

Recent Decision

At <http://www.earthjustice.org/backgrounders/display.html?ID=86>

1. What is the latest ruling from the Court?

Judge Coughenour of the U.S. District Court for the Western District of Washington has imposed buffer zones restricting use of 38 pesticides along streams supporting threatened and endangered salmon. The order requires 20-yard no-spray buffers and 100-yard buffers in which aerial applications cannot occur. The buffers will remain in place until the U.S. Environmental Protection Agency (EPA) completes Endangered Species Act ("ESA") consultations on the pesticides, which is expected to take at least an additional two to three years for many of the pesticides.

Judge Coughenour has also ruled that for seven pesticides that have been frequently detected in urban surface waters, EPA must provide point of sale warnings that the pesticides may harm salmon when used in urban areas, because they pollute salmon streams. King County, Washington, has designed [three graphics that illustrate the salmon warning](#) the Judge is requiring.

2. What is the history of the case?

In July 2002, Judge Coughenour ruled that the EPA had violated the Endangered Species Act, because it had failed to take steps to ensure that its authorized uses of 54 pesticides will not jeopardize the survival of threatened and endangered salmon. "Despite competent scientific evidence addressing the effects of pesticides on salmonids and their habitat, EPA has failed to initiate [ESA] consultation with respect to its pesticide registrations. EPA's own reports document the potentially-significant risks posed by registered pesticides to threatened and endangered salmonids and their habitat."

The Judge ordered EPA to comply with the ESA by evaluating, with the input of NOAA Fisheries, the effects of these pesticides on endangered and threatened salmon. In July and August 2003, Judge Coughenour ruled that while the EPA was completing this process, interim protective measures should be put in place, and that buffers along salmon streams are a "common, simple, and effective" remedy that should be implemented. The December 2003 ruling imposes such buffers and requires point of sale warnings.

3. Who are the parties to the litigation?

Plaintiffs in this case, represented by Earthjustice, are the Washington Toxics Coalition, the Northwest Coalition for Alternatives to Pesticides, the Pacific Coast Federation of Fishermen's Associations, and the Institute for Fisheries Resources. The EPA is the defendant. CropLife America, a trade association representing chemical companies, and 34 other industry associations representing users, manufacturers, and applicators, intervened in the litigation as defendants. In addition, several other parties, including Syngenta Crop Protection Inc. and Dow Agrosciences LLC filed amicus briefs with the court.

Interim Protective Measures and Implementation

4. When will the interim protective measures go into effect?

The court's order requiring buffers will be effective as of early 2004. The court and the parties wanted to ensure that the effective date would allow farmers enough time to complete the 2003 fall growing season with minimal disruption. The effective date was carefully selected to balance the expectations of farmers entering the 2003 growing season with the needs of salmon.

5. How long will buffers be required?

Judge Coughenour will require buffers along Salmon Supporting Waters until one of two events occurs for a particular pesticide or a particular population of salmon: (1) EPA finds that a pesticide is "not likely to adversely affect" salmon, or will have "no effect" on salmon; or (2) NOAA Fisheries issues a biological opinion under the ESA regarding the pesticide's effects on salmon.

6. Where will buffers apply?

The buffer zones will apply along Salmon Supporting Waters in California, Oregon, and Washington. Salmon Supporting Waters are streams, estuaries, or other water bodies where threatened and endangered salmon are ordinarily found. Salmon Supporting Waters do not include irrigation ditches or canals. Buffers will not apply to pesticides that were part of the litigation, but which EPA has since determined are "not likely to adversely affect" salmon or will have "no effect" on salmon.

7. What are the required buffers?

Judge Coughenour has imposed standard buffers of 20 yards for all uses of the pesticides, and 100 yards for aerial applications, along Salmon Supporting Waters. However, for certain pesticide uses, or particular pesticide application methods that do not pose as great a threat to salmon, smaller buffers will be required. For example, indoor uses, tree injections, flea and tick collars, and cut-stump applications are excluded from the buffer restrictions.

