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BOARD OF FORESTRY AND FIRE PROTECTION

June 15, 2015

J. Keith Gilless, Chairman
California Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244

RE: Comments on 45-day Notice for Proposed Adoption of Regulations for the Working Forest Management Plan

Dear Chairman Gilless and Board Members:

The Environmental Protection Information Center submits these comments for consideration by the Board of Forestry and Fire Protection in its review of the proposed regulations for the "Working Forest Management Plan" documents and review process.

The Environmental Protection Information Center ("EPIC") is a community-based, membership driven environmental non-profit organization that speaks for both its members and supporters. EPIC has established a long history of engagement in the monitoring and enforcement of laws and regulations related to private timberland management over the last 37 years. EPIC has been on the forefront of enforcing laws requiring sustainable forest practices, including its successful challenge to the Pacific Lumber/Maxxam Sustained Yield Plan. EPIC advocates on behalf of its members for sustainable forest practices to ensure protection of all natural resources, including water, protected and listed species, and cultural and historic sites. EPIC members are directly impacted by private land forest operations, particularly in terms of impacts to natural resources, wildlife and fisheries, water quality and quantity, ecological processes, and aesthetics. Timber operations which cause adverse environmental harm have a direct impact on EPIC members, particularly because of the loss of timberland productivity and failure to adequately protect natural resources which depend on quality timberlands. For example, EPIC members from throughout California require clean and adequate water sources, and pure air – resources which are directly affected by poorly regulated logging practices throughout California. EPIC maintains rulemaking by the Board of Forestry and Fire Protection ("Board") must adhere to all applicable laws to ensure sustainable forestry and protection of natural resources will be an effective standard for private land timber management.

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INTRODUCTION

EPIC believes good management planning can benefit resource protection, particularly if it defines long-term resource planning standards, identifies and evaluates landscape issues, provide mechanisms to remedy legacy and operational environmental impacts, and includes an ongoing feedback-loop that monitors practices and conditions to maintain ecological processes and increase productivity and sustainable forestlands while protecting natural resources.

The California Legislature passed AB 904 to provide a landscape planning mechanism for non-industrial timberland owners with ownerships of less than 15,000 acres. While EPIC did not support AB 904, now that it is law, EPIC wants it to be implemented in a manner that is effective and consistent with the Legislative intent "to encourage long-term planning, increased productivity of timberland, and the conservation of open space on a greater number of nonindustrial working forest ownerships and acreages." (PRC § 4597(a)(3)). Thus, EPIC supports the policy to "encourage prudent and responsible forest resource management of nonindustrial timberlands" through development of good "Working Forest Management Plans." (PRC § 4597(a)(4)). EPIC believes, as did the Legislature when it enacted AB 904, that to achieve benefits such as "added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, aesthetics, and the maintenance of ecosystem processes and services," the Working Forest Management Plan must comply with *rigorous timber inventory standards* that ensure uneven aged management and sustainability, and are subject to periodic review and verification. (*Id.*, (a)(5)). (Emphasis added).

A Working Forest Management Plan ("WFMP"), by definition, is a management plan with objectives of "maintaining, restoring, or creating uneven aged managed timber stand conditions, achieving sustained yield, and promoting forestland stewardship that protects watersheds, fisheries and wildlife habitats, and other important values." (PRC § 4597.1 (j)). Only landowners with less than 15,000 acres of timberland, and who are not primarily engaged in the manufacture of wood products, are eligible to secure approval of a WFMP. (*Id.*, (i)). These landowners must have the objective of "an uneven aged timber stand and sustained yield" which they propose to achieve through implementation of a WFMP. (PRC § 4597.2).

The Legislature directed the Board of Forestry to adopt regulations as needed to implement AB 904 provisions. (See, e.g., PRC §§ 4597.2(l), 4597.3, 4597.8, 4597.11(m), and 4597.12(b)). EPIC has previously provided comment on Board committee drafts of proposed WFMP regulations. From our review of this most recent proposal, it does not appear that the Board has made changes as suggested by EPIC, or addressed important issues which render the regulations vulnerable to challenge as not being in compliance with the Administrative Procedure Act or other laws. To secure the record on this lack of response, EPIC includes with this comment letter its previous comment letters date April 7, 2014 and March 2, 2015, which are incorporated by reference herein **(Attachments A and B)**. EPIC has once again reviewed the entire rule package and provides these comments to identify its concerns.

One of EPIC's primary concerns all along is the Board's failure in previous drafts to provide actual interpretation and clarity of the statutes enacted pursuant to AB 904, and instead to simply restate much of the statutory language. It is clear from this most recent rule package that the Board proposes to adopt a rule package which relies extensively on the statutory language without interpretation and guidance for effective implementation. EPIC strongly disagrees with this approach, as it fails to provide the necessary guidance to ensure the legislative goals and

objectives. EPIC presented many examples of this in our earlier comments, which are incorporated by reference here. The Board's Initial Statement of Reasons ("ISOR") again tries to justify this practice under a theory that "duplication of statute" was necessary for "consistency" and "to satisfy the clarity standard." (ISOR, at p. 7). EPIC disagrees. Because the draft regulations now duplicate language, or in some cases introduce new language which further confuses the statutory standards, many of the regulations do not satisfy the Administrative Procedure Act standards for clarity and consistency. In the absence of necessary guidance and interpretation, the regulations as drafted do not provide the basic information required by, or offer interpretation of, governing statutes in a manner that will achieve the California's stated goals and objectives in authorizing WFMPs.

Underlying this regulatory effort is the reality that over one million acres of forest land may be eligible for and receive Working Forest Management Plan approval. According to the ISOR, "there are at least 81 landowners who would qualify under the new WFMP program." (ISOR, at p. 5). That represents an additional **1,214,999** acres that could be placed under the proposed lifetime plans. The Board estimates that of these 81, "at least 60 used even aged management (i.e. clear cutting) at some point." (*Id.*).

EPIC tried to identify the location of these 81 ownerships to evaluate their location and determine the potential for impact within differing forested areas and ecosystems. EPIC requested a copy of the source document(s) for this statement. In response, the Board staff provided legislative analyses which included the same statement as in the ISOR. In response to a follow-up request, Board staff provide a 2-page "NTMP Expansion Study" document issued by the California Department of Forestry and Fire Protection ("CAL FIRE: or "Department") which described CAL FIRE's process to identify WFMP eligible forestland in California, resulting in a map specifically identifying 80 potential landowners that could be eligible for a WFMP. When asked for this information, the Board could not provide it. EPIC has also asked CAL FIRE for this information through a Public Records Act Request ("PRA"), with no success as of this date. In personal communications with CAL FIRE's Dennis Hall about our request, Mr. Hall indicated that CAL FIRE did not have a responsive document behind the statement; rather, Mr. Hall indicated that the "analysis" was done via a GIS database query, stating that all that the Department could give us was its entire GIS database. In its June 9, 2015 written response to our PRA, the Department stated it would not respond to the PRA until June 25, 2015 as responsive documents were not located at the CAL FIRE Sacramento Headquarters.

