



MEMORANDUM

September 26, 2013

TO: TFW Policy Committee
FROM: Jim Hotvedt^{jeh}
Adaptive Management Program Administrator
SUBJECT: Adaptive Management Proposal: Washington Department of Fish and Wildlife request to review proposed revisions to hydraulic project code rules

The Washington Department of Fish and Wildlife (WDFW) is currently revising the hydraulic code rules (220-110 WAC) with the intent of providing more clarity to applicants and bringing the rules up to the standards of the current best available science for protection of fish life. WDFW requests the Adaptive Management Program (AMP) to provide a formal adaptive management review of draft rules having relevance to forest practices, as well as provide a report to WDFW containing comments and proposed recommendations. A letter of request to the Adaptive Management Program Administrator (AMPA) dated September 17, 2013 was received from Terry Jackson, Forest Habitats Section Manager in WDFW, making this request (see attached).

By submitting this proposal to the Adaptive Management Program, WDFW is following direction from Appendix M of the 1999 Forest and Fish Report (FFR) (see attached). As outlined in Appendix M, if WDFW proposes 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 the Report for issues addressed in the Report”, WDFW must invoke the adaptive management process for providing a review of the proposed new hydraulic code rules. However, this does not mean that the Policy Committee is under any obligation to conduct such review. Appendix M state, “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 ... and involve affected parties through that process.)”.

WDFW is making the following request(s):

1. That the Policy Committee 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.

If so determined,

2. That the Policy Committee 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;
3. That the Policy Committee 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; and
4. That the Policy Committee submit their report to WDFW by February 15, 2014.

Attached documents provided by WDFW and me at this time include the WDFW proposal, Appendix M from the Forest and Fish Report, WDFW rule chapters pertaining to water crossing structures, a draft environmental impact statement, and a table summarizing the draft WDFW hydraulic code revisions pertaining to forest practices. In addition, forest practices rules and Board Manual Section 5 pertaining to hydraulic projects recently adopted by the Forest Practices Board at their August 2013 meeting and to which the WDFW hydraulic project rules might apply are attached.

All proposals from the board or an AMP participant are submitted to the Administrator who will assure that the proposal identifies:

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 Adaptive Management Program key questions and resource objectives or other rule, guidance, or DNR product; and
5. Available literature, data and other information supporting the proposal.

See the attached proposal from WDFW for answers to questions 1-5 above.

Board Manual guidelines for the AMP state “The Administrator assesses a proposal for its applicability and relevance to the Adaptive Management Program” by answering a series of eight questions listed in BM 22 (BM 22-8 & 9). After reviewing the questions in Board Manual 22 and the proposal submitted by WDFW, my responses to the eight questions are as follows:

1. Is the proposal intended to inform a key question, resource objective, or performance target from Schedule L-1?

Schedule L-1 contains resource objectives related to heat/water temperature; LWD/organic inputs; sediment; hydrology; chemicals; and stream typing and fish passage. Following my course-level assessment of the WDFW proposal, I agree with WDFW’s assessment that their proposal would inform the resource objectives in the table below.

Resource objective	Functional objective
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.
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.

2. Is the proposal intended to implement projects listed in Schedule L-2?
No. This proposal focuses on rules
3. Is the proposal intended to inform the forest practices rules, guidance, or DNR product? Is the specific rule, board manual section, DNR product, or effectiveness of compliance monitoring cited and key language provided correctly? If the proposal is for a new forest practices rule, does it fill a gap? If so, would it fit within the current forest practices structure?

The proposed WDFW hydraulic code rules would inform the following WACs and Board Manual Section.

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"

The attached forest practices rules and board manual language were adopted by the Forest Practices Board, subject to minor grammatical and formatting revisions, at their August 13, 2013 meeting and become effective December 30, 2013. Components of these rules may have to be reviewed and revised by the board if affected by the proposed WDFW hydraulic code rules.

4. If the proposal includes a completed study, was the study carried out using protocols and standards similar to CMER (i.e., study design, peer review)?

N/A

5. What does the study tell us?

N/A

6. What does the study not tell us?

N/A

7. What is the relationship between this proposal and any other studies that may be planned, underway, or recently completed? Cite the information and provide a coarse assessment of the literature, data, or other scientific information provided and determine whether any of the literature or data has been peer reviewed. Identify whether the literature or data is applicable to Washington State forest practices issues. Factors to consider in answering this question include, but are not limited to: 1) Feasibility of obtaining more information (within or outside AMP) to better inform Policy about resource effects. 2) Whether other studies reduce uncertainty.

N/A

8. How much of an incremental gain in understanding would/do the proposal results represent? Explain how the proposal results might affect the current rules, numeric targets, performance targets, or resource objectives.

The revised WDFW hydraulic code rules may better meet Forest and Fish goals, particularly in the passage of all fish at all life stages, passage of 100-year flow, and maintenance of channel processes.

WDFW recently extended their deadline for receiving comments and recommendations to February 15, 2013. That provides a four-month window for the Policy Committee to decide whether or not to accept the proposal, and if so, to develop and deliver a set of comments and recommendations. Consequently, I suggest that there is a level of urgency behind accepting and completing the review, if the Policy Committee so chooses.

Because the proposed WDFW rule revisions may affect forest practices rules, and could potentially require changes to those rules, I recommend:

1. That the Policy Committee accept WDFW's proposal to send the draft WDFW hydraulic code rule revisions through the adaptive management review process;
2. That the proposal go down the Policy track;
3. That the Policy Committee select a limited set of issues on which to focus; and
4. That the Policy Committee agree that if consensus cannot be reached, a non-consensus document with majority and minority comments and recommendations on the selected issues be acceptable for delivery to WDFW.

/Jeh

Attachments:

WDFW hydraulic code rules AMP proposal to policy 9_26_2013
Chapter 220-110 WAC draft version 4- 092613 - forest related
HPA-FP rule change summary table
Chapter 220-110 WAC draft environmental impact statement
Forests and fish report appendix M
FPHP rule proposal to forest practice board-August 2013 (Forest practices WACs)
Board Manual Section 5 Guidelines for forest practices hydraulic projects - to forest practices board-August 2013