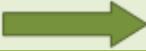


**Forests & Fish Policy Committee Meeting**  
 Department of Ecology – Lacey Building Headquarters  
 Conference Room RS 16/17

May 2, 2013  
 9:00 am – 4:30 pm

| Time          | Item   | Lead(s)                |
|---------------|--|------------------------|
| 9:00 – 9:30   | Welcome & Introductions<br>Review agenda, updates<br>Announcements<br>Review April meeting summary<br><br> <u>Decision: Approve April 4, 2013 meeting summary</u> | A. Miller & Wheeler    |
| 9:30 – 9:45   | <b>May 14, 2013 Forest Practices Board Meeting</b><br>Review agenda topics<br>Co-Chairs' quarterly memo to the Board   | Engel & A. Miller      |
| 9:45 – 10:30  | <b>Follow-up from Budget Process</b><br>Debrief from April 4 <sup>th</sup> budget meeting – how did the process work?<br>Discuss future schedule/timeline  | Wheeler, Engel & Hicks |
| 10:30 – 10:45 | <b>Type F Brainstorm</b><br>Review Objectives & Issues table<br>Prepare for May 16 and 30 (June 12 if needed) meetings to develop Charter  | Wheeler & Turpel       |
| 10:45 – 12:00 | <b>Post Mortem Report Findings Package</b><br>Review materials in the Findings Report Package<br>Discuss next steps regarding recommendation to Forest Practices Board   | Hotvedt & A. Miller    |
| 12:00 – 1:00  | Lunch and Caucus Time for Post-Mortem Report Findings Package  |                        |
| 1:00– 2:00    |  <b>Post Mortem Report Findings Package</b> (continued)<br><u>Decision: Course of action: Action or No Action</u>   | All                    |
| 2:00 – 2:45   | <b>WDFW Hydraulic Code Rulemaking Process</b><br>Review 222-110 code with revisions<br>Discussion of the Forest and Fish Report, Appendix M process  | Jackson                |
| 2:45 – 3:15   | <b>Adaptive Management Program Reform Rulemaking</b><br>Updates and next steps<br><br> <u>Decision: Establish Board Manual committee, appoint members</u>       | Engel                  |
| 3:15 – 3:45   | <b>Type N Update</b><br>Next steps, technical subgroup   | A. Miller              |
| 3:45 – 4:00   | <b>CMER Update</b><br>Westside F and N studies – discuss need to go through ISPR   | Hicks & Mendoza        |
| 4:00 – 4:30   | Review parking lot topics<br>Agenda topics for June and July meetings  | Wheeler                |
| 4:30          | Adjourn  |                        |

(over)

*Remaining 2013 meetings: June 6, July 11, August 1, September 5, October 3, November 7, & December 5. All meetings are scheduled at Department of Ecology – Lacey Headquarters.*

**Remote participation** Phone Bridge: 360-902-2916, passcode 229161. Glance (desktop sharing): go to [triangle.glance.net](http://triangle.glance.net) and enter Session Key from facilitators at beginning of meeting.

Materials:

- Draft April 4, 2013 meeting summary
- Type F Objectives & Issues table
- Forest and Fish Report, Appendix M
- Adaptive Management Program draft rule language
- Board Manual 22, Guidelines for Adaptive Management Program, Part 3.4
- Petition for AMP rule amendment from Policy
- Forest and Fish Policy work priorities
- Forest Practice Board proposed work plan

Forests & Fish Policy Committee  
 May 2, 2013 Meeting Summary

Decisions and Action Items from Meeting

| Decision  | Notes                           |
|---|---------------------------------|
| 1. Accepted April 4, 2013 meeting summary with minor edits.   | Full consensus of all caucuses. |
| 2. Approved motion to append authors' responses to the minority reports within the Post Mortem Report Findings Package. | Full consensus of all caucuses. |
| 3. Approved proposed action for the Post Mortem Report Findings Package with minor edits ( <i>see Attachment 4</i> ).   | Full consensus of all caucuses. |

| Action Item  | Assignment/Notes           |
|--|----------------------------|
| 1. Draft proposal on WDFW hydraulic code rule-making for October Policy meeting.   | Terry Jackson, Jim Hotvedt |
| 2. Prepare to brief Policy at the June meeting about what the legislation requires Policy to do about commenting on the WDFW hydraulic code revisions. | Terry Jackson              |
| 3. Work with other caucuses and TWIG/CMER staff to prepare feedback to the Eastside Type F Effectiveness TWIG at the June 6 Policy meeting.            | Karen Terwilleger          |
| 4. Draft May 2, 2013 meeting summary.  | Claire Turpel              |

**Introductions** – Stephen Bernath and Adrian Miller, Co-Chairs, welcomed the group and led introductions (*please see Attachment 1 for the list of attendees*).

**Announcements**

- Bob Wheeler reminded the Policy Committee (Policy) that the group has a lot to address at this meeting, and there is a lot on Policy's workload for the next several months. There was a lot of important intra- and inter-caucus dialogue to prepare for this meeting's agenda.
- Marty Acker's new email at USFWS is: [martin\\_acker@fws.gov](mailto:martin_acker@fws.gov).

**April 4, 2013 Meeting Summary** – Policy members suggested minor edits to the April 4, 2013 draft meeting summary. After some discussion of clarifying edits, all caucuses voted to accept this meeting summary.

***DECISION:*** Policy Committee approved the April 4, 2013 meeting summary.

**Forest Practices Board Meeting, May 14, 2013** – Marc Engel updated Policy on the planned agenda for the quarterly Board meeting.

- The Board will discuss several rule-making processes, including the Adaptive Management Program (AMP) Reform Rulemaking. All caucuses are encouraged to identify who from their caucus should be involved in a subgroup to address the AMP Reform Rulemaking. Marc Ratcliff will convene a stakeholder process to make these revisions, due July 15.

- The hydraulic code revisions will be in the new Board Manual Section 5. This is posted online for everyone to review while reviewing the draft rules (*Forest Practices Board website: Rules & Board changes → draft Board Manual*).
- Klickitat County will bring a petition to the Board for rule-making that adds critical habitat rules to protect habitat for the western gray squirrel.
- The Policy Co-Chairs will present their quarterly memo to the Board. It is expected that the Board will take more interest in Policy's work, details, timelines, deliverables, etc. Therefore, the Co-Chairs will try to account for what Policy has completed as well as the current status of all work.
- The Board has done a CR-101 process for the original intent of critical habitat for when SEPA is needed for special wildlife plans. WDFW convened a wildlife group, which has been delayed while issues are being addressed internally by WDFW. That decision, when made, will go to the Board (August or later).

**Follow-up on Budget Process** – Bob Wheeler asked Policy to identify any issues that came up during the April workplan and budget meeting:

- Most members appreciated the way Mark Hicks went through the changes to the workplan.
- One member suggested revising the process so Policy does not approve the workplan at the same meeting to approve the budget. It is unclear what it means for Policy to approve CMER's workplan, so next year it would be helpful to clarify what approval/non-approval of CMER's workplan means. It was also encouraged that Policy members attend more CMER meetings to better understand what that process and workload is like.
- It would be helpful to see how the Master Schedule addresses the Settlement Agreement, perhaps with a memo.
- With the plan to move the budget and workplan process to match the state legislature biennial calendar, Policy will be thoughtful about how to streamline the process for the future. With the state's biennial calendar, the next opportunity for Policy to begin matching timelines will be for the 2015-17 budget.
- In order for Policy to eventually address all rule groups, it was suggested that Policy should choose another rule group and take time to go through the rule group as thoroughly as with Type N.
- Some current Policy members were not around when Policy addressed organizational development. Perhaps another opportunity can be provided for those people to evaluate and give feedback on that process.

