

Chapter 2

Regulatory and Management Context



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2 REGULATORY AND MANAGEMENT CONTEXT

2.1 Introduction

Chapter 2 provides an overview of the legal context within which MRC prepared our HCP/NCCP, along with our proposals to meet regulatory requirements. Inevitably, some of this text reads like *legalese*—the descriptions dense and specialized. This, unfortunately, goes with the territory.

2.1.1 Regulation of the California timber industry

The timber industry is heavily regulated in California. MRC timber operations, for example, are subject to numerous federal, state, and local laws, statutes, regulations, and ordinances that protect soils; forests; fish and wildlife habitat; threatened, endangered, and rare species; air quality; water quality; wetlands; and cultural resources. Following are the most important legislative acts or regulations, in the order in which they are discussed in this chapter:

- Federal Endangered Species Act (ESA).
- California Endangered Species Act (CESA).
- Natural Community Conservation Planning Act (NCCPA).
- Z'berg-Nejedly Forest Practice Act (FPA).
- Federal Clean Water Act (CWA).
- California Porter-Cologne Water Control Quality Act.
- Water Quality Control Plan for the North Coast Region (Basin Plan).
- California Coastal Act.
- Federal Coastal Zone Management Act (CZMA).
- Surface Mining and Reclamation Act (SMARA).
- National Environmental Policy Act (NEPA).
- California Environmental Quality Act (CEQA).
- National Historic Preservation Act (NHPA).
- Migratory Bird Treaty Act (MBTA)

2.1.2 Key legislation for HCP/NCCP

A series of diagrams in this subsection graphically introduce the key pieces of legislation discussed in this chapter, along with the documents and permits that flow from them.

- Figure 2-1 shows the legislative acts that are directly related to MRC conservation planning for endangered species and natural communities.
- Figure 2-2 shows the legislative acts that mandate environmental impact analysis of proposed projects, like HCPs and NCCPs.
- Figure 2-3 shows additional legislative acts whose requirements MRC is seeking to meet through our HCP/NCCP.

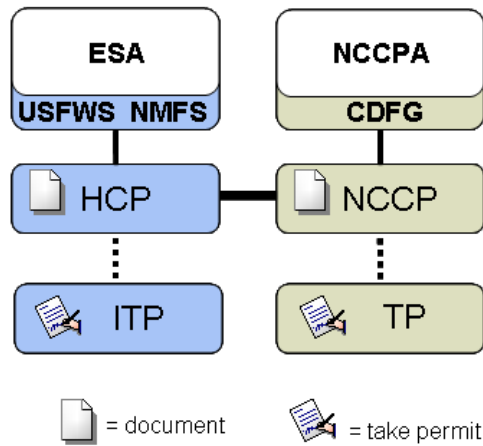


Figure 2-1 ESA and NCCPA

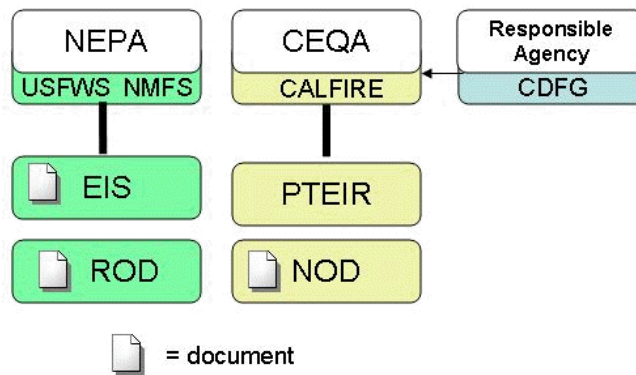


Figure 2-2 NEPA and CEQA

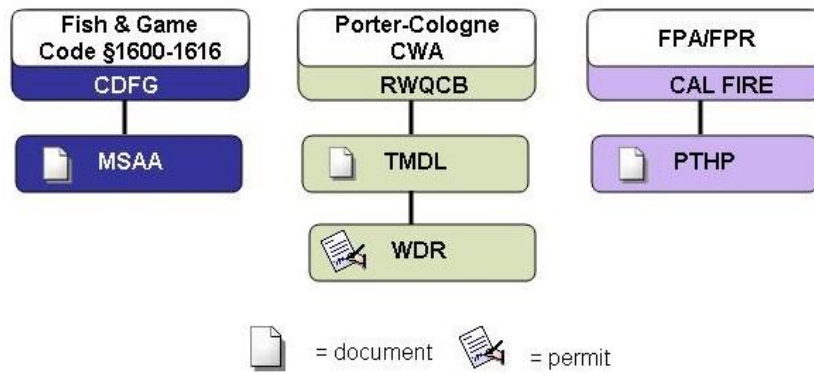


Figure 2-3 Additional Legislation

2.2 Federal Protections

2.2.1 Listings and critical habitat under ESA

Enacted in 1973, the Federal Endangered Species Act (ESA) attempts to conserve ecosystems and provide for protection and recovery of endangered and threatened species. NMFS of the Department of Commerce and USFWS of the Department of Interior are both responsible for administering ESA. NMFS has jurisdiction over marine species, including anadromous fish, listed under ESA, while USFWS has jurisdiction over terrestrial species, including plants and non-anadromous aquatic species, listed under ESA.

In order to receive protection under ESA, a species must be listed as either endangered or threatened by USFWS or NMFS, using the best scientific data available. The agencies also maintain a list of candidate species.

Once a species is listed as endangered or threatened, several regulatory protections become effective. The principal protection is a prohibition on “take” under Section 9(a) (1) (B) of ESA.

DEFINITION

Take under ESA means “to hurt, harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.”

Take can encompass a broad range of activities, including those that cause destruction of species habitat or modification of species habitat that significantly impairs essential behavioral patterns, including breeding, feeding, rearing, or migration.

Under Section 7 of ESA, a federal agency involved with either a public or private project may need to consult with USFWS or NMFS to ensure that its actions do not jeopardize the continued existence of a federally listed species, including plants. This requirement applies whether or not the species is covered by an HCP.

At the time of a species listing, USFWS or NMFS may designate *critical habitat* for the species.

DEFINITION

Critical habitat is an area defined by regulation and intended to include geographic locations which are essential to the recovery and conservation of a species.

USFWS and NMFS do not designate critical habitat unless they can determine that an area actually will contribute to the conservation of a species. Critical habitat designations, when made, affect federal agency decisions and federally permitted activities.

USFWS or NMFS must prepare a recovery plan for species under their jurisdiction, unless the Secretary of the Interior or the Secretary of Commerce, respectively, determines that the plan will not promote the conservation of the species. Recovery plans include management measures recommended for the conservation and survival of a species. They are intended to recover the species to a level of abundance and viability throughout its range, so that listing is no longer necessary. Recovery plans are also meant to encourage cooperative conservation efforts between public and private landowners.

Critical habitat has been designated for a few species covered under our HCP/NCCP, including the marbled murrelet and certain anadromous fish. In preparing our plan, MRC considered these

critical habitat designations. More importantly, MRC intends to manage our timberlands for the health of many key species and natural communities. We are not restricting our conservation efforts only to those species on our lands that are listed by federal and state agencies.

2.2.2 Incidental take permits (ITP)

DEFINITION

Incidental take under federal law is “any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.”

In 1982 an amendment to ESA allowed private landowners to receive ITPs for the *take* of endangered and threatened species in the course of “otherwise lawful activities.” Oftentimes, *take* may not directly kill an individual organism. In some cases, *take* may mean a habitat modification (i.e., harm) or noise and visual disturbance (i.e., harass). ESA may authorize incidental take stemming from actions of state or local governments, corporations, or private individuals, but only if the take will not appreciably reduce the survival and recovery of the species in the wild. ITPs are appropriate whenever there is a chance that an activity could *take* a listed species. ESA does not prohibit take of plants. While Table 1-2 lists the plants covered by our HCP/NCCP, coverage only includes various levels of protection extended to these rare plants. ITPs are not relevant to plants.

USFWS and NMFS approve ITPs only after an applicant has submitted an HCP for listed species that meets strict regulatory criteria, established by these federal wildlife agencies. Applications for ITPs, including an HCP, are voluntary. While ITPs often are issued for individual projects, ESA also encourages project proponents to plan for long-term conservation of species on an ecosystem level. The plan must include conservation measures to meet biological goals and objectives for covered species and their habitat. If approved, an ITP will take effect for covered species at the time a permit is issued. Covered species may include listed and unlisted species; therefore, unlisted species may also be named in an ITP. For unlisted covered species, an ITP will take effect when a species is actually listed. MRC has chosen to include unlisted species in our HCP/NCCP and our application for an ITP. This coincides with MRC efforts to provide conservation and management measures on an ecosystem basis.