This denial of access to information informing these rules has frustrated EPIC's ability to fully evaluate the impact of these proposed regulations. EPIC needs to know the location of the potential 1.2 million acres of forestland that could be eligible for WFMP in order to evaluate the potential for impacts on ecological areas and habitats not evaluated in the proposed regulations or the ISOR. It is imperative that the Legislative intent be fully and accurately implemented in a manner that protects timberland and other natural resources.

These comments focus on core issues which EPIC requests be responded to with changes in the proposed regulations, before the Board may act to approve WFMP regulations. The regulations fail to satisfy the statutory duty embodied by AB 904. They lack necessary definitions. They fail to require content to ensure that long term sustained yield ("LTSY") is plainly stated, and achieved through implementation of uneven aged management and monitoring. The proposed regulations do not require uneven aged management over time. The regulations fail to provide adequate measures to protect water quality, protected and listed species, and cultural and historic

sites. They fail to ensure that cumulative impacts are properly evaluated and mitigated. The regulations fail to meet governing statutory requirements by permitting exceptions to standard rule provisions, and authorizing stocking standards which do not achieve increased timberland productivity. The regulations also fail to meet the statutory requirement for a Five Year Review process. Because of these failures, the Board's proposed rules do not satisfy CEQA requirements.

EPIC requests that before the Board takes action on the proposed rules, it consider and respond in writing to all comments presented, evidence submitted, and the suggestions made.

I. LEGAL FRAMEWORK

Rulemaking is subject to the requirements of the California Administrative Procedure Act ("APA"). To be effective, a regulation must be consistent and not in conflict with the governing statute, and must be reasonable necessary to effectuate the purpose of the statute. (Gov't Code § 11342.2). To be approved by the Office of Administrative Law, the regulations must satisfy these criteria: necessity, authority, clarity, consistency, reference and non-duplication. (Gov't Code § 11349.1). "Necessity" means to effectuate the purpose of the governing statute, taking into account the totality of the record before the agency at the time of approval. (Gov't Code § 11349 (a)). "Clarity" means the regulation must be "easily understood" by those who are directly affected by them; "consistency" means "being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions or other provisions of law." (*Id.*, subd. (c) and (d)). A notice of proposed rulemaking must include discussion of "matters required by statute(s) applicable to the specific state agency or to any specific regulation or class of regulations." (Gov't Code § 11345.5 (a)(4)). The proposed rules do not meet these standards.

The Board's rulemaking must meet the standards of the Forest Practice Act, including AB 904, the legislation which enacted the Working Forest Management Plan provisions codified in the Forest Practice Act as Public Resources Code sections 4597 - 4597.22. Rules must satisfy the Forest Practice Act goal of maximum sustained production of *high quality timber products* while protecting natural resources and other values. (PRC § 4513). (Emphasis added). Rules must comply with AB 904's intent, which requires a Working Forest Management Plan to "comply with rigorous inventory standards" intended to "ensure long-term benefits such as added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, aesthetics, and the maintenance of ecosystems processes and services." (PRC § 4597 (a)(5)). The proposed rules are not in compliance with the Forest Practice Act governing goals because they lack necessary standards and clarity.

The Board must follow the California Environmental Quality Act ("CEQA") in the review and approval of regulations. Pursuant to CEQA, the Secretary of Resources has certified the rulemaking process by the Board as a "regulatory program" within the meaning of Public Resources Code section 21080.5. Section 21080.5 of CEQA provides a mechanism for the use of an environmental review document "in lieu of the environmental impact report." In adopting regulations, the Board must comply with all requirements of CEQA except those provisions of Chapters 3 and 4 of CEQA (commencing with sections 21100 and 21150), and Public Resources Code section 21167. The Board must also comply with its certified program, consisting of its legislative mandates and regulations. A certified program remains subject to other provisions in CEQA, including the policy of avoiding significant adverse effects on the environment, (14 CCR

§ 15250), and adequate evaluation and mitigation of cumulative impacts. (*EPIC v. Johnson* (1985) 170 Cal.App.3d 604).

The CEQA certification statute specifies the minimum requirements for Board regulations. These include requirements that the rules ensure that projects approved pursuant to Board rules (1) will not be approved if there are feasible alternatives or feasible mitigation measures available that could substantially lessen a significant adverse effect of the activity on the environment; and (2) are subject to and include orderly evaluation and which requires the plan document to be consistent with the environmental protection purposes of the FPA. (PRC § 21080.5(d)(2)(A), (B)). The CEQA certification also requires that the plan that is subject to the rules, such as the Working Forest Management Plan, must include a "description of the proposed activity with alternative to the activity, and mitigation measures to minimize any significant adverse effect on the environment from the activity." (PRC § 21080.5(d)(3)(A)). CEQA requires that any project be evaluated for the potential for, and avoidance at time of approval of, significant and cumulative adverse impacts upon the environment. (PRC §§ 21000, 21001, 21003.1, 21080.5(d)(3)(A)).

The Board must comply with its own rulemaking regulations, as well as Public Resources Code section 21080.5 (d). Among other things, these provisions require the Board to evaluate and mitigate possible significant adverse environmental effects, and propose reasonable alternatives to rule proposals. (14 CCR § 1142). The Board must also evaluate during its process how well the proposed rules would serve the policies of the Forest Practice Act ("FPA"), eliminate any avoidable environmental damage, serve the production of high quality timber while maintaining the productivity of all affected resources, and how the rule proposal could be modified to more effectively accomplish the purposes of the Forest Practice Act. (14 CCR § 1144).

The proposed regulations fail to satisfy these legal standards. The ISOR and the proposed rules do not provide adequate standards to evaluate significant adverse individual and cumulative impacts on the environment, fail to provide standards for mitigation and/or minimization of significant adverse individual or cumulative impacts, and fail to identify or describe reasonable alternatives to the proposed regulations that could potentially minimize or mitigate to insignificance any potential significant adverse individual or cumulative impacts to the environment.

In addition, the APA requires the agency to consider all relevant matters presented to it before adopting regulations. (Gov't Code § 11346.8). Despite this clear obligation, the Board's Notice of Proposed Action advises that the Board will not consider any oral comments presented at the scheduled June 17 hearing. The notice advises that "[a]t the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, *but does not require*, that persons who make oral comments at the hearing also submit a summary of their statements." (Notice, at p. 1). (Emphasis added). The Notice then states that the "Board *will consider only written comments* received at the Board office by that time and those written comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing." (Notice, at p. 2). (Emphasis added). In this way, the Notice advises that oral statements given at the public hearing will not be considered by the Board. This violates the APA and eviscerates the fundamental purpose and function of the public hearing for rule making.

