

August 1, 2013

Memorandum

To: Policy Committee

From: Marc Engel, Forest Practices Assistant Division Manager,
Policy & Services, DNR
Terry Jackson, Forest Habitat Section Manager, WDFW

Subject: Forests and Fish Report, Appendix M review of proposed
WDFW draft Hydraulic Code rules

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) changes the fish protection standards in the Hydraulic Code rules (220-110 WAC). The Board, per RCW 76.09.040(3)(b), must complete all subsequent FPHP rule makings through the incorporation “into the forest practices rules any changes to those fish protection standards in the rules adopted under chapter 77.55 RCW (220-110 WAC) that are: (i) Adopted consistent with RCW 77.55.361; and (ii) applicable to activities regulated under the forest practices rules”.

WDFW, per RCW 77.55.361 (4) and (5), must complete two steps to meet their statutory requirements for any proposed rulemaking amending the Hydraulic Code rules (220-110 WAC). WDFW shall:

- Notify DNR prior to beginning a rule-making process that may affect activities regulated under chapter 76.09 RCW; and
- Act consistent with Appendix M of the forest and fish report, as the term "forests and fish report" is defined in RCW 76.09.020, when modifying fish protection rules that may affect activities regulated under chapter 76.09 RCW.

To accomplish the second step, WDFW must request a review of proposed new hydraulic code rules 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 (*the*

Policy committee), 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 (*Hydraulic Code, 220-110 WAC*) 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.”

Appendix L of the Forests and Fish Report (FFR) identifies the participants and describes the procedures of the adaptive management program. Sub-clauses L.2 (d) and (e) describe the duties of the Adaptive Management Program Administrator (AMPA) and the TFW Policy Committee respectively; and L.4 (f) describe the need to develop an adaptive management process to bring proposals before the Policy committee.

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.

For WDFW to fulfill their statutory requirements to meet Appendix M of FFR, they must initiate a request for an AMP review of the proposed HPA rule changes through the AMPA. The proposal must follow the process outlined in Part 3.1 Stage 1, *Initiation and Screening of Proposals* (beginning on page M22-7), 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.

Proposals may also include:

6. The proposal’s testing hypotheses and assumptions;
7. A description of affected public resources;
8. Potential cause and effect relationships with forest management;
9. A description of the proposal’s study design; and

10. An estimated timeline with milestones and costs associated with implementation of the proposal.

Upon receipt of the Proposal Initiation packet from WDFW, the AMPA (Jim Hotvedt) will assess the proposal and provide to the Policy committee:

- A summary of the proposal;
- Recommendation of applicability and value to the AMP;
- Recommendation of the proposed track, science or policy, for the AMP review

In summary, to meet the requirement to fulfill an Appendix M review, WDFW must request an AMP review of their new Hydraulic Code rules. The process is:

- WDFW submits a Proposal Initiation packet to the AMPA containing:
 - The draft Hydraulic Code rules and supporting EIS;
 - Specific request for AMP to submit a report summarizing their review of the scientific information and any proposed adjustments to the Director of WDFW; and
 - Answers to the first five questions and possibly the second five questions, if pertinent, of Stage 1, Initiation and Screening of Proposals as listed in the Adaptive Management board manual
- AMPA presents to the Policy committee:
 - WDFW proposal including all submitted materials; and
 - Recommended AMP track, science or policy, for review of WDFW request
- Policy committee decides whether to accept WDFW Proposal Initiation to review proposed revisions to the Hydraulic Code rules:
 - If yes, AMP conducts review and prepares a report for the Director of WDFW;
 - If no, WDFW will pursue its normal rule adoption process as directed by the APA (34.05 RCW) and involve affected parties through that process.