

September 17, 2013

MEMORANDUM

TO: Jim Hotvedt, Adaptive Management Administrator

FROM: Terry Jackson, WDFW, Forest Habitats Section Manager

SUBJECT: Proposal Initiation: Revised HPA Rules and Appendix M

The Forest Practices Board (Board), after adoption of the Forest Practices Hydraulic Project (FPHP) rules, is required to make subsequent changes to the FPHP fish protection standards whenever the Department of Fish and Wildlife (WDFW) makes changes to the Hydraulic Code Rules (220-110 WAC) and associated fish protection standards. As outlined in Appendix M of the Forest and Fish Report (FFR), if WDFW does propose changes to the hydraulic code rules *“that would affect state or private forest landowners and impose restrictions or burdens on forest practices beyond those contemplated by the recommendations of this Report for the issues addressed in this Report...”*, WDFW must invoke the adaptive management process for providing a review of the proposed new hydraulic code rules.

WDFW is currently revising the hydraulic code rules. These rules revisions will:

- provide more clarity to applicants;
- bring the rules up to the standards of the current best available science for protection of fish life;
- come closer to meeting the Forest and Fish objectives of (1) passing fish at all life stages; (2) passing debris likely to be encountered; and (3) passing the 100-year flow;
- provide specific designs and provisions that provide for assurances and certainty for the applicant, while also providing flexibility for applicants to submit innovative designs as long as they provide equal or better protection to fish life;
- be consistent with how HPAs are permitted and conditioned today (that is, status quo with how we do business today);
- be consistent with Appendix M: *“WDFW will seek to make rule changes in a manner that maintains the integrity and furthers the purposes of the recommendations in this Report [Forest and Fish Report] to the maximum extent practical, consistent with its statutory authority, legislative mandates, court orders, agreements, and fiscal resources.”*

Therefore, WDFW believes that these revised rules are unlikely to result in additional burdens to forest landowners. However, **WDFW is bringing forward this proposal to Policy and requesting that Policy determine if an adaptive management review process would provide additional value to that which has already been or will be conducted through the WDFW rule-making process.**

As part of the official rule-making process:

- WDFW has received comments from several of the TFW stakeholders, including WFPA and Ecology. WDFW has met with these stakeholders to discuss their concerns, and has incorporated recommendations, as appropriate, into the attached draft proposed rules.
- WDFW has also worked with other stakeholders (Indian Tribes, Association of Washington Businesses (AWB), Washington State Association of Counties (WSAC), and Association of

Washington Cities (AWC)). Primary concerns and recommendations from these stakeholders have been addressed and incorporated into the proposed rules as appropriate.

- WDFW has based rule revisions pertaining to water crossing structures on peer-reviewed best available science (see list of references under question #5), and is going through the SEPA review process (see Draft EIS attached).
- WDFW is also in the process of conducting a Small Business Impact Statement and Cost-Benefit Analysis, which will be available for review during the CR-102 public review process.

If Policy so decides, WDFW requests that Policy provide a formal adaptive management review of the draft rules having relevance to forest practices, as well as provide a report to WDFW containing comments and proposed recommendations. WDFW is providing Policy with the specific chapters of the revised rules (version 4) which are relevant to forest practices (i.e., primarily chapters pertaining to water crossing structures), as well as a copy of the draft EIS. **WDFW requests that Policy focus their discussions and review on the primary issues of concern that could be perceived as lacking a credible scientific basis for protection of fish life or that could impose an added burden on forest landowners.** To date, the primary issues of concern that have been elevated to WDFW by forest practices stakeholders are: hydraulic design method, stream simulation design method, and fords.

WDFW requests that Policy's report to WDFW be submitted by February 15, 2014. Any comments and recommendations will then be incorporated, as appropriate, into WDFW's final rule-making process.

The following questions/issues, along with WDFW responses, are taken from Section 22 of the Forest Practices Board Manual "*Guidelines for Adaptive Management Program*".

1. *The possible affected forest practices rules, guidance, or DNR products.*

The following rules were adopted by the Board in August 2013 and will become effective on December 30, 2013. The board manual was approved by the Board at the same meeting will become effective along with the rules.

