



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

Monterey Bay National Marine Sanctuary

299 Foam Street
Monterey, California 93940

September 5, 2007

Mr. A. G. Kawamura
Secretary
California Department of Food & Agriculture
Executive Office
1220 N Street, Room A-400
Sacramento, California 95814

Dear Mr. Kawamura,

The purpose of this letter is to convey our concerns with the proposed and pending eradication effort for the light brown apple moth in the Monterey Area.

The Monterey Bay National Marine Sanctuary (Sanctuary) is a federal agency under the U.S. Department of Commerce. The Sanctuary stretches along 276 miles of central California coast and encompasses more than 5,300 square miles of ocean area. The MBNMS is renowned for its scenic beauty and remarkable productivity. The sanctuary supports one of the world's most diverse marine ecosystems, including 33 species of marine mammals, 94 species of seabirds, 345 species of fishes and thousands of marine invertebrates and plants.

The MBNMS has several concerns with the California Department of Food & Agriculture (CDFA) plan to apply significant quantities of insect pheromone and associated compounds by aerial application along the coastline areas of the Monterey Bay. Our concerns focus on potential impacts to the Sanctuary and adequate environmental analysis.

As you know, CDFA consulted with MBNMS staff in July on a proposed eradication project including overflight operations inland of Highway One within the communities of Seaside and Marina. MBNMS staff indicated by email in late July that as long as the application was inland and applied in proper wind speed/direction so as not to enter the sanctuary, the project was outside the Sanctuary jurisdiction and a permit was not necessary. Now that the scope has broadened to the project needs to be reevaluated. The potential harm or injury to Sanctuary waters and resources is in question under the expanded application area of the Monterey Peninsula. This expansion has surprised us and we would like more detailed information on the substance and application method and assurance that the product being released will not enter Sanctuary waters.

Given the project's new geographic scope, we have significant concerns regarding the application of this compound and its potential release into Sanctuary. Further, we have not received the supporting documentation we requested during a conference call with Jack Edmunsen and your staff on September 4, 2007.



The primary regulations governing management of the MBNMS are described in the United States Code of Federal Regulations, Title 15, Part 922. To summarize, MBNMS regulations prohibit discharging or depositing any material or other matter into the Sanctuary.

Because we have not received the information we have requested from the CDFA, we are still unable to determine that none of this material will be discharged into the Sanctuary and therefore, cannot determine if a permit or authorization will be required. Once we receive adequate additional environmental information and analysis we will make that determination. Please be advised that if a permit is required, the CDFA will need to apply for and secure that permit in advance of your operations consistent with MBNMS regulations and previous State of California agency practice.

Discharge of any air delivered substance into the Sanctuary without written authorization, or contrary to terms and conditions of a Sanctuary permit/authorization, could be investigated by the NOAA Office for Law Enforcement as a possible violation of the National Marine Sanctuaries Act (NMSA - 16 U.S.C. 1431 et.seq.) and Federal regulations at 15 C.F.R. 922. Violations could result in civil fines of up to \$130,000 per day of continuing violation and/or additional civil recovery action for lost natural resources over time, damage assessment, agency response costs, and environmental restoration costs. There are no statutory limits in the NMSA for natural resource damage recoveries. The NMSA is a strict-liability statute. It is therefore important that anyone considering an action that could potentially violate Federal law and regulations governing the Sanctuary (regardless of intent) ensure that adequate safeguards are in place to prevent such violations or that written authorization has been secured from the Sanctuary Superintendent.

Additionally, please be advised that we believe the Environmental Assessment entitled "Treatment of Light Brown Apple Moth in the Seaside Area in California" dated July 2007, is inadequate with regard to the National Environmental Policy Act (NEPA) provisions as:

- The CDFA indicated to our staff on September 4, 2007 that a "Finding of No Significant Impacts" had been drafted. However, your office released a letter to the Mayor of Monterey dated the same day indicating that operations would begin on Sunday September 9, at 8pm. Please be advised that this determination could be considered "pre-decisional" and is a serious weakness under the NEPA process
- The section entitled "Affected Environment" does not include analysis of all of the affected environments and specifically lacks any information analyzing potential impacts to the Cities of Pacific Grove, Pebble Beach and Carmel, or the potential for accidental release into the waters of the National Marine Sanctuary
- The MBNMS has requested that the CDFA and USDA complete an addendum to the Environmental Analysis to include evaluation of a myriad of issues not adequately addressed, including: an aerial dispersal model identifying wind condition and weather constraints; toxicity information; a risk assessment; information on monitoring efforts to occur on the ground and in the water; flight operation protocols, and flight transects; proposed altitudes and locations; confidence levels as related to no-discharge within waterways and the National Marine Sanctuary; and lastly, information analyzing the long-term eradication strategy



- Fragmentation of the project: as the EA does not evaluate the long-term spraying plans and cumulative effects

Please immediately provide us with the information we have requested, so that we may determine whether a permit or authorization from this office will be required. If you have any questions regarding our concerns please contact myself or Ms. Deirdre Hall of my staff. Ms. Hall may be reached at 831-647-4207 or via email at deirdre.hall@noaa.gov. Thank you for your cooperation with the Monterey Bay National Marine Sanctuary.

Sincerely,



Paul Michel
Superintendent

cc: Mayor Della Salla, City of Monterey
Mayor Daniel Cort, City of Pacific Grove
Mayor Sue McCloud, City of Carmel

