

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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4/22/13

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.

EPA understands that the North Coast Regional Water Quality Control Board (RWQCB) has been involved in the development of the HCP and, to a lesser extent, the EIS/EIR. We encourage the Services to continue collaborating with the RWQCB in the development of the Final Environmental Impact Statement, as its regulatory input regarding timber harvest and water quality protection should be integrated into Plan design.

While EPA is impressed by the adaptive management plan described in the HCP, we remain concerned that, due to the uncertain consequences of climate change, changing economic conditions, the spread of invasive species and pathogens, and other confounding factors, the issuance of incidental take permits with 80 year durations would unduly limit the Services' ability to adapt to future circumstance. EPA recommends the careful consideration of all alternatives, including an alternative to the Proposed Action that is shorter in duration.

We have rated the DEIS/PTEIR as Environmental Concerns – Insufficient Information (EC-2) (see enclosed "*Summary of Rating Definitions*"). In the enclosed detailed comments, we provide specific recommendations regarding analyses and documentation needed to assist in assessing potential significant impacts from the proposed Project. Specifically, EPA is concerned with the sparse discussion of Clean Water Act regulatory compliance; the limited detail regarding the adaptive management plan carried over into the DEIS from the HCP/NCCP; the temporal duration of the Preferred Alternative and the range of alternatives considered in the EIS; and potential impacts from reasonably foreseeable future conditions, including the spread of the Sudden Oak Death pathogen.

EPA appreciates the opportunity to provide input on this DEIS/PTEIR. We are available to further discuss all comments and recommendations provided. When the Final EIS is released for public review, please send two hard copies and two CDs to the address above (Mail Code: CED-2). If you have any questions, please contact me at 415-972-3521, or contact Carter Jessop, the lead reviewer for this Project. Carter can be reached at 415-972-3815 or jessop.carter@epa.gov.

Sincerely,

/s/

Kathleen Martyn Goforth, Manager
Environmental Review Office
Communities and Ecosystems Division

Enclosed: EPA Ratings Summary
EPA Detailed Comments

cc: Chris Browder, California Department of Forestry and Fire Protection
Brad Valentine, California Department of Fish and Game
David Fowler, North Coast Regional Water Quality Control Board

**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 analysis is deemed infeasible, the FEIS should provide the basis for that conclusion.

Definition of Wetlands, Seeps and Springs

Section 2.3.13.4 describes protective measures that would apply to wetlands, wet meadows, and wet areas under the Proposed Action, and Section 2.3.13.5 describes protective measures that would apply to seeps and springs; however, no clear definitions are provided to distinguish a seep or spring from wetlands, wet meadows, or wet areas. It is not often clear how these aquatic features are distinguished from each other, as both seeps and springs can exhibit characteristics that meet the definitions of wetlands/wet meadows/wet areas, and springs can exhibit characteristics that can be determined to meet criteria for Class II waters. Furthermore, seeps and springs can be the hydrologic source areas for wetlands/wet meadows/wet areas, and/or tributary to Class I waters; therefore, modification of flows from these features should be considered as a potential impact to other aquatic features and the beneficial uses they support.

Recommendations: The FEIS should provide a clear definition and differentiation of wetlands, wet meadows, wet areas, seeps, and springs, and describe how each feature will be characterized in the field, so that the Services can determine whether the protective measures proposed for each aquatic feature are appropriate.

Road Inventory and Sediment Loading

Roads are one of the primary sources of sediment in forested areas, but the DEIS does not include a road map or a discussion of the total miles of road segments likely to be constructed under each of the alternatives. In light of the TMDL listing of all of the major project watersheds as impaired for sediment, a closer examination of existing and proposed roads is an important factor in comparing project alternatives and ensuring that new road construction is minimized.

Recommendation: The FEIS should include a road map and an evaluation of the potential to close (and decommission) unnecessary roads. Although the current road inventory is incomplete, the FEIS should provide the best available information and a brief discussion of uncertainties about the road network. The FEIS should also discuss what measures would be employed to ensure that the construction of new roads is minimized to the extent possible.

Adaptive Management

An important cornerstone of the long term viability and success of MRC's Habitat Conservation Plan is the careful monitoring and adaptive management set forth in chapters 13 and 14 of the HCP/NCCP. EPA applauds MRC and the Services on the use of adaptive management as a core component of the HCP to make the plan more resilient to uncertainty and unforeseen circumstances; however, we find that the DEIS' discussion of the AMP is brief and lacks a thoroughness commensurate with its overall importance to the project. While CEQ and EPA encourage the practice of incorporation by reference in order to reduce the overall length and expense of NEPA document preparation, some additional detail and discussion of the proposed AMP is necessary in order for the EIS to more accurately depict the integral role of this project component.

Recommendation: The FEIS should include greater detail regarding the use of adaptive management for the long term management of uncertainty related to the proposed project. In particular, it would be valuable to understand how monitoring and adaptive management efforts would differ between project alternatives.

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).

Forest Pathogens – Sudden Oak Death

Caused by the plant pathogen *Phytophthora ramorum*, the forest disease “sudden oak death” (SOD) has caused widespread mortality and dieback of true oak and tanoak in the forests of coastal central and northern California. The pathogen is particularly virulent to tanoak trees, with infection resulting in mortality in most cases. The pathogen prefers the cool, moist conditions characteristic of the foggy coastal forests in the HCP plan area. Due to the importance of tanoak in the lower canopies of most upland forests, SOD is considered to be one of the greatest invasive threats to North Coast redwood forests. The Department of Agriculture has listed California, Oregon and Washington as “regulated” to control the spread of SOD, while 14 California counties, including Mendocino County, have additional Federal and State quarantine regulations in place to further manage the pathogen’s spread¹. An increase in SOD occurrence in the plan area would likely result in substantial changes in fire risk and behavior, landscape properties, wildlife food and habitat abundance, and other conditions that may negatively affect HCP/NCCP goals and objectives. To the extent that SOD results in an increase in exposed soil surfaces, it can contribute to decreased water quality. Section 14.9 of the HCP/NCCP briefly discusses the threat posed by SOD in the context of identifying “changed circumstance” and “unforeseen circumstance” scenarios related to the extent of SOD infection in plan area watersheds. The DEIS does not address the issue of SOD, except in so far as it falls into the general category of “disease,” which is mentioned briefly. SOD is addressed in the HCP/NCCP only in regards to reactive measures that could be imposed in the event that SOD infection covers a major portion of the plan area. Neither document addresses specific monitoring or preventive measures for tracking and minimizing the spread of the disease. In light of the profound and permanent changes that SOD would likely have on the health of redwood ecosystems, this sparse consideration is insufficient.

Recommendations: The FEIS and revised HCP/NCCP should provide a more thorough discussion and consideration of impacts related to the oomycete pathogen *Phytophthora ramorum*. The FEIS and HCP/NCCP should provide a discussion of monitoring and preventive practices that MRC would employ to monitor and limit the spread of the disease, such as equipment and personnel decontamination procedures. The Oak Mortality Task Force website at <http://www.suddenoakdeath.org/> may be a useful resource for content related to SOD, including applicable state and federal regulations, best management practices for foresters and wildland managers, and other potentially pertinent information. The FEIS and HCP/NCCP should address how elimination or reduction in abundance of tanoak in the plan area would affect the success of other plan components.

¹USDA Animal and Plant Health Inspection Service, Pest Information site:
http://www.aphis.usda.gov/plant_health/plant_pest_info/pram/regulations.shtml