

Impact of Current Injunctions on Pest Control



Leopoldo Moreno
Environmental Scientist
Department of Pesticide Regulation
(916)324-3888
pmoreno@cdpr.ca.gov



EARTHJUSTICE

Because the earth needs a good lawyer

Salmonid Court Order

- 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 (SSW)
- Effective date 2/5/04.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE
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



Active Ingredients Affected (Salmon)

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



Active Ingredients Affected (cont.)

- Lindane
- Linuron
- **Malathion**
- Methamidophos
- Methidathion
- Methomyl
- Methyl parathion
- Metolachlor
- Metribuzin
- Naled
- Oxyfluorfen
- Pendimethalin
- Phorate
- Prometryn
- Propargite
- Tebuthiuron
- Triclopyr (BEE + TEA)
- Trifluralin

The rest of the active ingredients originally included in the lawsuit have been removed from this list. They were found by EPA to have no effect on salmonids.



Pesticide Programs Excluded from Salmonid Court Order

- 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 (cont.)

- 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.



NOAA Fisheries Draft Biological Opinion on
Chlorphacinone, Diazinon and **Malathion**
July 31, 2008



September 15, 2008

Ms. Angela Somma
Chief
Endangered Species Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
13th Floor
Silver Spring, MD 20910

Dear Ms. Somma:

The California Department of Pesticide Regulation (DPR) provides the following comments on the Draft Biological Opinion for Chlorpyrifos, Diazinon and Malathion as issued by the National Marine Fisheries Service (NMFS) on July 31, 2008.

1) DPR disagrees with NMFS' finding that U.S. EPA's proposed authorization for the registration of pesticide products containing the active ingredients chlorpyrifos, diazinon and malathion is likely to jeopardize the continued existence of the 10 Salmonid Evolutionarily Significant Units (ESUs) occurring in California. DPR also disagrees with NMFS' conclusion that U.S. EPA's proposed authorization for the registration of pesticide products containing the active ingredients chlorpyrifos, diazinon and malathion is likely to destroy or adversely modify designated critical habitat for the above mentioned salmonid ESUs.

2) A number of environmental factors believed to negatively impact salmonids are listed in the Biological Opinion. These include water flow, water temperature, removal of riparian habitat, urbanization, bank erosion, decreased base flow, sediment loadings, chemical pollutants from automobile traffic, wastewater treatment plants outflows, water chemistry, biota, canalization, heavy metals such as zinc, copper, lead, arsenic, mercury, infectious diseases, parasites, fertilizers, manures (nitrates), VOCs, nutrients, pathogenic bacteria, old organochlorines, reduced dissolved O₂, and pesticides. Considering that the affected populations range from Southern California to the Canadian border (and beyond), these various factors should be accounted for in some manner. It is likely that in some habitats, pesticides are not a significant factor while urbanization, high water temperature or sediment loading is. It is not clear from reading the Biological Opinion that pesticides are a factor in any of the habitats.

3) The Biological Opinion appears to treat the various species, subspecies, and populations (ESUs) as a single unit with regard to the perceived effects of the three pesticides. No effort to differentiate subpopulations or varying exposure scenarios was made. This is an error since pesticide use and the resulting exposure, and the listed environmental factors, vary considerably over the vast range covered by the Biological Opinion.

DPR's Comments for Public Docket

DPR disagreed with NOAA
Fisheries findings.

Speculation – Environmental
Factors.

NMFS used flawed models in
their analyses.

NMFS disregards monitoring
efforts and findings since
2002.

Effects analyses used 25-
year old standards, which
have changed significantly
since then.

Ignored monitoring data in
California to use their "model"





Weather.gov
Forecast

City, ST

[» GO](#)

[» Active Weather Alerts](#)

[» NOAA Organizations](#)

[» Working With NOAA](#)

[» Media & Constituents](#)

[» NOAA In Your State](#)

[» Emergency Information for NOAA Employees](#)

Media Contact

[» Monica Allen](#)
301-713-2370

NOAA Biological Opinion on Pesticides Recommends Buffers to Protect Salmon

November 18, 2008



Airplane spraying pesticide.

[High resolution](#) (Credit: NOAA/USFWS)

NOAA today issued a [biological opinion](#) to the Environmental Protection Agency that found three chemicals used in pesticides – diazinon, malathion, and chlorpyrifos - are likely to jeopardize 27 populations of salmon on the West Coast that are listed as either endangered or threatened. The opinion calls for buffer zones next to salmon streams where the chemicals are used.

