Court-ordered Pesticide Use Buffer Zones for Protection of Salmonids Update – 12/12/2011

Endangered Species Project
Dept. of Pesticide Regulation

EARTHJUSTICE

Because the earth needs a good lawyer

01-CV-00132-ANS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON TOXICS COALITION, NORTHWEST COALITION FOR ALTERNATIVES TO PESTICIDES, PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS, and INSTITUTE FOR FISHERIES RESOURCES, Plaintiffs, v. ENVIRONMENTAL PROTECTION AGENCY, and MIKE LEAVITT, ADMINISTRATOR, Defendants, v. AMERICAN CROP PROTECTION ASSOCIATION, et al., Intervenor-Defendants.	CASE NO. C01-0132C ORDER

This matter is before the Court on Plaintiffs' motion for further injunctive relief. Having considered the briefs and arguments of the parties, and the entire record in this matter, and based on the Court's orders dated July 16, 2003 and August 8, 2003, and the oral argument held on August 14, 2003, the Court finds that further injunctive relief is appropriate to prevent potential adverse effects of certain

ORDER – 1

- Lawsuit brought about by Washington Toxics Coalition represented by Earthjustice.
- US Western District Court ruled in favor of plaintiffs.
- Imposes prohibitions for use of 38 active ingredients 100 yds by air, and 20 yds by ground from Salmon Supporting Waters.
- Effective date 2/5/04.

Basis for the Washington Toxics Coalition *etc.* Lawsuit

The suit by environmental and fishery groups alleged that U.S. EPA failed to solicit National Marine Fisheries Service (NMFS) formal consultation on the risks from 54 pesticides to 26 distinct populations of Pacific Salmon and Steelhead.

Those native fish are listed as threatened or Endangered under the Endangered Species Act.

Species Included in California

NOAA FISHERIES
NATIONAL MARINE FISHERIES SERVICE

- Order applies to "salmon supporting waters" within the range of the salmon ecologically significant units (ESUs) as identified by National Marine Fisheries Service (NMFS) in its critical habitat designations in Washington, Oregon, and California.

Ecologically Significant Unit (ESU)

"a population of fish that (1) is substantially reproductively isolated from other populations and (2) represents an important component in the evolutionary legacy of the species."

What Are Salmon Supporting Waters?

For purposes of this legal action, the court has determined that "salmon supporting waters" are the area below the ordinary high water mark of all streams, lakes, estuaries, and other water bodies where salmon are ordinarily found at some time of year."

Court-Imposed EPA/NMFS Consultation

- EPA must go through formal consultation with the National Marine Fisheries Service for each of the 38 active ingredients (AI) included, and the Service must issue the corresponding Biological Opinion (BiOp) .
- If NMFS finds effects to salmon, its habitat or its prey, the BiOp must include Reasonable and Prudent Alternatives (RPAs) or Reasonable and Prudent Measures (RPMs) to protect the species.

Active Ingredients Under Court Order

- 1,3-dichloropropene
- 2,4-D BiOp 4
- Acephate
- Azinphos-methyl BiOp 3
- Bensulide BiOp 3
- Bromoxynil
- Captan BiOp 4
- Carbaryl BiOp 2
- Carbofuran BiOp 2
- Chlorothalonil BiOp 4
- Chlorpyrifos BiOp 1
- Coumaphos
- Diazinon BiOp 1
- Diflubenzuron
- Dimethoate BiOp 3
- Disulfoton BiOp 3
- Diuron BiOp 4
- Ethoprop BiOp 3
- Fenamiphos BiOp 3
- Fenbutatin-oxide

Ongoing Consultation | No Effects | Some Effects to Salmon Habitat or Prey | Definite Effects to Salmon | Undergoing Cancellation

Active Ingredients Under Court Order (continued)

- Lindane
- Linuron BiOp 4
- Malathion BiOp 1
- Methamidophos BiOp 3
- Methidathion BiOp 3
- Methomyl BiOp 2
- Methyl parathion BiOp 3
- Metolachlor
- Metribuzin
- Naled BiOp 3
- Oxyfluorfen
- Pendimethalin
- Phorate BiOp 3
- Phosmet BiOp 3
- Prometryn
- Propargite
- Tebuthiuron
- Triclopyr (BEE) BiOp 4
- Trifluralin

Ongoing Consultation | No Effects | Some Effects to Salmon Habitat or Prey | Definite Effects to Salmon | Undergoing Cancellation

Pesticide Programs Excluded

- Public Health Vector Control Programs.
- Noxious Weed Programs **
- NMFS-Authorized Programs.

