



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

OFFICE OF PREVENTION, PESTICIDES
AND TOXIC SUBSTANCES

MEMORANDUM

October 16, 2008

SUBJECT: Effects Determinations for Oxyfluorfen Relative to the California Red-Legged Frog and Designated Critical Habitat

FROM: Christine Hartless, Ph.D. *Christine Hartless* 10-16-08
ERB I
Environmental Fate and Effects Division

TO: Arthur-Jean B. Williams, Associate Director
Environmental Fate and Effects Division

Attached is the assessment of potential direct and indirect effects to the California red-legged frog (CRLF) and potential modification to designated critical habitat from uses of oxyfluorfen. While the Endangered Species Act requires we assess uses of pesticides relative to any potentially affected listed species, this assessment focuses only on the CRLF, including designated critical habitat, addressing provisions of a settlement agreement entered into by the federal government to resolve claims made by plaintiffs against EPA in a court case (CBD v. EPA¹).

The attached assessment was conducted following the guidance in the Agency's Overview Document². Effects determinations for this assessment are summarized below.

Based on the best available information, the Agency makes a "**may affect, and likely to adversely affect**" determination for the CRLF from the use of oxyfluorfen. Based on potential for effects to aquatic and terrestrial plants, all currently registered uses of oxyfluorfen in California have the potential to cause indirect effects to the CRLF. Applied at certain rates to certain crops, oxyfluorfen may also have the potential to cause direct effects to the CRLF. Additionally, the Agency has determined that there is potential for modification of CRLF designated critical habitat from the use of the chemical. A summary of the risk conclusions and effects determinations for the CRLF and its critical habitat is presented in **Tables 1.1 and 1.2**. Use-specific determinations for the CRLF are provided in **Table 1.3** which also includes a summary of LOC exceedances for direct effects to the CRLF for each modeled scenario and taxonomic group. A summary of indirect effect LOC exceedances for each modeled scenario and taxonomic group are provided in **Table 1.4**. Further information on the results of the effects determination is included as part of the Risk Description in **Section 5.2**. Given the LAA determination for the CRLF and potential modification of designated critical habitat, a description of the baseline status and cumulative effects for the CRLF is provided in **Attachment 2**.

¹ Settlement agreement of October 20, 2006: Center for Biological Diversity v. United States Environmental Protection Agency. Civ. No: 02-1580-JSW(JL)).

² Overview of the Ecological Risk Assessment: Process in the Office of Pesticide Programs, U.S. Environmental Protection Agency: Endangered and Threatened Species Effects Determinations: January 23, 2004.

As required by the Alternative Consultation Agreement EPA entered into with the U.S. Fish and Wildlife Service and National Marine Fisheries Service (the Services), I have been trained by the Services to make such determinations. Additionally, this assessment was subjected to internal Agency peer review throughout its development. The review panel included seven other scientists, **one** of whom has been trained by the Services to make such determinations, Edward Odenkirchen.

Please let me know if you have any questions regarding this assessment and effects determination for oxyfluorfen relative to the CRLF and its designated critical habitat.

cc: Steve Bradbury
Debbie Edwards