II. THE REGULATIONS FAIL TO SATISFY THE INTENT OF THE STATUTE

A. The Regulations Fail to Provide Essential Standards.

AB 904 expressly declares that the "working forest management plan shall comply with rigorous timber inventory standards." (PRC § 4597(a)(5)). These standards are needed to ensure the long-term benefits outlined in the statute, including "added carbon sequestration," "sustainable production of timber and other forest products," and "the maintenance of ecosystems processes and services." Yet, the proposed regulations fail to identify any "rigorous timber inventory standards." In fact, the proposed regulations do not provide any clearly stated timber inventory standards. While proposed rule 1094.6 requires "description" of "inventory design and standards," including types of projections or models used to make projections of growth and yield, (subsection (g)), or "inventory design and timber stratification criteria" to support growth and yield calculations used to determine LTSY, (subsection (h)), these provisions do not provide any actual standard, much less "rigorous" timber inventory standards, that must be satisfied. In doing a search of the entire proposed rule package, there is not one reference to "inventory standard," or "timber inventory." The rules fail to meet the required APA necessity and consistency standards because they do not include "rigorous timber inventory standards."

The proposed rules fail to provide clear definitions for the "long-term benefits" the rigorous timber inventory standards are intended to ensure. For example, the proposed rule package fails to define or give interpretation to the terms such as "added carbon sequestration," "sustained production of timber and other forest products," or "maintenance of ecosystems processes and services." (PRC §4597(a)(5)). This failure contributes to the legal deficiency of the rule package, by not providing necessary interpretation of core statutory provisions.

AB 904 expressly requires that a WFMP include the objective of "maintaining, restoring or creating uneven aged managed timber stand conditions," PRC § 4597.1 (j), and that a WFMP may be submitted only by a landowner "with the long-term objective of an uneven aged timber stand … through the implementation of the [WFMP]." (PRC § 4597.2). Yet, the proposed rules do not include any requirement that the landowner state or commit to the objective of uneven aged management. Nor does the proposed rule package require an express statement and identification for uneven aged management. Instead, proposed rule 1094.6 states that a "function" of the WFMP is to "provide information and direction for timber management so it complies with ....*management objectives of the landowner(s)*." (Emphasis added). AB 904 says nothing about undefined landowner management objectives. Introducing this ambiguous provision to guide the WFMP, while failing to provide the statutory "rigorous timber inventory standards," and regulations to require implementation of the stated objective of uneven aged management, is contrary to the statute and not authorized. As such, it violates the APA. The proposed regulations place no limits on or definition of what may constitute landowner's "management objectives." There is nothing "rigorous" about allowing a landowner's unbridled management objectives to define timber management as contemplated by AB 904. This too violates the APA due to a lack of authority and consistency.

The proposed rules, and specifically rule 1094.6, do not require an express statement and identification of "long term sustained yield." While there are provisions that require submission of information as to how the plan submitter estimates LTSY, there is no plain requirement for the WFMP submitter to *state* the LTSY. As noted above, there is no provision which stipulates that

the WFMP submitter must conduct uneven aged management to reach LTSY, or to maintain LTSY. The ISOR advises that this rule package is intended to "incentivize" uneven aged management, (ISOR at p. 5), yet the rules themselves do not require uneven aged management over time, into the future, or upon realization of the (unstated) LTSY, much less incentives to use uneven aged management. As such they do not satisfy the intent and purpose of AB 904, e.g., to provide "increased productivity of timberland" and to be a plan to achieve the long-term objective of an "uneven aged timber stand and sustained yield through implementation of a working forest management plan." (PRC §§ 4597(a)(3), 4597.2).

Additionally, the rules lack any metric to evaluate, consistently over time, whether statutory goals for "sustained production of timber" and "sustained yield" are being achieved. (PRC §§ 4597, 4597.2). Specifically, the rules fail to require regular and ongoing reporting of volume harvested and volume remaining, at least for tree size, species, and stands. In order to achieve sustainability, the volume removed—such as Scribner volume, cubic or board feet – must be recorded to determine whether estimates for removal are being followed. It is also necessary to provide regular reporting of emerging growth, in order to evaluate whether growth projections for the LTSY are accurate or need adjustment. This is needed entirely independent of any Five Year Review for compliance; it is needed to ensure that the purposes of the WFMP are being fulfilled over time.

The failure to provide these key provisions in the proposed rules means that not only has the APA not been followed, but equally CEQA requirements have not been met. The ISOR summarily concludes that the proposed rule package will not result in significant adverse environmental effects. (ISOR at p. 121). This conclusion is insufficient because it is not based on substantial evidence. There is the potential for actual harm due to the lack of "rigorous timber inventory standards," express articulation of landowner objectives, clear statement of LTSY, stated measures and commitment to use of uneven aged management over time, and adequate recording and monitoring of volumes harvested and growth occurring. The lack of these measures means, simply, that WFMPs and their implementation, have the very real potential to cause significant adverse effects on the environment, and particularly timberland productivity and inventories over time, which in turn can adversely impact many natural resources. The ISOR fails to consider or evaluate this potential under CEQA.

The proposed rules and the ISOR do not include real consideration of baseline conditions with regard to the status and plight of threatened and endangered species, nor do the proposed rules or the ISOR adequately evaluate how forest management under the guise of a WFMP may affect these conditions and trends. There is an inherent presumption that the proposed rules will not have a significant adverse impact on the environment. (*See* ISOR at p. 121). As described in more detail below, the proposed rules do not contain adequate standards or safeguards regarding the identification and protection of threatened or endangered species within the WFMP assessment area.

There are numerous examples of forest-associated species currently listed as threatened or endangered that are well-known to be in decline based on the best available science and research. Based on this evidence, there species may be significantly adversely affected by the lack of adequate standards and mitigations in the proposed rules. Yet the ISOR fails to consider and evaluate the potential for significant adverse impact on these species. One well-known species that is experiencing well-documented declines in vital demographic statistics is the Northern Spotted Owl ("NSO"). The latest range-wide demographic study for the NSO documents

declines in reproduction, apparent survival, and overall populations in most study areas. (Forsman et al. 2011, "Population Demography of the northern spotted owls: 1985-2008" ("Forsman et al. 2011"). **(Attachment C)**. This study concludes that past and ongoing habitat loss, combined with increased competition from non-native invasive barred owls are partially responsible for these declines. (Forsman et al. 2011; Abstract). Yet the proposed rule package, in the absence of necessary standards, would permit logging in ways that are harmful to this species.