** (Some safeguards required, see next slides)

Safeguards Required for Noxious Weed Programs

- Aerial application cannot occur within 100 yards of salmon supporting waters (SSW);
- Broadcast spraying cannot occur within 20 yards of SSW or when wind speed > 5 mph;
- Chemical spraying cannot occur within 15 feet of SSW or when wind speed > 5 mph;
- Only those pesticides registered for aquatic application can be used within 15 feet of SSW;

More…

Safeguards Required for Noxious Weed Programs (continued)

- Pesticides cannot be used when precipitation is occurring or is forecast to occur within 24 hours;
- All spraying operations must be overseen by a certified applicator;
- For 2,4-D and triclopyr, only the amine formulations can be used.

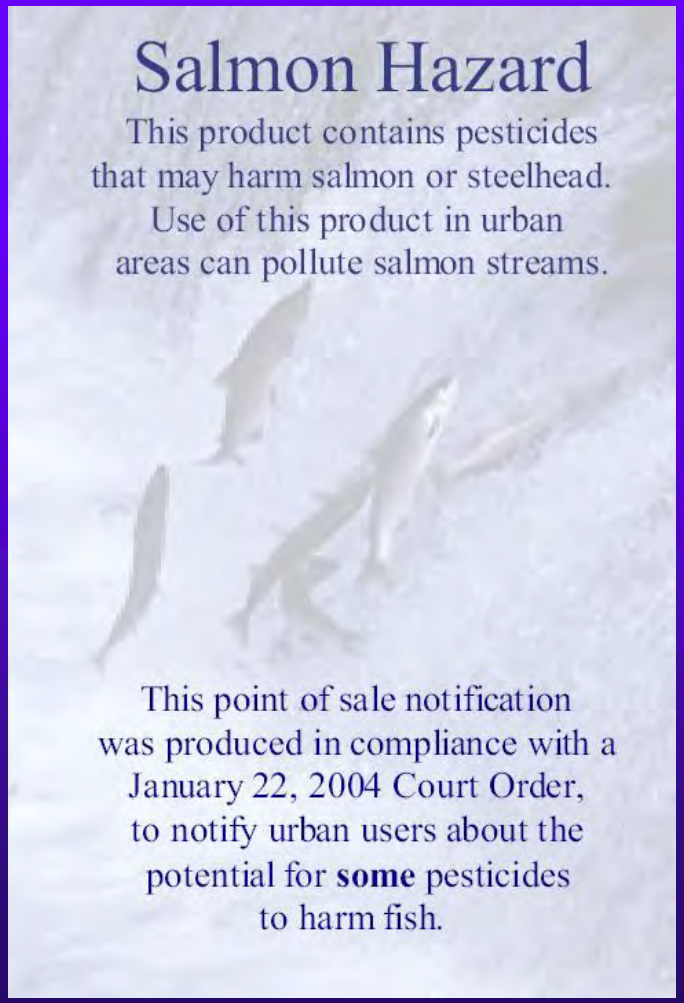
Urban Use
Active Ingredients Affected

- 2,4-D
- Carbaryl
- Diazinon
- Diuron
- Malathion
- Triclopyr BEE
- Trifluralin

These AIs are specifically targeted for their use in urban areas and have requirements for Point Of Sale Notification. The urban areas affected by this point of sale notification may be found in pages 23-31 of the Court Order at:
http://www.epa.gov/oppfead1/endanger/litstatus/wtc/1-04order.pdf

Urban Pesticides
Point of Sale Requirements

- Heading "Salmon Hazard" in large font.
- Statement: "This product contains pesticides that may harm salmon or steelhead. Use of this product in urban areas can pollute salmon streams".
- Both heading and statement shall be visible to purchasers.
- EPA notified pesticide retailers on April 5, 2004.



