

# Introduction/Purpose and Need

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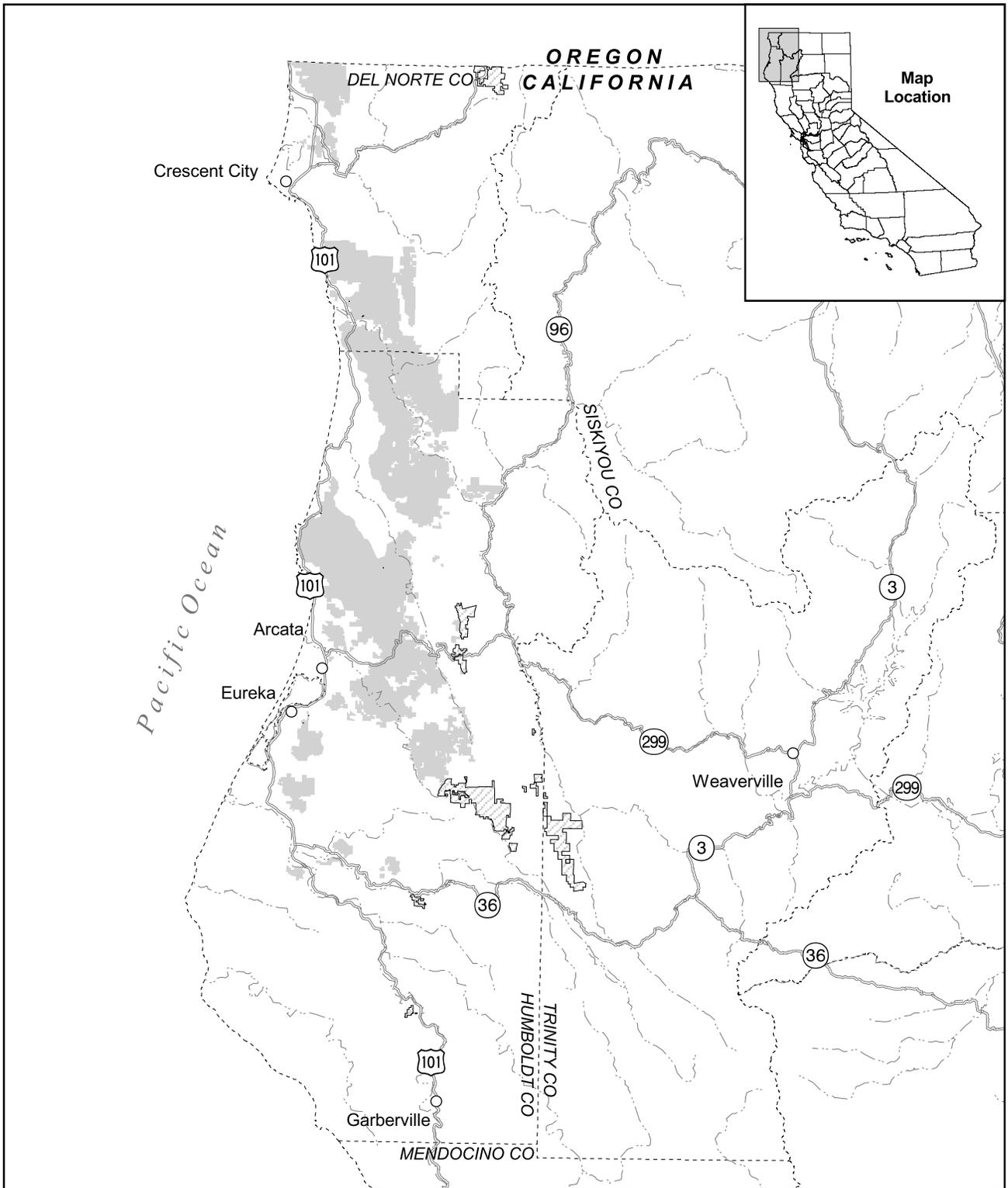
## 1.1 Background and Document Overview

The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) (collectively referred to as the Services) are responding to applications from Simpson Resource Company (Simpson) for an Incidental Take Permit (ITP) and Enhancement of Survival Permit (ESP), respectively, as authorized under Section 10 of the federal Endangered Species Act (ESA). Simpson has initiated efforts to expand and improve its aquatic species conservation and ecosystem management program on its forestland in Humboldt and Del Norte counties in California (Figure 1-1). Simpson's recent efforts have resulted in the development of a multi-species Aquatic Habitat Conservation Plan/Candidate Conservation Agreement with Assurances (AHCP/CCAA). The AHCP/CCAA was prepared to support the ITP and ESP applications to the Services.

Simpson manages its forestlands for timber production and other purposes pursuant to California's Timberland Productivity Act, the Z'Berg-Nejedly Forest Practice Act, the Board of Forestry's implementing rules and regulations for management of private forestlands, various other state laws, and Simpson's internal management policies and guidelines. These internal policies and guidelines are primarily contained in the *Habitat Conservation Plan for the Northern Spotted Owl on the California Timberlands of Simpson Resource Company* (Simpson Resource Company, 1992) and Simpson's "Option (a)" document (Simpson, 1999) filed with the California Department of Forestry and Fire Protection.