EPIC specifically objects to the use of existing Rule 919.9(g) [939.9(g)] within a WFMP. CAL FIRE admits that so-called "Option-(g)" under Rule 919.9 [939.9] is inadequate to protect the NSO. At the March 6, 2013 Board hearing, CAL FIRE Deputy Director Duane Shintaku declared the insufficiency of Rule 919.9 (g) to prevent "take" of the NSO:

> "[F]rankly, the Department recognizes that frankly Ken knows we have been working with him prior to retirement in the Service and we have recognized the problems with option-g for quite some time and even before we were handed the full brunt of the responsibility back in 2008 we had heard from the service that option-g was really not adequate. So where did that leave the Department?...there were really just two options....We were really just relying on option-e, the other option that allowed people to avoid take through an HCP and the third was option-g so for quite some time the boards rules with respect 919 and NSO have been outdated, and if you think about it they have been around for 20 years and it's no big mystery that the science has informed what owls need across the landscape.... so first of all CAL FIRE agrees with EPIC in terms of the obsolete nature of option-(g).... so really where we are today is what we are call g+.... what that means is we recognize g is not going to get it done, but the rules specifically say an RPF only has the choices (a)–(g) in order to address a spotted owl in a THP, so because the RPF has to say I am using option-(g)—coupled with the fact that we know option-g is obsolete—that forces the Department into what I would consider a full-blown CEQA analysis. We have to make sure that significant impacts, cumulative impacts and take are all addressed in the plan, and we just use the (g) vehicle to get that done. What does that mean? It means that most of the plans... in which the RPF says I am using option-(g), do not rely on the minimums in the rule today. What that generally means is that they look at the most recent Fish and Wildlife Service guidance and take that high quality nesting/roosting/foraging and the parameters, distances, operating periods incorporated into the plan ....if the only remaining option is option-e.... that creates a huge problem for the plan preparing RPF as well as the Department." (Shintaku 2013, Testimony before Board of Forestry, March 2013). **(Attachment D)**.

Extending the use of a regulation which is ineffective to prevent illegal take of the NSO is contrary to the statutory function of the WFMP to promote forestland stewardship that protects wildlife habitats.

Anadromous salmonid species in California, particularly in coastal watersheds, are similarly in peril. For example, the National Marine Fisheries Service's ("NMFS") has documented that of the literally thousands of Coho, which once returned to Northern California and Southern Oregon rivers and streams, today have over three quarters of SONCC Coho salmon independent populations at high risk of extinction. ("Final Recovery Plan for the Southern Oregon/Northern California ("SONCC") Evolutionary Significant Unit ("ESU") of Coho Salmon" ("NMFS 2014" or "Recovery Plan"), at p. E-2). **(Attachment E).** This Recovery Plan includes an assessment of

the 2010 Anadromous Salmonid Protection Rules ("ASP") which currently regulate timber harvest activities on private ownerships within the range of the SONCC Coho. NMFS staff actively engaged and participated in Board meetings and expressed concern to the Board that the ASP rules, while resulting in some improvements to riparian protections, would not adequately protect anadromous salmonids until several inadequacies in the Forest Practice Rules were remedied. The NOAA Fisheries Service expressed this to the Board in a letter dated September 8, 2009:

> *"For the last 10 years, NMFS representatives have been recommending to the BOF develop either no-take rules (e.g., similar to those for federally listed northern spotted owl and marbled murrelet) or move forward on the development of a section 10(a)(1)(B) statewide permit (e.g. Habitat Conservation Plan [HCP]) that authorizes incidental take of listed salmonid species...However, NMFS finds that the proposed Anadramous Salmonid Protection Rules are not no-take rules, and are unlikely to meet the intent of the rules themselves and are not likely to abate the risk of extinction for listed salmonids where these Rules are implemented."* (NOAA Fisheries letter to Stan Dixon, California Board of Forestry 9/8/09). **(Attachment F)**.

While the proposed rules implicitly indicate the WFMP must comply with Technical Rule Addendum No. 2 for evaluation of cumulative impacts, this is insufficient because the existing Addendum No. 2 fails to adequately evaluate cumulative impacts to anadromous salmonids. While the Board continues to fumble around with its feeble attempts to tweak the language contained in Technical Rule Addendum No. 2 (cumulative impacts assessment), the Board is missing the larger picture related to the causes of, and the need to further regulate, the cumulative impacts of timber harvest activities on properly functioning habitat conditions for Coho and other listed salmonids. The ISOR should have discussed the Board's related rulemaking project to amend Technical Rule Addendum No. 2 and what effects it could have on the WFMP requirement for cumulative impacts assessment.

More recently, another forest-associated species has been proposed for listing under the federal Endangered Species Act ("ESA") by the U.S. Fish and Wildlife Service ("USFWS"). The USFWS has proposed listing of the Pacific Fisher as a "threatened" species under the ESA. In its Draft Species Assessment Report for the Pacific Fisher, the USFWS cites large-scale loss of important habitat components for the fisher due to past 'vegetation management' and timber harvest, and current 'vegetation management' activities. (U.S. Fish and Wildlife Service, 2014b, "Draft Species Report Fisher (Pekania pennant), West Coast Population, January 13, 2014," at p. 55). **(Attachment G)**. The proposed WFMP rules do not attend to the need to prevent loss important habitat components for this species, and the ISOR fails to discuss this as a potential significant adverse environmental effect.

Finally, past and contemporary forest management has had a devastating impact on the federal-threatened and state-endangered Marbled Murrelet. The most recent science indicates that there is an estimated 13 percent loss of the higher suitability habitat over baseline during the period from 1994 to 2008. (Raphael et al. (2011). "Northwest Forest Plan—the first 15 years (1994–2008): status and trend of nesting habitat for the marbled murrelet" ("Raphael et al. 2011)). **(Attachment H)**. Fire has been the major cause of loss of nesting habitat on federal land since the Northwest Forest Plan was implemented; timber harvest is the primary cause of loss on non-federal lands. (Raphael et al. 2011, at abstract).The Marbled Murrelet is well-known to primarily rely on old growth and late successional forest types for its survival. Raphael et al. (2011) shows

that habitat for the Marbled Murrelet continues to decline, and that this species continues to be in great peril.

Neither the proposed rules themselves, nor the ISOR describing the rules, actually require consideration of the potentially significant adverse individual or cumulative effects of forest management activities to be permitted in perpetuity under the WFMP regulations on these species, and fail to describe reasonable alternatives that would minimize or substantially lessen such impacts in violation of CEQA.

The proposed rules also do not contain adequate safeguards or standards to ensure the "maintenance of ecological processes and services" as required by the enacted statute. In particular, there is a lack of adequate standards to require adequate description and evaluation of pre-existing conditions, most notably watercourse conditions. 14 CCR 916.4 articulates a detailed information-gathering requirement for RPFs to utilize in describing and evaluating pre-existing conditions. However, the proposed regulations fail to articulate meaningful standards for disclosure of the information gathered pursuant to the evaluation conducted under 14 CCR 916.4, and fail to articulate measures to be taken to address pre-existing and legacy conditions identified as a result of the analysis. The WFMP is an "in-perpetuity" plan, and as such, the implementing regulations must contain adequate requirements not only for evaluating, but also for addressing pre-existing, legacy, and ongoing impacts. Lacking these safeguards, these regulations have the potential to result in a significant adverse impact on the environment. Moreover, the ISOR fails to evaluate the potential for significant adverse impact to ecological processes and services due to the lack of adequate standards, as required by CEQA for Board rulemaking.