Court Order Terminating Events

- As EPA goes through formal consultation with NMFS on each active ingredient (AI), and NMFS determines an AI is not likely to jeopardize salmon, and
- not likely to destroy or adversely modify salmon designated critical habitat or its prey
- The AI, in turn, should be removed from the list subject to the court order.

Active Ingredients No Longer Subject to Court Order

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

JUN 30 2011

Mr. Steven Bradbury
Director, Office of Pesticide Programs
U.S. Environmental Protection Agency
One Potomac Yard
2777 S. Crystal Drive
Arlington, VA 22202

Dear Mr. Bradbury:

Enclosed is the National Oceanic Atmospheric Administration National Marine Fisheries Service's (NMFS) biological opinion (Opinion), issued under the authority of section 7(a)(2) of the Endangered Species Act (ESA) of 1973 as amended (16 U.S.C. 1536(a)(2)), on the effects of the U.S. Environmental Protection Agency's (EPA) proposed registration of pesticide products containing the active ingredients 2,4-D, triclopyr BEE, diuron, linuron, captan, and chlorothalonil, on endangered species, threatened species, and critical habitat that has been designated for those species. This Opinion assesses the effects of all pesticides containing the above listed ingredients on 28 listed Pacific salmonids.

After considering the status of the listed resources, the environmental baseline, and the direct, indirect, and cumulative effects of EPA's proposed action on listed species, NMFS concludes that pesticide products containing triclopyr BEE, diuron, linuron, captan, and chlorothalonil are not likely to jeopardize the continuing existence of any listed Pacific salmonids. NMFS has concluded that 2,4-D is likely to jeopardize the continuing existence of 28 listed Pacific salmonids. NMFS also concludes that the effects of products containing triclopyr BEE, linuron, and captan are not likely to destroy or adversely modify designated critical habitat for listed Pacific salmonids as described in the attached Opinion. Finally, NMFS concludes that the effects of products containing 2,4-D, diuron, and chlorothalonil are likely to destroy or adversely modify designated habitat for some listed Pacific salmonids as described in the attached Opinion. As NMFS has not designated critical habitat for Lower Columbia River coho salmon or Puget Sound steelhead, the Opinion presents no further critical habitat analysis for the these

Captan
Linuron
Triclopyr BEE

These three AIs were found not likely to jeopardize salmon and
not likely to destroy or adversely modify designated critical habitat for salmon

Court Order Enforcement

- This order is specific to Washington Toxics Coalition and USEPA.
- FIFRA is not a mechanism to enforce the order, nor is it enforced by California state and local government through pesticide regulations or permit conditions.
- It can only be enforced through citizen law suits.

U.S. EPA Consultation With NMFS

- Consultation for Chlorpyrifos, Diazinon and Malathion completed in October 2008.
- DPR expressed disagreement with Draft Biological Opinion, posted comments on Public Docket (9/16/2008). U.S. EPA also disagreed with NMFS.
- NMFS' Biological Opinion proposed buffers of 500' for ground applications and 1000' for aerial apps. plus other requirements for fish kill reporting, monitoring, runoff prevention, etc.

U.S. EPA Implementation

- U.S. EPA decided to impose variable buffers depending on application rate (lbs A.I./acre) + droplet size + size of adjacent body of water. For aerial apps. still almost 1000'. For ground, the minimum is 100'.
- U.S. EPA has produced 40 Draft County Bulletins for California.
- Draft County Bulletins for Chlorpyrifos, Diazinon and Malathion, were reviewed by DPR (11/09, 01/10) and comments sent to U.S. EPA.
- Any resulting FIFRA-enforceable pesticide use limitations will be made available thru EPA's Bulletins *Live!* Web site at:

http://www.epa.gov/oppfead1/endanger/bulletins.htm

U.S. EPA Bulletins *Live!* Website

Bulletins Live!

Quick Resources

- Search by active ingredient or by State

Protecting Endangered Species

Choose a state: California

Choose a county: Alameda [Go]

Directions: To access your Endangered Species Protection Bulletin, either use the drop-down menu to select your state and county OR use the map to select the state you wish to view.

