



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

777 Sonoma Avenue, Rm 325
Santa Rosa, California 95404-6528

July 7, 1999 F/SWR3:JEA

Mr. Rob Rossi
750 Pismo Street
San Luis Obispo, California 93401

Dear Mr. Rossi:

On May 28, 1999, the National Marine Fisheries Service (NMFS) received a letter with concerns regarding your proposed agricultural operation on the Santa Margarita Ranch in San Luis Obispo, California and potential impacts on listed species.


According to this letter, the proposed plan is to convert 3,000 acres into vineyards this fall. Irrigation would be provided from wells along Rinconada and Trout Creeks. These creeks are in the headwaters of the Salinas River watershed. South-Central California Coast steelhead (*Oncorhynchus mykiss*) are listed as threatened under the Endangered Species Act of 1973, as amended (ESA) and are found in the Salinas River and in Trout and Rinconada Creeks. NMFS is concerned that the wells used for irrigation for the vineyard operations could be hydrologically connected to the underflow of the creeks. Water withdrawals could lower the water level in the creeks, adversely impacting the steelhead. If there has been any hydrological testing done on these wells, we would like to review the data.

Section 9 of the ESA prohibits the taking of any federally listed endangered or threatened species. The definition of "take" includes to harass, harm, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. "Harm" is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). Anyone who engages in a take would be subject to prosecution under section 9 of the ESA. Such taking may occur only under the authority of NMFS pursuant to section 7 or through a section 10(a)(1)(B) permit, as mandated in the ESA.

Section 7 of the ESA requires federal agencies to consult with NMFS on proposed actions which may affect threatened or endangered species. If the proposed project is likely to adversely affect listed species, any federal agency involved in the permitting, licensing, funding, or any other aspect of this project may be required to consult with NMFS prior to the implementation of the project.

If a federal nexus does not exist for the proposed project, an exception to the federal prohibition against take of a listed species may be authorized by NMFS through an incidental take permit issued pursuant to section 10(a)(1)(B) of the ESA. To qualify for the permit, you would need to submit an application to NMFS together with a habitat conservation plan (HCP).



 If you determine that your proposed activities may result in incidental take, which is defined as take that is incidental to, but not the purpose of, the carrying out of an otherwise lawful activity, you should contact NMFS immediately. We are available to assist you in determining what adverse impacts may occur and how to minimize those impacts from your proposed operations. If you have any questions regarding this matter, please contact Ms. Joyce Ambrosius at (707) 575-6064.

Sincerely,



Patrick J. Rutten, Supervisor
Protected Resources Division

cc: J. Lecky - NMFS
K. Symonds - FWS, Ventura
E. Carroll - Dept. of Planning and Building, Co. of SLO
C. Marshall - CDFG,
B. Stafford - CDFG,
A. McMahon - Congressional Rep. Lois Capps

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