B. The Proposed Regulations Fail to Define Several Terms Which Require Definition.

The proposed regulations lack clarity and consistency because they fail to define essential terms. These include those terms identified above – added carbon sequestration, sustainable production of timber and other forest products, maintenance of ecosystem processes and services, and rigorous timber inventory standards. (PRC § 4597(a)).

In addition, terms used in the proposed rules which have not been defined, and are not clear in their use, include:

- "forestland stewardship" (1094.2(l), 1094.3);
- "management objectives of the landowner(s)" (1094.6);
- "baseline conditions" (1094.6(g)(1));
- "timber volumes" (1094.6(i));
- "similar requirements" (1094.6(j) OPTION 2);
- "LTSY plan" (1094.6 (n)(1));
- "addresses" (1094.6(o));
- "necessary deviations" (1094.8);
- "physical environmental changes" (1094.8(i));
- "significant changes" (1094.16(d)(1)); and
- "proprietary information" (1094.29(g)).

All of these terms require definition to understand their specific meaning, as well as the rule or rule provision which uses these terms. Without definition, the rules which use these terms do not satisfy the APA standard of clarity. Moreover, as ambiguous terms, they may not protect the environment, because to the extent any one or all of them are intended to act as a requirement, that requirement is not readily defined or determined. The ISOR fails to identify or evaluate the potential significant adverse impact from these undefined terms. The lack of definition contributes to the failure to adequately evaluate potential significant adverse environmental effects, define mitigation, and evaluate feasible alternatives – all in violation of CEQA.

III. THE REGULATIONS VIOLATE APA STANDARDS AND CEQA.

The following are comments on specific provisions of the rules which EPIC believes illustrate the lack of APA and CEQA compliance. There are key substantive provisions which must be changed and amended before the proposed rules can be adopted to be in compliance with the law. EPIC requests that the Board consider and respond to each of these items before it takes final action to adopt proposed WFMP rules.

A. The Proposed Rule Specifying WFMP Content Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

In reviewing the proposed WFMP content rule 1094.6, EPIC identified six substantive areas which require changes in order to satisfy the APA and CEQA standards articulated above. These are: (1) LTSY, (2) water quality, (3) wildlife and protected species, (4) cultural and historic sites, (5) cumulative impacts analysis, and (6) use of exceptions to standard rule requirements. For these provisions as identified below, the ISOR failed to provide a reasonable and adequate discussion of potential significant adverse impacts, or necessary mitigation, or considered alternatives that could have eliminated or substantially reduced these potential effects, in violation of CEQA.

1. Long Term Sustained Yield

To reiterate, a major flaw in the proposed rules is the failure to require an express statement from the landowner, in the WFMP or otherwise, of the objective commitment to long term sustained yield and uneven aged management. The failure to require an express statement to show how uneven aged management over time will be used and implemented is a flaw. In addition, the following subsections are insufficient and require changes, as recommended here.

Subsection (g) requires a description of the "planning horizon associated with the estimate of LTSY," and "the period of time necessary to estimate achievement of LTSY." As worded, neither of these provisions are clear as to what is meant by the "estimate" for "achievement" of LTSY. It is unclear whether the determination of LTSY depends on merely an estimate, unknown at the time of WFMP approval, or something more. The regulations need to identify the controls in place to ensure the WFMP commitment toward sustainability and uneven aged management will be achieved. We could find no requirement that the WFMP plainly state the time needed to achieve actual LTSY or to require a stated commitment to uneven aged management over time. This subsection must be clarified to have meaning, and provide better standards to specify LTSY and uneven aged management. In the absence of controls, this provision leaves room for unrealistic estimates for achievement of LTSY, and does not provide for increased productivity of timberlands, sustainability, or protection of resources – in violation

of the APA as well as the Forest Practice Act. The ISOR fails to discuss or evaluate the potential for significant adverse impacts to resources from this lack of definition and controls.

Subsection (h) requires a description of inventory design and timber stand stratification criteria which show that the projected inventory supports the growth and yield calculations used to determine "LTSY by volume." Because "volume" is never defined, the term "LTSY by volume" lacks necessary clarity. Volume can be Scribner volume, board foot or cubic volume, or basal area volume. The volume measurement must be clarified to provide uniformity in determining LTSY.

Subsection (h) also provides three "minimum standards" which must be satisfied in the required description of inventory criteria. Subsection (3) requires projections of LTSY "and volumes available for harvest," without defining what kind of volume (e.g., Scribner, board or cubic foot, or basal area) is being projected. It also requires that the LTSY projections and volumes available for harvest by Stand or Strata shall be "aggregated for the area covered by the WFMP to develop the LTSY estimate." This is unclear. Stands grow at different rates, density, with different competition and site qualities. All may be different from one stand to the next, from one strata to the next, all within the area covered by one WFMP. "Aggregating" does not take these differences into account and may result in skewed LTSY projections. This could result in failing to meet the statutory WFMP objectives, accompanied by adverse environmental impacts on resources such as timber, water quality, and protected species. Yet potential impacts of this language have not been analyzed as required by CEQA. These provisions must be fully defined and interpreted so as to protect timber and natural resources, and provision must be made to evaluate the potential impacts from such aggregating of areas.

Subsection (i) lacks clarity because, while it requires a description of the property and planned activities, it does not provide a time frame for those projections. Thus, for example, while requiring information about the "projected timber volumes and tree sizes to be available for harvest," there is no requirement to identify the time frame for these expected harvest potentials. Is this on an annual basis? For how many years? This is necessary information to understand the accuracy and effectiveness of projected LTSY. Subsection (i) does not define a time frame for projected volumes and tree sizes. The WFMP is permitted to extend into perpetuity; if perpetuity is the time frame then a statement that identifies reliable projected volumes into perpetuity is required. To be clear and consistent with the objectives of the statute, a defined metric is needed to monitor the volume and tree size projections over time. A realistic time frame must be established for these projections, at the end of which the WFMP must be reviewed for conformance to those projections.

Subsection (i) also places no limits on the type of silvicultural method to be applied, even though the statute is clear that the WFMP is intended to achieve "uneven aged timber stand and sustained yield." PRC § 4597.2. Indeed, nowhere do the regulations actually limit or restrict silvicultural methods to uneven-aged management. This is contrary to the plain language of the statute to achieve uneven aged management.