Simpson is requesting authorization for the incidental take of three fish Evolutionary Significant Units (ESUs) that are listed as threatened under the ESA and that overlap Simpson's lands in northern California. These fish ESUs are the Southern Oregon/Northern California Coast coho salmon ESU, California Coastal chinook salmon ESU, and Northern California steelhead ESU. Simpson also is requesting authorization for the incidental take of three other fish ESUs, two fish species and two amphibian species, currently unlisted, should they become listed in the future. These unlisted ESUs/species are chinook salmon (Southern Oregon and Northern California Coastal ESU, Upper Klamath/Trinity Rivers ESU), steelhead (Klamath Mountains Province ESU), coastal cutthroat trout, rainbow trout, southern torrent salamander, and tailed frog. Chapter 3 of the proposed AHCP/CCAA describes the ESUs/species for which Simpson is seeking permit coverage. Simpson has proposed an AHCP/CCAA duration (permit period) of 50 years.

The Services have determined that issuance of an ITP by NMFS and issuance of an ESP by USFWS are major federal actions that trigger the National Environmental Policy Act (NEPA) requirement for the analysis and disclosure of the potential environmental impacts of the actions. Pursuant to NEPA, the environmental consequences of the federal incidental take authorizations are being analyzed in this Environmental Impact Statement (EIS), with the USFWS and NMFS as co-lead federal agencies.



**LEGEND**

- PROPOSED SIMPSON AHCP/CCAA PLAN AREA
- SIMPSON OWNERSHIP NOT INCLUDED IN AHCP/CCAA PLAN AREA
- COUNTY BORDER
- MAJOR ROADS
- RIVERS



10 0 10 Miles  
SCALE IS APPROXIMATE

**Figure 1-1  
Simpson Resource Company  
California Ownership**

## 1.2 Purpose and Need for the Proposed Action

The USFWS and NMFS are responding to applications from Simpson for: (1) an ESP pursuant to Section 10(a)(1)(A) of the federal ESA; and (2) an ITP pursuant to Section 10(a)(1)(B) of the ESA, respectively. Pursuant to ESA Section 10(a), if NMFS finds that all ESA requirements for incidental take permit issuance are met, NMFS is required to issue the requested permit. The USFWS may approve an ESP if it finds that the CCAA meets the regulatory requirements for such permits. In addition, implementing the provisions of these permits will further NMFS' and USFWS' long-term objective of ensuring long-term survival of ITP/ESP species while allowing otherwise lawful activities of the applicant to continue.

The Services' purpose and need in this action, therefore, is to respond to Simpson's ITP and ESP application for incidental take authorization pursuant to an HCP/CCAA that provides protection and conservation to listed, proposed, and unlisted species and their habitats, consistent with the requirements of Section 10(a)(1)(A) and Section 10(a)(1)(B) of the ESA.

The applications request that NMFS approve Simpson's application and issue an ITP and that the USFWS approve Simpson's application and issue an ESP. The Services' approval and issuance of these permits are the NEPA "actions" analyzed in this EIS.

## 1.3 Decisions To Be Made

NMFS must decide whether to issue, issue with conditions, or deny an ITP pursuant to Section 10(a)(1)(B) of the ESA. Pursuant to Section 10(a)(2)(B) the applicant is required to prepare a habitat conservation plan, and in reaching its decision to issue an ITP, NMFS must find that:

- The taking will be incidental to, and not the purpose of, the carrying out of an otherwise lawful activity
- The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking
- The applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild
- Other measures that NMFS may require as necessary or appropriate for purposes of the conservation plan will be met and plan implementation will be assured

The USFWS must decide whether to issue, issue with conditions, or deny an ESP pursuant to Section 10(a)(1)(A) of the ESA (June 17, 1999, 64 FR 32706). The applicant for an ESP is required to prepare a CCAA and in reaching its decision to issue an ESP, the USFWS must find that:

- The take will be incidental to an otherwise lawful activity
- The CCAA complies with CCAA/ESP regulations that incorporate the Services' Candidate Conservation Agreement with Assurances policy (i.e., the benefits of the

conservation measures as implemented, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties) would preclude or remove the need to list the covered species

- The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species
- Implementation of the terms of the CCAA is consistent with applicable federal, state, and tribal laws and regulations
- Implementation of the terms of the CCAA will not conflict with any ongoing conservation programs for species covered by the permit
- The applicant has shown capability for and commitment to implementing all of the terms of the CCAA

## 1.4 Action Area

As discussed in Chapter 1, the Action Area includes all commercial timberland acreage within the 11 Hydrographic Planning Areas (HPAs) on the west slopes of the Klamath Mountains and the Coast Range of California in Del Norte and Humboldt counties where Simpson owns lands or harvesting rights, during the period of such ownership within the permit term. The Action Area is currently 416,531 acres, including approximately 1,866 acres of lands on which Simpson owns perpetual harvesting rights. The Action Area acreage will adjust during the permit term to reflect real property transactions involving Simpson.<sup>1</sup> To account for those potential adjustments, the EIS analyzes possible impacts of the Proposed Action and the alternatives on all commercial timberlands within the 11 HPAs, defined as the “Primary Assessment Area.” Under Alternative C, the Action Area and Primary Assessment Area contain additional areas outside the 11 HPAs that are known as “rain-on-snow” areas (see Section 2.5).

## 1.5 Regulatory Background

Federal authorization of incidental take is subject to several laws and regulations. Timber harvest-related activities on private lands are subject to numerous federal and state regulations and other applicable guidelines. Key relevant state regulations and guidelines applicable to management activities on Simpson’s lands in northern California, and those associated with issuance of an ITP and ESP by the Services, are described below. In essence, these laws and regulations, which are summarized below, establish what are “otherwise lawful activities” pursuant to which any take that is authorized under the ITP and ESP must be incidental. In addition, laws that do not directly control these issues but are related are also summarized below.