8. Which salmon will the buffers protect?

There are 26 distinct populations of wild Pacific salmon and steelhead that are listed as threatened or endangered under the ESA. They include coho, chinook, chum, and sockeye salmon, and steelhead trout.

9. How can I find out if there are Salmon Supporting Waters near where I live?

In Washington and Oregon, Salmon Supporting Waters may be found at the [StreamNet website](#). In California, information for locating Salmon Supporting Waters may be found at the [USGS website](#). However, these sources do not include salmon-bearing estuaries, which are subject to the Court's ruling. [Check these maps for the rough geographic location of Salmon Supporting Waters](#).

10. Why are buffers being used to protect endangered and threatened salmon and steelhead?

As Judge Coughenour ruled, buffers are a "common, simple, and effective" strategy for protecting endangered and threatened salmon and steelhead from the effects of pesticides. Even when used as authorized by homeowners, farmers, or industry, pesticides travel into salmon waterways. By increasing the distance from pesticide application to Salmon Supporting Waters, buffers reduce the likelihood that a dangerous level of pesticides will reach these waters.

11. What pesticides are subject to the buffers and how were they selected?

Plaintiffs originally brought to the court's attention [54 pesticides that were frequently detected](#) by U.S. Geological Survey ("USGS") in salmon watersheds at levels dangerous to aquatic life, or which EPA predicted would contaminate waters at levels that could harm fish, their food, and habitat. Since Judge Coughenour's order in July 2002, requiring the EPA to begin to assess the risks of pesticides to salmon, EPA has determined that several pesticides used in specific areas are "[not likely to adversely affect](#)" salmon, or will have "[no effect](#)" on salmon. Buffers will not be required along Salmon Supporting Waters for these "no effect" or "not likely to adversely affect" pesticides. Currently, [38 pesticides are subject to some type of buffer requirement](#) under the court's order.

12. What do the experts think about the use of buffers?

In 1989, the U.S. Fish and Wildlife Service concluded that dozens of pesticides would jeopardize the survival of endangered species and it prescribed pesticide-free buffers around the species' habitat to prevent interaction between the pesticide and the species.

EPA has issued county bulletins containing county-specific use restrictions for pesticides affecting endangered species. Although currently voluntary and not utilized

for salmon, the following most common buffer schemes collectively comprise over 90% of EPA's buffer scenarios:

Aerial Buffer

Ground Buffer

0.5 mile

0.25 mile

0.25 to 0.5 mile

100 yards

200 yards

40 yards

100 yards

20 yards

The Natural Resources Conservation Service, in the U.S. Department of Agriculture ("USDA"), considers buffers an important tool to reduce pesticide migration by slowing water run-off, trapping sediment, and enhancing infiltration within the buffer. [[Learn more.](#)]

The Washington Department of Fish and Wildlife has also recommended buffers in agricultural lands to slow run-off and filter out pesticides. Knutson, K.L., and V.L. Neaf,

1997, Management Recommendations for Washington's Priority Habitats: Riparian, Washington Department of Fish and Wildlife.

An expert report prepared for EPA, NOAA Fisheries and the U.S. Fish and Wildlife Service on salmon habitat protections for nonfederal lands recommends buffer zones along salmon streams in which pesticides cannot be used. "An Ecosystem Approach to Salmonid Conservation" (Spence et al., 1996). The U.S. Forest Service has imposed one-mile no spray buffers around wilderness areas.

13. **What protective measures are in place for urban areas?**

In addition to the buffers, Judge Coughenour has ordered that EPA provide a salmon warning at the point of sale for seven pesticides that have been frequently detected by USGS in urban surface waters. This warning must be visible to all purchasers at the point of sale, and will state:

Salmon Hazard: This product contains pesticides that may harm salmon or steelhead. Use of this product in urban areas can pollute salmon streams.

14. **Why are these protective measures necessary for urban areas?**

Pesticide use in urban environments presents a unique problem because impervious surfaces increase run-off, which is usually channeled directly into streams through storm drains and pipes. Urban development limits the breakdown of pesticides that occurs in natural landscapes when pesticides are exposed to air, light, and soil. The salmon warning is necessary in urban areas to educate the public about the effects of urban pesticide use on salmon.

