

## Information to Assist Pesticide Users in Determining Whether the Injunction Applies to their Proposed Pesticide Use

On October 20, 2006, the Federal District Court for the Northern District of California issued a Stipulated Injunction that resolves a case brought against EPA by the Center for Biological Diversity. The court's injunction puts in place buffer areas around certain habitats of the California red-legged frog, and disallows use of certain pesticides within those habitats and buffer zones. EPA is providing this information to help pesticide users identify those pesticides and areas subject to the injunction. The following four steps will help you determine whether the injunction applies to your proposed pesticide use:

- (1) Active Ingredients Subject to the Injunction
- (2) General Geographic Areas Subject to the Injunction
- (3) Exceptions to the Injunction
- (4) Determining Whether a Specific Proposed Application Site is Subject to the Injunction

### STEP 1 – ACTIVE INGREDIENTS SUBJECT TO THE INJUNCTION

The court's injunction only addresses pesticides containing certain ingredients. Are you planning to apply a pesticide product containing one or more of the following pesticide active ingredients? If you answer "no", the court's injunction does not apply to the pesticide use. If you answer "yes" go to step 2. *Note: the active ingredient in a pesticide product may be found on the front panel of the product label under "Ingredients".*

As EPA completes its review of these pesticides, some may no longer be subject to the injunction. If the active ingredient below is in [brackets], its review is complete and is no longer subject to the injunction.

2,4-D	Diflubenzuron	Methamidophos	Phorate
Acephate	Dimethoate	Methidathion	Phosmet
Alachlor	Disulfoton	Methomyl	Prometryn
Aldicarb	Diuron	Methoprene	Pronamide
Atrazine	Endosulfan	Methyl parathion	Propanil
Azinphos-methyl	EPTC	Metolachlor	Propargite
Bensulide	Esfenvalerate	Molinate	Rotenone
Bromacil	Fenamiphos	Myclobutanil	Simazine
Captan	Glyphosate	Naled	Strychnine
Carbaryl	Hexazinone	Norflurazon	Telone (1,3-dichloropropene)
Chloropicrin	Imazapyr	Oryzalin	Thiobencarb
Chlorothalonil	Iprodione	Oxamyl	Triclopyr
Chlorpyrifos	Linuron	Oxydemeton-methyl	Trifluralin
DCPA	Malathion	Oxyfluorfen	Vinclozolin
DEF	Mancozeb	Paraquat dichloride	Ziram
Diazinon	Maneb	Pendimethalin	

## Steps and Information for Pesticide Users

Dicofol

Metam sodium    Permethrin

### STEP 2 – GENERAL GEOGRAPHIC AREAS SUBJECT TO THE INJUNCTION

The injunction addresses pesticide use only within and around certain geographic areas designated by the US Fish and Wildlife Service as critical habitat, and specified non-critical habitat ‘sections’. Sections are defined one-square mile areas of land, based on the Meridian-Township-Range-Section (MTRS) geographic system. These geographic areas are within one or more of 33 counties within California.

Are you planning to apply the pesticide in one or more of the following counties in California? If you answer “no”, the court’s injunction does not apply to the pesticide application. If you answer “yes”, click on the county name to view a map of critical habitat and non-critical habitat sections within that county to which the injunction applies.

Is your proposed use within 400 feet of the general critical habitat areas or non-critical habitat sections? If you answer “no”, the court’s injunction does not apply to your pesticide application. If you answer “yes”, continue to step 3.

Alameda	Los Angeles	Placer	San Luis Obispo	Stanislaus
Amador	Marin	Plumas	San Mateo	Tehama
Butte	Mendocino	Riverside	Santa Barbara	Tuolumne
Calaveras	Merced	San Benito	Santa Clara	Ventura
Contra Costa	Monterey	San Bernardino	Santa Cruz	Yuba
El Dorado	Napa	San Francisco	Solano	
Fresno	Nevada	San Joaquin	Sonoma	

### STEP 3 – EXCEPTIONS TO THE INJUNCTION

Some pesticide uses are exempt from the court’s injunction or have exceptions associated with them. Review the list of exceptions below. After reviewing these exceptions, if you determine the injunction still applies to your proposed pesticide use, continue to step 4.

- Pesticide Uses Exempt from the Injunction
- Pesticide Uses Subject to Reduced Buffer Areas
- Exceptions for Uses Approved Under the Endangered Species Act
- Exceptions for Public Health Vector Control Programs
- Exceptions for Invasive Species and Noxious Weed Programs

#### Exceptions Resulting in No Buffer Areas

If your proposed pesticide use is described in this section, the injunction does not apply to your use of the pesticide regardless of geographic location.

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- a. Cattle ear tags
- b. Indoor uses
- c. Tree injection applications
- d. Homeowner applications to potted plants
- e. Flea and tick collars for dogs and cats
- f. The manufacture of an end-use product

### Exceptions Resulting in Reduced Buffer Areas

If your proposed pesticide use is described in this section, you may not use the pesticide within 60 feet of aquatic breeding critical habitat or non-breeding aquatic critical habitat within the critical habitat areas (shown on county maps) or within 60 feet of aquatic features within the non-critical habitat sections subject to the injunction.

- a. Use of 1,3-dichloropropene (telone) and chloropicrin.
- b. Localized spot treatments using handheld devices on rights-of-way, roadsides, pastures, lawns, or in forests.
- c. Spot treatments of wasp and hornet nests
- d. Individual tree removal using cut stump application
- e. Basal bark application to individual plants
- f. Use of the pesticides in bait stations

### Exceptions for Endangered Species Act Approved Use

If your proposed pesticide use is permissible under one or more of the following, the injunction does not apply.