A biological opinion is [NOAA Fisheries Service's](#) assessment of whether a federal action is likely to jeopardize an endangered or threatened species, or its

critical habitat.

EPA will use NOAA's biological opinion as it decides how pesticides containing the three chemicals can be used. EPA examines and registers ingredients of a pesticide to ensure there will be no unreasonable adverse effects. Once registered, a pesticide must be used in a way that is consistent with approved directions on the label.

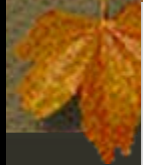
NOAA's biological opinion says these three chemicals may be used in pesticides if farmers and others follow specific restrictions on how and when they apply the pesticides to their fields and crops. NOAA says these restrictions should be made explicit on the pesticide labels.

"Scientific research has shown that these three chemicals when found in streams can damage and even kill salmon," said [Jim Balsiaer](#), acting NOAA



Sockeye salmon in a stream.

[High resolution](#) (Credit: NOAA/USFWS)



"Scientific research has shown that these three chemicals when found in streams can damage and even kill salmon," said [Jim Balsiger](#), acting NOAA assistant administrator for NOAA's Fisheries Service. "The chemicals may also harm stream water quality and the small fish and insects that salmon eat. The restrictions are designed to prevent harmful effects. "

Some of the required restrictions of the biological opinion include:

- Buffer zones of 1,000 feet for aerial application and 500 feet for ground application between where the pesticides are applied and salmon streams.
- Strips of a minimum of 20 feet of grasses, bushes or other vegetation on agricultural sites adjacent to surface waters designed to absorb runoff from pesticide-treated fields.
- Restrictions on applying pesticides in windy conditions that could carry pesticides into nearby streams.
- A prohibition on applying pesticides when a storm is predicted that could cause pesticide run off into nearby streams.

NOAA scientists found the chemicals not only can be lethal to salmon at certain concentrations, but can also hinder salmon growth at lower levels of concentration by impairing their ability to smell their prey and by reducing the amount of small fish and insects for food. The chemicals have also been found to slow the swimming of salmon or make their swimming erratic, impairing their ability to return to their natal streams to spawn and to avoid predators.

The final [biological opinion](#) is the first in a series that NOAA will issue between now and Feb. 29, 2012, to the EPA concerning a total of 37 active chemical ingredients in pesticides. EPA requested that NOAA prepare the biological opinions as the result of lawsuits from environmental groups in recent years.



NOAA understands and predicts changes in the Earth's environment, from the depths of the ocean to the surface of the sun, and conserves and manages our coastal and marine resources.



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

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?](#)

List of Species

Pesticide Use
Limitations (by
County)

ESPP Database

For Kids:
Coloring Book
Poster



California Red-legged Frog Injunction

- Lawsuit brought about by Center for Biological Diversity vs. U.S. EPA
- This injunction is the result of the settlement reached in California's Northern District Court.
- Imposes prohibitions for use of 66 active ingredients 200 feet by air, and 60 feet by ground from California red-legged frog's aquatic and upland habitats occurring in 33 counties.
- Effective date 10/20/06.



Active Ingredients Affected (CRLF)

- 1,3-dichloropropene
- 2,4-D
- Acephate
- Alachlor
- Aldicarb
- Atrazine
- Azinphos-methyl
- Bensulide
- Bromacil
- Captan
- Carbaryl
- Chloropicrin
- Chlorothalonil
- Chlorpyrifos
- Chlorthaldimethyl
- Diazinon
- Dicofol
- Diflubenzuron
- Dimethoate
- Disulfoton
- Diuron
- Endosulfan




Active Ingredients Affected (CRLF)

- EPTC
- Esfenvalerate
- Fenamiphos
- Glyphosate
- Hexazinone
- Imazapyr
- Iprodione
- Linuron
- Malathion
- Mancozeb
- Maneb
- Metam Sodium
- Methamidophos
- Methidathion
- Methomyl
- Methoprene
- Methyl parathion
- Metolachlor
- Molinate
- Myclobutanil
- Naled
- Norflurazon



Active Ingredients Affected (CRLF)


- Oryzalin
- Oxamyl
- Oxydemeton-methyl
- Oxyfluorfen
- Paraquat dichloride
- Pendimethalin
- Permethrin
- Phorate
- Phosmet
- Prometryn
- Propanil
- Propargite
- Propyzamide
- Rotenone
- Simazine
- SSS-tributyl phosphorithiolate
- Strychnine
- Thiobencarb
- Triclopyr (BEE + TEA)
- Trifluralin
- Vinclozolin
- Ziram



Pesticide Programs Excluded from CRLF Injunction

- Public Health Vector Control Programs.
- Noxious Weed Programs **
- Endangered Species Act-Approved Uses.