To ensure that a listed species is not placed in jeopardy, ESA provides specific guidance on habitat conservation and mitigation measures. Prior to making a decision whether to issue an ITP, USFWS and NMFS must comply with ESA consultation requirements and public review provisions, as well as with the environmental analysis and public review mandated by the National Environmental Policy Act (NEPA).

2.2.3 HCP and NCCP

MRC intends our HCP/NCCP together with the Implementing Agreement to satisfy the legal and scientific requirements for federal HCPs and state NCCPs. These documents will support issuance of an ITP for covered species under ESA Section 10(a)(1)(B) and the issuance of a take authorization for covered species under NCCPA (Fish and Game Code section 2835).

2.2.3.1 ITP under ESA

ESA generally prohibits “take” of species listed as endangered or threatened unless an applicant obtains an ITP from USFWS or NMFS. MRC is applying for an ITP under Section 10(a)(1)(B) of the ESA to authorize the take of federally listed species as a result of MRC covered activities.

To obtain an ITP under Section 10 of the ESA, an applicant must submit an HCP that specifies

- (i) the impact which will likely result from such taking;
 - (ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;
 - (iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and
 - (iv) such other measures that...[USFWS/NMFS] may require as being necessary or appropriate for purposes of the plan.
- ESA, section 10(a)(2)(A)

USFWS and NMFS will issue an ITP if they find with respect to the permit application and the HCP that

- (i) the taking will be incidental;
 - (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
 - (iii) the applicant will ensure that adequate funding for the plan be provided;
 - (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
 - (v) the measures, if any, required under subparagraph (A)(iv) will be met; and...[USFWS/ NMFS] has received such other assurances as [they] may require that the plan will be implemented...The permit shall contain such terms and conditions as...[USFWS and NMFS] deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to such reporting requirements as [USFWS/NMFS] deems necessary for determining whether such terms and conditions are being complied with.
- ESA, section 10(a)(2)(B)

2.3 State of California Protections

2.3.1 Listings under CESA

Enacted in 1970, the California Endangered Species Act (CESA) states that "it is the policy of the state to conserve, protect, restore, and enhance any endangered or any threatened species and its habitat" (California Fish and Game Code, section 2052). CESA generally parallels the main provisions of ESA prohibiting *take* of listed species and is administered by the California Department of Fish and Game (CDFG). CESA prohibits take of species listed as endangered or threatened, as well as candidates for such listing, while also providing several regulatory mechanisms to authorize the incidental take of species.

DEFINITION

Take, under CESA, is to "hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill" (California Fish and Game Code, section 86).

As a guide to state agencies, the California Fish and Game Code states that

... it is the policy of the state that state agencies should not approve projects as proposed which would jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of those species, if there are reasonable and prudent

alternatives consistent with conserving the species or its habitat which would prevent jeopardy (California Fish and Game Code, section 2053).

2.3.2 Alternative forms of take authorization in CESA

Anyone wishing to conduct activities that might harm endangered, threatened, or candidate species listed by the state may seek a permit for take from CDFG. While CESA does not specifically require preparation of an HCP to apply for an ITP, state law sets out high standards that an applicant must meet before CDFG may issue such a permit.

Under section 2081 of the Fish and Game Code, CDFG may issue a permit for

. . . take of endangered species, threatened species, and candidate species if all of the following conditions are met: (1) The take is incidental to an otherwise lawful activity. (2) The impacts of the authorized take shall be minimized and fully mitigated . . . (3) The permit is consistent with any regulations adopted pursuant to Sections 2112 and 2114. (4) The applicant shall ensure adequate funding to implement the measures required by paragraph 2, and for monitoring compliance with, and effectiveness of, those measures. (California Fish and Game Code, section 2081, subd.(b))

Under CESA, measures to minimize and mitigate impacts of *take* must be proportional to the impact of authorized taking of a species. Moreover, all measures must be capable of successful implementation and further the applicant's objectives to the greatest extent possible. Also for state-listed species, CDFG may, under certain circumstances, accept a federal ITP as consistent with CESA and satisfying its requirements.

Commercial timber operations proposed by MRC may result in take of species listed as threatened or endangered under CESA, or candidates for such listing. However, MRC is not pursuing an ITP under Fish and Game Code section 2080.1 or 2081. Instead, MRC is proceeding under an alternate state statute, as explained in section 2.3.3. If this alternative becomes impractical, however, MRC may elect to pursue an ITP under section 2081 or a consistency determination under section 2080.1.

2.3.3 Natural community conservation plan (NCCP)

2.3.3.1 Description of the scope, objectives, and process

CDFG may authorize take of a species, including unlisted species, under the Natural Community Conservation Planning Act (DFG Code 2800 et seq.). In that case, an applicant must provide for conservation and management of all species covered in an NCCP approved by CDFG. An NCCP identifies and provides for measures necessary to conserve and manage natural biological diversity within a plan area while allowing appropriate development and growth.

The NCCPA provides for conservation beyond that required for mitigation of any proposed activities of the plan. This conservation is a mutual objective of the applicant and CDFG. MRC, for example, may have policies for old growth and hardwood retention that provide for the recovery of covered species in the plan area. Likewise, CDFG may purchase conservation easements from MRC in sensitive habitats, such as pygmy forest or Lower Alder Creek; such easements preclude development and restrict harvest to protect critical conservation areas.

The NCCPA requires independent scientific input regarding conservation goals, principles, strategies, and uncertainties. To comply with this requirement, MRC convened a science panel May 23-24, 2003. Refer to *Appendix V* for a summary of the science panel’s recommendations.

Also in May 2003, MRC and CDFG entered into a Planning Agreement under Section 2810 of the NCCPA to lay out the scope, objectives, and process for developing an HCP/NCCP. The Planning Agreement, as amended in 2009,

- Defines the goals and obligations of CDFG and MRC.
- Specifies the benefits of the HCP/NCCP, including conservation of species and natural communities, as well as greater regulatory efficiency and certainty.
- Details geographic boundaries of the conservation planning area.
- Lists the natural communities and the endangered, threatened, candidate, and other species that are the initial focus of the HCP/NCCP.
- Describes the initial proposal for possible covered activities.
- Identifies the preliminary conservation objectives for the planning area, namely,
 - To preserve and enhance riparian habitat and functions.
 - To minimize sediment inputs to watercourses that can harm aquatic species.
 - To retain structural components of terrestrial habitat necessary for the diversity of native species.
 - To conserve existing rare or unique habitats.
- Establishes
 - Processes for independent scientific guidance and public participation.
 - Interim measures for projects under development and a means for CDFG review.
 - Mitigation to achieve preliminary conservation objectives.
- Encourages concurrent planning for wetlands and waters.
- Ensures coordination with USFWS and NMFS.
- Outlines financial and staffing commitments during development of the plan.

MRC prepared this HCP/NCCP to meet legal and scientific requirements for approval by CDFG and to obtain issuance of a permit under Section 2835 of the NCCPA. MRC intends for the permit to apply to covered species named in Table 1-1 and Table 1-2.

2.3.3.2 NCCP checklist

According to the NCCPA, CDFG must determine whether the MRC plan fulfills the requirements of an NCCP. Table 2-1 paraphrases those requirements, provides their relevant sections in the California Fish and Game Code, and indicates where MRC has addressed them within the HCP/NCCP.

Table 2-1 NCCP Checklist

Checklist for NCCP Requirements	
Requirement (California Fish & Game Code Section)	HCP/NCCP Cross Reference
<ul style="list-style-type: none"> ▪ The plan was developed in accordance with the process identified in the Planning Agreement (MRC 2009) per section 2810 (2820(a)(1)). 	<ul style="list-style-type: none"> ▪ Section 2.3.3.1 <i>Natural Community Conservation Plan</i> ▪ Chapter 7 <i>Planning for Conservation</i>