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<sup>1</sup> Additional commercial timberlands that Simpson may acquire in the future may be added to Simpson’s Initial Plan Area (known herein as the current Action Area), subject to Simpson submitting to the Services a description of the lands it intends to add, along with a summary of relevant characteristics they share with existing Action Area lands within that HPA. Up to 15 percent of the current Action Area (e.g., 61,821 acres), including areas on which Simpson owns perpetual harvesting rights, may be added to or deleted from the Action Area without an amendment to the proposed HCP/CCAA. The 15 percent cap would not apply to certain categories of land transfers as specified in the proposed Implementation Agreement between Simpson and the Services.

## 1.5.1 Federal Regulatory Provisions Relating to Approval of ITPs

### 1.5.1.1 Endangered Species Act

The federal Endangered Species Act of 1973, as amended (ESA), is administered by the Secretaries of the Interior and Commerce through the USFWS and NMFS. Species listed as endangered or threatened under the ESA are provided protection as described herein.

#### Section 9

Section 9 of the ESA and accompanying federal regulations prohibit the unauthorized taking of fish and wildlife species listed as threatened or endangered by government, private companies, and individuals. As defined in the ESA, taking means, “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or to attempt to engage in such conduct.” By regulation, the USFWS and NMFS have defined harm as any act that “actually kills or injures” listed fish or wildlife; harm may include, “significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife.”

#### Section 10

In recognition that take cannot always be avoided, Section 10(a)(1)(A) of the ESA allows USFWS and NMFS to authorize taking of endangered and threatened species by non-federal entities that is incidental to, but not the purpose of, otherwise lawful activities. Similar provisions are found in Section 7 for actions by federal agencies (see below). Under Section 10(a)(1)(B), such authorizations are granted through the issuance of ITPs. Applicants for such permits must submit Habitat Conservation Plans (HCPs) that specify:

- The names of the species that will be taken
- The impact(s) that will likely result from the proposed taking
- The measures the applicant will take to minimize and mitigate those impacts
- The source of funding available to implement the measures
- Procedures that will be used to respond to unforeseen circumstances
- Alternatives to the taking and the reason the alternatives were not chosen, and
- Any other measures considered by the Secretaries (i.e., USFWS and NMFS) as necessary or appropriate for minimizing or mitigating the impacts of the taking

Section 10(a)(1)(B) also was intended by Congress to authorize the Services to approve HCPs for unlisted as well as listed species, and to issue ITPs that cover unlisted species where coverage is already being provided for listed species. If an HCP treats an unlisted species as if it were already listed, additional mitigation would not be required within the area covered by the HCP upon the listing of that species. The “No Surprises” regulation recently adopted by the U.S. Department of Interior and the U.S. Department of Commerce (February 23, 1998, 63 FR 8859) also provides that landowners who have habitat for listed species on their property and agree to an HCP under the ESA will not be subject to later further restrictions for a larger land or financial commitment if the applicant adheres to the HCP. Under the Proposed Action addressed in this EIS, NMFS would issue an ITP based on implementation measures contained in Simpson’s proposed AHCP that would cover the six listed and unlisted salmon and steelhead ESUs within NMFS’s jurisdiction.

Additionally, in 1999 the Services announced a joint policy that provided additional ESA assurances through issuance of ESPs to non-federal landowners for currently unlisted species that are: (1) proposed for listing under the ESA as threatened or endangered,

(2) candidates for listing, or (3) likely to become candidates or proposed in the near future. Similar to issuance of ITPs in which the applicant must submit an HCP, issuance of an ESP requires that landowners enter into a Candidate Conservation Agreement with Assurances (CCAA) that commits them to implement voluntary conservation measures for the proposed or candidate species, or species likely to become candidates or proposed in the near future. The ESP provides assurances that additional conservation measures will not be required and additional land, water, or resource use restrictions will not be imposed if the species are listed in the future. Under the Proposed Action, the USFWS would issue an ESP based on conservation measures contained in Simpson's proposed CCAA for two species of trout, one salamander, and one frog species in USFWS's jurisdiction. Applicants for ESPs must provide the following information:

- The common and scientific names of the species for which the applicant requests incidental take authorization
- A description of the land use or water management activity for which the applicant requests incidental take authorization
- A Candidate Conservation Agreement that complies with the requirements of the CCAA policy available from the Service

## **Section 7**

Under Section 7 of the ESA, federal agencies must ensure that actions they authorize, fund or carry out are not likely to jeopardize the continued existence of endangered, threatened, or proposed species or result in the destruction or adverse modification of designated critical habitat of listed species by federal agency actions. Because issuance of an ITP or ESP is a federal action, the Services consult with themselves to ensure ITP/ESP issuance will comply with Section 7 of the ESA. This EIS is being prepared to support possible issuance of an ITP and/or ESP, which requires compliance with ESA Section 7.

### **1.5.1.2 National Environmental Policy Act**

The NEPA of 1969, as amended, applies to all federal agencies and most of the activities they manage, regulate, or fund that affect the environment. It establishes environmental policies for the nation, provides an interdisciplinary framework for federal agencies to assess environmental impacts, and contains "action-forcing" procedures to ensure that federal agency decision makers take environmental factors into account.

NEPA requires the analysis and full public disclosure of the potential environmental impacts of a proposed major federal action. The issuance of an ITP by NMFS and issuance of an ESP by USFWS, as defined in this EIS, are major federal actions that trigger the NEPA requirement for the analysis and disclosure of the potential environmental impacts of the actions. Pursuant to NEPA, the environmental consequences of the federal incidental take authorizations are being analyzed in this EIS, which is being prepared with the USFWS and NMFS as co-lead federal agencies.

