

**Authority:** Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: August 21, 2014.

**Deborah A. Szaro,**

*Deputy Regional Administrator, EPA Region 1.*

Dated: August 21, 2014.

**Joan Leary Matthews,**

*Director, Clean Water Division, EPA Region 2.*

Dated: August 21, 2014.

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Dated: August 21, 2014.

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Dated: August 21, 2014.

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Dated: August 21, 2014.

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Dated: August 21, 2014.

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*Acting Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance, EPA Region 8.*

Dated: August 21, 2014.

**Nancy Woo,**

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Dated: August 21, 2014.

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*Director, Office of Water and Watersheds, EPA Region 10.*

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## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2014-0301; FRL-9915-79]

### Availability of Stipulated Injunction in Northwest Center for Alternatives to Pesticides v. EPA litigation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces to the public the availability of an Order (stipulated injunction) issued by the

U.S. District Court for the Western District of Washington that, among other things, would reinstate streamside no-spray buffer zones to protect endangered or threatened Pacific salmon and steelhead in California, Oregon, and Washington. The stipulated injunction, issued on August 15, 2014, settles litigation brought against EPA by the Northwest Center for Alternatives to Pesticides (NCAP) and others. These buffers were originally established by the same court in prior litigation brought against EPA by the Washington Toxics Coalition (WTC) and others. Like the original buffer zones, the limitations in this stipulated injunction are part of a court order but are not to be enforceable as labeling requirements under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The no-spray buffer zones will apply to the pesticides carbaryl, chlorpyrifos, diazinon, malathion, and methomyl. These buffers will remain in place until EPA implements any necessary protections for Pacific salmon and steelhead based on reinitiated consultations with the National Marine Fisheries Service (NMFS). EPA is reevaluating these pesticides in connection with its current FIFRA registration review process and the stipulated injunction reinstates the buffers in the interim.

#### FOR FURTHER INFORMATION CONTACT:

Anita Pease, Environmental Fate and Effects Division (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (703) 305-7695; email address: [pease.anita@epa.gov](mailto:pease.anita@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

You may be potentially affected by this action if you develop, manufacture, formulate, sell, and/or apply pesticide products, and if you are interested in the potential impacts of pesticide use on listed species. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

• Other stakeholders who have an interest in potential impacts of pesticides on listed species.

However, this action is directed to the public in general, and may be of particular interest to the parties in the NCAP v. EPA litigation, environmental organizations, professional and recreational fishing interests, other public interest groups, state regulatory partners, other interested federal agencies, pesticide registrants and pesticide users. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*C. How can I get copies of this document and other related information?*

A copy of the stipulated injunction is available in the docket under docket identification (ID) number EPA-HQ-OPP-2014-0301.

## II. Background

### A. What action is the Agency taking?

EPA is announcing the availability of a stipulated injunction issued on August 15, 2014, by the U.S. District Court for the Western District of Washington that, among other things, reinstates streamside no-spray buffer zones to protect endangered and threatened Pacific salmon and steelhead in California, Oregon, and Washington. The stipulated injunction settles litigation brought against EPA by NCAP and others. Like the original buffer zones, the limitations in this injunction are part of a court order but are not enforceable as labeling requirements under FIFRA. To view the interactive map displaying the areas where the buffer zones apply, go to [www.epa.gov/espp/litstatus/wtc/uselimitation.htm](http://www.epa.gov/espp/litstatus/wtc/uselimitation.htm). The interactive map is expected to be updated no later than September 30, 2014 to include the current list of chemicals subject to the restrictions, enhanced spatial resolution, and the most recent geospatial data depicting stream reaches where the buffer zones apply. The no-spray buffer zones apply to the pesticides carbaryl, chlorpyrifos, diazinon, malathion, and methomyl. These buffer zones will remain in place until EPA implements any necessary protections for Pacific salmon and steelhead based on reinitiated consultations with NMFS. EPA is reevaluating these pesticides in connection with its current FIFRA

registration review process and the stipulated injunction reinstates the buffers in the interim.

The no-spray buffers in the proposed stipulated injunction extend 300 feet from salmon supporting waters for aerial applications of the five pesticides and 60 feet for ground applications.

Under this settlement agreement, there are three relevant use exemptions carried over from the WTC case:

1. Public health vector control administered by public entities, such as the use of malathion by local governments for mosquito control.