**Type F** – A Policy Subcommittee of the Whole will meet for three meetings to develop a Charter. The first meeting is May 16.

- Members of the Technical/Operational Subgroup have drafted language for the three outstanding issues in their document to address issues related to defining the F/N break. This will be shared with Policy a week in advance of the May 16<sup>th</sup> Type F meeting.
- One Policy member asked that more information be provided about the current status of the maps, water typing modifications, status of implementation, etc.

- One desired outcome for this Type F process is to increase consistency among regions and interpretations for the F/N break. Another is to understand the duty of a permanent rule.

**Post Mortem Report Findings Package** – The Conservation Caucus motioned to append the authors’ responses to the minority reports and the Tribal Caucus seconded. After some discussion, Policy voted to append the authors’ responses to the minority reports with full consensus.

***DECISION:*** Policy approved to append the authors’ responses to the minority reports.

The decision before Policy at this meeting is to vote whether or not to take action on the Report Findings Package. Now that this report is with Policy, Policy should decide whether they choose to answer Questions 7, 8, and 9 as outlined in Section 22. Policy does not decide at this meeting what the actions will be, just that they want to take action.

The Conservation and Landowner Caucuses developed a motion that proposed that some action would be taken. At this point, the motion is vague enough so as not to eliminate too many options. This motion would need a Subgroup with a Charter to do this work, and the dates are based on the timelines given in Board Manual Section 22, Part 3.4. The Landowner Caucus motioned to approve the proposed action with amendments to the dates and the Conservation Caucus seconded (*see Attachment 4*). Policy voted to approve this motion with full consensus.

***DECISION:*** Policy approved proposed action with minor edits.

The Post Mortem Subcommittee is open for anyone to participate. It will be considered a Subcommittee of the Whole so none of the decisions have to be vetted at a regular Policy meeting, with the exception of the final decision which shall be voted upon at a regularly scheduled Policy meeting. Adrian Miller will convene the Subcommittee.

### **WDFW Hydraulic Code Rulemaking Process**

Version 3 of the rules has been sent, comments were due to Randi Thurston through the comment log by April 26<sup>th</sup>. These comments are being incorporated into the draft and then will go to the Attorney General for review. The initiation of the CR-102 process, along with the SEPA review, will happen in October and public review will happen at that time as well. This timeline anticipates having a draft of the rules to the Commission in March 2014, and hopes to have the rules adopted by April 2014.

Appendix M of the Forests & Fish Report influences this process. Once the rules are brought to Policy, it is up to the Policy Committee whether they will go through the adaptive management process. If the rules do not go through that process, it will go through the TFW process.

Based on these deadlines, Terry Jackson will work with Jim Hotvedt before the October Policy meeting to draft a proposal, incorporating the draft language (through CR-102) and SEPA/EIS information. Based on WDFW’s proposal, policy would then have October through the end of December to finalize their report with comments and recommendations to WDFW. In early 2014, Terry would share with Policy how those comments and recommendations were incorporated by WDFW.

This effort has to work for both WDFW and Policy's timelines. Policy should prepare for this to be on the November 2013 Board agenda. The group briefly discussed the need for more information about the interaction between WDFW's rulemaking process and how this will interact with Policy's role in the adaptive management process. Terry Jackson will brief the group on this at the next meeting.

The Co-Chairs will brief the Board about this upcoming issue at the May 14<sup>th</sup> meeting. Though this is not on Policy's current workload, the Board should know about this anticipated adaptive management request. Before the work comes to Policy in October, it would be helpful for DNR and WDFW to clarify Policy's role and the workload associated with that role.

**Adaptive Management Reform Rulemaking Process** – DNR will present at the May Board meeting the rule language and intent to develop a Board Manual based on that language. In order to bring the language to the Board at the August meeting, Policy should agree on what to recommend to the Board by July 15 so it can be included in the Board packet. A Subgroup will be formed to address this and will focus on the settlement agreement sections of Section 22; all other parking lot revisions will be addressed at a later date.

**Type N Update** – The re-convened Policy Subgroup will meet 2:30 - 3:30 on May 9<sup>th</sup> at Ecology. The group will clarify direction to the Technical Subgroup.

**Feedback to Eastside Type N Riparian Effectiveness TWIG** – Due to CMER's LEAN process, now Policy has two opportunities to assess CMER's work and affirm that the study is answering the right questions. Greg Stewart, lead writer from the Eastside Type N Riparian Effectiveness TWIG, presented a memo to Policy for their initial approval, to ensure that the TWIG has the proper study questions before study design begins and the second approval from Policy.

Policy had many questions about the memo; responses are captured below:

- The hope is to correlate related variables such as timing, magnitude of discharge, and temperature change.
- There are several questions left out of this document that may be incorporated into the study at a later date. This is an initial outline and if Policy likes this direction, the TWIG will come up with other options for how to solve those questions.
- Policy is encouraged to indicate to the TWIG if they feel this study creates bias one way or the other. If Policy wants the TWIG to incorporate small landowners, that should be indicated now.

Policy also discussed the role Policy plays in this step: what feedback does the TWIG need to move on? Some members felt unprepared to make a decision on short notice about the direction this TWIG is taking. Karen Terwilleger volunteered to facilitate inter-caucus dialogue about this subject between the May and June Policy meetings and report back to Policy in June.

**CMER Update** – All projects are moving forward with one exception. Two projects are moving into ISPR and should have final reports for Policy within the next twelve months. The Type N Hard Rock study is going along smoothly, and should have results to Policy within the next twelve months.

The meeting adjourned at 4:15pm.

Attachment 1 – Attendance at 4/4/13 Meeting by Caucus

**Conservation Caucus**

Mary Scurlock  
 Chris Mendoza

**County Caucus**

Kendra Smith, Skagit County  
 Laura Merrill, Washington State Assoc of  
 Counties

**Federal Caucus**

Marty Acker, USFWS  
 Dave Powers, EPA (phone)

**Landowner Caucus**

Kevin Godbout, Weyerhaeuser  
 Doug Hooks, WFPA  
 Adrian Miller, Longview Timber Corp.  
 Dick Miller, WFFA  
 Jim Riley, Hancock Forest Management Co.  
 Karen Terwilleger, WFPA

**State Caucus**

Marc Engel, DNR  
 Mark Hicks, Ecology  
 Terry Jackson, WDFW  
 Mary McDonald, DNR  
 Marc Ratcliff, DNR

**Tribal Caucus**

Chase Davis, UCUT  
 Mark Mobbs, Quinault Tribe  
 Jim Peters, NWIFC  
 Nancy Sturhan, NWIFC  
 Curt Veldhuisen, Skagit River System  
 Cooperative (phone)

**Others**

Jim Hotvedt, Adaptive Management Program Administrator  
 Claire Turpel, Triangle Associates  
 Bob Wheeler, Triangle Associates

Attachment 2 – Ongoing Priorities Checklist

| <b>Priority</b>                 | <b>Assignment</b>      | <b>Status</b>  | <b>Notes</b>   |
|---------------------------------|------------------------|--|--|
| Type N Board Manual Development | Type N Policy Subgroup | One remaining issue to resolve: determination of uppermost Type N break, particularly during the wet season. | Policy approved language change to recommendation 2.b. and full Strategy Summary Document on March 7. Type N technical subgroup meetings are being scheduled. Policy will draft language and review at the Dec '13 / Jan '14 meeting and pass to the Forest Practices Board in Feb 2014. |

| Priority                                | Assignment                                 | Status   | Notes  |
|---|--|--|--|
| Type F                                  | Facilitation team with Policy Co-Chairs    | 5/16, 5/30, and 6/12 meetings focused on this topic set.             |  |
| FPHF Integration                        |  | Begin CR-102 process, pending Board decision at the May FPB Meeting. |  |
| Adaptive Mgmt Program Reform Rule       |  | Begin CR-102 process, pending Board decision at the May FPB Meeting. |  |
| Mass Wastings Report Findings Package   |  | Subgroup convening to develop Charter.                               |  |
| Ongoing CMER reports reviewed by Policy | Mark Hicks & Chris Mendoza, CMER Co-Chairs |  | CMER Co-Chairs to give update(s) as needed at May Policy meeting |

\*This table is meant to note the Policy Committee priorities that were sent to the Forest Practices Board and any other major topics or issues that arise during the year.

