EPA has a continuing duty to regulate the activity covered by this incidental take statement. If the EPA (1) fails to assume and implement the terms and conditions or (2) fails to require the applicant(s) to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the EPA must report the progress of the action and its impact on the species to NMFS OPR as specified in the incidental take statement. [50 CFR§402.14(i)(3)].

To satisfy its obligations pursuant to section 7(a) (2) of the ESA, the EPA must monitor (a) the direct, indirect, and cumulative impacts of its long-term registration of pesticide products containing chlorpyrifos, diazinon, and malathion; (b) evaluate the direct, indirect, or cumulative impacts of pesticide misapplications in the aquatic habitats in which they occur; and (c) the consequences of those effects on listed Pacific salmonids under NMFS's jurisdiction. The purpose of the monitoring program is for the EPA to use the results of the monitoring data and modify the registration process in order to reduce exposure and minimize the effect of exposure where pesticides will occur in salmonid habitat.

The EPA shall:

1. Minimize the amount and extent of incidental take from use of pesticide products containing chlorpyrifos, diazinon, and malathion by reducing the risk of chemicals reaching the water.
2. Monitor any incidental take or surrogate measure of take that occurs from the action.
3. Report annually to NMFS OPR on the monitoring results from the previous season.

Terms and Conditions

To be exempt from the prohibitions of section 9 of the ESA, the EPA must comply with the following terms and conditions, which implement the reasonable and prudent measure described above. These terms and conditions are non-discretionary.

1. EPA shall develop and implement a NMFS-approved effectiveness monitoring plan for off-channel habitats with annual reports. The plan shall identify representative off-channel habitats within areas prone to drift and runoff of pesticides. The number and locations of off-channel habitat sampling sites shall include currently- used off-channel habitats by threatened and endangered Pacific salmonids identified by NMFS biologists and will include at least two sites for each general species (ESU, DPS) i.e., coho salmon, chum salmon, steelhead, sockeye salmon, and ocean-type Chinook and stream-type Chinook salmon. Additionally, each state shall have at least three sites within their borders. One site in each state shall target where juvenile ESA-listed salmonids migrate to the Pacific Ocean. The plan shall collect daily surface water samples for seven consecutive days for at least three seven-day periods during the application season. Collected water samples will be analyzed for current-use OPs and carbamates following USGS schedules for analytical chemistry. The report shall be submitted to NMFS OPR and will summarize annual monitoring data and provide all raw data.

2. For Ozette Lake Sockeye, require the following no-application buffers/setbacks on labels for all malathion, diazinon and chlorpyrifos containing products: Where ground applications are permitted. Do no apply pesticide products within 500 ft (152.4 m) of Ozette Lake sockeye salmon habitat. Where aerial applications are permitted. Do not apply pesticide products within 1,000 ft (304.8 m) of Ozette Lake sockeye salmon habitat.