Checklist for NCCP Requirements	
Requirement (California Fish & Game Code Section)	HCP/NCCP Cross Reference
<ul style="list-style-type: none"> ▪ The plan integrates adaptive management strategies that are periodically evaluated and modified based on information from monitoring programs and other sources; these strategies assist conservation of covered species and ecosystems within the plan area (2820(a)(2)). ▪ The plan <ol style="list-style-type: none"> 1. Protects habitat, natural communities, and species diversity on a landscape or ecosystem basis through the creation and long-term management of habitat reserves or other measures that provide equivalent conservation of covered species appropriate for land, aquatic, and marine habitats within the plan area (2820(a)(3)). 2. Conserves, restores, and manages representative natural and semi-natural landscapes to maintain the ecological integrity of large habitat blocks, ecosystem function, and biological diversity (2820(a)(4)(A)). 3. Establishes one or more reserves or proposes other measures that provide equivalent conservation of covered species within the plan area and linkages between them and adjacent habitat areas outside of the plan area (2820(a)(4)(B)). 4. Protects and maintains habitat areas that are large enough to support sustainable populations of covered species (2820(a)(4)(C)). 5. Sustains the effective movement and interchange of organisms between habitat areas to maintain ecological integrity of habitat within the plan area (2820(a)(4)(E)). ▪ The plan incorporates a range of environmental gradients (such as slope, elevation, aspect, and coastal or inland characteristics) and high habitat diversity; this provides for shifting distributions of species due to changed circumstances (2820(a)(4)(D)). ▪ The plan identifies allowable activities and restrictions within reserve areas compatible with conservation of species, habitats, natural communities, and associated ecological functions (2820(a)(5)). 	<ul style="list-style-type: none"> ▪ Chapter 13 <i>Monitoring and Adaptive Management</i> ▪ Chapter 8 <i>Conservation Measures for Aquatic Habitat</i> ▪ Chapter 9 <i>Conservation Measures for Terrestrial Habitat</i> ▪ Chapter 10 <i>Conservation Measures for Fish and Wildlife</i> ▪ Chapter 11 <i>Conservation Measures for Rare Plants</i> ▪ Chapter 1 <i>Purpose and Scope of the Plan</i> ▪ Chapter 3 <i>Environment and Habitat</i> ▪ Section 1.14 “Activities Covered in the Plan” ▪ Chapter 8 <i>Conservation Measures for Aquatic Habitat</i> ▪ Chapter 9 <i>Conservation Measures for Terrestrial Habitat</i> ▪ Chapter 10 <i>Conservation Measures for Fish and Wildlife</i> ▪ Chapter 11 <i>Conservation Measures for Rare Plants</i>

Checklist for NCCP Requirements	
Requirement (California Fish & Game Code Section)	HCP/NCCP Cross Reference
<ul style="list-style-type: none"> ▪ The plan contains specific conservation measures that meet the biological needs of covered species and that are based on the best available scientific information about the status of covered species and the impacts of permitted activities on those species (2820(a)(6)). 	<ul style="list-style-type: none"> ▪ Chapter 4 <i>Covered Aquatic Species</i> ▪ Chapter 5 <i>Covered Terrestrial Species</i> ▪ Chapter 9 <i>Conservation Measures for Terrestrial Habitat</i> ▪ Chapter 10 <i>Conservation Measures for Fish and Wildlife</i> ▪ Chapter 11 <i>Conservation Measures for Rare Plants</i>
<ul style="list-style-type: none"> ▪ The plan contains a monitoring program (2820(a)(7)). 	<ul style="list-style-type: none"> ▪ Chapter 13 <i>Monitoring and Adaptive Management</i>
<ul style="list-style-type: none"> ▪ The plan contains an adaptive management program (2820(a)(8)). 	<ul style="list-style-type: none"> ▪ Chapter 13 <i>Monitoring and Adaptive Management</i>
<ul style="list-style-type: none"> ▪ The plan includes an estimated timeframe and process for implementing reserves or other conservation measures, including obligations of landowners and plan signatories and consequences for failure to acquire lands in a timely manner (2820(a)(9)). 	<ul style="list-style-type: none"> ▪ <i>Implementing Agreement</i> ▪ Chapter 8 <i>Conservation Measures for Aquatic Habitat</i> ▪ Chapter 9 <i>Conservation Measures for Terrestrial Habitat</i> ▪ Chapter 10 <i>Conservation Measures for Fish and Wildlife</i> ▪ Chapter 11 <i>Conservation Measures for Rare Plants</i>
<ul style="list-style-type: none"> ▪ The plan ensures that mitigation and conservation measures are roughly proportional in time and extent to the impact on habitat or covered species authorized under the plan. These provisions identify (a) the conservation measures—including assembly of reserves where appropriate and implementation of monitoring and management activities—that the landowner will maintain or carry out in rough proportion to the impact on habitat or covered species and (b) the measurements that will be used to determine if this occurs (2820(b)(9)). 	<ul style="list-style-type: none"> ▪ MRC applies most conservation measures during the THP process. Other conservation measures, such as those for controllable erosion, are not directly tied to the THP process.
<ul style="list-style-type: none"> ▪ The plan ensures adequate funding to carry out the conservation measures identified in the plan (2820(a)(10)). 	<ul style="list-style-type: none"> ▪ <i>Implementing Agreement</i>

Checklist for NCCP Requirements	
Requirement (California Fish & Game Code Section)	HCP/NCCP Cross Reference
<ul style="list-style-type: none"> ▪ The plan defines species coverage, including any conditions of coverage (2820(b)(1)). 	<ul style="list-style-type: none"> ▪ Chapter 1 <i>Purpose and Scope</i>
<ul style="list-style-type: none"> ▪ The plan establishes long-term protection of habitat reserves or provides equivalent conservation of covered species (2820(b)(2)). 	<ul style="list-style-type: none"> ▪ Chapter 8 <i>Conservation Measures for Aquatic Habitat</i> ▪ Chapter 9 <i>Conservation Measures for Terrestrial Habitat</i> ▪ Chapter 10 <i>Conservation Measures for Fish and Wildlife</i> ▪ Chapter 11 <i>Conservation Measures for Rare Plants</i>
<ul style="list-style-type: none"> ▪ The plan defines specific terms and conditions, which, if violated, would result in the suspension or revocation of the permit, in whole or in part. CDFG will include a provision requiring notification to the plan participant of a specified period of time to cure any default prior to suspension or revocation of the permit in whole or in part. These terms and conditions will address, but are not limited to, provisions specifying the actions CDFG will take under all of the following circumstances (2820(b)(3)): <ol style="list-style-type: none"> 1. The plan participant fails to provide adequate funding. 2. The plan participant fails to maintain the rough proportionality between impacts on habitat or covered species and conservation measures. 3. The plan participant adopts, amends, or approves any plan or project without the concurrence of the wildlife agencies that is inconsistent with the objectives and requirements of the approved plan. 4. The level of take exceeds that authorized by the permit. 	<ul style="list-style-type: none"> ▪ <i>Implementing Agreement</i>
<ul style="list-style-type: none"> ▪ The plan specifies procedures for amendment of the plan and the <i>Implementing Agreement</i> (2820(b)(4)). 	<ul style="list-style-type: none"> ▪ <i>Implementing Agreement</i> ▪ Chapter 1 <i>Purpose and Scope</i>
<ul style="list-style-type: none"> ▪ The plan ensures implementation of a monitoring program and adaptive management program (2820(b)(5)). 	<ul style="list-style-type: none"> ▪ <i>Implementing Agreement</i> ▪ Chapter 13 <i>Monitoring and Adaptive Management</i>
<ul style="list-style-type: none"> ▪ The plan provides for oversight of plan implementation to assess mitigation performance, funding, and habitat protection measures (2820(b)(6)). 	<ul style="list-style-type: none"> ▪ Chapter 7 <i>Planning for Conservation</i> ▪ Chapter 13 <i>Monitoring and Adaptive Management</i>

Checklist for NCCP Requirements	
Requirement (California Fish & Game Code Section)	HCP/NCCP Cross Reference
<ul style="list-style-type: none"> ▪ The plan provides for periodic reporting to the wildlife agencies and the public for purposes of information and evaluation of plan progress (2820(b)(7)). 	<ul style="list-style-type: none"> ▪ Chapter 13 <i>Monitoring and Adaptive Management</i>
<ul style="list-style-type: none"> ▪ The plan provides mechanisms to ensure adequate funding to carry out the conservation actions identified in the plan (2820(b)(8)). 	<ul style="list-style-type: none"> ▪ <i>Implementing Agreement</i> ▪ Chapter 7 <i>Planning for Conservation</i>
<ul style="list-style-type: none"> ▪ The plan ensures that mitigation and conservation measures are roughly proportional in time and extent to the impact on habitat or covered species authorized under the plan. Plan provisions will identify the conservation measures, including assembly of reserves where appropriate and implementation of monitoring and management activities, that will be maintained or carried out in rough proportion to the impact on habitat or covered species and the measurements that will be used to determine if this is occurring. (2820(b)(9)) 	<ul style="list-style-type: none"> ▪ Chapter 7 <i>Planning for Conservation</i> ▪ Chapter 8 <i>Conservation Measures for Aquatic Habitat</i> ▪ Chapter 9 <i>Conservation Measures for Terrestrial Habitat</i> ▪ Chapter 10 <i>Conservation Measures for Fish and Wildlife</i> ▪ Chapter 11 <i>Conservation Measures for Rare Plants</i>
<ul style="list-style-type: none"> ▪ The plan stipulates that if a participant does not maintain proportionality between <i>take</i> and conservation measures specified in the <i>Implementing Agreement</i> and does not either (a) cure the default within 45 days or (b) enter into an agreement with CDFG within 45 days to expeditiously cure the default, CDFG will suspend or revoke the permit, in whole or in part (2820(c)). 	<ul style="list-style-type: none"> ▪ <i>Implementing Agreement</i>
<ul style="list-style-type: none"> ▪ The plan requires that data and reports associated with monitoring programs be available for public review; the landowner must also conduct public workshops on an annual basis to provide information and evaluate progress toward attaining the conservation objectives of the plan (2820(d)). 	<ul style="list-style-type: none"> ▪ Chapter 13 <i>Monitoring and Adaptive Management</i> ▪ <i>Implementing Agreement</i>

2.4 Summary of ESA, CESA, and NCCPA

Table 2-2 provides a summary of the federal and state legislation discussed up to this point, as it specifically relates to our HCP/NCCP.