1. A “no jeopardy” biological opinion issued under ESA section 7(a)(2) by the United States Fish and Wildlife Service (Service) and that opinion addresses the use of the pesticide and effects on the California red-legged frog, provided that such use is consistent with any incidental take statement included with the Service’s opinion
2. A “reasonable and prudent alternative” identified in a “jeopardy” biological opinion issued under ESA section 7(a)(2) by the Service that addresses the use of the pesticide and effect on the California red-legged frog, provided that such use is consistent with the “reasonable and prudent alternative” and any incidental take statement included with the Service’s opinion.
3. A written concurrence by the Service in a “not likely to adversely affect” determination made under ESA section 7(a)(2) that addresses the use of the pesticide and effects on the California red-legged frog.
4. An incidental take permit issued by the Service under ESA section 10(a) that authorizes the take of the California red-legged frog from application or use of the pesticide.
5. Completion of a “not likely to adversely affect” determination made by an action agency to satisfy its ESA section 7(a)(2) consultation obligation for a particular use of a pesticide pursuant to the applicable regulations in effect at the time that the determination is made.

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### Exceptions for Public Health Vector Control Programs

If you are applying a pesticide for purposes of public health vector control under a program administered by a public entity, the injunction does not apply to your use.

### Exceptions for Invasive Species and Noxious Weed Programs

The injunction generally applies to invasive species and noxious weed control. However, the injunction **does not** apply to your proposed pesticide use if all of the following conditions are met:

- a. You are applying a pesticide for purposes of controlling state-designated invasive species and noxious weeds under a program administered by a public entity; and
- b. You do not apply the pesticide within 15 feet of aquatic breeding critical habitat or non-breeding aquatic critical habitat within critical habitat areas, or within 15 feet of aquatic features within non-critical habitat sections subject to the injunction; and
- c. Application is limited to localized spot treatment using hand-held devices; and
- d. Precipitation is not occurring or forecast to occur within 24 hours; and
- e. You are a certified applicator or working under the direct supervision of a certified applicator; and
- f. If using 2,4-D or triclopyr, you are using only the amine formulations.

## **STEP 4 – DETERMINING WHETHER A SPECIFIC PROPOSED APPLICATION SITE IS SUBJECT TO THE INJUNCTION**

Determining specifically whether your proposed application site is subject to the injunction requires site-specific information regarding botanical and geographic features in the area. If your pesticide use is not described in the exceptions found in Step 3, the standard buffer provisions of the court's injunction may apply to your use. Read further to determine specifically whether your application site is subject to the injunction. *Note that the Stipulated Injunction contains additional language to describe these habitats and contains the official description of where the buffers apply.*

The injunction prohibits use in and around certain habitat areas within general critical habitat areas and within specified non-critical habitat sections. Standard buffers apply to these areas. Following are the standard buffer provisions:

- (1) Within the general critical habitat areas shown on county maps -- All areas described by the U.S. Fish and Wildlife Service as aquatic breeding critical habitat, non-breeding aquatic critical habitat, or upland critical habitat for the California red-legged frog, and in buffer zones (60 feet for ground application or 200 feet for aerial applications) measured from the edge of the aquatic breeding, non-breeding aquatic, or upland critical habitat; or

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(2) Within non-critical habitat sections shown on county maps -- All aquatic features and upland habitats and in buffer zones (60 feet for ground application or 200 feet for aerial applications) measured from the edge of the aquatic feature or upland habitat.

### Definitions

**Aquatic breeding critical habitat.** Defined in 50 CFR 17.95(d)(2)(i) as standing bodies of fresh water (salinity < 7.0 parts per thousand) including: natural and manmade (e.g., stock) ponds, slow moving streams or pools within streams, other ephemeral or permanent water bodies that typically become inundated during winter rains and hold water for a minimum of 20 weeks in all but the driest years.

**Non-breeding aquatic critical habitat.** Defined in 50 CFR 17.95(d)(2)(ii) as fresh water habitats that may or may not hold water long enough for the frog to complete its lifecycle but that do provide for shelter, foraging, predator avoidance, and aquatic dispersal. Wetland habitats that meet these elements include, but are not limited to: plunge pools within intermittent creeks, seeps, quiet water refugia during high water flows, springs of sufficient flow to withstand summer dry periods.

**Upland critical habitat.** Defined in 50 CFR 17.95(d)(2)(iii) as upland areas within 200 ft of the edge of riparian vegetation or dripline surrounding aquatic and riparian habitat and comprised of vegetation such as grasslands, woodlands and/or wetland/riparian plant species that provides shelter, forage, predator avoidance for the frog. Can include natural features such as boulders, rocks, organic debris, small mammal burrow, and moist leaf litter or manmade features such as industrial debris and agricultural features.

**Aquatic features.** Defined as fresh-water habitats in or near lowlands or foothills with dense, shrubby, or emergent vegetation. Such areas include natural or manmade (e.g., stock) ponds, slow moving streams or pools within streams, and other ephemeral or permanent waterbodies that typically become inundated during winter rains such as plunge pools, intermittent creeks, seeps, and quiet water refugia. Such areas do not include those areas not otherwise meeting the definition of aquatic breeding habitat and non-breeding aquatic habitat.

**Upland habitats.** Defined as all areas that are both within 200 feet of the mean high-water mark of an aquatic feature and meet the definition of upland habitat as it applies to Critical Habitat.