Additionally, the WDFW HPA rule-making is in progress. The draft language is being prepared for the Attorney General; once they return from the AG office, the CR-102 process begins. Policy members are encouraged to send any comments on the draft language to Randi Thurston at WDFW.

Attachment 3 – Entities, Groups, or Subgroups: Schedule and Notes

| Entity, Group, or Subgroup       | Next Meeting Date | Notes |
|----------------------------------|-------------------|-------|
| Forests & Fish Policy Committee  | June 6            |       |
| CMER                             | May 28            |       |
| Type N Subgroup                  | May 9             |       |
| Type F Subcommittee of the Whole | May 16; May 30    |       |
| Forest Practices Board           | August 13         |       |

Attachment 4 – Proposed Action on Post Mortem from the Landowner and Conservation  
 Caucuses for Consideration by Policy on May 2, 2013

**Question Presented:**

Should any action be taken at this time, in response to the information that CMER has provided – i.e. the Final Post Mortem Study (Version 8a) and Findings Report? (Question 7 from Board Manual M22-29/29)

**Proposed Answer:**

Yes, the Policy Committee believes that additional Policy Committee actions are needed in response to

the Mass Wasting Effectiveness Monitoring Project. At this time, we do not recommend actions to be taken by the Forest Practices Board; we will report on subsequent recommendations as noted below.

Policy will evaluate alternatives in three general categories: Forest Practice Application Review Process for mass wasting risk, compliance monitoring, and additional research.

Policy will convene specific meetings to develop a Mass Wasting Strategy to create a charter and work collaboratively on evaluating options within the three general categories and will make any recommendations on actions to Policy by July 1.

#### FPA Review Process

- Policy requests a presentation from DNR on an overview of the FPA analysis and approval process regarding unstable slopes and to answer questions about these issues from Policy members.
- Evaluate additional screening tools and practices to identify unstable slopes

#### Compliance

- Evaluate existing documentation requirements and discuss need for additional documentation of unstable slope assessments and geotechnical reports.
- Evaluate existing guidance and training options for foresters.

#### Research

- Review existing CMER and external information on mass wasting
- Discuss any unanswered or new questions raised by the Mass Wasting Effectiveness Monitoring Project and recommend any additional research needs.

Policy must reach consensus on the recommended alternative(s) by **September 13**. Assuming Policy reaches consensus, Policy has until **October 11** to finalize the recommendations and provide them to the adaptive management administrator for delivery to the Board.

FOREST PRACTICES BOARD  
2013 WORK PLAN  
Updated 5/2013

| TASK   | COMPLETION DATE/STATUS |
|--|------------------------|
| <b>Adaptive Management Program*</b>  |                        |
| • CMER FY 2014 Work Plan and Budget  | May                    |
| • Extensive Riparian Status and Trend Monitoring Type F/Eastside Temperature Study   | <i>August</i>          |
| • The Mass Wasting Effectiveness Monitoring Project: A Post Mortem Study Examination of the Landslide Response to the December 2007 Storm in Southwestern Washington | November               |
| • Program Funding  | On-going               |
| <b>Annual Reports</b>  |                        |
| • Compliance Monitoring Annual Report  | February               |
| • Forests and Fish Policy Priorities*  | August                 |
| • Northern Spotted Owl Conservation Advisory Group   | November               |
| • Taylor's Checkerspot Butterfly Report  | February               |
| • TFW Cultural Resources Roundtable  | August                 |
| • Clean Water Act Assurances   | August                 |
| • WAC 222-20-120   | <i>August</i>          |
| <b>Board Manual Development</b>  |                        |
| • Section 3, Guidelines for Forest Roads   | August                 |
| • Section 4, Guidelines for Clearing Slash and Debris from Type Np and Ns Waters   | August                 |
| • Section 21, Guidelines for Alternate Plans   | August                 |
| • Section 22, Adaptive Management Program*   | August                 |
| • New Section, Guidelines for Forest Hydraulic Projects  | August                 |
| • Section 26, Guidelines for Large Woody Debris Placement Strategies   | August                 |
| <b>CMER Membership</b>   | As needed              |
| <b>Rule Making</b>   |                        |
| • WAC 222-16-080 Critical habitat  | August                 |
| • Forest Practices Hydraulic Projects (2ESSB 6406)   | August                 |
| • NSO Critical Habitat   | 2013                   |
| • WAC 222-12-045 Adaptive Management Reform*   | August                 |
| • <i>Forest Biomass</i>  | <i>August</i>          |
| <b>Upland Wildlife - Northern Spotted Owl</b>  | On-going               |
| <b>Quarterly Reports</b>   |                        |
| • Adaptive Management Program & Strategic Plan Implementation*   | Each regular meeting   |
| • Board Manual Development   | Each regular meeting   |
| • Compliance Monitoring  | Each regular meeting   |
| • Clean Water Act Assurances   | February               |
| • Forests and Fish Policy Work Priorities*   | Each regular meeting   |
| • Legislative Update   | February & May         |
| • NSO Implementation Team  | Each regular meeting   |

*Italics = change or addition*  
\* = Forest & Fish Policy

*Approval Pending – May 14, 2013*

FOREST PRACTICES BOARD

2013 WORK PLAN

Updated 5/2013

| TASK   | COMPLETION DATE/STATUS |
|--|------------------------|
| • Rule Making Activities                             | Each regular meeting   |
| • Small Forest Landowner Advisory Committee & Office | Each regular meeting   |
| • TFW Cultural Resources Roundtable                  | Each regular meeting   |
| • Upland Wildlife Working Group                      | Each regular meeting   |
| <b>Work Planning for 2014</b>                        | November               |



**TFW/Forests and Fish Policy  
Forest Practices Board**

**P.O. Box 47012, Olympia, WA 98504-7012**

**Policy Co-Chairs: Stephen Bernath, Department of Ecology  
Adrian Miller, Longview Timber LLC**

February 8, 2013

TO: Forest Practices Board

FROM: Stephen Bernath, Co-Chair  
Adrian Miller, Co-Chair

SUBJECT: Policy Priorities for Calendar Year 2013

The draft 2013 Board Work Plan presented at the November 2012 meeting shows a number of Adaptive Management Program work products to be presented to the Board from Policy. These include the Cooperative Monitoring Evaluation and Research Committee (CMER) work plan and budget; anticipated Policy recommendations of two completed CMER studies; and the Forest Practices Hydraulic Project (FPHP) and Adaptive Management Program Reform (AMP) rule makings and developed and amended board manuals.

At the August 2012 Board meeting Policy presented their proposed scope of work for calendar year 2013:

- Development of Type N strategies, to meet the CWA milestone. The Forest Practices Board established this as Policy's number one priority at its November 2011 meeting.
- FPHP rule making and board manual development, a priority resulting from 2012 legislation. Work is being done by Forest Practices Board staff and includes consultation and participation from all TFW caucuses. It has a mandatory December 2013 due date and is on the 2013 Board Work Plan.
- AMP reform rule making, resulting from the Settlement Agreement negotiated by three caucuses in response to potential litigation by one of those caucuses. The Settlement Agreement has due dates contained within it. Policy is recommending both rule and board manual changes resulting from ongoing deliberations in Policy. This is also on the 2013 Board Work Plan.
- Type F/N issues and the development of Water Typing Permanent Rule – Determining the Type F/N Water break and the interplay between the interim and permanent Type F Water rules.
- Policy Recommendations to the Board based on Results from the Post-Mortem Study and other CMER studies as they are completed.