Subsection (n) requires information for management units, including identification of the acres and estimated growth and yield for each planned harvest entry covering the period of time necessary to meet growth and yield objectives. The regulations do not require the WFMP to plainly state the LTSY or the period of time necessary to achieve growth and yield. This can have adverse environmental impacts because the WFMP is a perpetual plan, and without

required time frames, adherence to the policies to ensure protection of the environment, such as sustained production of timber and other forest resources, may be forestalled.

To further illustrate the lack of clarity for LTSY, subsection (q) requires the WFMP to describe "a future schedule of inventory sampling and analysis of LTSY." It appears – though not specifically stated – that this is intended to provide a schedule to update inventory sampling and LTSY analysis. There is no requirement here, or elsewhere, that specifies the *time frame* for a future schedule of inventory sampling and analysis of LTSY. In the absence of any meaningful time frame, this measure fails to provide the necessary structure to ensure that LTSY and sustained yield is being monitored and achieved. There is no provision here or elsewhere which requires disclosure of volumes actually harvested, as opposed to "projections" of yield. This information is necessary to ensure that LTSY - and the required objective for uneven aged management and sustainability - is being achieved. Absent this, the subsection undermines and obfuscates the legislative directive and threatens ecological processes.

For each of these provisions, the ISOR fails to evaluate the potential for significant adverse impact on resources as a consequence of ambiguity, lack of clarity, and failure to implement the statute.

2. Water Quality Protection

Subsection (j) provides two options – one which requires submission of an erosion control implementation plan with "information" as required by 14 CCR § 923.1 (e) – and a second option which requires description of "methods" to be used to avoid significant sediment discharge to watercourses from timber operations. Option 1 is insufficient to ensure protection of potential erosion sites, as section 923.1 (e) sets forth only operation standards for roads and landings, rather than identifying measures to be implemented to ensure erosion control for all operations. Option 2 does provide more disclosure as to what shall be done to avoid erosion from all timber operations (rather than just roads and landings), but authorizes reliance on so-called "similar requirements of other applicable provisions of law" in lieu of providing the required description of methods used to avoid significant sediment discharge to watercourses. In the absence of a definition for "similar requirements," this exemption renders the provision unclear and ambiguous, and may result in significant adverse impacts to the environment which are not analyzed in the ISOR.

3. Protection of Wildlife and Other Vulnerable Listed Species

The proposed rules fail to require documentation that the WFMP landowner has conducted surveys or searches for protected wildlife, plant and other vulnerable species. Subsection (m) requires disclosure only of "known locations" of listed or protected plant and animal species and their key habitats. This is insufficient, and fails to meet the statutory objective to maintain ecosystem processes, (PRC § 4597(a)(5)), and protect fisheries and wildlife habitats. (PRC § 4597.1(j)). An actual investigation using applicable protocol surveys to determine the *presence* of protected and listed species or their habitat is necessary to ensure that the WFMP satisfies the legislative intent to not cause adverse impacts to protected and listed species.

Subsection (o) requires an assessment for LTSY projections projecting a reduction in trees greater than 12 inches dbh or reduced inventories of Major Stand Types or for a percentage of Stands or Strata, which "addresses" listed and protected species and their habitat needs. It is

entirely unclear what it means to "address" these resources. If the intent is to ensure that these vulnerable species are protected when tree size and quantity are reduced as described, then the regulation must provide standards to ensure protection. In the absence of having to actually look for species, merely "addressing" these vulnerable species is not sufficient. To satisfy legislative intent, the proposed rules need a standard to credibly evaluate potential impacts from reduced tree and stand size; otherwise, this provision poses threats to protected and listed species and their habitat needs which constitutes a potential significant environmental effect which has not been analyzed or mitigated as required by CEQA and Board rules.

It is well established that past and contemporary forest management are important factors contributing to the decline of many threatened and endangered fish and wildlife species. The lack of clarity and adequate standards in the proposed rules has the potential to result in significant adverse individual and cumulative effects to these species and their habitats. The proposed rules and the ISOR describing the rules fail to provide a mechanism for analysis of, disclosure of, and mitigation to insignificance of potentially significant adverse impacts to threatened and endangered species and thus violate CEQA.

4. Failure to Ensure Protection of Archeological, Cultural, and Historic Sites

Subsection (r) suffers from the same inadequacy as the subsection for protected species. By only requiring description of "known" cultural or historical resources, the WFMP fails to ensure protection for these resources. Surveys and field investigations should be required, and the ISOR should evaluate the potential for significant adverse impact on the environment if this information is not required.

5. Lack of Cumulative Impacts Analysis in WFMP

Subsection (x) is confusing because it simply requires the WFMP to include a "description of" the cumulative impacts analysis, whereas section 898 requires that a plan include a cumulative impacts assessment using Technical Rule Addendum No. 2 methodology. (14 CCR §§ 898, 912.9). A full cumulative impacts assessment must be included in the WFMP, as required by the Forest Practice Rules and CEQA; any requirement less than that violates the Forest Practice Act and CEQA.

6. Allowance for Exceptions to Standard Requirements Places Resources at Risk

Subsections (z), (aa), and (cc) through (ff) authorize exceptions to standard FPA rule provisions in certain circumstances. These subsections are unclear as to whether they are intended to apply to the entire area covered by the WFMP, identified Management Units, or only to specified location(s) stated in the WFMP. Such exceptions appear contrary to the Legislative intent and purpose of the WFMP; authorizing the WFMP to utilize exceptions and alternative practices in perpetuity poses a real – and unanalyzed – threat to the environment. Moreover, permitting exceptions for all time is contrary to the Legislative intent to encourage prudent and responsible forest management – with increased productivity of timberland. (PRC § 4597(a)(1), (3), (5)). These exceptions are contrary to the APA standards for necessity, consistency and clarity, and have not been properly evaluated in the ISOR or within the WFMP, as required by CEQA. They pose the risk, over time, of causing significant adverse environmental effects. As permanent

standards, they must be assessed in the context of the best science detailing what our forests can expect in 10, 20, 30 and 50 years from now due to climate change and other conditions.

Subsection (ii) authorizes development of so-called "standard operating practice(s)" for two of these exceptions: for tractor operations on steep and unstable slopes and lands, and for use of landings, logging roads, and skid trails in protected watercourse zones. This standardized 'permission' has not been properly analyzed under CEQA for the potential for significant impacts. It permits use of an undefined "deviation," with alternative mitigation to be incorporated into the WFMP—without any mention of public review and comment. CEQA requires mitigation to remedy significant environmental impacts. If there is a need for mitigation, there is a need for CEQA review. This process is contrary to the APA, Forest Practice Act, and CEQA.

