



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

OCT 20 2008

OFFICE OF PREVENTION, PESTICIDES  
AND TOXIC SUBSTANCES

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

Dear Mr. Arroyo:

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 **phorate**, to the California Red-Legged Frog (CRLF) (*Rana aurora draytonii*), San Joaquin kit fox (*Vulpes macrotis mutica*), Bay checkerspot butterfly (BCB) (*Euphydryas editha bayensis*), and the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*). Our assessment resulted in a determination that the use of pesticides containing phorate is likely to adversely affect (LAA) each of the four subject species. Further, while the assessment resulted in a determination that critical habitat of the Bay checkerspot butterfly will not be modified, there is the potential for modification of the California red-legged frog designated critical habitat from the use of phorate. We have indicated as well that critical habitat of the valley elderberry longhorn beetle may be modified; however, the likelihood of such effects to this species habitat is remote. Critical habitat has not been designated by the US Fish and Wildlife Service for the San Joaquin kit fox.

This assessment was conducted consistent with the scientific procedures outlined in the Agency's Overview Document<sup>1</sup> and reviewed by the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service<sup>2</sup>. 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. As you are aware, after having carefully reviewed the Overview Document, FWS 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]

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<sup>1</sup> 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.

<sup>2</sup> 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/consultations/pesticides/evaluation.pdf>)

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 a stipulated injunction which resolved litigation brought by the Center for Biological Diversity against EPA under the Endangered Species Act (Civ. No: 02-1580-JSW(JL)), and with another suit filed by the Center for Biological Diversity against EPA (Civ. No. 07-2794-JCS). As a result, this assessment focuses only on the four species noted above. EPA acknowledges that use of pesticides containing phorate 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.


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

As the US Fish and Wildlife Service requested of EPA, this assessment contains an appendix that arrays information regarding certain public literature, by effect. For your convenience you may access the Code List for ECOTOX at <http://cfpub.epa.gov/ecotox/blackbox/help/codelist.pdf> . This Code list describes and defines all the codes used in the ECOTOX system including those to describe various types of effects.

As agreed to in the past, the subject assessment and effects determination, attachments and appendices may be accessed by your staff from our Web site at <http://www.epa.gov/oppfead1/endanger/litstatus/effects> within the next several days. Please let me know if you have any questions regarding this request or the materials we have developed to initiate formal consultation.

Enclosures

Sincerely,

 10/20/08  
Arthur-Jean B. Williams, Associate Director  
Environmental Fate and Effects Division (7507P)

cc: Debbie Edwards  
Steven Bradbury