Policy and DNR Forest Practices Board staff currently have a substantial number of tasks they are either focusing on or that caucuses would like Policy to focus on. A brief status report for the ongoing Type N

and Type F/N projects shows the 2013 Board Work Plan is consistent within the capacity for Policy to complete. A brief summary of Policy work on these projects:

- The Policy stakeholders have worked throughout 2012 on a wide range of implementation issues surrounding Type F watercourse classification. Some changes have been adopted, some identified for further discussion, and some remain to be further developed before they can be articulated. Policy reached consensus at their February 7, 2013 meeting to complete a Charter, by the end of June 2013, to initiate the processes to determine the Type F/N Water break and develop recommendations for the transition from the interim water typing rule to a permanent rule. This process will integrate any implementation issues as well as attempt to address fundamental policy differences between the caucuses.
- The Type N Water Strategy is nearing completion and may be approved at the March policy meeting. The Type N Sub-Policy Group, at their February 7, 2013 meeting reached consensus on the strategy and next steps to begin completing a new board manual section to provide field protocols to assist landowners in the location of the uppermost point of perennial flow in Type N Waters, including reviewing data that may inform a wet season protocol. As a result of this agreement DNR has added Board Manual Section 23, *Guidelines for Field Protocol to Locate the Uppermost Point of Perennial Flow in Type N Waters* to the 2013 Board Work Plan.

Policy and CMER operate by consensus and are primarily staffed by members volunteered by their organizations. The Adaptive management Program is not a full-time resource-based system. Policy and CMER members and participants have other assigned duties from their respective employers/interests and many times play multiple roles within the forest practices system, such as board support work and field implementation of forest practices.

Policy has agreed to work on priorities as identified on the 2013 Board Work Plan. The capacity for Policy to accept any new work as assigned by the Forest Practices Board, or taken on by Policy for other reasons, will likely distract Policy from timely efforts on meeting Clean Water Act assurances milestones, integrating fish protection standards into the forest practices rules, implementing necessary Adaptive Management Program reform as called for in the settlement agreement, or transitioning into a permanent set of Type F rules.

cc: Forest Practice Board Liaisons  
FFR Policy

### **3.4 Stage 4: Policy Recommendation**

Upon receipt, Policy has 180 days to develop a decision whether consensus or not and then make a recommendation to the Board. Working with the Administrator, Policy recommendations to the Board will be accompanied by a formal petition for rulemaking in accordance with WAC 222-08-100 and RCW 34.05.330 or a non-rulemaking alternative action. Policy may also recommend that the Board take no action. Policy consideration of all products from Stage 3 will be based on the *Framework for Successful Policy/CMER Interaction* (Appendix B).

#### **Policy Decision to Take Action**

Policy determines by consensus whether any action should be taken in response to the information provided. Upon receipt of the findings report, Policy has 45 days to review the findings and to make a consensus decision as to whether the information merits taking action or not. A no action consensus skips the Policy Alternatives step and goes to the Final Policy Consensus step. Policy consensus for taking action will initiate the development of action alternatives.

#### **Policy Alternatives**

Policy analyzes the alternative courses of action and determines an appropriate management response. Alternatives will include information necessary to show whether the proposal is scientifically credible, operationally practical and administratively feasible. Policy has 60 days to develop appropriate alternative courses of action, and an additional 45 days to reach a consensus decision on an alternative to recommend to the Board.

#### **Final Policy Consensus**

Policy determines by consensus whether to make an adaptive management recommendation to the Board. In making a recommendation Policy will be mindful of factors that the Board will need to consider when making a decision. These factors include the FFR goals (listed in Part 1, Adaptive Management Program Overview) and statutory direction in chapter 76.09 RCW. If Policy has agreed upon an alternative, Policy finalizes its recommendations within 30 days and gives them to the Administrator for delivery to the Board. If Policy has not agreed upon an alternative, Policy either invokes Stage 2 of the Adaptive Management Program dispute resolution process or gives relevant materials listed below to the Administrator for delivery the Board. If dispute resolution is selected Policy has 90 days to attempt to reach a consensus. If dispute resolution is successful, Policy has selected an alternative and has 30 days to finalize the recommendations and gives them to the Administrator for delivery to the Board. If dispute resolution is unsuccessful, Policy has 30 days to assemble the materials described in WAC 222-12-045(2)(h)(ii)(C) and forward to the Administrator for delivery to the Board.

Recommendations to the Board should be accompanied by:

1. Specific recommendations and/or alternatives developed by Policy;
2. Any final CMER report, Policy product, or the Administrator discussion report of potential implications to the rules and guidance;
3. Any appropriate scientific peer review reports and documentation;
4. Any other information or reports as appropriate specifically generated as a result of the Adaptive Management Program process related to the original Board approved proposal of concern; and
5. Draft rule language when appropriate to the recommendation.

#### **Administrator Coordination**

The Administrator will provide coordination in the development and presentation of the Policy report to the Board.

**Policy Committee Rule Proposal  
Adaptive Mangement Reform and Forest Biomass  
For the Forest Practices Board  
May 2013**

1 **WAC 222-12-045 \*Adaptive management program.**

2 In order to further the purposes of chapter 76.09 RCW, the board has adopted and will manage a  
3 formal science-based program, as set forth in WAC 222-08-160(2). Refer to board manual  
4 section 22 for program guidance and further information.

5 (1) **Purpose:** The purpose of the program is to provide science-based recommendations and  
6 technical information to assist the board in determining if and when it is necessary or  
7 advisable to adjust rules and guidance for aquatic resources to achieve resource goals and  
8 objectives. The board may also use this program to adjust other rules and guidance. The  
9 goal of the program is to affect change when it is necessary or advisable to adjust rules  
10 and guidance to achieve the goals of the forests and fish report or other goals identified  
11 by the board. There are three desired outcomes: Certainty of change as needed to protect  
12 targeted resources; predictability and stability of the process of change so that  
13 landowners, regulators and interested members of the public can anticipate and prepare  
14 for change; and application of quality controls to study design and execution and to the  
15 interpreted results.

16 (2) **Program elements:** By this rule, the board establishes an active, ongoing program  
17 composed of the following initial elements, but not to exclude other program elements as  
18 needed:

19 (a) **Key questions and resource objectives:** Upon receiving recommendations from  
20 the TFW policy committee, or similar collaborative forum, the board will  
21 establish key questions and resource objectives and prioritize them.

22 (i) Projects designed to address the key questions shall be established in the  
23 order and subject to the priorities identified by the board.

24 (ii) Resource objectives are intended to ensure that forest practices, either  
25 singularly or cumulatively, will not significantly impair the capacity of  
26 aquatic habitat to:

27 (A) Support harvestable levels of salmonids;

28 (B) Support the long-term viability of other covered species; or

29 (C) Meet or exceed water quality standards (protection of beneficial  
30 uses, narrative and numeric criteria, and antidegradation).

31 (iii) Resource objectives consist of functional objectives and performance  
32 targets. Functional objectives are broad statements regarding the major  
33 watershed functions potentially affected by forest practices. Performance  
34 targets are the measurable criteria defining specific, attainable target forest  
35 conditions and processes.