Impacts and Alternatives

15. **What will the impact of the ruling be?**

Buffers are already commonly used along waterways to mitigate the effects of pesticides, and the buffers imposed in this case are consistent with this long-standing practice. In agriculture and forestry, buffers are considered a best management practice by a number of agencies, and therefore should in many cases already be in place.

* California has developed county bulletins that include 200-yard aerial and 40-yard ground buffers. The California Department of Pesticide Regulation believes that the "vast majority of agricultural applicators in California are following the limitations in these bulletins."

* Many pesticide labels contain a general statement that the pesticide should be applied in a way that does not contaminate surface water.

* Washington State Forest Practices Rules require no-spray zones in forestry pesticide applications.

* The Conservation Reserve Program of the USDA employs 100-foot setbacks from the water's edge for riparian buffers.

Because numerous alternatives are available, buffers will have a minimal impact, if any, on food and crop production. In addition, all Northwesterners will benefit from the positive impacts that thriving populations of Pacific salmon bring to the regional economy.

5. Why do the USDA and EPA claim the ruling will cost hundred of thousands of dollars?

The USDA and the EPA have each employed very different, and wildly inaccurate, methods that attempt to guess what the impact of Judge Coughenour's ruling will be. Both estimates were reached months before Judge Coughenour's ruling was made, and both are based on incomplete versions of "worst-case" scenarios, which include pesticides that are not subject to the court's ruling. For example, federal agricultural officials based their analysis on the assumption that farmers would opt to tear out fruit trees in the 100-yard no spray zone, even though ground applications would be permitted in 80 percent of the buffer banned for aerial spraying and alternatives are available in the entire zone. In reality, the buffers imposed by the court are already commonly recommended, and the economic impact to growers, if any, will be minimal.

6. What does this ruling mean for public health?

This ruling will benefit public health along with the health of our Pacific salmon. Requiring buffers along Salmon Supporting Waters will limit the amount of pesticides that enter these waters. Reducing use of the worst pesticides for salmon will improve the quality of our drinking and surface waters, will reduce residues of these pesticides in food, and will reduce farm workers' exposure to poisonous chemicals.

7. What about pesticides used to fight West Nile Virus and noxious weeds?

Judge Coughenour's ruling exempts from buffers the use of pesticides: (1) for public health disease control as administered by public entities; and (2) for noxious weed programs, where certain safeguards are followed. This means that local governments can still use pesticides to protect human health, including to control the spread of the West Nile Virus. In addition, noxious weed programs administered by public entities may still proceed, so long as certain precautions are followed that are routinely required by NOAA Fisheries when it evaluates noxious weed programs.

8. What are the alternatives to use of these pesticides in the buffer zones?

The pesticides subject to the court order are the worst of the worst for salmon. This ruling only affects a subset of available pesticides (38 out of over 900 registered pesticides), and other chemical alternatives may also be available. According to a July 26, 2003 editorial in the Santa Rosa Press Democrat, California grape growers, who use some of the pesticides affected by this ruling, were not troubled by the anticipated ruling, because they "in most cases could employ alternatives," according to a spokesperson for the Sonoma County Grape Growers Association.

Non-chemical alternatives are also available for almost all pest problems. These alternatives include biological and mechanical controls, as well as mating disruption and habitat modification. Natural alternatives for urban and suburban uses of pesticides are also widely advocated and available in the Northwest. For more information, visit the [Northwest Coalition for Alternatives to Pesticides](#) or the [Department of Natural Resources & Parks](#) websites.

Prepared by: Washington Toxics Coalition, Northwest Coalition for Alternatives to Pesticides, Pacific Coast Federation of Fishermen's Associations, the Institute for Fisheries Resources, and Earthjustice.

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Associated Cases:

[Pesticides Impacts on Salmon & Steelhead](#)

Associated Campaign:

[Fish Trees Water: Safeguarding and Restoring the Great Northwest](#)

Other Resources:

[Pesticides Cause Risk to Salmon](#)

[Protecting Endangered Salmon from Pesticides](#)