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

JUN 30 2010

OFFICE OF PREVENTION, PESTICIDES AND TOXIC SUBSTANCES

Gary Frazer
Assistant Director for Endangered Species
U.S. Fish and Wildlife Service
1849 C Street NW .
Washington, D.C. 20204

Dear Mr. Frazer:

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) formal consultation under 50 CFR Part 402.46, Optional Formal Consultation Procedures for FIFRA Actions. This consultation request addresses the potential effects of pesticides registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and containing the active ingredient **simazine**, to the threatened Delta smelt (*Hypomesus transpacificus*). Our assessment resulted in a determination that the use of pesticides containing simazine is likely to adversely affect (LAA) the subject species. Further, the assessment resulted in a determination that there is a potential for effects to the designated critical habitat of the Delta smelt from the use of simazine.

This assessment was conducted consistent with the scientific procedures outlined in the Agency's Overview Document[1] and reviewed by the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS)[2]. The effects determination was made by staff in the Environmental Fate and Effects Division (EFED), who have been trained by FWS and certified to make effects determinations. Further, the attached assessment and effects determination has undergone review by our internal Peer Review Panel, which included one or more reviewers also trained by FWS and certified to make effects determinations. The FWS, after having carefully reviewed the Overview Document, concluded that EPA's ecological risk assessment process "will produce effects determinations that reliably assess the effects of pesticides on endangered and threatened species [] and critical habitat pursuant to Section 7 of the [ESA] and [its] implementing regulations", and that "this approach also will produce all information necessary to initiate formal consultation where appropriate."

The scope of this assessment is consistent with an Order and Stipulated Injunction in a case brought by the Center for Biological Diversity against EPA under the Endangered Species Act (Civ. No 07-2794-JCS). As a result, this assessment focuses only on the species noted above. EPA acknowledges that use of pesticides containing simazine is not limited to the geographic scope of this assessment and that in the future, potential risks to other listed species will need to be evaluated by EPA.

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[1] U.S. EPA. 2004. Overview of the Ecological Risk Assessment Process in the Office of Pesticide Programs. Office of Prevention, Pesticides, and Toxic Substances. Office of Pesticide Programs. Washington, D.C. January 23, 2004.
[2] USFWS/NMFS. 2004. Letter from USFWS/NMFS to U.S. EPA Office of Prevention, Pesticides, and Toxic Substances. January 26, 2004. (http://www.fws.gov/endangered/pdfs/Consultations/Pest/Pestevaluation.pdf)

While our determination is that pesticides containing simazine are likely to adversely affect the subject species, this determination does not necessarily apply throughout the geographic range of the species. EPA believes the precise geographic scope of potential effects is dependent upon both the specific locations and sizes of populations of the species in relation to actual use of the pesticide and upon the locations and attributes (e.g. population of prey species) of the various relevant habitats. This location information relative to the species and the attributes of its various types of habitat are not available to EPA. We look forward to the FWS bringing this species-specific information to the consultation process to appropriately characterize the spatial and temporal extent of any potential effects to the subject species or its habitat.

As agreed to in the past, the subject assessment and effects determination, attachments and appendices may be accessed within the next several days by your staff from our Web site at http://www.epa.gov/espp/litstatus/effects/redleg-frog/. Also, when reviewing appendices relative to ECOTOX citations, you may wish to access the Code List for ECOTOX at http://cfpub.epa.gov/ecotox/blackbox/help/codelist.pdf.

Please let me know if you have any questions regarding this request or the materials we have developed to initiate formal consultation.

Enclosures

Sincerely,

Arthur-Jean B. Williams, Associate Director
Environmental Fate and Effects Division (7507P)

cc: Donald Brady
Richard Keigwin
Steve Bradbury