Table 2-2 Summary of ESA, CESA, and NCCPA

Legislation Acronym	Purview of Legislation	Take Authorization	MRC Seeking Authorization?	Issuing Agency	Requirement for Issuance
ESA	<ul style="list-style-type: none"> ▫ Animals and plants that appear on the federal lists of endangered or threatened species. 	Incidental Take Permit (ITP)	Yes.	USFWS NMFS (anadromous species, such as salmon)	HCP
CESA	<ul style="list-style-type: none"> ▫ Animals native to California that appear on the state lists of threatened, endangered, or candidate species. ▫ Plants native to California that appear on the state lists of threatened, endangered, or rare species. 	2080.1 or 2081 Permit	No	CDFG	2080.1 requires a federal ITP or incidental take statement, while 2081 requires an application and may include a plan similar to an HCP.
NCCPA	<ul style="list-style-type: none"> ▫ Animals native to California that appear on a state list of threatened, endangered, or candidate species, as well as any other species for which take authorization is desired or that is integral to the design of the NCCP. ▫ Plants native to California that appear on a state list of threatened, endangered, or rare species, as well as any other species for which take authorization is desired or that is integral to the design of the NCCP. ▫ Natural communities or ecosystems. 	2835 Permit	Yes	CDFG	NCCP

2.5 Forest Management

2.5.1 Timber harvest plans

The intent of the California Board of Forestry and Fire Protection (BOF) through the administrative arm of the Department of Forestry is to move large forestland owners away from site-specific plans and toward a landscape-level or watershed-level approach to forest management. MRC planning is consistent with such an approach.

The Z'berg-Nejedly Forest Practice Act of 1973 (FPA) governs all timber harvesting on private and state-owned lands in California. The FPA is intended to regulate non-federal timberlands and enhance, restore, and maintain the productivity of timberland wherever feasible. Its goal is to achieve maximum sustained production of high-quality timber while giving consideration to recreation, watersheds, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment.

The FPA authorizes and requires the BOF to adopt timber harvesting rules and regulations for all commercial timber harvesting on non-federal lands. Those rules, known as the California Forest Practice Rules (CFPR), are in turn administered and enforced by the California Department of Forestry and Fire Protection (CAL FIRE). Thus, the CFPR implements the legislative requirements and intent of the FPA.

Under FPA and CFPR, landowners must submit Timber Harvest Plans (THP) to CAL FIRE for all commercial timber harvesting on non-federal timberlands.

DEFINITION

A **THP** is a landowner's blueprint for harvesting an individual stand of timber or a group of stands.

THPs are prepared by registered professional foresters (RPFs) who are licensed to write these complex and detailed plans. Among other things, the THP answers

- What trees are proposed for harvest?
- How will they be harvested?
- How will the site be reforested?
- What steps and mitigation measures will be taken to
 - Prevent erosion and other damage to the environment?
 - Maintain water quality?
 - Protect wildlife habitat?
 - Ensure the sustainability of other forest values?

CAL FIRE foresters review THPs for compliance with FPA and CFPR, as well as with other state and federal laws that protect watersheds and wildlife. Before a THP is approved, Forest Practice Rules require an interdisciplinary environmental review by several state agencies, including CAL FIRE, CDFG, Regional Water Quality Control Board (RWQCB), counties, Coastal Commission, Department of Parks and Recreation, and the California Geological Survey (CGS). In addition, CAL FIRE conducts pre-harvest inspections on most plans; review teams from other agencies participate, as their staffing permits, on a subset of plans. At this time, the agencies can ask for additional mitigation if a proposed activity threatens a forest resource or violates any other federal or state law. The Forest Practice Rules also require that a THP be available for public comment for at least 30 days. CAL FIRE considers all comments from the agencies and the public, and prepares written responses before approving or denying a THP.

If a THP meets the intent of the California Forest Practice Act to maintain the productivity of timberlands while protecting other non-timber related resources, it is approved; the timberland owner can then proceed with harvesting operations according to terms of the plan. State forest practice inspectors can and do visit active harvest sites to make certain forest practice rules are followed. If violations are found, penalties can be imposed on a timber operator, an RPF, or a landowner.

Timber harvest plans generally have 3-year durations; CAL FIRE can extend this to 5 years at their discretion. MRC possesses valid THPs for timber operations already in progress in the plan area. MRC also has submitted several proposed THPs to CAL FIRE for specific properties which it intends to harvest. We will continue preparing and submitting THPs for planned timber operations and implementing approved THPs. THPs currently submitted must comply with *take* prohibitions of the state and ESA. Future THPs within the plan area will incorporate any applicable conservation measures, adaptive management, monitoring, or other provisions of this HCP/NCCP. MRC may implement or continue to implement previously approved THPs after the effective date of the Implementing Agreement according to their previously approved terms and applicable state and federal law. However, such THPs may not be covered activities or subject to HCP/NCCP requirements and they will not receive incidental take authorization under federal and state permits. Any THP or THP amendment approved after ITP issuance will comply with the conservation measures in the HCP/NCCP.

2.5.2 Maximum sustained production

The Forest Practice Rules (FPR) require timberland owners to achieve maximum sustained production (MSP) of high quality timber products “while giving consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment” (PRC 4513). Timberland owners controlling more than 50,000 ac fulfill the requirement for MSP through a Sustained Yield Plan (SYP), an Option A, or a PTEIR (see 14 CR 1092).

Currently, MRC does have an Option A. Revised in February 2008, our Option A serves as a 100-year harvest schedule for MRC forestland. MRC used this 100-year time frame to calculate the Long Term Sustained Yield according to the Forest Practice Rules. Key issues covered in the report include harvest levels; harvest compared to growth; silviculture; and non-timber forest values. Option A contains current MRC operating policies for protecting terrestrial and aquatic wildlife habitat, public access, and domestic water supply.

However, in conjunction with our HCP/NCCP, MRC will submit a PTEIR to demonstrate MSP. Our Timber Management Plan (TMP), which is an appendix of the PTEIR, relates our management policies to the Forest Practice Rules.

2.5.3 Forest stewardship council (FSC)

The Forest Stewardship Council is an international non-profit organization founded in 1993 to support forest management that is environmentally appropriate, socially beneficial, and economically viable. The association consists of a diverse group of representatives from around the world, including

- Environmental, social, and community groups.
- Professionals in forestry and the timber trade.
- Organizations of indigenous people.
- Organizations for forest product certification.

While not a regulatory agency, FSC is noteworthy because it administers a voluntary, third-party certification program that encourages a marketplace for well-managed forests. FSC authorizes use of a particular logo on products that meet the internationally recognized FSC *Principles and Criteria of Forest Stewardship*. To receive this logo, a company's timber must be tracked from forest to shop. FSC aims to provide an independent, international, and credible labeling scheme on timber and timber products. This label extends to the consumer a guarantee that a product has come from a forest which has been evaluated and certified according to agreed social, economic, and environmental standards.

In the fall of 1998, MRC requested a review by Scientific Certification Systems (SCS), an FSC certifying body. During this review, the strengths and weaknesses of MRC operations were documented. Immediately, MRC began work on the deficiencies cited during the SCS review. We shifted our resource inventory to a stand-based system, using aerial photos to stratify vegetation into classes, and developed an online database to ensure current information. Our forest management placed increased emphasis on ecosystems.

In the summer of 1999, SCS conducted a full evaluation of MRC operations in tandem with a separate FSC-accredited certifier, Smartwood. MRC received FSC certification of our operations in November 2000. Smartwood and SCS re-certified MRC on November 9, 2005. This certification is good for 5 years, during which time MRC will undergo annual audits. MRC has prepared our HCP/NCCP to be compatible with FSC principles.