### **1.5.1.3 1996 Amendments to the Magnuson-Stevens Fishery Conservation and Management Act**

The 1996 Sustainable Fisheries Act amended the Magnuson-Stevens Fishery Conservation and Management Act (the Magnuson Act) to add provisions requiring NMFS and the various fishery management councils to identify and protect essential fish habitat (EFH) for

fish species managed under the Magnuson Act. EFH can include coastal areas and oceans, and it can also include rivers used by anadromous fish. The amendments require that whenever federal or state approval is required for any activity, including a non-fishing related activity, that could adversely affect EFH, a consultation similar to the consultation required under the ESA must be conducted. If it is determined that the activity would adversely affect EFH, recommendations would be made on measures that the agency can take to conserve the habitat. The Magnuson Act did not, however, place mandatory requirements on agencies for compliance with conservation measures recommended by NMFS.

Currently, among the covered species EFH has been defined only for chinook and coho salmon. It is currently the policy of NMFS that the terms of an HCP approved by NMFS will fully satisfy the requirements of the Magnuson Act, including its consultation and recommendation provisions. Any assessments required under the Magnuson Act for evaluating potential impacts by other federal agencies on EFH, such as impacts being evaluated by the USFWS for Simpson's proposed CCAA, may be satisfied through the NEPA process.

#### **1.5.1.4 Migratory Bird Treaty Act**

The Migratory Bird Treaty Act of 1918 (MBTA) makes it unlawful to pursue, hunt, capture, kill, or possess or attempt to do the same to any migratory bird or part, nest, or egg of such bird listed in wildlife protection treaties between the United States and Great Britain, Mexico, Japan, and Russia. As with the federal ESA, the act also authorizes the Secretary of the Interior to issue permits for take. The procedures for securing such permits are found in Title 50 of the Code of Federal Regulations (CFR), together with a list of the migratory birds covered by the act. The USFWS has recently determined that an ITP issued under Section 10 of the ESA also constitutes a Special Purpose Permit under 50 CFR 21.27.

#### **1.5.1.5 Bald Eagle and Golden Eagle Protection Act**

The Bald Eagle and Golden Eagle Protection Act makes it unlawful to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest or disturb any bald or golden eagle.

### **1.5.2 Related Federal Laws**

#### **1.5.2.1 Clean Water Act**

The Clean Water Act of 1977 (CWA) is the principal federal legislation designed to protect the quality of the nation's waters. The purposes of the CWA include "the protection and propagation of fish, shellfish, and wildlife." The U.S. Environmental Protection Agency (EPA) is charged with implementing most of the CWA, including Section 303, which contains provisions for establishing and meeting water quality standards. The CWA provides for establishment of Total Maximum Daily Loads (TMDLs) where water bodies are not meeting established water quality standards. The CWA includes provisions for states to assume much of the implementation responsibility, which is largely the case in California. (See subsequent discussion on the Porter-Cologne Water Quality Control Act of 1969.) Many stream reaches and watersheds in the Action Area have been listed as impaired waterbodies by the North Coast Regional Water Quality Control Board (RWQCB).

### **1.5.2.2 National Historic Preservation Act**

The National Historic Preservation Act (NHPA) of 1966, as amended, requires federal agencies to take into account the effects of a proposed undertaking on cultural resources listed or eligible for listing on the National Register of Historic Places (NRHP). The purpose of Section 106 is to ensure that federal agencies consult with state and local groups before non-renewable cultural resources, such as archaeological sites and historic structures, are affected. Section 106 requires federal agencies to take into account the effects of their actions on properties that may be eligible for listing or that are listed in the NRHP for projects that they finance, permit, or own.

## **1.5.3 State Regulation of Timber Harvesting and Related Activities**

### **1.5.3.1 California Forest Practice Act and Forest Practice Rules**

#### **Overview**

In general, commercial timber operations on state and private land in California are governed by the Z'berg-Nejedly Forest Practice Act of 1973 (Forest Practice Act) as implemented through Forest Practice Rules (Title 14 of the California Code of Regulations [14 CCR]) promulgated by the Board of Forestry (BOF) and administered by the California Department of Forestry and Fire Protection (CDF). Pertinent examples of California Forest Practice Rules (CFPRs) relevant to fish and wildlife habitat management under Simpson's proposed AHCP/CCAA include: (1) the environmental review process undertaken by CDF, with input from other state agencies, that applies to review and approval of proposed commercial timber operations; (2) watercourse and lake protection zone rules; (3) special rules to protect fish, wildlife, and watersheds; (4) rules for defined special treatment areas; (5) rules specific to the requirement for maximum sustained production of high quality timber products; and (6) a methodology for assessing cumulative environmental effects. The CFPRs also incorporate significant requirements contained in other state laws, such as the Porter-Cologne Water Quality Control Act, the California Environmental Quality Act (CEQA), and the California Endangered Species Act (CESA) (see below).

#### **Environmental Review Process**

The CFPRs impose a two-tiered environmental review process on timber harvesting operations in California. The review process is a certified regulatory program that produces the functional equivalent of an Environmental Impact Report (EIR) process and documentation required under CEQA for discretionary permitting decisions by state agencies. As a certified program, it is exempt from CEQA requirements regarding preparation of initial studies, negative declarations, and EIRs. Other provisions of CEQA, however, apply to BOF decisions, such as the policy of avoiding significant adverse effects on the environment (where feasible) and the requirement to consult with responsible agencies.