U.S. EPA Implementation (continued)

- Draft California bulletins for Carbaryl, Carbofuran and Methomyl were also reviewed by DPR (07/10) and comments sent to U.S. EPA.
- For all AIs consulted on, EPA is asking registrants to voluntarily modify labels referring the user to the U.S. EPA Bulletins Live Web site, or face cancellation proceedings.
- Restrictions would be voluntary until labels are modified (18 months approx.).
- Once the pesticide label makes reference to the Bulletins Live! Web site, the Pesticide Use Limitations for the active ingredient(s) in that bulletin would become <u>enforceable under FIFRA and by all corresponding federal, state and local agencies.</u>

What to do now…

- Until a final decision is made on any of the 38 active ingredients under this injunction, follow the Court Ordered no-use buffers of 100 yards (aerial application) or 20 yards (ground application) from Salmon Supporting Waters.
- If you are part of a public Vector Control or Noxious Weed Eradication program check for your exemptions under this injunction.
- Check U.S. EPA's Web site often for updates on this and other injunctions at:

  http://www.epa.gov/oppfead1/endanger/litstatus/eslitig.htm

DPR's Ongoing Efforts

- DPR has provided comments to the Biological Opinions (BiOp) issued thus far.
- DPR is working cooperatively with U.S. EPA and NMFS to help refine the Reasonable and Prudent Alternatives (RPAs) and Reasonable and Prudent Measures (RPMs) resulting from each BiOp.
- As U.S. EPA officials inform DPR of their actions, DPR will make that information available through our Web site.

Salmonid Habitat Information Available Through DPR's Website

Salmonid Habitat Locations for California
http://www.cdpr.ca.gov/docs/es/salmonid.htm

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Salmonid Habitat Locations for California

On January 22, 2004, the U.S. District Court for the Western District of Washington at Seattle imposed no-use buffer zones around salmon-supporting waters (as defined by the court) in Washington, Oregon, and California for certain pesticides. On April 28,U.S. EPA launched the Enviromapper Site, an interactive mapping website to help pesticide users better understand the court-ordered buffers. Another source of information on salmon-supporting waters in California where these measures apply is in the section lists in the back of DPR's endangered species county bulletins.

The section lists in the bulletins provide only an index to watersheds where listed salmon and steelhead trout are known to occur. Within listed sections protection measures apply to flowing waters that contain fish where fish passage to the ocean is not prevented by dams or other impassable barriers. **Note that the court order supersedes the protection measures in the bulletins.**

The court's order will remain in effect for each pesticide listed below until any of the following occur:

1. The U.S. Environmental Protection Agency (U.S. EPA) determines that these pesticides have no effect on listed

U.S. EPA EnviroMapper Site

http://www.epa.gov/oppfead1/endanger/litstatus/wtc/uselimitation.htm

Address http://www.epa.gov/oppfead1/endanger/wtc/uselimitation.htm

DashBar | Enter search words h | Search

U.S. Environmental Protection Agency

Pesticides: Endangered Species Protection Program

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EPA Home > Pesticides > Environmental Effects > Endangered Species Protection Program > Court Ordered Limitations > Court Ordered Buffers Around Pacific Salmon-Supporting Waters > Pesticide Use Limitations - 9th District Court Order >

- List of Species
- Pesticide Use Limitations (by County)
- Court Ordered Limitations
- ESPP Database
- For Kids: Coloring Book Poster

Pesticide Use Limitations - 9th District Court Order

The EnviroMapper Site is intended to assist pesticide users' understanding of certain pesticide use limitations put in place by the 9th District Court and which apply to specific waters and specific pesticides' uses in Washington, Oregon and California. There are some exceptions to the limitations which may be found on the http://www.epa.gov/oppfead1/endanger/wtc/maps.htm page. If you have not already done so, you should review the **background** and the **exceptions** to determine whether the Court Order applies to your use of the pesticides.

Because limitations may be changed or deleted as EPA continues its review of 55 pesticide active ingredients, pesticide users should visit this site, before, but close to the time of pesticide use to determine whether the Court Ordered limitations apply to your use of a specific pesticide. EPA will update this site when Court Ordered limitations change.

To determine specific waters and pesticide use limitations that may apply to your use of a pesticide, from the list at the right: 1) select the state in which you intend to apply a pesticide; 2) select the specific pesticide active ingredient you intend to use; and 3) click the "Submit" button.