36 (iv) Resource objectives are intended for use in adaptive management, rather  
37 than in the regulatory process. Best management practices, as defined in  
38 the rules and manual, apply to all forest practices regardless of whether or  
39 not resource objectives are met at a given site.

40 (b) **Participants:** The board ~~will manage~~ the program and ~~has empowered~~  
41 empowers the following entities to participate in the program:

- The cooperative monitoring evaluation and research committee (CMER);
- ~~†~~The TFW policy committee (and/or similar collaborative forum);
- ~~†~~The adaptive management program administrator; and
- ~~o~~Other participants as directed to conduct the independent scientific peer review process.

The program will strive to use a consensus-based approach to make decisions at all stages of the process. Specific consensus-decision stages will be established by CMER and approved by the board. Ground rules will follow those established by the TFW process as defined in the board manual.

(i) **CMER.** By this rule, the board establishes a cooperative monitoring evaluation and research (CMER) committee to impose accountability and formality of process, and to conduct research and validation and effectiveness monitoring to facilitate achieving the resource objectives. The purpose of CMER is to advance the science needed to support adaptive management. CMER also has ongoing responsibility to continue research and education in terrestrial resource issues. CMER will be made up of members that have expertise in a scientific discipline that will enable them to be most effective in addressing forestry, fish, wildlife, and landscape process issues. Members will represent timber landowners, environmental interests, state agencies, county governments, federal agencies and tribal governments from a scientific standpoint, not a policy view. CMER members will be approved by the board. This will not preclude others from participating in and contributing to the CMER process or its subcommittees. CMER shall also develop and manage as appropriate:

- (A) Scientific advisory groups and subgroups;
- (B) Research and monitoring programs;
- (C) A set of protocols and standards to define and guide execution of the process including, but not limited to, research and monitoring data, watershed analysis reports, interdisciplinary team evaluations and reports, literature reviews, and quality control/quality assurance processes;
- (D) A baseline data set used to monitor change; ~~and~~
- (E) A process for policy approval of research, monitoring, and assessment projects and use of external information, including the questions to be answered and the timelines; and
- (F) A biennial research, monitoring, and assessment work plan to be presented to the policy committee at their regular April meeting beginning in 2015 and at least every two years thereafter.

(ii) **TFW policy committee (policy committee).** ~~TFW, or a similar collaborative forum, is managed by a policy committee (hereafter referred to in this section as “policy committee”).~~ The policy committee is established to consider the findings of CMER research and monitoring; and to make recommendations to the board related to forest practices rules and/or the board manual, and other guidance. Policy committee

1 membership is self-selecting, and at a minimum should include  
2 representatives of the following consists of caucus principals or their  
3 representatives from the following nine caucuses: ~~Timber landowners~~  
4 ~~(industrial private timber landowners; and nonindustrial private timber~~  
5 ~~landowners); environmental community; western Washington tribal~~  
6 ~~governments; eastern Washington tribal governments; county~~  
7 ~~governments; department of natural resources; state departments~~  
8 ~~(including of fish and wildlife and ecology, and natural resources); and~~  
9 federal agencies (including National Marine Fisheries Service, U.S. Fish  
10 and Wildlife Service, and U.S. Environmental Protection Agency and U.S.  
11 Forest Service). ~~Policy members will participate without compensation or~~  
12 ~~per diem.~~

13  
14 Policy committee members or their representatives are the primary  
15 participants for discussion and decisions at policy committee meetings,  
16 technical or scientific staff may attend policy committee meetings for  
17 consultation. Each caucus of the policy committee is allowed one vote on  
18 any action before the policy committee. The policy committee will act as a  
19 consensus based body.

20  
21 Beginning in April 2014, the policy committee shall, among other  
22 responsibilities, and in cooperation with CMER, prepare for presentation  
23 to the board at their regular May meeting:

- 24 (A) A CMER master project schedule prioritizing all CMER research  
25 and monitoring projects through 2031;  
26 (B) Assurances that the CMER work plan projects are scheduled  
27 according to the CMER master project schedule;  
28 (C) A review and update of the CMER master project schedule at least  
29 every four years; and  
30 (D) Assurances that all of the projects on the master project schedule,  
31 as amended by the Board, will be completed by 2040.

- 32 (iii) **Adaptive management program administrator (program**  
33 **administrator).** The department will employ a full-time independent  
34 program administrator to oversee the program and support CMER. The  
35 program administrator will have credentials as a program manager,  
36 scientist, and researcher. The program administrator will;  
37 (A) ~~make~~ Make reports to the board and have other responsibilities as  
38 defined in the board manual;  
39 (B) Work with the policy committee and CMER to develop the CMER  
40 master project schedule and present it to the board at their regular  
41 May 2014 meeting;  
42 (C) Report to the board every two years, beginning at their regular  
43 May 2015 meeting on:  
44 (a) Progress made to implement the CMER master project  
45 schedule and recommended revisions;

- 1 (b) The status of ongoing projects including adherence to  
2 scheduled timelines; and  
3 (c) Policy committee’s responses to all final CMER reports.  
4 (iv) **Forest practices board (board).** The board, among other responsibilities,  
5 shall:  
6 (A) Require the program to complete work according to the CMER  
7 master project schedule;  
8 (B) Determine whether the program is in substantial compliance with  
9 the CMER master project schedule every two years, beginning at  
10 the regular August 2014 meeting; and  
11 (C) Notify the National Marine Fisheries Service and the U.S. Fish and  
12 Wildlife Service by letter within thirty days after their regular  
13 meeting if the board determines the program is not in substantial  
14 compliance with the CMER master project schedule.  
15 (c) **Independent scientific peer review process.** By this rule, the board establishes  
16 an independent scientific peer review process to determine if the scientific studies  
17 that address program issues are scientifically sound and technically reliable; and  
18 provide advice on the scientific basis or reliability of CMER’s reports. Products  
19 that must be reviewed include final reports of CMER funded studies, certain  
20 CMER recommendations, and pertinent studies not published in a CMER-  
21 approved, peer-reviewed journal. Other products that may require review include,  
22 but are not limited to, external information, work plans, requests for proposal,  
23 subsequent study proposals, the final study plan, and progress reports.  
24 (d) **Process:** The following stages will be used to affect change for managing  
25 adaptive management proposals and approved projects. If consensus cannot be  
26 reached by participants at any stage, the issue will be addressed within the dispute  
27 resolution process.  
28 (i) **Proposal initiation:** Adaptive management proposals can be initiated at  
29 this stage by any of the participants listed in (2)(b) of this subsection to the  
30 program administrator, or initiation may be proposed by the general public  
31 at board meetings. Proposals must provide the minimum information as  
32 outlined in the board manual and demonstrate how results of the proposal  
33 will address key questions and resource objectives or other program rule  
34 and/or guidance issues. The board may initiate proposals or research  
35 questions in the course of fulfilling their duties according to statute.  
36 (ii) **Proposal approval and prioritization:** The program administrator will  
37 manage the proposal approval and prioritization process at this stage and  
38 consult with CMER on the program workplan. CMER proposals will be  
39 forwarded by the program administrator to policy and then to the board.  
40 The board will make the final determination regarding proposal approvals  
41 and prioritization. The board will act on proposal approval and  
42 prioritization in a timely manner.  
43 (iii) **CMER implementation of proposal:** Board approved proposals are  
44 systematically implemented through CMER at this stage by the program  
45 administrator.

