



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

JUN 27 2013

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

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 oxydemeton methyl (ODM). Given the terms of the cancellation order attached to the enclosed memorandum and the May Affect, Likely to Adversely Affect determination for the federally threatened California Red-legged Frog (*Rana aurora draytonii*) (EPA, 2007), a May Affect determination has been made with respect to the potential direct and indirect effects to the federally threatened bay checkerspot butterfly (*Euphydryas editha bayensis*) (BCB), valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) (VELB), California tiger salamander Central California Distinct Population Segment (*Ambystoma californiense*) (CTS-CC), and delta smelt (*Hypomesus transpacificus*) (DS), and the federally endangered California tiger salamander, the Sonoma County Distinct Population Segment (CTS-SC) and Santa Barbara County Distinct Population Segment (CTS-SB), California clapper rail (*Rallus longirostris obsoletus*) (CCR), California freshwater shrimp (*Syncaris pacifica*) (CFWS), San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) (SFGS), and tidewater goby (*Eucyclogobius newberryi*) (TG). Similarly, a May Affect determination has been made for critical habitat modification for the BCB, VELB, CTS-CC, CTS-SB, DS, and TG.

These effects determinations address potential risk to the San Francisco Bay species for which ODM was alleged to be of concern in a complaint made by the Center for Biological Diversity against the United States Environmental Protection Agency on May 30, 2007 (Case No: 07-2794-JCS). The scope of this effects determination is consistent with a stipulated injunction which resolved litigation brought by the Center for Biological Diversity against EPA under the Endangered Species Act (CIV. No07-2794-JCS). As a result, this effects determination focuses only on the species noted above.

Although the EPA concludes a May Affect finding based on the currently registered uses of ODM, EPA has already taken action to limit further distribution and sale of this pesticide by approving its cancellation effective December 31, 2014. This cancellation order will have the effect of ultimately eliminating any risk posed by ODM to the listed species addressed in this consultation. Given that use of this product is being eliminated, EPA does not believe it is a necessary or a productive use of resources for EPA to attempt to conduct a quantitative risk assessment to evaluate the extent of the very limited future risk to listed species that may exist from exposures to ODM. Further, given the cancellation of ODM on December 31, 2014, it would be difficult to precisely estimate the declining amounts of ODM that will exist in the channels of trade. As with most cancellations, EPA expects that following the effective date of cancellation there will be steep declines in usage over the coming years and that any possible effects to listed species from these chemicals will exist only in the short term, making the potential for jeopardy highly unlikely.

As agreed to in the past, the subject effects determination 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/>.

Please contact me at (703) 305-7092 or brady.donald@epa.gov if you have any questions regarding this request or the materials we have developed to initiate formal consultation.

Enclosures

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Brady".

Donald Brady, Director
Environmental Fate and Effects Division
Office of Pesticide Programs

cc: Richard Keigwin
Anita Pease