UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
777 Sonoma Ave., Room 325
Santa Rosa, CA 95404-6528

January 19, 2007

STATE OF CALIFORNIA
CENTRAL COAST WATER BO
Received
JAN 2 9
895 Aerovista Place, Ste.
San Luis Obispo, CA 93

Glenn Yost
California Department of Food and Agriculture
Marketing Branch
1220 N Street
Sacramento, California 95814

Dear Mr. Yost:

The purpose of this letter is to provide written comments for the public hearing on the California Leafy Green Products Handler Marketing Agreement (marketing agreement). Staff from the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) attended the California Department of Food and Agriculture's (CDFA) public hearing on January 12, 2007. CDFA called the public hearing to consider the implementation of the marketing agreement with the understanding that best management practices (BMPs) and good agricultural practices (GAPs) would follow at a later date.

Your process, as proposed, will result in creating a marketing agreement first, then creating the BMPs and GAPs. It is not clear to NMFS how handlers, regulatory agencies, or the general public can support or oppose a marketing agreement if the BMPs are unknown. NMFS expects the process to be most efficient if a leafy green best practices document is prepared first; and then build a marketing agreement upon the best practices document.

The proposed marketing agreement would apply to leafy green products grown adjacent to the Salinas River. The Salinas River supports Federally threatened South-Central California Coast (S-CCC) Distinct Population Segment steelhead and their designated critical habitat. The Salinas River is an important watershed for the recovery of steelhead. Historically and currently, the Salinas River watershed has been impacted from agricultural development and practices, dams, and water withdrawals, as well as other anthropogenic effects leading to the decline of the steelhead population. Adverse impacts occurring along the Salinas River may result in the take of S-CCC steelhead and affect their recovery.

Our review of the leafy green industry's December 20, 2006, draft *GAP Metrics Tables and Decision Trees* Table 7 (*Crop Land and Water Source Adjacent Land Use*) concerns us in that it may contradict pubic trust resource protection measures already in place. The draft language suggests that if riparian habitat wasn't present near a food crop, growers would be meeting the

GAP metric. This could lead growers to destroy valuable constituents of critical riparian habitat under the belief they were following the marketing agreement. However, they would be in violation of existing resource agency regulations. If the above metric and language becomes part of the marketing agreement, NMFS is concerned what the outcome would be if your marketing agreement conflicts with our regulations. NMFS can only support a marketing agreement that avoids adverse effects to steelhead and their habitat. If your agreement, or practices implemented by growers as a result of your marketing agreement, adversely affects steelhead and their habitat, the CDFA or the growers would be in violation of the Federal Endangered Species Act (ESA).

Although Table 7 notes, "*Growers should check for local, State and Federal laws and regulations that protect riparian habitat, restrict removal of vegetation or habitat, or restrict construction of wildlife deterrent fences in riparian areas or wildlife corridors. Growers may want to contact the relevant agencies (e.g., the Regional Water Quality Control Board and State and Federal fish and wildlife agencies) to confirm the details of these requirements,*" growers could find themselves having to meet potentially conflicting regulations. To better serve the growers, we recommend incorporating State and Federal regulations protecting wildlife resources into your BMPs and GAPs.

NMFS is encouraged by the marketing agreement's requirement of a best practices document prepared by industry and its scientists, which will be reviewed by State and Federal agencies, as well as scientifically peer reviewed, and then adopted by the marketing agreement boards. We are aware of the December 20, 2006, draft best practices metrics document in circulation outlining specific practices. The leafy green industry has stated government agencies have reviewed and provided suggestions and other input on this second draft. The leafy green industry did not provide NMFS with a copy of this draft and we have not provided suggestions and other input. It is important BMPs and GAPs include science-based data to integrate agricultural needs with the needs of riparian and wildlife habitat. It is our belief that inclusion of State and Federal agencies with expertise in these areas would move the process along faster and more efficiently.

As you may be aware, in a December 13, 2006, letter to the U.S. Food and Drug Administration (FDA) and representatives of the leafy green industry, we urged FDA and the industry to work with us on achieving two parallel missions – public health protection (*i.e.*, food safety) and listed species protection. We believe industry or regulatory guidance that does not include consideration of existing public trust regulations and laws could result in delays for growers trying to meet industry requirements.

It is important that State and Federal agencies work with the leafy green industry on this marketing agreement, future state marketing orders, and any Federal actions involved with food safety. The actions here may be directed at the Salinas Valley but they may also have national implications.

We look forward to working with you on BMPs and GAPs that protect steelhead and their habitat. Please contact Mr. Bill Stevens at (707) 575-6066 or via email at William.Stevens@noaa.gov if you have any questions concerning this letter.

Sincerely,

Dick Butler
Santa Rosa Area Office Supervisor
Protected Resources Division

cc: William Hogarth, NMFS, Silver Spring, Maryland
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