UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

APR 22 2013

RECEIVED
APR 22 2013

Eric Shott
National Marine Fisheries Service
777 Sonoma Ave., Rm 325
Santa Rosa, CA 95404

John E. Hunter
United States Fish and Wildlife Service
P.O. Box 4483
Arcata, CA 95521

Subject: Draft Environmental Impact Statement/Program Timberland Environmental Impact Report for Authorization of Incidental Take and Implementation of the Mendocino Redwood Company Habitat Conservation Plan/Natural Community Conservation Plan and Timber Management Plan (CEQ # 20120369)

Dear Mr. Shott and Mr. Hunter:

The U.S. Environmental Protection Agency (EPA) has reviewed the Draft Environmental Impact Statement (DEIS)/Program Timberland Environmental Impact Report (PTEIR) for the above referenced project. Our review and comments are provided pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

Mendocino Redwood Company (MRC) has submitted applications to the U.S. Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) for the take of certain federally protected species incidental to MRC's timber harvest and forest land management activities on approximately 213,000 acres of privately held lands in coastal Mendocino County. The DEIS/PTEIR evaluates the environmental effects and possible alternatives to the authorization of the proposed permit. MRC's Proposed Action would authorize take of 11 animal species and 31 plant species for an 80 year period under a Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) developed by MRC in cooperation with Federal, State, and local agencies. The DEIS identifies the Proposed Action as the NEPA preferred alternative because it "best meets the purpose and need of the lead federal agencies, considering environmental economic and other factors" (p. ES-7).

EPA supports the general project goal of increasing protections for threatened and endangered species in the plan area and recognizes the difficulty faced in balancing species protection with the continued operation of commercial timberlands. We recognize and appreciate the extensive work that has been undertaken by the FWS and NMFS (collectively referred to as the Services) in the development of this HCP. We are pleased to note that the HCP includes a long term adaptive management approach that uses careful monitoring to adjust plan targets and management strategies over the duration of the project.

SUMMARY OF EPA RATING DEFINITIONS*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

ADEQUACY OF THE IMPACT STATEMENT

Category "1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category "2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category "3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment.

EPA DETAILED COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT/ PROGRAM TIMBERLAND ENVIRONMENTAL IMPACT REPORT FOR AUTHORIZATION OF INCIDENTAL TAKE AND IMPLEMENTATION OF THE MENDOCINO REDWOOD COMPANY HABITAT CONSERVATION PLAN/NATURALCOMMUNITY CONSERVATION PLAN AND TIMBER MANAGEMENT PLAN, MENDOCINO COUNTY, CA, APRIL 22, 2013

Water Resources

Clean Water Act Compliance

The DEIS does not discuss Clean Water Act Section 404 applicability and compliance, and neither the DEIS nor the HCP/NCCP indicates whether the Services have had contact with the Army Corps of Engineers regarding this project. Pursuant to the definitions at 40 CFR 232, while some silvicultural activities are exempt from Section 404 permitting requirements, not all activities described in the DEIS should necessarily be assumed exempt in all cases.

> **Recommendations**: The FEIS should address in greater detail the project's Clean Water Act implications and compliance, as well as the status of any consultation with the Army Corps of Engineers regarding this action. It should identify which activities, if any, might require coverage under either a nationwide or individual permit from the Army Corps. The FEIS should describe the processes whereby these permits would be obtained or how avoidance of non-exempt activities in jurisdictional waters would be ensured.

The DEIS does not discuss Section 402 of the Clean Water Act. Industrial facilities and/or activities such as rock pits, rock quarries, rock crushing, gravel washing, log sorting, and log storage associated with the project would require permitting in accordance with the National Pollutant Discharge Elimination System.

> **Recommendations:** The FEIS should provide additional detail identifying how proposed activities will comply with state and federal industrial stormwater regulations. The FEIS should state how the project, including activities exempt from CWA §404, would comply with CWA §402 and the requirements at 33 CFR 323.4. EPA is available to provide additional feedback and technical assistance related to the CWA §§ 404 and 402 programs should the Services request it.