On-line Help

State:
- Select a state
- California
- Oregon
- Washington

Pesticide: (optional)
- chlorpyrifos
- coumaphos
- diazinon
- diflubenzuron
- dimethoate
- disulfoton
- diuron - crop
- diuron - non-crop
- ethoprop
- fenamiphos
- fenbutatin oxide
- lindane
- malathion
- methidathion
- methomyl
- methyl parathion
- metolachlor

Submit | Clear Form

US EPA Buffers Information for Salmonids

http://www.epa.gov/oppfead1/endanger/litstatus/wtc/maps.htm

U.S. ENVIRONMENTAL PROTECTION AGENCY

Pesticides: Endangered Species Protection Program Share

Recent Additions | Contact Us **Search:** All EPA This Area Go

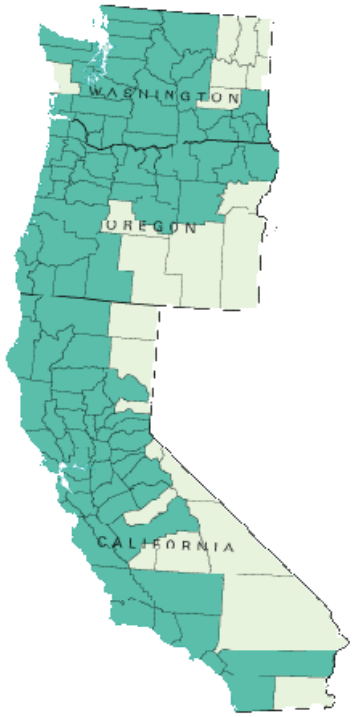
You are here: EPA Home » Pesticides » Endangered Species Protection Program » Endangered Species Litigation WTC v. EPA - Court Issues Order in Endangered Species Case (2002) » Court Ordered Buffers Around Pacific Salmon-Supporting Waters

Court Ordered Buffers Around Pacific Salmon-Supporting Waters

Shaded Counties on the map below, are those that support threatened and endangered salmon or steelhead habitat, and in which pesticide use buffers may have been ordered by the court. If you plan to use any of the pesticides subject to the court order in a shaded county **YOU SHOULD FIRST READ THE BACKGROUND** section. Pesticide users are urged to check this site, before, but close to the time of application of the pesticide, since the buffers may become unnecessary as EPA continues its review of the pesticides subject to the court order.

Quick Resources

- Court Ordered Limitations
- Effects Determinations and Consultations



BACKGROUND

A citizen suit was filed under the Endangered Species Act against EPA by a group of environmental organizations (Washington Toxics Coalition, et al. v. EPA). In response, the United States District Court for the Western District of Washington issued on January 22, 2004, an order that establishes pesticide buffer zones. Buffer zones are areas adjacent to certain streams, rivers, lakes estuaries and other water bodies, in which the court is ordering certain pesticides not be used. Generally, the buffers established by the Court are 20 yards for ground application and 100 yards for aerial application, adjacent to certain "salmon-supporting waters" in Washington, Oregon and California. The order applies to pesticide use in these three states, for any product containing one or more of the pesticides subject to the court order.

The Court Order which became effective on February 5, 2004, defines salmon-supporting waters as certain water bodies below the "normal high water mark" and thus, any buffer should be measured from that normal high water mark. The buffers apply to the waters indicated on our interactive mapper, and to estuaries relevant to each of the salmon and steelhead. An estuary is a water passage where a tide meets a river current.

Failure to comply with the court order is not a violation of the Federal Insecticide and Fungicide Act (FIFRA). EXIT Disclaimer However, EPA recognizes the legal effect of the Court's order and is providing the information on this Web site and linked sites, to assist pesticide users in understanding the specific provisions of the Court's order.

There are several general exceptions to the buffers in the court order and many pesticide specific variations. You should read the general exceptions to determine if any buffers apply to your use of the pesticides subject to the order.

If the general exceptions do not apply to you, consult our interactive map to determine whether a specific buffer applies to your use of a pesticide, and the waters to which that buffer applies.

Enter our interactive map site to determine how the Court's order applies to a pesticide use you intend to make.