The first tier of the review process entails the programmatic consideration by the BOF and CDF of environmental impacts common to timber operations and the adoption of rules (the CFPRs) to control those impacts. The second tier of review occurs when the rules are applied to individual timber operations through the preparation, review, and approval of Timber Harvesting Plans (THPs).

A THP is a three-year plan for the harvesting of commercial tree species on private and state-owned forestlands. The primary purpose of the THP is to identify the scope of the proposed timber operations, assess potential site-specific and area-specific individual and cumulative effects on the environment, and discuss all feasible mitigation measures and alternatives that will reduce or avoid potentially significant impacts. Each plan is filed with CDF and reviewed by an interdisciplinary team that, if necessary, also inspects the plan site. No harvesting can occur until the THP for the site is approved. Approval of a THP requires a determination by the Director of CDF that all significant adverse impacts, including cumulative effects, have been avoided or mitigated to a level of insignificance.

Simpson regularly submits proposed THPs to CDF for review by CDF and a state agency review team (comprising the RWQCB, Department of Fish and Game, and Department of Mines and Geology). Additional input is received from interested federal agencies, often including the USFWS and NMFS. Simpson's THPs cover only small areas (generally fewer than 100 acres).

### **Watercourse and Lake Protection Rules**

The California Watercourse and Lake Protection Zone (WLPZ) rules require buffers of specified widths along streams and other bodies of water. They also require maintenance of specified percentages of overstory canopy and understory vegetation in the buffers. These buffers are intended to: (1) provide a vegetative filter strip that will capture and reduce sediment carried by runoff from side-slopes; (2) preserve canopy cover to maintain water temperatures; and (3) provide for filtration of organic and inorganic material and vegetation, as well as streambed and flow modification by instream woody debris. In addition, the construction, use, and maintenance of logging roads, skid trails, and landings are regulated to minimize erosion and sedimentation impacts to watercourses and to remove or prevent in-stream obstructions to unrestricted fish passage.

### **Special Rules for Wildlife and Sensitive Watersheds**

The CFPRs also require the retention of snags, intended for wildlife purposes and for the recruitment of large woody debris (LWD) for instream habitat through retention of larger living trees near aquatic habitats. Specific habitat protection and harvesting prescriptions are established for wildlife species designated as sensitive species. In addition, wildlife needs must be considered in the cumulative effects assessment, discussed below.

If substantial evidence exists that timber operations within a planning watershed will create a reasonable potential to cause or contribute to ongoing, significant cumulative effects on resources within the watershed, the BOF may classify the planning watershed as sensitive. Subsequent to classification, the BOF may further define watershed-specific performance standards for timber operations that will avoid or mitigate new or continuing significant cumulative effects. None of the planning watersheds in Simpson's proposed AHCP/CCAA have been designated as sensitive watersheds by the BOF.

Further, the CFPRs stipulate that no THP can be approved if it would result in an unauthorized taking of species listed under either the federal or state ESAs.

### **Special Treatment Area**

The state Coastal Commission has designated a number of special treatment areas along the north coast of California, within which general development and various management

activities are restricted. Approximately 280 acres of Simpson's proposed AHCP/CCAA coverage area lies within any of these designated areas.

The state BOF, however, has created a separate network of special treatment areas (STAs) that could limit the scope of silvicultural treatments, including the size of clearcut units, time intervals between harvest entries, and logging practices that may be employed. STAs under the CFPRs are specific locations containing one or more of the following significant resource features:

- Are within 200 feet of the watercourse transition line of federal or state designated wild and scenic rivers
- Are within 200 feet of national, state, regional, county, or municipal park boundaries
- Are key habitat areas of federal or state designated threatened, rare or endangered species
- Are within 200 feet of state designated scenic highways

Approximately 1,800 acres in Simpson's proposed AHCP/CCAA coverage area are considered STAs by virtue of being within 200 feet of state or federal park lands.

### **Maximum Sustained Production of High Quality Timber Products**

Pursuant to the Forest Practice Act, the BOF adopted regulations designed to achieve the goal of maximum sustained production (MSP) of high-quality timber products, while giving consideration to various other forest benefits and amenities. Each proposed timber harvest operation must demonstrate that it will contribute toward achievement of MSP. Pursuant to Section 913.11(a) (also known as "Option [a]") of the CFPRs, MSP will be achieved by:

- Producing a yield of timber products specified by the landowner, which takes into account biological and economic factors, as well as consideration of other forest values
- Balancing growth and harvest over time
- Realizing growth potential as measured by adequate site occupancy by the tree species to be managed and maintained given silvicultural methods selected by the landowner
- Maintaining good stand vigor
- Providing for adequate regeneration, as defined in the CFPRs

### **Cumulative Environmental Effects**

The CFPRs provide that all THPs must address cumulative environmental effects, which are defined as two or more individual effects that, when considered together, are considerable or that compound or increase other environmental impacts. Under the CFPRs, the cumulative impact from several projects is the change in the environment that results from the incremental impacts of a project when added to other closely related past, present, and reasonably foreseeable future projects. The CFPRs provide that no THP can be approved unless it avoids or mitigates with feasible measures all significant environmental impacts, including cumulative impacts. Each THP is required to include a CEQA-based assessment of potential cumulative impacts and, if necessary, avoid or mitigate such impacts to a level

of insignificance, and incorporate feasible mitigation measures that exceed those required by the CFPRs.

### **CFPRs as Baseline for No Action**

As discussed in Section 2.1, the CFPRs are part of the No Action Alternative. The No Action Alternative also includes Simpson's operational policies and guidelines.