2.6 Water

While MRC developed this HCP/NCCP in consultation with the wildlife agencies, we anticipate that the measures for covered species will also meet the Water Quality objectives described below.

2.6.1 Clean water act (CWA)

The federal Clean Water Act of 1977 is the principal federal legislation designed to protect the quality of the nation's waters. The purpose of CWA includes "the protection and propagation of fish, shellfish, and wildlife." The Environmental Protection Agency (EPA) is charged with implementing most of CWA, including Section 303, which contains provisions for establishing and meeting water quality standards. CWA provides for establishment of Total Maximum Daily Loads (TMDLs) where water bodies are not meeting established water quality standards.

DEFINITION

A **TMDL** is a quantitative assessment of water quality problems, contributing sources, and load reductions or control actions needed to restore and protect waterbodies.

CWA also permits EPA to delegate many of the permitting, implementation, and enforcement aspects of the law to state governments. In California, the State Water Resources Control Board (SWRCB) and the Regional Water Boards have the authority to implement most CWA programs, although EPA still retains oversight responsibilities.

During review of individual THPs, CAL FIRE considers the requirements of CWA. MRC intends for our HCP/NCCP to comply with CWA regulations, as well as with current state and federal standards for water quality control. Our conservation measures for sediment reduction, aquatic management zones, and terrain stability units specifically pertain to Water Quality requirements.

2.6.2 Total maximum daily load

Section 303(d) of CWA establishes a water quality assessment and planning process through which states, territories, and authorized tribes are required to

- Identify polluted waterbodies in which *beneficial uses* are impaired.
- Set priorities for addressing these polluted waters.
- Write pollutant control plans, called TMDLs, in order to attain state water quality standards.

A TMDL represents a written, quantitative assessment of water quality problems and contributing pollutant sources that

- Identifies one or more numeric targets based on applicable water quality standards.
- Specifies the maximum amount of a pollutant that can be discharged (or the amount of a pollutant that needs to be reduced).
- Allocates pollutant loads among sources in a watershed.
- Provides a basis for taking actions needed to meet numeric target(s) and implement water quality standards.
- Uses data collection and monitoring to (a) review trends at set milestones; (b) determine if management is achieving objectives; and (c) adapt management, if necessary, to meet objectives.

The TMDL process provides a means for determining the causes of waterbody impairment. It allocates responsibility among different sources of pollutant discharge in order to reduce pollutant emissions and achieve water quality standards. The TMDL process also affords the public the opportunity to participate in decisions about these pollutant control plans.

EPA national policy is that all TMDLs must provide reasonable assurances that they can and will be implemented to meet water quality standards. This means that waste load (for point-source) and load (for non-point source) allocations are technically feasible and can be implemented in a reasonable period of time. States are generally responsible for developing TMDLs; EPA reviews and approves them. If EPA does not approve a TMDL, it is responsible for establishing the TMDL for the state. In some cases, EPA may be forced to establish TMDLs under court order or consent decree, when the state has not yet adopted and submitted a required TMDL.

Section 303(d) of CWA requires states to identify waterbodies that do not meet water quality standards and are not supporting beneficial uses. Each state must submit an updated list, called the *List of Impaired Waterbodies* or 303(d) list, to EPA by April of each even numbered year. In addition to identifying waterbodies that are not supporting beneficial uses, the 303(d) list identifies pollutants or stressors causing impairment, and establishes a planned schedule for addressing the impairment.

States are not required to include implementation plans when an initial TMDL is submitted to EPA. Rather, federal regulations require states to incorporate TMDLs in their Water Quality Management Plan (WQMP) along with implementation measures for all aspects of WQMP and TMDL. Where states do not submit implementation plans with the TMDL, the TMDL should include a time schedule for completion of the implementation plan. In practice, TMDLs are usually implemented through existing state regulatory and non-regulatory programs. These programs control pollutant discharges from point sources, such as discharges from wastewater treatment plants, and non-point sources, such as polluted runoff from commercial timberlands or agricultural lands. In California, RWQCB prepares the implementation plans.

2.6.3 Impaired water bodies in the MRC plan area

There are 2 forms of pollution that impair waters on MRC land: sediment and water temperature. Table 2-3 shows the 303(d) status of all significant water bodies within the MRC plan area, along with pollutants that exceed water quality standards.

Table 2-3 Status under CWA of Significant Waterbodies in the HCP/NCCP Plan Area

Status under CWA of Significant Waterbodies in the Plan Area		
Body of Water	Status of TMDL	Implementation ^a
South Fork Eel (Hollow Tree Creek is a tributary.)	TMDL for sediment and temperature established by US EPA on December 16, 1999.	Implementation plan to be completed by RWQCB.
Noyo	TMDL for sediment established by US EPA on December 16, 2001.	Implementation plan to be completed by RWQCB.
Big River	TMDL for sediment established by US EPA in December 2001. TMDL for sediment to be completed.	Implementation plan to be completed by RWQCB.
Albion	TMDL for sediment established by US EPA in December 2001.	Implementation plan to be completed by RWQCB.
Navarro	TMDL for sediment and temperature established by US EPA in December 2000.	Implementation plan to be completed by RWQCB.
Greenwood Creek	Not on official 303(d) list.	n/a
Garcia	TMDL for sediment approved by US EPA on March 7, 2002.	Implementation plan completed by RWQCB in 2002.
Russian	TMDL for temperature to be completed. TMDL for sediment to be developed (due 2011). SWRCB may propose a requirement for a TMDL for pathogens.	n/a
Alder Creek/ Schooner Creek/ Mallo Pass	Not on official 303(d) list.	n/a
Elk Creek	Not on official 303(d) list.	n/a
Gualala River	TMDL for sediment established by US EPA in December 2001. TMDL for temperature to be completed.	Implementation plan to be completed by RWQCB.
Cottoneva Creek	Not on official 303(d) list.	n/a

Status under CWA of Significant Waterbodies in the Plan Area		
Body of Water	Status of TMDL	Implementation ^a
Rockport coastal streams (Hardy, Juan, or Howard Creeks)	Not on official 303(d) list.	n/a

TABLE NOTES

^a Implementation and monitoring are required under the state Porter-Cologne Water Quality Control Act and 40 CFR §130.6 for inclusion in the Basin Plan.

n/a = not applicable

In sum, one significant waterbody, the Garcia River, has a completed TMDL and implementation plan. The remaining waterbodies on the 303(d) list, with the exception of the Russian River, have had sediment TMDLs established by EPA and await implementation by the state. The Russian River TMDL is not due until 2011. The water temperature TMDLs for Garcia, Gualala, and Big Rivers are not yet scheduled for development.

Our HCP/NCCP addresses water-quality concerns by

- Preserving and enhancing aquatic habitat through limited harvest within Aquatic Management Zones (AMZs)¹ and the addition of large woody debris (LWD) to streams.
- Managing for streamside stands with large, dense conifer species.
- Promoting and increasing recruitment of LWD.
- Maintaining ecologically appropriate water temperatures.
- Promoting riparian functions, such as nutrient cycling, coarse organic inputs, flood water roughness, and structure.
- Protecting stream bank stability.
- Minimizing and re-mediating sediment inputs to watercourses that can harm aquatic species.

In addition, our HCP/NCCP contains special adaptive management and monitoring measures especially designed for long-term conservation and enhancement of aquatic habitat. We considered TMDLs in the formation of our adaptive management and monitoring measures. As a result, our plan should meet future objectives or numeric targets for sediment or water temperature. MRC consulted and cooperated with the Regional Board in preparing our HCP/NCCP and will continue to do so during implementation. For the most part, we expect to rely on the measures in the HCP/NCCP to meet water quality requirements and anticipate that the RWQCB will incorporate such measures into their permits. RWQCB, for example, issues permits for waste discharge related to MRC timber harvest and other land management. If the MRC regime for water quality control is successful, we anticipate that the RWQCB may wish to include it in TMDL implementation plans for watersheds within the plan area.

2.6.4 Porter-Cologne water quality control act

The California Porter-Cologne Water Quality Control Act, at Water Code Section 13240 (Porter-Cologne Act), along with the Federal Water Pollution Control Act, as amended by the Clean

¹ AMZs are strips of land alongside Class I, Class II, and Class III watercourses (see Table 8-1 for watercourse definitions) where MRC will manage riparian function.

Water Act, require water quality control plans for waters of the state, as well as public review of those plans. SWRCB establishes statewide policies and plans for the implementation of state and federal control laws for water quality. RWQCB adopts and implements water quality control plans for a region.