GENERAL EXCEPTIONS

Below are descriptions of specific uses for which there is no buffer for any of the pesticides subject to the court

Salmonid Habitat Locations for California. Link to DPR's Endangered Species County Bulletins http://www.cdpr.ca.gov/docs/es/colist.htm

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The court's order will remain in effect for each pesticide listed below until any of the following occur:

1. The U.S. Environmental Protection Agency (U.S. EPA) determines that these pesticides have no effect on listed

County Bulletins List: Select county of interest. This will open a .pdf file of that bulletin.

Select Bulletins by County

Alameda	Alpine	Amador	Butte	Calaveras	Colusa
Contra Costa	Del Norte	El Dorado	Fresno	Glenn	Humboldt
Imperial	Inyo	Kern	Kings	Lake	Lassen
Los Angeles	Madera	Marin	Mariposa	Mendocino	Merced
Modoc	Mono	Monterey	Napa	Nevada	Orange
Placer	Plumas	Riverside	Sacramento	San Benito	San Bernardino
San Diego	San Francisco	San Joaquin	San Luis Obispo	San Mateo	Santa Barbara
Santa Clara	Santa Cruz	Shasta	Sierra	Siskiyou	Solano
Sonoma	Stanislaus	Sutter	Tehama	Trinity	Tulare
Tuolumne	Ventura	Yolo	Yuba		

Section List

Section List - San Joaquin County

Sections	Species
03N09E: S34	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU), Valley Elderberry Longhorn Beetle
03N09E: S35	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
03N09E: S36	Steelhead Trout (CCV-ESU), Vernal Pool Fairy Shrimp
03S04E: S1-2	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S04E: S11-17,20-23	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S04E: S24-25	California Red-legged Frog, San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S04E: S26-28	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S04E: S29	Steelhead Trout (CCV-ESU)
03S04E: S3	California Red-legged Frog, San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S04E: S32-33	California Red-legged Frog, Steelhead Trout (CCV-ESU)
03S04E: S34-36	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S04E: S4-5,8	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S04E: S9-10	California Red-legged Frog, San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S05E: S1-2	Steelhead Trout (CCV-ESU)
03S05E: S12	Steelhead Trout (CCV-ESU)
03S05E: S13-36	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S05E: S3-11	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S06E: S1-4	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
03S06E: S10-15	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
03S06E: S16-18	Steelhead Trout (CCV-ESU)
03S06E: S19	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S06E: S20-23	Steelhead Trout (CCV-ESU)
03S06E: S24	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
03S06E: S25-29	Steelhead Trout (CCV-ESU)
03S06E: S30-32	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S06E: S33-35	Steelhead Trout (CCV-ESU)
03S06E: S5-9	Steelhead Trout (CCV-ESU)
03S07E: S1	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
03S07E: S17-20	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
03S07E: S2-4	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU), Valley Elderberry Longhorn Beetle
03S07E: S5-8	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
03S07E: S9-10	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU), Valley Elderberry Longhorn Beetle
04N04E: S1-2,11-14,22-27,33-36	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
04N05E: S1-15	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
04N05E: S16	Steelhead Trout (CCV-ESU)
04N05E: S17-19	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)

- Species locations are shown by Township/Range/Section coordinates.
- If the area where you intend to apply a pesticide (restricted by the court order) is located within a section included in this list, check for salmonid habitat in the vicinity of your application site.

(continued on next slide)

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04N05E: S17-19	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)

Section List

- If you intend to make an aerial application, the product cannot be applied within 100 yards of salmon supporting waters included in the section list.
- If you intend to make an application by ground, then you have to stay away 20 yards from salmon supporting waters included in the section list.

Again, what are Salmon Supporting Waters?

For purposes of this legal action, the court has determined that "salmon supporting waters" are the area below the ordinary high water mark of all streams, lakes, estuaries, and other water bodies where salmon are ordinarily found at some time of year."