Section 3.4 of the DEIS does not disclose or discuss the extent of potential impacts to wetlands under the Proposed Action or its alternatives. Section 3.5.1.4 presents an estimate of the wetland acreages within the primary and secondary management areas, as determined by the National Wetlands Inventory (USFWS 2011). The sum of all wetland types within the primary assessment area totals 2,267 acres, while the secondary assessment area contains 14,732 acres.

> **Recommendations:** Although EPA recognizes the potential challenge of estimating total wetlands impacts associated with the project given that "MRC inventories wetlands only as it is necessary to determine site-specific management strategies" (p. 3-227), the FEIS should present a reasonable effort to quantify the expected range of wetland impacts. The FEIS should address this issue in terms of both gross acreage and percent of total wetlands impacted in the management area for each alternative. If this is analysis is deemed infeasible, the FEIS should provide the basis for that conclusion.

The DEIS briefly describes, and the HCP/NCCP more thoroughly discusses, the monitoring work that would be performed under the preferred alternative proposed by MRC. This includes 3 general types of monitoring: compliance monitoring, to ensure that MRC is meeting the regulatory requirements of the HCP; effectiveness monitoring, to ensure that MRC is meeting the biological goals and objectives outlined in the HCP; and validation monitoring, to evaluate the assumptions upon which conservation measures have been based. Chapter 13 of the HCP/NCCP indicates that MRC "may or may not implement optional monitoring programs during the term of [their] HCP/NCCP," and that "only validation monitoring programs are optional" (HCP/NCCP Vol 1, p. 13-12). The HCP/NCCP goes on to state that MRC will use the results of its validation monitoring to inform the active adaptive management components of the AMP (p. 13-23). In the sections that follow, the HCP/NCCP stipulates, program by program, which monitoring efforts would be optional and which would be required. Neither the DEIS nor the HCP/NCCP explains why some monitoring programs would be optional and others would not. Nor do the documents describe how MRC would determine whether or not to proceed with an optional monitoring program. The DEIS and HCP/NCCP do not provide a means for evaluating what effect the option not to pursue monitoring for a given issue area might have on the ability to adapt the HCP/NCCP to change.

> **Recommendation:** The FEIS should include a table similar to Table 13-1 of the HCP/NCCP, revised to specify which of the monitoring programs would be optional. For optional programs, the FEIS should describe the circumstances under which MRC would or would not implement a given monitoring program and the effect that would have upon the adaptive management approach related to that resource area.

Alternatives Analysis and Preferred Alternative Duration

Under the Federal No Surprises rule, and given the language in the HCP Implementing Agreement providing MRC with sole discretion over approval of modifications outside what is contained in the AMP, the Wildlife Agencies would have a limited capacity to alter or update the HCP/NCCP for the duration of the take permits. While the AMP and the "Unforeseen Circumstances" stipulations of the HCP/NCCP are designed to mitigate this problem by providing an avenue for ongoing revision of the HCP/NCCP, EPA remains concerned by the 80 year length of the preferred alternative. The DEIS and HCP do not sufficiently explain the need for take permits of such extensive duration. The suggestion that environmental outcomes would be benefitted to the greatest extent by selection of the HCP with the longest proposed duration is an over simplification of the issue and lacks sufficient detailed consideration. It is unclear how the Services determined the particular alternatives selected for in depth consideration in this DEIS. For instance, it is unclear why an alternative to the proposed project with a 40 year duration similar to Alternative C, but that covers all species identified under the preferred alternative would not be a viable option. Nor is it clear why an alternative with a duration other than 40 or 80 years was not be considered.

> **Recommendation:** The FEIS should explain in greater detail the rationale for the selection of the preferred alternative and should discuss the basis for the assumption that greater benefits would result from a longer duration. We suggest that the Services consider whether a "hybrid" alternative that includes provisions selected from two or more of the alternatives analyzed in detail might be an appropriate option for this project (e.g., selection of Alternative C, but with coverage for all species considered under the Proposed Project).