The Water Quality Control Plan for North Coast Region, also known as the Basin Plan, identifies beneficial uses of water and describes the problems of water quality and quantity in surface and ground water in the region. The plan area of our HCP/NCCP lies within the North Coastal Basin—1 of 2 large natural drainages there. The North Coastal Basin is made up of 9 hydrologic units:

1. Redwood Creek.
2. Trinidad.
3. Mad River.
4. Eureka Plain.
5. Eel River.
6. Cape Mendocino.
7. Mendocino Coast.
8. Russian River.
9. Bodega.

Table 2-4 shows, within the HCP/NCCP plan area, beneficial uses of water and projected effects, as well as potential impacts relative to current regulations.²

Table 2-4 Beneficial Uses of Water and Potential Impacts of HCP/NCCP

Beneficial Uses of Water and Potential Impacts of HCP/NCCP		
Category of Beneficial Use	Expected HCP/NCCP Effect	Potential Impacts from HCP/NCCP
Cold freshwater habitat (COLD)	+	Conservation measures that target riparian conditions should produce a maximum amount of cold freshwater habitat across the plan area.
Warm freshwater habitat (WARM)	-	Conservation measures should improve cold water habitat and reduce non-natural warm water habitat.
Estuarine habitat (EST)	+	Conservation measures that target sediment control and riparian conditions should positively impact downstream sedimentation and water temperatures of estuarine habitat.
Inland saline water habitat (SAL)	0	This habitat does not occur in the plan area.

² The beneficial uses in this table are also in the Basin Plan for waters within MRC land. Chapter 2 of the Basin Plan provides definitions of these beneficial uses. The Basin Plan is available on the North Coast RWQCB at http://www.swrcb.ca.gov/northcoast/water_issues/programs/basin_plan/basin_plan.shtml (accessed 05/04/2011).

Beneficial Uses of Water and Potential Impacts of HCP/NCCP		
Category of Beneficial Use	Expected HCP/NCCP Effect	Potential Impacts from HCP/NCCP
Marine habitat	+	Conservation measures that target riparian conditions should produce improved freshwater, which flows into marine habitats.
Rare, threatened, or endangered species (RARE)	+	Conservation measures that target rare, threatened, and endangered species and their habitats should positively impact federal and state species covered in this plan.
Migration of aquatic organisms (MIGR)	+	Road design standards that require watercourse crossings to allow migration of all life stages of anadromous fish and that remove or modify current barriers should positively impact aquatic organisms.
Spawning, reproduction, or early development (SPWN)	+	Conservation measures that target sediment control and riparian conditions should positively impact all life stages of covered salmonid species.
Freshwater replenishment (FRSH)	0	Forest management in this plan should not impact freshwater replenishment.
Water quality enhancement (WQE)	+	Conservation measures in this plan should enhance water quality.
Municipal and domestic supply (MUN)	+	Conservation measures that target sediment control should positively impact the quality of domestic water supply in the plan area, including drinking water.
Agricultural supply (AGR)	+	Conservation measures that limit water supply for some agricultural uses should increase the quality of pond habitat for amphibian species.
Industrial service supply (IND)	+	Conservation measures that target sediment control and riparian conditions should positively impact downstream effects of industrial uses of water, such as mining, hydraulic conveyance, and fire protection.
Industrial Service Supply (PRO)	+	Conservation measures that target sediment control and riparian conditions should positively impact industrial uses of water downstream.
Hydropower generation	0	Forest management in this plan should not impact hydropower generation.

Beneficial Uses of Water and Potential Impacts of HCP/NCCP		
Category of Beneficial Use	Expected HCP/NCCP Effect	Potential Impacts from HCP/NCCP
Groundwater recharge (GWR)	0	Forest management in this plan should not impact groundwater recharge.
Navigation (NAV) Navarro and Russian Rivers	+	Conservation measures that target sediment control should positively impact river navigation by lowering the frequency of dredging to keep navigation corridors open.
Water contact recreation (REC-1)	±	Conservation measures that target sediment control should positively impact water recreation by promoting clean water and deep pools. Conservation measures that increase LWD for habitat development could adversely impact water recreation, such as boating or rafting.
Non-contact water recreation (REC-2)	+	Conservation measures that target sediment control and riparian conditions should positively impact recreational activities that might indirectly involve water contact or that focus on aesthetic enjoyment, such as picnicking or hiking.
Commercial and sport fishing (COMM)	+	Conservation measures for salmonid species and habitat should increase salmonid populations and improve commercial and sport fishing.
Wildlife habitat (WILD)	+	Conservation measures that target sediment control and riparian conditions should improve general wildlife habitat, such as water sources, vegetation for cover, and available prey.
Presence of areas of special biological significance (ASBS)	+	Conservation measures for seeps, springs, wet areas, pygmy forest, and oak woodlands protect areas of biological significance.
Flood peak attenuation and flood storage (FLD)	+	Riparian conservation measures should enhance buffers in riparian areas.
Wetland habitat (WET)	+	Conservation measures target seeps, springs, wetlands, wet areas, and wet meadows.
Native American culture (CUL)	+	Aquatic conservation measures should improve current riparian conditions for anadromous salmonids, which are an integral part of local native culture.

Beneficial Uses of Water and Potential Impacts of HCP/NCCP		
Category of Beneficial Use	Expected HCP/NCCP Effect	Potential Impacts from HCP/NCCP
Subsistence fishing (FISH)	+	Riparian conservation measures should improve conditions for native fish, increasing the potential for subsistence fishing.
Aquaculture (AQUA)	+	Conservation measures that target sediment control and riparian conditions should improve the potential for cultivation and harvesting of aquatic plants and animals.

TABLE NOTES

+ Positive impact - Negative impact ± Positive and negative impact 0 No discernible impact

The Basin Plan, which is part of the comprehensive California Water Plan and complies with the California Environmental Quality Act (CEQA), sets water quality objectives to protect and enhance the beneficial uses identified in Table 2-4. It also contains an implementation plan with specific measures and prohibitions, action plans, and policies designed to achieve and maintain water quality objectives. The California Water Code—Porter-Cologne and CWA section 303(c)(1)—mandates updates to the Basin Plan every 3 years. This triennial review is itself the process to update the Basin Plan. The RWQCB adopts the Basin Plan; subsequently, SWRCB, the Office of Administrative Law, and the federal EPA approve it.

Regional Boards regulate all pollutant or nuisance discharges that may affect either surface water or groundwater. Any person proposing to discharge waste within a region must file a report of waste discharge with the Regional Board. No discharge may take place until the Regional Board issues a waste discharge requirement (WDR) or a waiver of the waste discharge requirement. The Regional Board uses the Basin Plan as a regulatory tool and standard, principally by relying on objectives, implementation measures, and other prohibitions when assessing particular discharges. Section 13243 of the Porter-Cologne Act authorizes the Regional Board to specify certain conditions or areas where discharge of waste, or certain kinds of waste, will not be permitted. These specifications may be in the Basin Plan or in a WDR. Among others, the Basin Plan for the North Coast Region contains specific measures and prohibitions to protect water quality and beneficial uses from actual and potential nonpoint source discharges, such as logging and herbicide waste from silvicultural applications. An action plan, which is consistent with the State Nonpoint Source Management Plan, promotes implementation of best management practices through voluntary implementation, regulatory-based encouragement, and effluent limitation.

The Basin Plan specifies when the Regional Board will waive or require reports on waste discharge, as follows:

The Regional Board considers that implementation of the discharge prohibitions relating to logging, construction, or associated activities can provide appropriate protection to waters of the region from these sources of waste and, in the great majority of their activities, will waive the need for reports of waste discharge and waste discharge requirements. However, where investigations (by the staff of the Regional Board) indicate that the beneficial uses of water may be adversely affected by waste discharges, the

staff shall require the submission of Reports of Waste Discharge.
(NCRWQCB 1996, 85)

Our HCP/NCCP incorporates, at a minimum, the discharge prohibitions stated in the Basin Plan. Therefore, in carrying out our forestry operations, MRC may not file reports of waste discharge, unless ongoing investigations by the Regional Board indicate that we need to submit a report and receive a WDR.

2.6.5 Streambed alteration agreements

Section 1602 of the California Fish and Game Code generally prohibits anyone from substantially diverting, obstructing, or changing the natural flow, bed, channel, or bank of any river, stream, or lake in California. It also prohibits using any material from streambeds, unless first notifying CDFG. In addition, Section 1602 prohibits actions that might substantially and adversely affect an existing fish or wildlife resource. In such cases, CDFG must make a determination of adverse effect and advise what reasonable measures need to be taken through a lake or streambed alteration agreement (1600 Agreement).