In response to a joint request made by NMFS and the California Resources Agency, an independent Scientific Review Panel found in 1999 that the CFPRs and their implementation (the forest practice rulemaking process, the rules themselves, and the THP review and approval process) do not "achieve properly functioning habitat conditions" necessary to "adequately conserve anadromous salmonids" listed under the ESA (Ligon et al., 1999). Since then the BOF has adopted "interim" rules for Class I watercourses that further strengthen the forest practice rules and the THP process. NMFS continues to find that the CFPRs do not ensure the achievement of properly functioning habitat for conservation of anadromous salmonids throughout their range in California, although forest practices operations conducted pursuant to this process in a particular area, land ownership, or region under this process may achieve such conditions.

### **1.5.3.2 California Environmental Quality Act**

Similar to NEPA, CEQA requires state agencies with discretionary permitting authority to evaluate the environmental effects of a proposed project. If one or more significant impacts are identified, a detailed EIR must be prepared. If no significant impacts are determined or if all of the significant impacts can be mitigated to levels less than significant, a negative declaration is prepared. CEQA also requires that a negative declaration or Draft EIR be prepared if a project has statewide, regional, or area-wide significance, including projects that would substantially affect sensitive habitats.

As noted above, the preparation, review, and approval of THPs that detail activities associated with timber harvesting on state and private lands serves as the functional equivalent of an EIR under CEQA.

### **1.5.3.3 Porter-Cologne Water Quality Control Act**

The California Porter-Cologne Water Quality Control Act of 1969 authorizes RWQCBs to establish water quality objectives necessary for the reasonable protection of beneficial uses, including preservation and enhancement of fish, wildlife, and other aquatic resources or preserves. The objectives are stated in basin plans. The North Coast Basin Plan, which encompasses Simpson's ownership, includes water quality objectives for several pollutants associated with non-point source discharges from timber operations. These include the suspended sediment load and suspended sediment discharge rate of surface waters, turbidity, and the natural receiving water temperatures of intrastate waters. The North Coast Basin Plan regulates certain practices relating to logging and related activities pursuant to the North Coast RWQCB's authority to regulate discharges of pollutants that may affect water quality. Under the CFPRs, no THP may be approved if it would result in the violation of an applicable Basin Plan provision.

As previously noted (see Clean Water Act above), the State Water Resources Control Board (SWRCB) and regional water boards implement the federal CWA in California under the

oversight of the EPA, Region IX. Direction for implementation of the CWA is provided by the Code of Federal Regulations (40 CFR) and by a variety of EPA guidance documents on specific subjects. The SWRCB and the North Coast RWQCB have the authority and responsibility to ensure compliance with the provisions of the CWA in the north coast region of California, which includes Simpson's northern California ownership.

#### **1.5.3.4 Streambed Alteration**

Pursuant to California Fish and Game Code sections 1600-1603, the Department of Fish and Game (CDFG) regulates the alteration of streambeds through streambed alteration agreements. Under these provisions, CDFG specifies conditions that must be followed during timber operations to protect fish and wildlife resources that could be impacted by the construction of stream crossings and related timber harvest activities.

#### **1.5.3.5 California Endangered Species Act**

The CESA is part of the California Fish and Game Code. As a guide to state agencies, Section 2053 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."

The CESA also states, however, that such reasonable and prudent measures must at the same time maintain the project purpose to the greatest extent possible. CESA also prohibits take of species listed or proposed for listing as endangered or threatened and provides a number of regulatory mechanisms to authorize the incidental take of species.

### **1.5.4 Related State Laws**

#### **1.5.4.1 Timberland Productivity Act**

The California Timberland Productivity Act of 1982 (TPA) affirms the state's interest in providing a favorable climate for long-term investment in forest resources through establishment of "timberland production zones" (TPZs). The use of lands designated as TPZ is limited to the growing and harvesting of timber and uses compatible with those activities. All of Simpson's lands included in the coverage area for its proposed AHCP/CCAA are zoned as TPZ.

## **1.6 Simpson Planning and Management**

### **1.6.1 Silviculture and MSP**

Simpson's lands that would be covered by the provisions of the proposed AHCP/CCAA are characterized by a number of unique conditions based on climate, tree species mix, geologic factors, and past harvesting and management history. The conifers of primary economic value on Simpson's lands are coast redwood and Douglas-fir, which require substantial direct sunlight to grow rapidly at young ages. Even-aged silvicultural techniques are used to promote propagation of these species throughout the North Coast redwood region.

Although the use of uneven-aged regeneration systems can be beneficial to many shade-tolerant species, such as western hemlock and white fir, these systems generally are less suited to the economically valuable redwood and Douglas-fir which grow at maximum rates when free to grow in full sunlight (Smith, 1962; USFS, 1973; Perry, 1994). On the basis of the unique growing conditions of the region and the long-term management approach implemented by Simpson, Simpson feels the continued use of even-aged regeneration tools is necessary to support its management and business objectives, as well as to achieve the state law mandates of maximum sustained production of high quality timber products as discussed below. Appendix A provides a table outlining considerations for selecting even-aged versus uneven-aged management.

### **1.6.2 State Laws and Regulations**

As noted above, Simpson operates its timberlands under multiple regulatory controls. The California Forest Practice Act mandates the achievement of maximum sustained production of high quality timber products and consideration of other significant values, including protection of wildlife, fisheries, water quality, and regional economic vitality and employment. In addition, all of Simpson's lands that would be covered by the ITP/ESP are designated as TPZ under California's TPA, which limits the use of TPZ lands to growing and harvesting timber and uses compatible with those activities. California's timber harvest regulations also require compliance with water quality protection measures adopted by Regional and State Water Boards under the Porter-Cologne Water Quality Control Act. Further, all timber harvesting is subject to the federal and state ESAs, and the CFPRs stipulate that no THP may be approved if it would result in an unauthorized taking of species listed under those acts.