- 1 (iv) **Independent scientific peer review:** An independent scientific peer  
2 review process will be used at identified points within this stage of  
3 implementation depending upon the study and will be used on specified  
4 final studies or at the direction of the board.
- 5 (v) **CMER committee technical recommendations:** Upon completion, final  
6 CMER reports and information will be forwarded at this stage by the  
7 program administrator to policy in the form of a report that includes  
8 technical recommendations and a discussion of rule and/or guidance  
9 implications.
- 10 (vi) **Policy committee petitions for amendment and recommendations to**  
11 **the board:** Upon receipt of ~~the~~ CMER report or a requested action by  
12 the board, the policy committee will prepare a report for the board  
13 outlining recommended actions including: need for additional research;  
14 program rule petitions; amendments and/or guidance recommendations in  
15 the form of petitions for amendment. When completed, the  
16 recommendations, including rule petitions and the original CMER report  
17 and/or other information as applicable will be forwarded by the program  
18 administrator to the board for review and action. Policy committee  
19 recommendations for rule amendment to the board will be accompanied  
20 by formal petitions for rule making (RCW 34.05.330). The Ppolicy  
21 committee will use the CMER results to make specific petitions  
22 recommendations to the board for amending on:
- 23 (A) The regulatory scheme of forest practices management (Title 222  
24 WAC rules and board manual);
- 25 (B) Voluntary, incentive-based, and training programs affecting  
26 forestry;
- 27 (C) The resource objectives; and
- 28 (D) CMER itself, adaptive management procedures, or other  
29 mechanisms implementing the recommendations contained in the  
30 most current forests and fish report.
- 31 (vii) **Board action to ~~adopt~~ accept petitions for amendment rule making**  
32 **and/or recommendations for guidance:** Upon receiving a ~~formal~~  
33 ~~petition~~ recommendations from the policy committee for amendment to  
34 rules petitions and/or recommendations for guidance, the board will take  
35 appropriate and timely action. There will be a public review of all  
36 petitions as applicable. The board will make the final determination.
- 37 (e) **Biennial fiscal and performance audits.** The board shall require biennial fiscal  
38 and performance audits of the program by the department or other appropriate and  
39 accepting independent state agency.
- 40 (f) **CMER five-year peer review process.** Every five years the board will establish  
41 a peer review process to review all work of CMER and other available, relevant  
42 data, including recommendations from the CMER staff. There will be a specified,  
43 but limited, period for public review and comment.

1 (g) **Funding.** Funding is essential to implement the adaptive management program,  
2 which is dependent on quality and relevant data. The department shall request  
3 biennial budgets to support the program priority projects and basic infrastructure  
4 needs including funding to staff the adaptive management program administrator  
5 position. A stable, long-term funding source is needed for these activities.

6 (h) **Formal Dispute resolution process for CMER and policy committee.** If  
7 consensus cannot be reached through the adaptive management program process,  
8 participants will have their issues addressed by this dispute resolution process.  
9 Potential failures include, but are not limited to: The inability of policy to agree  
10 on research priorities, program direction, or recommendations to the board for  
11 uses of monitoring and/or research after receiving a report from CMER; the  
12 inability of CMER to produce a report and recommendation on schedule; and the  
13 failure of participants to act on policy recommendations on a specified schedule.  
14 Key attributes of the dispute resolution process are:

15 (i) Specific substantive and benchmark (schedule) triggers will be established  
16 by the board for each monitoring and research project for invoking dispute  
17 resolution;

18 (ii) The dispute resolution process is available to both CMER and the policy  
19 committee to resolve disputes that result in the course of their respective  
20 processes. Formal dispute resolution will be staged in three parts and may  
21 be applied at any level of the adaptive management process. Any  
22 participant of CMER or policy, participating policy committee caucus or  
23 board approved CMER member, or the board, may invoke each  
24 succeeding stage, if agreement is not reached by the previous stage, within  
25 the specified time (or if agreements are not substantially implemented) as  
26 follows:

27 (A) Stage one will be an attempt by CMER ~~and or the policy~~  
28 committee, as applicable to reach consensus. On technical issues,  
29 ~~CMER shall have a~~Up to six-two months to reach a consensus  
30 under stage one; unless otherwise agreed upon by CMER or the  
31 policy committee if substantive progress is being made. PartiesAny  
32 party may move the process to stage two after an issue has been in  
33 dispute resolution before CMER or the policy committee for six  
34 two months unless otherwise agreed. The time periods commence  
35 from the date the dispute resolution process is invoked~~referral of~~  
36 ~~technical issues to CMER, report by CMER to policy, or the~~  
37 ~~raising of a nontechnical issue (or matter not otherwise referable to~~  
38 ~~CMER) directly at policy.~~

39 (B) Stage two dispute resolution in CMER or the policy committee  
40 will be either ~~informal~~-mediation or ~~formal~~-arbitration. Within one  
41 month, one or the other will be picked, with the default being  
42 formal mediation unless otherwise agreed. Stage two will be  
43 completed within three months (including the one month to select  
44 the process) unless otherwise agreed based on substantive progress  
45 being made.

1                   (C) If stage two dispute resolution within CMER does not result in  
2                   consensus, the program administrator will forward the dispute to  
3                   the policy committee for a decision, which could include initiation  
4                   of the dispute resolution process in policy.

5                   (ED) If stage two dispute resolution within the policy committee does  
6                   not result in consensus, stage three dispute resolution will be action  
7                   by the board. ~~The board will consider policy and CMER reports,~~  
8                   ~~and~~ program administrator will report the majority and minority  
9                   thinking regarding the results and uses of the results can be  
10                  brought forward to the board recommendations to the board for all  
11                  disputes failing to reach resolution following stage two. The board  
12                  will make the final determination regarding dispute resolution.

13  
14 **WAC 222-16-010 \*General definitions**

15 Unless otherwise required by context, as used in these rules:

16 ...

17 "Forest Biomass" means material from trees, and woody plants that are by-products of forest  
18 management, ecosystem restoration, or hazardous fuel reduction treatments on forest land.  
19 Although stumps are a by-product of these activities, only those removed for the purpose of road  
20 and landing construction, forest health treatments, or conversion activities may qualify as forest  
21 biomass.

22 **"Forest land"** means all land which is capable of supporting a merchantable stand of timber and  
23 is not being actively used for a use which is incompatible with timber growing. Forest land does  
24 not include agricultural land that is or was enrolled in the conservation reserve enhancement  
25 program by contract if such agricultural land was historically used for agricultural purposes and  
26 the landowner intends to continue to use the land for agricultural purposes in the future. For  
27 small forest landowner road maintenance and abandonment planning only, the term "forest land"  
28 excludes the following:

- 29 (a) Residential home sites. A residential home site may be up to five acres in size, and must  
30 have an existing structure in use as a residence;
- 31 (b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which  
32 appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy  
33 products, fish, and livestock exist.

34 **"Forest landowner"** means any person in actual control of forest land, whether such control is  
35 based either on legal or equitable title, or on any other interest entitling the holder to sell or  
36 otherwise dispose of any or all of the timber on such land in any manner. However, any lessee  
37 or other person in possession of forest land without legal or equitable title to such land shall be  
38 excluded from the definition of "forest land owner" unless such lessee or other person has the  
39 right to sell or otherwise dispose of any or all of the timber located on such forest land.

40 **"Forest practice"** means any activity conducted on or directly pertaining to forest land and  
41 relating to growing, and removal through harvesting, or processing timber or forest biomass,  
42 including but not limited to:

- 43 Road and trail construction;  
44 Harvesting, final and intermediate;  
45 Precommercial thinning;  
46 Reforestation;

- 1 Fertilization;
- 2 Prevention and suppression of diseases and insects;
- 3 Salvage of trees; and
- 4 Brush control.

5 "Forest practice" shall not include: Forest species seed orchard operations and intensive forest  
6 nursery operations; or preparatory work such as tree marking, surveying and road flagging; or  
7 removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery,  
8 mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in  
9 damage to forest soils, timber or public resources.