WAC 222-16-025, "*Fish protection standards and objectives for forest practices hydraulic projects*"

WAC 222-24-040, "*Water crossing structures for all typed waters*"

WAC 222-24-041, "*Water crossing structures in Type S and F waters*"

WAC 222-24-042, "*Water crossing structures in Type Np and Ns waters*"

WAC 222-24-044, "*Temporary bypass culverts, flumes, or channels*"

WAC 222-24-046, "*Bank protection*"

Forest Practices Board Manual Section 5, "*Guidelines for forest practices hydraulic projects*"

2. *The urgency based on scientific uncertainty and resource risk.*

The hydraulic code rules have not been revised since 1994, and the best available science has advanced since then on water crossing designs that are more likely to pass all fish at all life stages, as well as pass debris, pass the 100-year flow, and maintain channel processes. WDFW believes that these hydraulic code rules are better able to meet Forest and Fish goals, as well as more likely to result in

forest practices hydraulic projects that will be successful for the applicant. The designs for water crossing structures are believed to be less likely to fail in the future, as well as less likely to cause degradation to the stream channel and result in future barriers to fish. While these revised rules provide specific design methods more likely to protect fish life, the applicant can also propose alternative designs if they can provide equal or better protection for fish life.

3. Any outstanding TFW, FFR, or Policy agreements supporting the proposal.

After adoption of the Forest Practices Hydraulic Project (FPH) rules, the Forest Practices Board, per RCW 76.09.040(3)(b), must complete all subsequent FPH rule makings through the incorporation “into the forest practices rules any changes to those fish protection standards in the hydraulic code rules (220-110 WAC) adopted under chapter [77.55](#) RCW that are: (i) Adopted consistent with RCW [77.55.361](#); and (ii) applicable to activities regulated under the forest practices rules”.

Per RCW 77.55.361, WDFW must request a review of proposed new hydraulic code rules if they could affect forest practices activities, as outlined in Appendix M of the Forests and Fish Report. Sub-clause M.1(e) of this Appendix states *“If WDFW deems it necessary to modify regulations adopted under the HPA (Hydraulic Code rules, 220-110 WAC) after the adoption of rules that implement this Report 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 (the TFW Policy committee) 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.”*

In 2005, the Board approved Board Manual Section 22, *Guidelines for Adaptive Management Program* which was developed in accordance to requirements listed in FFR sub-clauses L.2 (d), (e), and L.4 (f) of Appendix L. To be specific, all proposals requesting investigation of potential changes to forest practices rules or guidance must follow the Proposal Initiation process listed in Part 3.1 of the manual section for adaptive management program (AMP) review.

According to Section 22 of the Board Manual, AMP review of the proposed HPA rule changes is to be initiated through submission of a proposal to the AMPA. The proposal is to follow the process outlined in Part 3.1 Stage 1, *Initiation and Screening of Proposals*, by identifying:

1. The affected forest practices rule, guidance, or DNR product;
2. The urgency based on scientific uncertainty and resource risk;
3. Any outstanding TFW, FFR, or Policy agreements supporting the proposal;

4. How the results of the proposal could address AMP key questions and resource objective or other rule, guidance, or DNR product; and
5. Available literature, data and other information supporting the proposal.

4. How the results of the proposal could address Adaptive Management Program key questions and resource objectives or other rule, guidance, or DNR product.

- This proposal reflects the consistency of the Hydraulic Code Rule revisions with the following Adaptive Management Program overall performance goals and functional objectives expressed in Appendix L, *Adaptive Management*, of the Forests and Fish Report:
 - Overall performance goals:
 - *Support harvestable levels of salmonids, and*
 - *Support the long-term viability of other covered species.*
 - Functional objectives:
 - *Fish Passage: Maintain or restore passage for fish in all life stages and provide for the passage of some woody debris by building and maintaining roads with adequate stream crossings.*
 - *Sediment: Provide clean water and substrate and maintain channel forming processes by minimizing to the maximum extent practicable, the delivery of management-induced coarse and fine sediment to streams (including timing and quantity) by protecting stream bank integrity, providing vegetative filtering, protecting unstable slopes, and preventing the routing of sediment to streams.*
 - *Hydrology: Maintain surface and groundwater hydrologic regimes (magnitude, frequency, timing, and routing of stream flows) by disconnecting road drainage from the stream network, preventing increases in peak flows causing scour, and maintaining the hydrologic continuity of wetlands.*
- This proposal also helps to assure that forest practices rules, board manual guidance and implementation of forest practices hydraulic projects are consistent with the current best available science for protection of fish life.

5. Available literature, data and other information supporting the proposal.

- 1) Scientific citations listed in EIS
- 2) 2013 – Water Crossing Design Guidelines (including associated reference section to these guidelines) <http://wdfw.wa.gov/publications/01501/>
- 3) Draft Fish Passage White Paper <http://wdfw.wa.gov/publications/01001/>
- 4) Water Crossings White Paper <http://wdfw.wa.gov/publications/00994/>
- 5) Compiled White Papers For Hydraulic Project Approval Habitat Conservation Plan (HCP) <http://wdfw.wa.gov/publications/00803/>

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6) Draft Bank Protection/Stabilization White Paper <http://wdfw.wa.gov/publications/00996/>

7) White Paper - Ecological Issues in Floodplains and Riparian Corridors

<http://wdfw.wa.gov/publications/00058/>