### **1.6.3 Watershed and Landscape Plans**

Although timber harvesting operations are regulated at the individual THP level, many of the productivity, resource protection, and environmental issues may be addressed on a larger landscape scale. Simpson has undertaken a number of watershed- and ownership-level planning efforts to protect terrestrial wildlife and aquatic habitat that meet or exceed state standard rules and regulations. These planning efforts are designed to address the State of California's mandates of: (1) enhancing timberland productivity; and (2) protecting endangered species, timber resources, and related environmental values. The planning efforts also seek to reconcile those mandates with Simpson's management objectives and the unique environmental and productivity conditions on Simpson's ownership. Simpson feels that even-aged management is also key to implementation of these other landscape management templates, including the Simpson Northern Spotted Owl HCP (see below), and achievement of maximum sustained production on Simpson's lands under Option (a).

Simpson has developed a substantive database on site-specific and regional conditions by conducting extensive data gathering and scientific research. The results of this research are incorporated in the watershed and ownership planning efforts. These various plans form the basis of Simpson's short- and long-term management decisions. Many of the internal policies, programs, and measures used by Simpson to govern planning and management on its lands are discussed below.

### **1.6.3.1 Northern Spotted Owl Habitat Conservation Plan**

The proposed AHCP/CCAA builds on conservation provided under Simpson's HCP for the northern spotted owl (NSOHCP), which provides protection to the AHCP/CCAA covered species through resource management measures, such as enhanced stream protection zones and wildlife habitat retention areas. In addition, the NSOHCP also provides some benefit to 39 other terrestrial species thought to be the most sensitive to timber operations on the ownership.

### **1.6.3.2 Maximum Sustained Production Option (a) Document**

Simpson manages its properties for the primary purpose of growing and harvesting commercial timber. Implicit in this goal is achievement of a sustained yield in perpetuity (i.e., the harvesting of timber at a rate commensurate with the ability of the land base to grow replacement trees). Simpson's "Option (a)" document is the company's blueprint for achieving maximum sustained production of high quality timber products over a 100-year planning horizon. The Option (a) document is submitted as part of Simpson's THPs to demonstrate compliance with the CFPR mandate that each THP demonstrate achievement of MSP. Similar to the NSOHCP, the Option (a) document is premised on the primary use of even-aged regeneration methods to meet MSP and wildlife habitat objectives given the unique conditions of Simpson's ownership and this region. The document also provides consideration to other significant values, including protection of wildlife, fisheries, water quality, and regional economic vitality and employment.

### **1.6.3.3 Road Management Policy**

Simpson currently has approximately 2,000 miles of management roads on its ownership in northern California. These roads are used by Simpson for land management activities and historically by the public for various recreational activities. Roads can be sources of erosion, particularly if improperly used or maintained. Erosion problems, road maintenance costs, as well as concerns over wildlife species sensitivity, have prompted Simpson over the last several years to restrict hundreds of miles to motorized public use through construction and installation of gates, barricades, and earthen berms. These restrictions benefit salmonids and other aquatic species by reducing erosion and associated sediment delivery to streams. They also benefit terrestrial wildlife species that are sensitive to local human presence. In addition, Simpson has invested substantial economic resources in road reconstruction and maintenance that is not associated with timber harvesting plan operations. The investment is intended to minimize further any sedimentation of aquatic habitat.

### **1.6.3.4 Other Programs and Measures**

Other programs and measures that provide a foundation for Simpson's proposed AHCP/CCAA are:

- A long-term stream channel monitoring program initiated in 1995 (active and ongoing)
- Stream assessments and studies of aquatic species conducted on Simpson property since 1993 (active and ongoing)
- The Salmon Creek Management Plan, prepared in 1993 in coordination with CDF, the CDFG, and the North Coast RWQCB (active and currently being implemented)

- The Management Strategies for the Little River Watershed, prepared in 1999 after Simpson acquired the Little River timberlands formerly owned by Louisiana-Pacific Corporation (active and currently being implemented)
- A cooperative effort with the Yurok Tribe fisheries staff and the Coastal Conservancy on a long-term program to restore anadromous fish habitat in 30 basins and sub-basins of the lower Klamath River (active and ongoing)
- A cooperative effort with Redwoods National Park in the upper Redwood Creek watershed to inventory roads and hillslopes and prioritize treatment areas to reduce the risk of future erosion (currently inactive, but may be resumed)
- Habitat restoration and enhancement projects completed in cooperation with restoration groups on 33 streams (active and ongoing)
- Standardized field methods to assess salmonid populations and habitat, originally developed through cooperative efforts of the Fish, Farm, and Forest Communities Forum (active and currently being implemented)
- The Redwood Creek Total Maximum Daily Load (TMDL) Implementation Plan proposed by the Redwood Creek Landowners Association (under consideration, but not currently implemented)

#### **1.6.3.5 Structure of Simpson's Timberlands Operations**

On December 31, 2001, Simpson Timber Company transferred its California timberlands assets to a new affiliate, Simpson Resource Company. The timberlands employees and management functions associated with those assets will be transferred to Simpson Resource Company around June 30, 2002. All references in this EIS to past or continuing operation of Simpson are intended to refer to past operation of the Simpson timberlands when they were owned and operated by Simpson Timber Company.