10 **"Forest road"** means ways, lanes, roads, or driveways on forest land used since 1974 for forest  
11 practices. "Forest road" does not include skid trails, highways, or local government roads except  
12 where the local governmental entity is a forest landowner. For road maintenance and  
13 abandonment planning purposes only, "forest road" does not include forest roads used  
14 exclusively for residential access located on a small forest landowner's forest land.

15 **"Forest trees"** does not include hardwood trees cultivated by agricultural methods in growing  
16 cycles shorter than 15 years if the trees were planted on land that was not in forest use  
17 immediately before the trees were planted and before the land was prepared for planting the  
18 trees. "Forest trees" includes Christmas trees but does not include Christmas trees that are  
19 cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

20 ...

21

22 **WAC 222-30-020 \*Harvest unit planning and design.**

23 | (1) **Logging system.** The logging system, including forest biomass removal operations,  
24 should be appropriate for the terrain, soils, and timber type so that yarding or skidding  
25 can be economically accomplished and achieve the ecological goals of WAC 222-30-010  
26 (2), (3) and (4) in compliance with these rules.

27 \*(2) **Landing locations.** Locate landings to prevent damage to public resources. Avoid  
28 excessive excavation and filling.

29 \*(3) **Western Washington riparian management zones.** (See WAC 222-30-021 and 222-  
30 30-023.)

31 \*(4) **Eastern Washington riparian management zones.** (See WAC 222-30-022 and 222-30-  
32 023.)

33 \*(5) **Riparian leave tree areas.** (See WAC 222-30-021, 222-30-022, and 222-30-023.)

34 ...

## ***Appendix M***

### **Assurances**

**I. Prescriptions.** The authors of this Report recommend the adoption of statutes, rules, and regulations necessary to implement the following and commit to take the actions set forth below:

#### **M.1 General state assurances**

- (a) The contents of this Report will be adopted and summarized in the forestry module of the state salmon recovery strategy being developed under chapter 75.46 RCW ("Salmon Recovery Strategy").
- (b) The authors of this Report will support the adoption of legislation substantially in the form attached as Schedule M-1 and will support the adoption and modification of rules and regulations necessary to make the forest practice rules, hydraulic code regulations and regulations of the department of ecology consistent with the recommendations contained in this Report.
- (c) DNR and DOE agree to exercise their discretion to protect covered resources and other fish under all applicable laws, regulations or rules in a manner consistent with the recommendations contained in this Report. DOE and DNR agree to direct their respective personnel not to exercise any site, application or project-specific conditioning authority to impose conditions on a forest landowner or operator which are more burdensome than the recommendations in this Report except as may be necessary for the prevention of potential or actual material damage to a public resource where such material damage would be attributable to one or more unique and unusual features of the proposed site, application or project. Upon any written request by a landowner relating to a specific situation, DNR and DOE will promptly investigate any claim that one of their respective employees is disregarding such direction and will take all appropriate corrective and disciplinary action. If consistent with the terms of this paragraph, any such additional conditions are imposed, written documentation will be provided to the landowner or operator by the applicable State Agency describing the circumstances necessitating such condition.
- (d) WDFW agrees to exercise its discretion to protect covered resources through its habitat protection and permit conditioning authorities in a manner consistent with this Report for issues and activities addressed in this Report. This is not intended to limit WDFW's hydraulics authority as established by the hydraulic code.
- (e) If WDFW deems it necessary to modify regulations adopted under the HPA after the adoption of rules that implement this Report (except as provided for in subclause M.1(b) above) which changes will affect state or private forest landowners and impose restrictions or burdens on forest practices beyond those contemplated by the recommendations of this Report for issues addressed in this Report, WDFW will invoke

the adaptive management process described in Appendix L prior to forwarding proposed changes to the Director or Commission. If TFW so elects, the proposed rule change will be processed through such adaptive management process. (If the adaptive management process is not triggered by TFW, WDFW will pursue its normal rule adoption process as directed by the APA and involve affected parties through that process.) If made applicable, the adaptive management process described in Appendix L will be used, where relevant, to review the scientific information, propose adjustments, and issue a final report to the WDFW who will then take these findings and incorporate them into the normal HPA rule adoption process. When considering and adopting final HPA rules that affect state and private forest landowners regarding activities addressed in this Report, WDFW will seek to make rule changes in a manner that maintains the integrity and furthers the purposes of the recommendations in this Report to the maximum extent practical, consistent with its statutory authority, legislative mandates, court orders, agreements, and fiscal resources.

- (f) The rule package will repeal the automatic pass-through of federal critical habitat designations that currently trigger Class-IV Special requirements.
- (g) The current forest practices regulations allow two opportunities for “safe harbor-like” certainty for landowners who are concerned about attracting marbled murrelets to older forest stands (WAC 222-16-080(1)(j)(iv)(B) and WAC 222-16-105). Landowners are concerned that these processes may be inadequate as to habitat established pursuant to this plan and thus request that the board reassess its policies providing “safe harbor” protection.

## **M.2 Assurances related to the ESA**

- (a) Subject to compliance with all applicable federal laws including those related to environmental and public review, the Services anticipate providing relief under the Endangered Species Act to forest landowners, operators, the state and its various subdivisions from any claim that forest practices conducted in accordance with the agreed upon prescriptions in this Report would constitute an impermissible “take” of any covered resources or would otherwise violate the Endangered Species Act or the regulations promulgated thereunder with respect to covered resources.
- (b) ESA protection would be provided in two phases. First, subject to compliance with all applicable federal laws, the Services anticipate promulgating one or more 4(d) rules with respect to the covered resources which are listed as “threatened.” These 4(d) rules would (i) exempt the conduct of forest practices in accordance with the prescriptions recommended in this Report from “take” prohibitions; and (ii) would not require the performance of any additional acts or the commitment of any additional resources (as such prescriptions may be revised in accordance with adaptive management) by forest landowners, operators, the state or any of its various subdivisions in order to avoid a violation of the Endangered Species Act. It is anticipated that the applicable 4(d) rule for each covered species will be adopted within two years after the date on which any such species is first listed except that in the case of bull trout, it is anticipated that the applicable 4(d) rule will be adopted by July 1, 2001.



**TFW/Forests and Fish Policy  
Forest Practices Board**

**P.O. Box 47012, Olympia, WA 98504-7012**

**Policy Co-Chairs: Stephen Bernath, Department of Ecology  
Adrian Miller, Longview Timber LLC**

April 23, 2013

TO: Patricia Anderson, Rules Coordinator, Forest Practices Board

FROM: Stephen Bernath, Co-Chair  
Adrian Miller, Co-Chair

SUBJECT: Petition to the Forest Practices Board for Rule Amendment – Adaptive Management Program Rules

The TFW/Forests and Fish Policy Committee (Policy Committee) hereby petitions the Forest Practices Board (Board) to amend WAC 222-12-045 *Adaptive management program*. This petition for rule amendment is authorized by WAC 222-08-100 *Petitions for adoption, repeal, or amendment of a rule* and RCW 34.05.330 *Petition for adoption, amendment, repeal – Agency action –Appeal*.

The reason for the proposed rule amendment is to implement the settlement agreement for the Forest Practices Habitat Conservation Plan. Although, the settlement agreement was between only three of the caucuses in Policy, this amendment has been through the adaptive management process and is a consensus-based request. In brief, the proposal amends the process followed by the adaptive management program (AMP) by:

- clarifying Policy Committee membership and voting authority;
- requiring a Compliance Monitoring, Evaluation, and Research (CMER) Master Project Schedule to be developed and adhered to, and reported to the Board on a specific scheduled timeline;
- modifying the AMP dispute resolution process to be more efficient for CMER and the Policy Committee; and
- clarifying how the Policy Committee makes rule petitions and guidance recommendations to the Board.