B. The Proposed Rule for WFMP Annual Notice Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

The WFMP is to be implemented through submission of an annual notice, which permits operations immediately upon submission. (PRC § 4597.11; proposed rule 1094.8). Like the WFMP, it must be a public record. As identified above, certain terms in the proposed rule for the WFMP Notice are not defined. The proposed annual Notice also does not include a requirement for information documenting what operations have already occurred under the WFMP, or identifying new conditions or potential impacts. In this way, the Notice does not provide a clear statement of the information needed to ensure that the Legislative intent to encourage increased productivity of timberlands, (PRC § 4597(a)(3)), and to establish uneven aged management and sustained yield through the implementation of the WFMP. (PRC § 4597.2).

At the outset, the proposed Notice rule directs that "[a]ll necessary deviations shall be approved by the Director prior to submission" of the Notice. The proposed rule does not define what constitutes a "necessary" deviation, and whether a "necessary" deviation is a substantial, minor or some other kind of deviation. The proposed rule also does not define who decides what a "necessary" deviation is or what process the Director must use to approve a "necessary" deviation. This provision lacks clarity.

The proposed Notice provisions suffer from many of the same defects as in the proposed WFMP content rule.

For LTSY and sustained yield, the proposed Notice rule lacks any disclosure of volumes and tree sizes scheduled for harvest. This information is necessary to document what timber operations have been or are proposed to be conducted to achieve the long-term objective of uneven aged management and LTSY. The WFMP requires a one-time description of projected timber volumes and tree sizes to be available for harvest and frequencies of harvest. (PRC § 4597.6(h)). The annual Notice, to be meaningful, needs to provide an annual record toward and update to those projections, to evaluate WFMP compliance. While proposed subsection (m) requires a statement that the Notice conforms to the provisions of the WFMP, it does not require data to support this conclusion. That statement must be based upon actual substantial evidence. At a minimum, the Notice should include a statement identifying what volumes and tree sizes are scheduled for harvest, in relation to the WFMP projections, and evidence documenting efforts to achieve the LTSY.

For wildlife and protected species, subsection (h) requires review of only public sources and databases to report whether there are any "known" occurrences of these species. There is no obligation to conduct protocol surveys or other investigation to look for these protected wildlife and plant species. This is necessary to fulfill the legislative intent to promote forestland stewardship which protects fisheries and wildlife habitats. (PRC § 4597.1(j)).

Similarly, subsection (g) permits a statement that no archaeological sites have been discovered, without a corresponding duty to conduct some kind of survey to determine if such sites do exist.

Subsection (i) requires a statement, based on a field evaluation, that "there are no physical environmental changes" in the Notice area "that are so significant as to require any deviation of the WFMP." The proposed rule does not define what is meant by "physical environmental changes" and what that phrase may encompass. The lack of definition makes this subsection confusing and without clarity, as no thresholds are provided. The provision is also unclear because earlier in the proposed rule it is clear that there can be no outstanding "necessary deviations" once the Notice is submitted. Whether "necessary deviations" means the same as or something different from "physical environmental changes" is not known, adding to the confusion. Since the submission of the Notice permits operations to commence immediately, in the absence of clear standards or thresholds, there is no ability to evaluate whether the statement is accurate. As with other provisions, evidence must be provided which documents that a field evaluation was conducted of the entire area covered by the Notice, and documents the conditions observed during the field evaluation. The failure to require this kind of investigation leaves the real potential for significant adverse impact on protected species or archaeological and cultural sites, an eventuality that is not mentioned or evaluated in the ISOR.

For water quality protection, subsection (n), like other provisions, does not require any actual evidence upon which conclusions as to *current* conditions are based. The mapping requirement under proposed subsection (u)(10) perpetuates the deficiency in the WFMP - to require mapping only of "known" unstable areas or slides, rather than also documenting locations which are potentially unstable or at risk. This must be expanded to require identification of "potential" unstable areas.

Subsection (t) requires description of the WFMP exceptions which have "standard operating practices," but fails to require identification of the site-specific locations for which these standard operating practices may occur. This means the potential for significant adverse environmental impact is never evaluated as required by the FPA and CEQA.

The proposed Notice regulation does not require a statement disclosing whether there are any ongoing operations in the WFMP area, even though the proposed rules permit operations to occur beyond a one-year time frame. (*See* Proposed rule 1094.25(b) (report may be filed annually for work not completed)). It is unclear to what extent more than one, or several, areas within the WFMP may be under operation in any given year. This poses the potential for significant cumulative impacts which would need to be evaluated, yet there is no requirement for the disclosure or evaluation of multiple operations. The ISOR does not mention or evaluate the potential for significant adverse environmental impacts which may occur due to the multiple year operations.

C. The Proposed Rule For Substantial Deviations Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

Proposed rule 1094.23 specifies a number of circumstances which are "presumed to be "substantial deviations"" of the WFMP. However, subsection (c)(14) then states that changes to an erosion control implementation plan as a result of operations to implement the provisions of an approved erosion control plan "shall not be considered a substantial deviation." This makes no sense and does not belong.

D. The Proposed Rule for Stocking Standards Fails to Meet the Intent of the Statute and Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

The Legislature authorized the WFMP as a tool to achieve "increased productivity of timberland." (PRC § 4597(a)(3)). Proposed rule 1094.27 (a) is inconsistent with this intent because it permits stocking to be satisfied using minimum stocking standards as set forth in 14 CCR section 1071, rather than require an increase in productivity over time. To "increase productivity" means to require a standard higher than merely "maintaining" minimum stocking standards. Use of minimum stocking does not effectuate the legislative purpose of the WFMP. Moreover, the proposed rules permit stocking reports to be filed within 5 years, in which case that information will not be subject to the proposed 5-Year Review. This will not "benefit" the environment, and has the potential to degrade the environment by not doing as contemplated by the Legislature – to increase timberland productivity and utilized uneven aged management. Furthermore, the proposed rules do not include an affirmative obligation to conduct effective annual monitoring to keep track of what timber operations occur each year, what volumes were removed and what volumes may be cut going forward, and to determine whether the growth and yield projections are accurate or need adjusting to maintain LTSY. The ISOR fails to mention or evaluate the potential for significant adverse impacts from not requiring heightened stocking standards to ensure increased productivity over time.

E. The Proposed Rules for the Five Year Review is Inconsistent with the Statute and Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

Proposed rule 1094.29 sets forth provisions for what is called a "Five (5) Year Review of the WFMP" ("5-Year Review"). This section is not clear, particularly as to the contents of the summary and what constitutes the "5-Year Review." The Legislature directed the board to adopt regulations to implement the statute section 4597.12, and the proposed regulation fails to meet this duty, satisfy APA standards of clarity, or ensure CEQA compliance.

The proposed rule is not consistent with the statute, Public Resources Code section 4597.12. By statute, the Department is to first develop a summary, and then conduct the 5-Year Review. (PRC § 4597.12(b) ("develop a plan summary *before each five-year review*")). (Emphasis added). In addition, the statute requires the Department to provide notice of the review and copy of the 5-Year Summary to the public so that the "public may submit additional information relevant to the purpose of the five-year review and the review team may consider this

information when conducting its review." (PRC § 4597.12(c)). Proposed rule 1094.29 makes a mismash of this clear process, obfuscating when the 5-year Summary is done in relation to the 5-Year Review, as well as the public's right of review and comment. As such, it is fails to meet the APA standards for clarity and is contrary to the authorizing legislation.