#### **1.6.4 AHCP/CCAA Planning and Development**

Simpson submitted its application for an ITP and ESP in the context of the above-discussed regulatory controls, which, under ESA Section 10, limit, shape and authorize, the "otherwise lawful activities" to which the take for which Simpson seeks authorization will be incidental. Accordingly Simpson's AHCP/CCAA is premised on achieving and maintaining consistency with the above-discussed legal and regulatory controls as well as management objectives.

Under the proposed action, the Services would authorize take of species covered under the plans pursuant to ESA Section 10, but the take must be incidental to otherwise lawful activities. In the context of the ESA and this EIS, those "otherwise lawful activities" include Simpson's timber harvesting operations that are regulated and approved under state law. Accordingly, the federal action does not include authorization of the harvesting itself.

According to Simpson, its proposed AHCP/CCAA is necessarily designed to be consistent with Simpson's unique management and productivity objectives that are based on Simpson's extensive site-specific and regional analysis, as reflected in the various internal planning templates. In addition to the ownership-wide planning processes and documents

used by Simpson to address its company-specific operating mandates, Simpson must also comply with all the applicable laws and regulatory requirements discussed above, including the CFPR requirements for incorporating into THPs measures that are designed to protect aquatic species and their habitats. The CFPRs also prohibit approval of THPs that would result in the unauthorized take of a listed species. However, rather than relying solely on the THP process to determine what measures to use for protecting aquatic species and their habitats, the HCP/CCAA process provides ownership-wide protection for aquatic species and their habitats and also addresses Simpson's needs of obtaining greater regulatory certainty and remaining competitive in the forest products market.

As with the other environmental and productivity concerns discussed above, Simpson has determined that protection of aquatic species and their habitats is best addressed at the ownership level. Accordingly, Simpson has proposed an HCP/CCAA that, if approved, would add an additional planning "template" to Simpson's existing plans relating to forest and resource management.

Simpson indicates that it seeks greater regulatory certainty in the operation of its business by obtaining the ITP and ESP. Approval of these permits would improve Simpson's ability to conduct long-term forest planning and contribute to a stable business climate that supports Simpson's ability to remain competitive in the forest products market. Incidental take authorization based on an HCP and a CCAA would allow greater certainty for Simpson's forest planning by providing assurances that, so long as Simpson complies with the terms of the HCP and CCAA, Simpson would not become subject to more stringent ESA-related regulatory conditions than what is required pursuant to the ITP and ESP for covered species during the term of the permits.

## **1.7 Consultation and Coordination**

### **1.7.1 Scoping**

Public scoping was conducted to identify issues and concerns pertaining to implementation of Simpson's proposed AHCP/CCAA and the content of this EIS. The scoping process involved solicitation of comments from the public, as well as feedback from other agencies, tribal groups, and organizations.

The Services and Simpson held four public scoping meetings over a two-day period on July 11 and July 12, 2000 in Eureka and Crescent City, California. Prior to these meetings, the Services published an NOI in the Federal Register (July 11, 2000, 65 FR 42674) to advertise the Services' intent to prepare an EIS and to announce the public scoping meetings. The NOI, provided information on the background and purpose of the proposed AHCP/CCAA, requested public comment on the EIS for the AHCP/CCAA within a 30-day comment period, and provided preliminary information on the public scoping meetings. The meetings also were advertised in the local Eureka and Crescent City newspapers, as well as through mailings to members of the public who had previously expressed interest in the AHCP/CCAA.

The objectives of the meeting were to inform the public about Simpson's AHCP/CCAA and the associated EIS, and to solicit public comment on the scope of the EIS for the Proposed Action and possible alternatives for consideration in the EIS. During these meetings, Simpson outlined the proposed AHCP/CCAA and opened the floor to questions and

comments. Additional public input was obtained during pre-meeting “open house” sessions that allowed the public to view poster material on the AHCP/CCAA and to visit with representatives from Simpson and the Services on a more informal basis.

Simpson also held a series of six informational meetings with cooperating agencies and local tribal groups. Meeting objectives were to inform the agencies and tribes (Yurok Nation and Hoopa Tribe) about Simpson’s AHCP/CCAA, solicit feedback on the AHCP/CCAA, and receive suggestions on the content of the associated EIS. Agencies in attendance were:

- State of California Resources Agency
- CDFG
- California Department of Forestry and Fire Protection (CDF)
- California Department of Mines and Geology (CDMG)
- California Department of Parks and Recreation
- SWRCB
- North Coast RWQCB
- U.S. Forest Service (USFS)
- EPA

Informational meetings were conducted using a presentation/question-and-answer format, and were hosted by Simpson. The meetings were held as follows: August 11, 2000 (Simpson offices, Eureka); August 18, 2000 (CDFG offices, Redding); August 25, 2000 (Yurok Tribal offices, Eureka); August 29, 2000 (CH2M HILL offices, Sacramento); August 30, 2000 (North Coast RWQCB offices, Santa Rosa); and September 21, 2000 (Hoopa Tribal offices). Attendees signed an attendance list with their affiliation and introduced themselves at the beginning of the meeting to the group. Attendees were informed that they should ask questions during or after the presentation as necessary.

### **1.7.2 Summary of Scoping Comments**

Comments on the EIS were grouped into five broad categories: (1) suggested alternatives; (2) general comments regarding the contents of the EIS; (3) scope of the impacts analysis; (4) analysis of impacts on aquatic species; and (5) analysis of other impacts. All comments are summarized in greater detail in the Scoping Report for this EIS dated September 18, 2000 and included herein as Appendix B.