** (Some restrictions required, see next slides)



USEPA – USFWS Consultation is Ongoing

- EPA has submitted assessments for 10+ AIs to USFWS.
- Awaiting for Draft Biological Opinion to be issued by USFWS



Web sites related to CRLF Injunction

- Stipulated Injunction and Order Information posted on U.S. EPA's Web site:

<http://www.epa.gov/oppfead1/endanger/stipulated-injunction.htm>

- U.S. EPA's website with maps of counties affected by the injunction:

<http://www.epa.gov/oppfead1/endanger/litigation/redleg-frog/steps-info.htm>

- Injunction information on DPR's Website:

http://www.cdpr.ca.gov/docs/es/rl_frog/index.htm



Center for Biological Diversity

BECAUSE LIFE IS GOOD

Protecting endangered species and wild places through science, policy, education, and environmental law.

FOR IMMEDIATE RELEASE: January 9, 2007

Contact: Jeff Miller, Center for Biological Diversity, (510) 499-9185

Environmental Protection Agency Threatened with Lawsuit For Failing to Protect 11 Bay Area Endangered Species from Pesticides

San Francisco, Calif. – The Center for Biological Diversity today filed notice of intent to sue the U.S. Environmental Protection Agency (EPA) for violations of the Endangered Species Act, in order to protect 11 San Francisco Bay Area endangered and threatened species and their habitats that are jeopardized by pesticides.

Based solely on reported use, more than 61 million pounds of pesticide active ingredients were applied in Bay Area counties from 1999 through 2005, more than 8 million pounds annually. Actual use may be several times this amount since most home and commercial pesticide use is not reported to the state. Under the Bush administration, the EPA has failed to consult with the U.S. Fish and Wildlife Service (FWS) or adequately consider endangered species impacts when registering and authorizing use of at least 60 toxic pesticides that may harm vulnerable Bay Area wildlife species.

"The EPA has failed to comply with even the basic requirements of the Endangered Species Act in registering and approving uses of pesticides known to poison Bay Area endangered species," said Jeff Miller, Bay Area Wildlands Coordinator with the Center. "Given the known significant effects on wildlife and the EPA's own acknowledgments regarding pesticide use exceeding levels of concern for endangered species, pesticide restrictions to protect our most endangered species are long overdue."

Pesticides of concern have been documented in Bay and Delta aquatic habitat for the Delta Smelt and Tidewater Goby; tidal marshland habitat for the California Clapper Rail and Salt Marsh Harvest Mouse; freshwater and wetlands habitat for the California Tiger Salamander, San Francisco Garter Snake and California Freshwater Shrimp; and terrestrial habitat for the San Joaquin Kit Fox, Alameda Whipsnake, Valley Elderberry Longhorn Beetle and Bay Checkerspot Butterfly. Pesticides may adversely affect an additional 19 of the 51 Bay Area animal species listed under the Endangered Species Act.

The EPA is required under the Endangered Species Act to consult with the FWS over registration, re-registration and approved uses of pesticides that may endanger listed species or adversely modify their designated critical habitat. With the lawsuit, the Center hopes to force interim pesticide use restrictions for the 11 species similar to those it recently obtained to protect the California Red-legged Frog, until assessments of pesticide impacts have been completed. A settlement signed by the EPA and the pesticide industry last October prohibits use of 66 pesticides in and adjacent to core Red-legged Frog habitats throughout California for three years, until the EPA completes consultations.

"Interim pesticide restrictions similar to those in effect for the Red-legged Frog would be reasonable and effective protection until formal consultations with the Fish and Wildlife Service are completed for these eleven species," said Miller. "Permanent use restrictions will be needed for contaminants harmful to endangered species and human health, such as atrazine

What's next?

Any Questions?