CDFG generally enters into 1600 Agreements for a term not to exceed 5 years. However, under certain conditions, CDFG may issue a 1600 Agreement for a longer term if the measures adequately protect fish and wildlife resources and comply with other statutory requirements. CDFG approval of 1600 Agreements is subject to CEQA review.

In preparing our HCP/NCCP, MRC has notified CDFG of our proposed activities, some of which fall under the regulations of Section 1600. While MRC has not identified the specific dates and locations of these proposed activities, CDFG can develop standard conditions to ensure that the proposed activities do not result in substantial adverse effect on fish and wildlife resources.

MRC has requested a Master Agreement for Timber Operations (MATO) for our proposed activities (see Appendix T). Since our HCP/NCCP will conserve and enhance fish and wildlife habitat in the plan area, MRC proposes that our conservation and management provisions serve as the measures and conditions for the MATO. If compliance with the measures and conditions in the MATO are not feasible for certain covered activities or if the covered activities are not subject to the MATO, MRC will notify CDFG and enter into a separate 1600 Agreement that complies with the conservation measures of the HCP/NCCP.

MRC will incorporate current water drafting agreements as covered activities provided those activities include the additional drafting requirements in Appendix E, *Road, Landing, and Skid Trail Standards* and in Appendix T, *Master Agreement for Timber Operations*.

2.6.6 Coastal zone

2.6.6.1 California coastal act

The California Coastal Act was enacted in 1976 to provide long term protection to California's 1100-mile coast line (Public Resources Code sections 30000 et seq.). The Coastal Act established a partnership between the state and local governments to manage the conservation and development of coastal resources in the coastal zone through a comprehensive planning and regulatory program. The coastal zone was drawn by the California Legislature in 1976 and stretches from 3 miles out at sea to inland points that vary from several hundred yards to 5 miles from shore. The policies in the Coastal Act are implemented through Local Coastal Programs (LCPs).

The coastal zone is divided into 74 coastal jurisdictions, each of which is responsible for establishing 1 or more LCPs within its scope. Each LCP is prepared by local coastal jurisdiction and certified by the Coastal Commission. An LCP contains a land use plan (LUP) that identifies the location, type, and density for any future development within the coastal zone, along with any other conditions or rules applied to such development. An LCP must also contain an implementation plan (i.e., zoning ordinance) to apply the policies of the Coastal Act and the LCP to future development. While each LCP is designed to reflect unique local characteristics of a particular coastal community, issues of statewide concern must also be addressed.

2.6.6.2 Coastal development permits

The Coastal Commission possesses initial permitting authority over most new development in a coastal zone. After an LCP for a local coastal jurisdiction is approved by the Coastal Commission, the permitting authority is transferred to local government. However, the Coastal Commission retains permanent permitting authority over development proposed on the shoreline, including tidelands, submerged lands, and public trust lands.

The Coastal Act provides that new development causing a “change in the density or intensity of use of land...[and] change in the intensity of use of water, or of access thereto” requires a coastal development permit from either the Commission or local government. Certain types of development or activities are exempt from the permit requirement. Timber operations which are in accordance with a THP submitted under provisions of the Z'berg-Nejedly Forest Practice Act (1973) are exempted from the permit process (Public Resources Code, section 30106).

2.6.6.3 Certification of consistency

The Coastal Commission also is responsible for reviewing all federal activities that affect coastal resources. The federal Coastal Zone Management Act (CZMA) requires each coastal state to prepare a coastal management program (16 U.S.C. sections 1451-1465).

The National Oceanic and Atmospheric Administration (NOAA) must approve all state coastal management programs, including a state's delineation of the coastal zone. The California Coastal Act and the California Coastal Management Program (CCMP) constitute the state coastal management program for purposes of the federal CZMA and have been approved by NOAA.

CZMA contains a federal consistency requirement, which prompts the Coastal Commission to review applications for federal permits that can reasonably be expected to affect the coastal zone. The Coastal Commission must ensure that the federally-permitted activity affecting any coastal use or resource is conducted in a manner consistent with the CCMP. The state may list in its coastal management program those federal licenses or permit activities that are automatically subject to the state's review under the federal consistency requirement (15 CFR section 930.53). For all other federal licenses or permit activities that are not listed in the state coastal management program, the Coastal Commission may request a consistency certification, but only after receiving approval from the Director of the federal Office of Ocean and Coastal Resource Management (OCRM).

Consistency certification generally addresses whether a federal action and its associated facilities affect any coastal land or water use or natural resource of the coastal zone, and, if so, whether the activities satisfy the substantive requirements of the CCMP. Even if activities permitted by a federal agency fall outside of the coastal zone, they may be reviewed for consistency with the CCMP if they affect land and water uses or natural resources inside the coastal zone.

To submit a consistency certification, an applicant for a federal license or permit must assert and demonstrate that the proposed activity complies with the CCMP and that the activity will be conducted in a manner consistent with the CCMP. The certification needs to be supported by any necessary data and information, including

- A copy of the federal permit application.
- A detailed description of the proposal and its coastal effects.
- An evaluation of the consistency of the project with enforceable policies of the CCMP.
- Comprehensive data and information sufficient to support the consistency determination.

Federal incidental take permits issued under ESA are currently not on the list of federal licenses or permits subject to certification for consistency with the CCMP. During the preparation of our HCP/NCCP, MRC consulted with staff from the Coastal Commission. We informed them about the scope of our HCP/NCCP and its covered activities. MRC also presented conservation and protection measures from the HCP/NCCP. These measures are intended to comply with the CCMP and the Coastal Commission's policies for protecting coastal resources. In addition, the federal incidental take permit must be consistent with the California Coastal Act and the CCMP, including the Coastal Commission's policies for environmental sensitive habitat areas (ESHAs) and wetlands.

The staff of the Coastal Commission has not indicated that it would seek approval to review the MRC application for a federal incidental take permit for consistency with the CCMP. As a result, there is no need for MRC to submit a consistency certification.

2.6.7 Surface mining and reclamation act (SMARA)

The Surface Mining and Reclamation Act of 1975 (SMARA) requires that a reclamation plan be approved for all sites where (1) there is surface mining of minerals and (2) removal of overburden is in excess of 1000 yd³ in any one location. In 1996, changes were made to SMARA that provide for an exemption for excavation of grading materials for roadbed construction and maintenance; such excavation must be conducted in connection with timber operations or forest management on land owned by the same person or entity. The exemption is not provided for excavation or grading within 100 ft of a Class I watercourse or 75 ft of a Class II watercourse (i.e., a watercourse buffer), or for excavation of materials that are sold for commercial purposes. The majority of MRC rock pits do not require a SMARA permit since they meet the 1996 exemption; however, MRC secures permits for any rock pits which require them.

The intent of SMARA is (a) to necessitate the reclamation of mined lands; (b) to minimize adverse effects on the environment; and (c) to protect the public health and safety. The 1996 exemption was created for timberland owners because mined materials were not being sold for financial gain; instead they were being used to control surface erosion during road maintenance. The exemption provided timberland owners with an economical source of *road base* to stabilize running surfaces, and *rip-rap*, or loose stone, to stabilize stream banks and cut-slopes. The exemption is not provided for rock pits near watercourses; this encourages timberland owners to move surface mining operations away from rivers and streams.

Additionally, surface mining operations conducted outside the watercourse buffer are exempt from the SMARA permit process only if slope stability and erosion are controlled in accordance with CCR, Title 14, Article 9, Section 3704(f) and Section 3706(d). The person closing the site implements, where necessary, re-vegetation measures and post-closure uses in consultation with CAL FIRE.

2.7 Environmental Review

2.7.1 National environmental policy act (NEPA)

The National Environmental Policy Act of 1969 applies, as amended, to all federal agencies that affect the environment. NEPA establishes environmental policies for the nation; provides an interdisciplinary framework for the agencies to assess environmental impacts; and contains “action-forcing” procedures to ensure that agency decision makers take environmental factors into account.

The Council on Environmental Quality (CEQ), implementing the procedural provisions of NEPA, requires all agencies to analyze the impact of their proposed actions and to include other agencies and the public in the process. The scope of NEPA analysis covers the direct, indirect, and cumulative effects of the proposed action.

As part of the HCP/NCCP process, MRC is assisting NMFS and USFWS to prepare a draft environmental impact statement (EIS). The issuance of ITPs by NMFS and USFWS are major federal actions that trigger the NEPA requirement for environmental analysis and disclosure of potential environmental impacts of proposed actions. The analysis in the EIS will consider the proposed conservation and management measures, including the mitigation and minimization measures, which would be implemented through our HCP/NCCP. The analysis will also consider and compare several alternatives to our HCP/NCCP. NMFS and USFWS will prepare a final EIS following a period of public review and comment on the draft EIS and HCP. In the final EIS, NMFS and USFWS will respond to public comments and incorporate suggested changes where appropriate. NMFS and USFWS are serving as the co-lead agencies under NEPA and will use their independent judgments in determining whether the EIS complies with NEPA regulations.

