



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 29 2002

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Don R. Knowles, Director
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Dear Mr. Knowles,

The Office of Pesticide Programs (OPP), U. S. Environmental Protection Agency (EPA), respectfully requests the initiation of Endangered Species Act (ESA) section 7(a)(2) consultation. This consultation request addresses 26 Evolutionarily Significant Units (ESUs) of Pacific salmon and steelhead that have been listed as Federally endangered or threatened and one pesticide registered by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for uses within the range of the listed ESUs. The pesticide subject to this request is the active ingredient fenbutatin oxide which is registered for a variety of crops that may be grown within the range of listed salmon and steelhead. There is one agricultural use product of concern. There are two additional homeowner products for use on ornamental plants that are not of concern, as explained in the analysis. Our long term intent is to make effects determinations and consult, as appropriate, relative to all listed species and locations. However, as per agreement with the National Marine Fisheries Service, this request is limited to Pacific salmon and steelhead for which NMFS has responsibility (see enclosure).

Fenbutatin oxide is registered for a variety of crops, primarily fruits, berries, and nuts. It can also be used on Christmas tree plantations in Oregon and Washington and production of ornamental plants. Actual use of fenbutatin oxide in California is primarily upon almonds, grapes, prunes, walnuts, and plums, but a variety of other crops are treated. Of the 62,623 pounds reported to have been used in California in 2001, most was within counties where there is one or more salmon and steelhead ESUs. Actual use of fenbutatin oxide on crops in the Pacific Northwest states is unclear. Apples, grapes, pears, and cherries are prominent crops in areas with listed salmon and steelhead. Fenbutatin oxide may also be used on Christmas tree plantations and for production of ornamentals. We do not have information on the amounts and locations for these uses of fenbutatin oxide, except for ornamentals in California. OPP has determined that there will be no effect from the use of fenbutatin oxide on 2 ESUs; that the use of fenbutatin oxide may affect, but is not likely to adversely affect 1 ESU; and the use of fenbutatin oxide may affect

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

23 ESUs.¹ For the latter 23 ESUs, OPP recommends an approach for deriving and implementing protective measures to avoid jeopardy and limit or eliminate incidental take. OPP requests concurrence on our not-likely-to-adversely-affect findings for the one ESU, and a biological opinion for the last 23 ESUs.

The 26 salmon and steelhead ESUs occur throughout western watersheds, except the Colorado River, that drain into the Pacific Ocean. The primary threats for these ESUs have been the continued development of the western states for a variety of human-related activities, including residential and commercial development, agriculture, and forestry, along with genetic swamping of certain ESUs by unrelated hatchery stocks. These activities have resulted in barriers to up stream and down stream migration, loss of available water, reduced water quality, and physical modification of aquatic and riparian habitat. Excessive harvesting may also have played a role in their decline. Listing of these salmon and steelhead ESUs has sensitized the public to the need to provide protection. As a result, California has included them in their "Interim Measures" county bulletins for protecting endangered and threatened species, thus providing protection from pesticide use. Washington state has formed a task force which is working with NMFS and others to address pesticide use in that state. Oregon has developed specific projects that involve pesticide use and salmon and steelhead. We are unaware of any specific measures in place in Idaho that address pesticides.

OPP is currently working towards a final endangered species program. We are developing county-specific bulletins to address pesticide use and endangered and threatened species. It is through such county bulletins, along with pesticide label references to these bulletins, that OPP intends as its primary means of implementing its protections for salmon and steelhead and other listed species.

We look forward to working with NMFS to protect and help recover listed species. If you have any questions, please feel free to call me at (703) 305-5239, or your staff may contact my Senior Scientist, Dr. Larry Turner at (703) 305-5007.

Enclosure

Sincerely,



Arthur-Jean B. Williams, Chief
Environmental Field Branch (7506C)

cc: Craig Johnson

¹ See Memorandum, with attached analysis, from Larry Turner, Ph.D., Environmental Field Branch, OPP, EPA, to Arthur-Jean B. Williams, Chief, Environmental Field Branch, OPP, EPA, November 29, 2002 (attached).



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

DEC 3 2001

Robert E. Fabricant
General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

Dear Bob:

This letter follows up on our discussion of October 17 with your staff regarding the effects of EPA-registered pesticides on federally-listed species under the Endangered Species Act. We understand that, in connection with two ongoing lawsuits, EPA has been exploring with staff from the National Marine Fisheries Service and the Fish and Wildlife Service the possibility of EPA initiating consultation with the Services on specific uses of certain pesticides and their effects on the listed species identified in the litigation, including Pacific salmon and steelhead. As we discussed, MFS finds this approach acceptable, and looks forward to working further with EPA and FWS in our comprehensive national effort to address the effects of pesticides on listed species.

Sincerely,

Craig R. O'Connor