This petition only proposes to amend the some of the processes followed by the adaptive management program. The proposed amendments incorporate process efficiencies and reporting requirements, and clarify existing rule language. The proposed amendments do not affect public resources or public health, safety, or general welfare. The proposed amendments also do not impose costs or conflict with, duplicate, or differ from other federal, state, or local laws.

cc: Forest Practice Board Liaisons  
FFR Policy

**Forests & Fish Policy Committee**  
**DRAFT Objectives and Issues for Type F Charter**

v. 4-23-13

The March and May Policy meetings will include time to **brainstorm** on these columns only. During the brainstorm, focus will be on **generating an overall list** and there is no bad idea; **ideas will not be disputed or debated** until the May 16, 30, and June 12 meetings. The following Objectives and Issues are from the facilitators' discussions with Policy Committee members and from the *Draft Implementation Issues document (v. 11-28-12)*.

| Objectives                                     | Issues   | Options                                   | Narrowed Options | Solutions   | Notes |
|--|--|---|------------------|---|-------|
| <b>Process Objectives</b>                      |  |   |                  |   |       |
| 1. Specify timeline for dispute resolution     | July 3, 2013 is deadline for Stage 1 of dispute resolution process. After July 3, several options: <ul style="list-style-type: none"> <li>• If agreement is made, substantive discussions on Type F come back to Policy.</li> <li>• If more time is needed, all caucuses can agree to continue working on the issues for a define period of time.</li> <li>• <del>Conservation</del> <u>Any</u> caucus can invoke Stage 2 dispute resolution.</li> </ul> |   |                  |   |       |
| 2. Specify who will be involved                | <ul style="list-style-type: none"> <li>• Policy Committee as a whole.</li> <li>• Subgroup of Policy Committee.</li> </ul>  | <u>Proposal: include small landowners</u> |                  | <u>Proposal: include small landowners</u>   |       |
| 3. Specify meeting dates, times, and locations | Will this need two or three meetings to develop the Charter?   |   |                  | 1. <u>Thursday, May 16, 1-4pm, Dept of Ecology Room 16/17</u><br>2. <u>Thursday, May 30, 1-4pm, Dept of Ecology Room 16/17</u><br>3. <u>Wednesday, June 12, 1-4pm, Dept of Ecology Room 16/17 –</u> |       |

| Objectives  | Issues  | Options | Narrowed Options | Solutions  | Notes |
|---|---|---------|------------------|--|-------|
|   |   |         |                  | <p style="color: red;">if needed<br/>           Proposal: set May 16, May 30 as meetings from 1-4pm with optional third meeting on June 13</p> |       |
| <p style="color: red;">4. <u>Organization for this work</u></p> | <ul style="list-style-type: none"> <li>• <u>Type F Operational/Technical Subgroup to continue its work through May. Bring everything they have to Policy two weeks in advance of the first Type F dispute resolution meeting on May 16 (May 2). (Will probably happen without industry representatives at their request.)</u></li> </ul>  |         |                  |  |       |
| <b>Substantive Objectives</b>                                   |   |         |                  |  |       |
| <p>1. Find a permanent rule everyone can agree to</p>           | <ul style="list-style-type: none"> <li>• Historically, Washington has had various forest practices rules. The hope is to finalize a set of permanent rules to reduce ambiguity and inconsistency with changing rules.</li> <li>• Currently under “interim” rule from the Forests &amp; Fish Rules (1999).</li> <li>• Consider timeline for developing permanent rule – how long will the effort take and what resources are needed to complete the effort?</li> <li>• Consider efforts needed to strengthen the modeling technology vs. physicals in the field to determine F/N break.</li> <li>• What information supports the need to change from the interim rule to a permanent rule?</li> <li>• Has the interim rule not achieved the Forests &amp; Fish rules?</li> <li>• What past work has been done that Policy should be briefed on so everyone is on the same page about history of issue?</li> <li>• Does this address the CWA milestones?</li> <li>• Understand how often the interim rule is inefficient/unsuccessful.</li> <li style="color: red;">• <u>Look at what the WAC and F&amp;F Rules say for permanent rule. Have everyone agree on what is currently on the books, move forward from there.</u></li> <li style="color: red;">• <u>Consider whether to revise permanent rule on the books or name</u></li> </ul> |         |                  |  |       |

| Objectives   | Issues   | Options | Narrowed Options | Solutions | Notes |
|--|--|---------|------------------|-----------|-------|
| <p>2. Clarify how to implement the definition of fish habitat on the ground</p>  | <p><u>the “interim” rule “permanent.”</u></p> <ul style="list-style-type: none"> <li>• Use existing or improved protocol; physicals; model or combo?</li> <li>• Can electroshocking be reduced?</li> <li>• <u>Work to reconcile mismatch between current practices and analyses of electroshocking effects. Work to coordinate between surveys to reduce electroshocking.</u></li> <li>• <u>Agree on primary objective: fish habitat vs. fish presence/absence.</u></li> <li>• <u>Agree on the definition of fish habitat. Consider if the definition refers to the obligation to protect fish habitat or fish use for water typing?</u></li> <li>• <u>Consider how shared risk as a programmatic commitment gets articulated through fish use or fish habitat.</u></li> <li>• <u>Follow Adaptive Management Program objective for protecting fish habitat (outlined in Forest Practices Rules, HCP, biological opinions, TFW, FFR).</u></li> <li>• <u>Increase consistency for fish habitat (i.e., protocol timing).</u></li> </ul> |         |                  |           |       |
| <p>3. Clearly articulate comprehensive rules and guidelines that are easily identifiable, implementable, repeatable, and enforceable</p> | <ul style="list-style-type: none"> <li>• Regulatory map – can this be created as a starting point?</li> <li>• These should clearly define the F/N break.</li> <li>• Should this measure on site-specific scale or landscape scale?</li> </ul>  |         |                  |           |       |
| <p>4. Include, as appropriate, information from Technical/Operational Subgroup work</p>  | <ul style="list-style-type: none"> <li>• Consider <i>Draft Implementation Issues</i> document – what has agreement and what does not?</li> <li>• Clarify status of the Technical/Operational Subgroup’s work to date.</li> <li>• <u>Agree on the need for and content of additional rule of Board Manual guidance, including but not limited to addressing issues identified by the Technical/Operational Subgroup.</u></li> <li>• Issues (from <i>Draft Implementation Issues</i> document): <ol style="list-style-type: none"> <li>1. Verifying fish presence/absence above permanent natural barriers</li> <li>2. What generally describes a permanent natural barrier?</li> </ol> </li> </ul>  |         |                  |           |       |

| Objectives | Issues  | Options | Narrowed Options | Solutions | Notes |
|------------|---|---------|------------------|-----------|-------|
|            | <ul style="list-style-type: none"> <li>3. Use of protocol surveys above man-made barriers</li> <li>4. Wetlands connected to Type F streams – No work yet</li> <li>5. Habitat disturbances (e.g., debris flow influenced) or habitat degradation</li> <li>6. Seasonal fish habitat (combined with #11)</li> <li>7. Role of electroshocking for determining fish habitat – examples of when it is and isn't appropriate</li> <li>8. Off-Channel Habitat – No work yet</li> <li>9. Definition of "Defined Channel" – No work yet</li> <li>10. Problem with surveying for fish one time only (removed/incorporated into others?)</li> <li>11. Survey timing for streams (combined with #6)</li> <li>12. Pre-Survey season meetings</li> <li>13. Using gradient inappropriately to end surveys and to designate F/N end point</li> </ul> |         |                  |           |       |

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