Point of Sale Requirements for Urban Pesticides
http://www.cdpr.ca.gov/docs/es/pointsale.htm

Department of Pesticide Regulation
Endangered Species Project

Point-of-Sale Requirements for Urban-Use Pesticides for Protection of Salmonids

On March 24, 2004, the U.S. Environmental Protection Agency (U.S. EPA) published in the Federal Register a notice to to state pesticide agencies in California, Oregon, and Washington, and also to pesticide retailers who sell pesticides in urban areas in those states through which "salmon-supporting waters" pass. The notice informs these pesticide retailers and state agencies of notification requirements imposed by a January 22, 2004, ruling of the Court for the Western District of Washington in the case of Washington Toxics Coalition, et al. (WTC) v. U.S. EPA. Retailers are made aware that they are required to make available a point-of-sale notification developed by U.S. EPA pursuant to the Court Order whenever pesticide products containing any of the following seven active ingredients are sold:

- 2,4-D
- Carbaryl
- Diazinon
- Diuron
- Malathion
- Triclopyr BEE
- Trifluralin

According to U.S. EPA, the point-of-sale notification should incorporate the following written and graphic information:

Additional Information Available Online

http://www.epa.gov/oppfead1/endanger/litstatus/wtc/index.htm

U.S. ENVIRONMENTAL PROTECTION AGENCY

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Endangered Species Case - Washington Toxics Coalition v. EPA

You will need Adobe Reader to view some of the files on this page. See EPA's PDF page to learn more.

Under the Endangered Species Act, EPA must ensure that its registration of a pesticide will not result in likely jeopardy to the continued existence of federally listed threatened or endangered species or destroy or adversely modify their designated critical habitat. In addition the Agency must consult, as appropriate, with the U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) if a pesticide's use may affect listed species or designated critical habitat.

This Web page provides information on the Washington Toxics Coalition v. EPA case, related to protection of Pacific salmon and steelhead, and links to the biological opinions issued by the NMFS and EPA's responses.

Background on this court case

On February 17, 2004, EPA announced the availability of the January 22, 2004, ruling of the U.S. District Court for the Western District of Washington in the case of Washington Toxics Coalition (WTC) v. EPA in a Federal Register notice. The Court established buffer zones around certain water bodies in California, Oregon, and Washington where the court ordered that specific pesticides could not be used. Generally, for ground pesticide applications, the court order establishes a 20-yard buffer zone; for aerial pesticide applications, the court order establishes a 100-yard buffer zone adjacent to salmon-supporting waters. These buffers are in effect until EPA completes its consultation obligations including finding that a pesticide has no effect on the species, receipt of a biological opinion from NMFS, or a finding by EPA that the pesticide is not likely to adversely affect the species with no affirmative rejection of that finding by NMFS.

Chief Judge Coughenour issued this order in response to the WTC's July 16, 2003, motion for injunctive relief to establish buffer zones as an interim measure to reduce the likelihood of jeopardy to 26 species of salmon and steelhead.

The Agency met its December 1, 2004, deadline to complete the review of the 55 pesticides as ordered by the court on July 2, 2002. For 37 pesticides, EPA determined there may be effects to one or more of the listed Pacific salmon or steelhead and therefore initiated consultation with the National Marine Fisheries Service.

Links to the Federal Register Notices and Court Orders:

- March 24, 2004, Federal Register notice on point of sale notification.
- February 17, 2004, Federal Register notice announcing the availability of the Court ruling.
- January 22, 2004, Court Order (PDF) (31 pp,754K)
- August 8, 2003, Court Order (PDF) (22 pp, 957K)
- July 16, 2003, Court Order (PDF) (5 pp, 231K)
- July 2, 2002, Court Order (PDF) (21 pp, 1.03MB)

Quick Resources

- EPA Seeks Input on NMFS' Draft Measures to Protect Endangered Pacific Salmon from 12 Pesticides
- NMFS April 20, 2009, Final Biological Opinion under the Endangered Species Act, Issued for Carbofuran, Carbaryl and Methomyl (PDF) (609 pp, 11.87MB)
- EPA Plans New Use Limitations on Carbaryl, Carbofuran, and Methomyl to Protect Salmon and Steelhead in California, Idaho, Oregon, and Washington (PDF) (20 pp, 888.73k, about PDF)
- Manufacturers Decline to Adopt Pesticide Use Limitations to Protect Endangered Species (PDF) (3 pp, 163k)
- EPA Gives Pesticide Manufacturers Two Weeks to Commit to Modifications to Protect Endangered Species (PDF) (5pp, 100KB)
- NMFS November 18, 2008, Final Biological Opinion under the Endangered Species Act, Issued for Chlorpyrifos, Diazinon, and Malathion (PDF) (484 pp, 11.04MB)