The proposed rule places the public notice and comment period before issuance or completion of the 5-Year Summary and 5-Year Review, by requiring the public notice "*at least 30 days prior to* each five (5) year anniversary date of the WFMP approval" and public notice to be submitted "during the thirty (30) day period." (Proposed rule 1094.29(a)). (Emphasis added). Subsection (b) only requires preparation of the 5-Year Summary "*within thirty (30) days* of each five year anniversary of a WFMP approval. (Emphasis added). By allowing the 5-Year Summary to be prepared "within 30 days" of the anniversary date, the Department can prepare the 5-Year Summary (and convene the review meeting) within 30 days *before* **or** 30 days *after* the anniversary date. This deprives the public of its right of review as provided in the statute, forcing the public to comment in a vacuum before the Summary or Review may even conducted. The public must be given an adequate period of review for the 5-Year Summary, to provide input into what information the review team agencies and the Department need to consider in conducting the 5-Year Review. In addition to AB 904, both the FPA and CEQA require that the public is entitled to review and comment on whatever document encompasses the 5-Year Review.

The rules are not clear as to what is to be included in the "summary" preceding the 5-Year Review, or what constitutes and shall be included in the 5-Year Review. If the 5-Year Summary is the document from which the 5-Year Review is to be conducted, a clear statement is necessary in order for the public to exercise its role to present "additional information relevant to the purpose of the five (5) year review," as stated in subsection (a). This is also needed for the public agency review process.

It is unclear what information is required to be included in either the 5-Year Summary or the 5-Year Review. It is not clear whether a 5-Year Summary or 5-Year Review will include the information outlined in subsections (b) or (c) , i.e., number of WFMP Notices, the acreage operated under each WFMP Notice, the violations received, the volume harvested in relation to projections of harvest in the WFMP. The only information that the review team is actually required to analyze is "significant episodic events occurring during the previous 5 years." (Proposed rule 1094.29(c)). The proposed rule needs to identify what is to be included in the 5-Year Summary and 5-Year Review. The proposed rule needs to specifically identify what information must be reviewed by the review team and be made equally available for public review and comment.

Subsection (d) provides three distinct and valid reasons why the Department "shall provide written comments that a review of the WFMP content and procedures may be necessary": (1) notices of violation have been issued; (2) the 5-Year Review indicates potentially significant adverse impacts to the environment may occur from continuance of the WFMP; or (3) the Department is presented with a fair argument that a project may have a significant adverse impact on the environment. However, the subsection provides no standards or process for the "review of the WFMP content and procedures." This is needed to make the provision meaningful. And as discussed above, because the public is effectively denied a right of review and comment, it is given no meaningful way to provide a "fair argument" as to potential impacts. Moreover, the proposed rule is also not clear as what process the Department uses to "confer"

with the Designated Agent. This provision must be clarified, and the process must be transparent and subject to meaningful public review and comment.

Subsection (g) is a restatement of the subsection (d) of the statute. (PRC § 4597.12 (d)). However, it conflicts with other provisions of the statutory scheme and proposed rules. The WFMP "shall be a public record." (PRC § 4597.2; proposed rule 1094.3). That means all the information identified in proposed rule 1094.6 is a public record. Similarly, the WFMP Notice is a public record. (PRC § 4597.11, proposed rule 1094.8). The 5-Year Review is based upon a review of this public information. Yet, proposed subsection (g) authorizes a WFMP landowner to withhold "proprietary information." Permitting a landowner to not disclose *undefined* information of its choosing, in the face of a public record and which is completely relevant to a determination of WFMP compliance, is contrary to the fundamental premise of the Forest Practice Act and CEQA to require public access and review.

CONCLUSION

The proposed WFMP rules are inconsistent with the enacting statute by failing to provide "rigorous timber inventory standards," and fail to comply with basic CEQA and APA requirements. The proposed rules are inadequate to ensure a commitment to uneven aged management, LTSY, sustainability, and are inadequate to provide for wildlife and water quality protection and enhancement. The ISOR fails to satisfy CEQA and the Board rules governing its CEQA duties for rulemaking, because it fails to identify or evaluate the potential for significant adverse impacts arising from the many issues identified above. EPIC therefore recommends that the proposed WFMP implementing rules be remanded back to the Management Committee for additional work to correct the deficiencies identified.

EPIC appreciates the opportunity to provide these comments, and requests a written response. Please do not hesitate to contact me at the number provided below should there be questions.

Sincerely,

Rob DiPerna
California Forest and Wildlife Advocate

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Enc. – See Attachments List

Attachments

Attachment A: EPIC Letter regarding WFMP Draft Regulations to Management Committee. April 7, 2014.

Attachment B: EPIC Letter regarding WFMP 45-day Notice. March 2, 2015.

Attachment C: Forsman, E.D., R.G. Anthony, K.M. Dugger, E.M. Glenn, A.B. Franklin, G.C. White, C.J. Schwarz, K.P. Burnham, D.R. Anderson, J.D. Nichols, J.E. Hines, J.B. Lint, R.J. Davis, S.H. Ackers, L.S. Andrews, B.L. Biswell, P.C. Carlson, L.V. Diller, S.A. Gremel, D.R. Herter, J.M. Higley, R.B. Horn, J.A. Reid, J. Rockweit, J. Schaberel, T.J. Snetsinger, and S.G. Sovern. 2011. Population Demography of the northern spotted owls: 1985-2008. Studies in Avian Biology.

Attachment D: Shintaku 2013. Testimony before Board of Forestry. March 2013.

Attachment E: National Marine Fisheries Service. 2014. Final Recovery Plan for the Southern Oregon/Northern California Coast Evolutionarily Significant Unit of Coho Salmon (*Oncorhynchus kisutch*). National Marine Fisheries Service. Arcata, CA.

Attachment F: NOAA Fisheries 2009. Letter to Mr. Stan Dixon, Chairman Board of Forestry and Fire Protection. September 9, 2009.

Attachment G: U.S. Fish and Wildlife Service, 2014b. Draft Species Report Fisher (Pekania pennanti), West Coast Population. January 13, 2014.

Attachment H: Raphael, Martin G.; Falxa, Gary A.; Dugger, Katie M.; Galleher, Beth M.; Lynch, Deanna; Miller, Sherri L.; Nelson, S. Kim; Young, Richard D. 2011. Northwest Forest Plan—the first 15 years (1994–2008): status and trend of nesting habitat for the marbled murrelet. Gen. Tech. Rep. PNW-GTR-848. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 52 p.