2.7.2 California environmental quality act (CEQA)

Similar to NEPA, the California Environmental Quality Act (CEQA) requires state agencies with discretionary permitting authority over a proposed project to evaluate the potential environmental effects of the project. If one or more potential significant impacts are identified, the state agencies must prepare a detailed environmental impact report (EIR). If no potential significant impacts are identified or if all of the potential significant impacts can be mitigated to levels less than significant by redesigning the project or incorporating mitigation measures into the project proposal, the state agencies may prepare a negative declaration. Approval of both a TMP and an NCCP, along with issuance of an ITP in association with an NCCP are “projects” within the meaning of CEQA and require environmental review.

To comply with CEQA, MRC has elected to use a Programmatic Timber Environmental Impact Report (PTEIR). A PTEIR is a CEQA environmental impact report that also meets certain requirements identified in the California Forest Practice Rules (see California Public Resources Code, section 1092, et seq.). A PTEIR places additional emphasis on environmental impacts associated with timber harvest so that the PTEIR analysis of such impacts can be incorporated and relied on during preparation of subsequent “programmatic timber harvest plans.” Specifically, a PTEIR must assess “impacts and provide mitigation for on-site and off-site impacts resulting from timber operations involved with an ownership, portion of an ownership, or multiple ownerships” (Public Resources Code, section 1092.01(b)).

CAL FIRE approval of a TMP is a discretionary action subject to CEQA; CAL FIRE is, therefore, the CEQA lead agency for the PTEIR. As the CEQA lead agency, CAL FIRE will direct and oversee preparation of the PTEIR and will rely on the PTEIR for purposes of assessing

the potential environmental impacts that may result from implementation of the TMP. CDFG approval of the HCP/NCCP and MATO, as well as issuance of an incidental take permit, are discretionary actions subject to CEQA. Therefore, CDFG will be a CEQA “responsible agency.” CDFG will collaborate with CAL FIRE and assist in the preparation of the PTEIR. Moreover, CDFG will rely on the PTEIR to assess potential environmental impacts resulting from MRC activities authorized under the ITP and MATO. The CEQA document, while prepared by CAL FIRE, must be acceptable to CDFG as they make their findings.

MRC is assisting CAL FIRE to prepare the draft PTEIR. The analysis in the PTEIR will consider the timber management regime proposed in our TMP. In addition, the analysis will assess the proposed conservation and management measures implemented through our HCP/NCCP, as well as several alternatives. CAL FIRE will prepare a final PTEIR following a period of public review and comment. The final PTEIR will respond to public comments and incorporate suggested changes where appropriate. As the lead agency under CEQA, CAL FIRE will use its independent judgment in determining whether the PTEIR complies with CEQA, the CEQA Guidelines, and the Forest Practice Rules.

Other state approvals described in this section may also require CEQA review. When appropriate, the state agencies responsible for such approvals will rely on the environmental analysis contained in the PTEIR to fulfill CEQA requirements.

Some state programs qualify as a certified regulatory program (CRP) and are exempt from the requirement of preparing a formal EIR. While not allowing the certified regulatory program to avoid other provisions in CEQA, such as the policy of avoiding significant adverse effects on the environment where feasible, exemption does provide for an alternative process to achieve CEQA goals of environmental protection. The preparation, review, and approval of THPs under the Forest Practices Act and the California Forest Practice Rules (CFPR) have been identified as a CRP. The documentation, analysis, and findings prepared for ordinary THPs in accordance with the CFPR, serve, therefore, as the “functional equivalent” of an EIR under CEQA. However, because MRC is preparing a TMP and has elected to use a PTEIR, upon CAL FIRE approval or “certification” of the PTEIR, MRC will subsequently be allowed to prepare Programmatic Timber Harvest Plans (PTHPs), which rely on and “tier” from the PTEIR.

The RWQB water quality program—including the amendment of basin plans, the adoption and implementation of TMDLs, and the issuance or waiver of WDRs—has also been approved as a CRP.

2.7.3 Joint environmental document

For projects that must comply with NEPA and CEQA, CEQA Guidelines and NEPA regulations strongly urge state and federal agencies to work together to prepare a single document that will satisfy both state and federal laws. The resulting document, of course, will be inadequate if it only satisfies one or the other statute. While there are some differences in legal requirements for both the contents of the federal and state analyses and the procedures to approve or certify them, the lead agencies can, with coordination, accommodate them in a joint document. When a proposed project requires both an EIR and an EIS, the applicant requests the lead agencies to prepare a joint document, in order to prevent delay, duplication, and excess paperwork.

MRC entered into a Memorandum of Understanding (MOU) with NMFS, USFWS, CAL FIRE, and CDFG to prepare a joint PTEIR/EIS for the review and approval of our HCP/NCCP. That MOU provided a process for the preparation of the joint PTEIR/EIS and described the

relationship and responsibilities of the parties, including NMFS, USFWS, CDFG, MRC, and an independent contractor, Stillwater Sciences, retained to prepare the draft PTEIR/EIS. In particular, the MOU clarified that the independent contractor served under direct control of the resource agencies; these agencies exercise their independent judgment under NEPA and CEQA and ensure that the final PTEIR/EIS is prepared in accordance with all applicable laws.

2.8 National Historic Preservation Act

2.8.1 THP activities

Within MRC land, there may be properties included in the National Register of Historic Places or eligible for such inclusion. These properties could be affected by proposed THP activities. To ensure compliance with the National Historic Preservation Act (NHPA), MRC, USFWS, and NMFS will enter into a programmatic agreement with the State Historic Preservation Office, the Tribal Historic Preservation Office, and CAL FIRE. The agreement will identify steps MRC, USFWS, CAL FIRE, CDFG, and NMFS will take to preserve historical resources on MRC land. These steps will be based on the portion of THP review that identifies and protects cultural resources and will be implemented for activities covered by ITPs, including those not ordinarily subject to THP review.

2.8.2 Activities not related to a THP

NHPA addresses covered activities, whether or not they relate to a THP. For ground disturbance that is not proposed in conjunction with a THP (such as expansion of rock pits, site preparation using tractors, and prescribed burning) but that requires compliance with NHPA, MRC will seek the advice of a professional archaeologist and prepare an *Archaeological Report* similar to those included in THPs. As necessary, we will propose protective measures in the report and include any additional measures required by the CEQA lead agency. Next, we will submit the report to the CEQA lead agency for approval. Finally, MRC will adopt and apply all mitigation measures within the report approved by the lead agency.

2.9 Migratory Bird Treaty Act (MBTA)

The Migratory Bird Treaty Act of 1918, as amended (MBTA), implements various treaties and conventions between the U.S. and Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds. Under the MBTA, taking, killing, or possessing migratory birds is unlawful, as is taking of any parts, nests, or eggs of such birds (16 U.S. Government Code [USC] 703). *Take* is defined more narrowly under the MBTA than under ESA and includes only the death or injury of individuals of a migratory bird species or their eggs. As such, *take* under the MBTA does not include the concepts of harm and harassment as defined under ESA. The MBTA defines migratory birds broadly; all covered birds in this plan are considered migratory birds under the MBTA.

The USFWS *Habitat Conservation Planning and Incidental Take Permit Process Handbook* (1996) includes Appendix 5 (“FWS Guidance on Addressing Migratory Birds and Eagles”). According to these guidelines, an incidental take permit can function as a Special Purpose Permit under the MBTA (50 CFR 21.27) for the take of all ESA-listed covered species in the amount or number and subject to the terms and conditions specified in an HCP. Any such take will not be in violation of the MBTA (16 USC 703-12). Within the plan area, the northern spotted owl and marbled murrelet are protected by MBTA.

Of these, the marbled murrelet is currently listed under ESA. Accordingly, once issued, the incidental take permit will automatically function as a Special Purpose Permit under the MBTA,

as specified in 50 CFR Sec. 21.27, for a 3-year term subject to renewal by the permittees. Should any other of the covered birds become listed under ESA during the permit term, the ESA permit would also constitute a Special Purpose Permit under the MBTA for that species for a 3-year term as specified in 50 CFR 21.27 subject to renewal by the permittees.

Non-listed covered species as well as other migratory birds not covered by the permit will benefit from seasonal restrictions on construction and other conservation measures described in our plan. Habitat restoration and management under our plan will also be a significant “benefit to the migratory bird resource” as required by the Special Purpose Permit.