2. NMFS-authorized programs (i.e., where a NMFS finding or permit allows use within the buffers).

3. Use of carbaryl under a Washington state-issued 24(c) registration for oyster beds in the estuarine mudflats of Willapa Bay and Grays Harbor.

*B. What is the Agency's authority for taking this action?*

On November 29, 2010, NCAP and other environmental groups and fishing interests filed a lawsuit in the Federal District Court for the Western District of Washington alleging that EPA failed to comply with sections 7 and 9 of the ESA (16 U.S.C. 1536, 1538) with regard to the effects of six EPA-registered pesticides (carbaryl, carbofuran, chlorpyrifos, diazinon, malathion, and methomyl) on 28 Pacific salmonid species that are listed as endangered or threatened under the ESA (*NCAP, et al. v. EPA*, C10-01919 (W.D. Wash.)). Subsequent to the filing of the case, all carbofuran end-use product registrations were cancelled, effectively leaving only five pesticides at issue in the litigation.

On February 21, 2013, in *Dow Agrosciences LLC v. NMFS*, 707 F.3d 462 (4th Cir. 2013), the U.S. Court of Appeals for the 4th Circuit vacated the NMFS biological opinion addressing chlorpyrifos, diazinon, and malathion. Following that ruling, the Plaintiffs in the *NCAP v. EPA* litigation supplemented their original complaint to assert that in the absence of a valid biological opinion, EPA had failed to complete consultation on those three pesticides. In the fall of 2013, the intervenors, CropLife America and other pesticide industry and pesticide user groups, filed a motion to dismiss both that claim and claims that EPA's registration of the pesticides was in violation of the "take" provisions of section 9 of the ESA.

On January 28, 2014, Judge Zilly denied intervenors' motion to dismiss these claims. Subsequent to that ruling, the parties filed a stipulated motion to stay the *NCAP v. EPA* litigation to allow

the parties to discuss the potential for settlement.

On June 6, 2014, EPA sought public comment on a proposed agreement with plaintiffs, in the form of a stipulated injunction, to reinstitute the no-spray buffers originally established in the *WTC v. EPA* litigation during the period that EPA develops new biological evaluations for salmonid species (which will be completed in connection with the development of EPA's national FIFRA registration reviews for these pesticides). Following review of the comments, most of which supported the proposed agreement, EPA filed the agreement with the Court and the Court entered the stipulated injunction on August 15, 2014. These buffer zones will remain in place until EPA implements any necessary protections for Pacific salmon and steelhead based on reinitiated consultations with NMFS. In separate litigation, *NCAP v. NMFS*, C07-1791 (W.D. Wash.), NMFS has agreed to complete any consultation EPA reinitiates on chlorpyrifos, diazinon, and malathion by December 2017, and any consultation EPA reinitiates on carbaryl and methomyl by December 2018. These dates are intended to correspond with EPA's FIFRA registration review schedule for these pesticides.

The stipulated injunction also requires EPA to provide notice of the reinstatement of the no-spray buffers zones to numerous groups, including certified applicators, state and local governments, federal agencies, user groups, extension services and land grant universities in affected portions of California, Oregon, and Washington. It also requires EPA to provide certain information to the public and pesticide users through the EPA Web site, including maps that highlight the stream reaches where the buffer zones apply. The stipulated injunction is available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2014-0301-0001>.

**List of Subjects**

Environmental protection, endangered species.

Dated: August 28, 2014.

**Marty Monell,**

*Acting Director, Office of Chemical Safety and Pollution Prevention, Office of Pesticide Programs.*

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[OMB Control No. 9000-0183; Docket No. 2014-0055; Sequence 13]

**Submission for OMB Review; Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions**

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension, to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat Division (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review an extension of a currently approved information collection requirement regarding Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions. This request for extension relates to FAR case 2013-022, Extension of Limitations on Contractor Employee Personal Conflicts of Interest, proposed rule, which published updated burden hours in the **Federal Register** at 79 FR 18503 on April 2, 2014. A notice was published in the **Federal Register** at 79 FR 33557 on June 11, 2014. No comments were received.

**DATES:** Submit comments on or before October 10, 2014.

**ADDRESSES:** Submit comments identified by Information Collection 9000-0183, Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000-0183. Select the link "Comment Now" that corresponds with "Information Collection 9000-0183, Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions". Follow the instructions provided on the screen. Please include your name, company name (if any), and "Information Collection 9000-0183, Preventing Personal Conflicts of Interest for Contractor Employees Performing