September 11, 2009, Press Release: New Limitations on Pesticide Uses Will Protect Salmon

EPA September 10, 2009,

http://www.epa.gov/oppfead1/endanger/litstatus/wtc/qs-as.htm

U.S. Environmental Protection Agency

Pesticides: Endangered Species Protection Program

United States Environmental Protection Agency GO

EPA Home > Pesticides > Environmental Effects > Endangered Species Protection Program > Court Issues Order in Endangered Species Case - Washington Toxics Coalition v. EPA > Questions and Answers on the Washington Washington Toxics Coalition Endangered Species Litigation

- List of Species
- Pesticide Use Limitations (by County)
- ESPP Database
- For Kids: Coloring Book Poster

Questions and Answers on the Washington Washington Toxics Coalition Endangered Species Litigation

Order from the Court

In response to a citizen suit filed under the Endangered Species Act against EPA by a group of environmental organizations (Washington Toxics Coalition, et.al. v. EPA), the United States District Court for the Western District of Washington issued on January 22, 2004, an order enjoining, vacating and setting aside EPA's authorization of the use of certain pesticides generally, within 20 yards for ground applications and 100 yards for aerial applications, adjacent to salmon supporting waters in California, Oregon and Washington. Further, the Court ordered EPA to generate and facilitate the availability of a notification of potential hazards to salmonids in major urban areas in the affected states. The Court Order, which became effective February 5, 2004, and information to help pesticide users understand the Order, is available at www.epa.gov/espp. The United States is now reviewing the order in detail and considering legal options.

1. What is EPA currently doing to protect endangered species?
2. What has EPA done about the 55 pesticides identified in the litigation?
3. What is EPA doing about those determinations where the pesticide "may affect" the species?
4. Why did the Judge issue this Order?
5. What does it mean that the Court "vacated" the registration of certain pesticides within buffer zones around Pacific Salmonid supporting waters?
6. Is it a violation of FIFRA to use a subject pesticide within the buffer zones?
7. Are these pesticide harmful to fish?
8. Why do the buffer zones apply to these particular pesticides?
9. Do the buffer zones in the Court's Order apply to FIFRA actions involving the subject pesticides that are approved after the effective date of Court's Order, including section 18 and section 24(c) actions?
10. What waters are considered "salmon supporting waters"?
11. Does the court order apply only to agricultural uses of these products?
12. When will EPA finish reviewing these pesticides?
13. When EPA finishes reviewing these pesticides, will the court ordered buffer zones be lifted?
14. How will I know if the court changes the buffer zones, areas and pesticide uses subject to the injunction?
15. What is EPA's process for protecting endangered and threatened species?

http://www.nmfs.noaa.gov/pr/

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Welcome to the Office of Protected Resources

The Office of Protected Resources (OPR) is a headquarters program office of NOAA's National Marine Fisheries Service (NOAA Fisheries Service, or NMFS), under the U.S. Department of Commerce, with responsibility for protecting marine mammals and endangered marine life.

NOAA's Office of Protected Resources works to conserve, protect, and recover species under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA) in conjunction with our Regional Offices, Science Centers, and various partners.

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Hawaiian Monk Seal
(Monachus schauinslandi)
Photo: NMFS Pacific Islands Fisheries Science Center

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08/24/2011	Draft 2011 Marine Mammal Stock Assessment Reports Now Available; Open for Comment through 11/22/2011
08/12/2011	Draft Programmatic Environmental Impact Statement (PEIS) for Hawaiian Monk Seal Recovery Actions; Open for Comment through 10/17/2011
08/10/2011	90-day Finding on a Petition to List the Saltmarsh Topminnow under the Endangered Species Act

Comment on Our Actions

» Port of Vancouver Incidental Take Request, through 09/19/2011

» U.S. Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar Incidental Take Request, through 09/29/2011

» Scientific Research Permit Applications Currently Open for Comment, ongoing

» More Actions Currently Open for Comment