



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Forest Practices Board

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: The Adaptive Management Program (program) was created to provide science-based recommendations and technical information to assist the Forest Practices Board (Board) in amending rules and guidance for aquatic resources to achieve the resources goals of the Forests and Fish Report. The Board may also use this program to adjust other Rules and guidance.

The rule amendments are designed to reform the program as outlined in the 2012 settlement agreement for the Forest Practices Habitat Conservation Plan. Specifically, the amendments modify the program in the following ways:

- The Timber/Fish/Wildlife Policy Committee (Policy Committee) is reestablished as a consensus-based body comprised of caucus principles or their representatives.
- Nine caucuses are established for the Policy Committee with one vote per caucus.
- The dispute resolution process is revised by allowing the Cooperative Evaluation Monitoring and Research Committee (CMER) to utilize stage 2 and by shortening the decision making timelines for the Policy Committee and CMER while allowing for timeline extension by consensus vote.
- The CMER work plan process is expanded to a Master Project Schedule prioritized with timelines for review and updates, and additional roles for the Adaptive Management Program Administrator and the Policy Committee.

Citation of existing rules affected by this order:

Repealed:
Amended: 222-12-045
Suspended:

Statutory authority for adoption: RCW 76.090.040 and 76.09.370

Other authority : WAC 222-08-032

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 13-11-131 on May 22, 2013 (date).
Describe any changes other than editing from proposed to adopted version: None

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone _____
fax _____
e-mail _____

Date adopted: August 13, 2013

NAME (TYPE OR PRINT)

Aaron Everett

SIGNATURE

TITLE

Chair

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 19, 2013

TIME: 10:03 AM

WSR 13-20-006

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>4</u>	Amended	<u>9</u>	Repealed	<u>5</u>

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	<u>1</u>	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	<u>1</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	<u>1</u>	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	<u>1</u>	Repealed	_____

WAC 222-12-045 *Adaptive management program. (~~(*Adaptive management program.)*~~) In order to further the purposes of chapter 76.09 RCW, the board has adopted and will manage a formal science-based adaptive management program (program), as set forth in WAC 222-08-160(2). Refer to board manual section 22 for program guidance and further information.

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

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

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

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

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

(A) Support harvestable levels of salmonids;

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

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

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

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

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

• The cooperative monitoring evaluation and research committee (CMER)(~~(7)~~);

• The TFW policy committee (and/or similar collaborative forum)
((τ));

• The adaptive management program administrator((τ));

• 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 TFW 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").))~~ 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, board manual sections, and/or other guidance. Policy committee membership ((is self-selecting, and at a minimum should include representatives of the following)) consists of caucus principals or their representatives from the following nine caucuses:

~~((Timber landowners--))~~ • Industrial ((and)) private timber landowners;

• Nonindustrial private timber landowners((+));

• Environmental community;

• Western Washington tribal governments;

• Eastern Washington tribal governments;

• County governments;

• Department of natural resources;

- State departments ((-including)) of fish and wildlife((-)) and ecology((-, and natural resources)); and
- Federal agencies (including National Marine Fisheries Service, U.S. Fish and Wildlife Service, and U.S. Environmental Protection Agency ((and U.S. Forest Service)). Policy members will participate without compensation or per diem)).

Policy committee members or their representatives are the primary participants for discussion and decisions at policy committee meetings. Technical or scientific staff may attend policy committee meetings for consultation and staff member or visitors may attend policy committee meetings, but refrain from decision making. The policy committee will base consensus on one vote from each of the nine caucuses. The policy committee will act as a consensus-based body.

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

(A) A CMER master project schedule prioritizing all CMER research and monitoring projects through 2031;

(B) Assurances that the CMER work plan projects are scheduled according to the CMER master project schedule;

(C) A review and update of the CMER master project schedule at least every four years; and

(D) Assurances that all of the projects on the master project schedule, as amended by the board, will be completed by 2040.

(iii) **Adaptive management program administrator (program administrator)**. The department will employ a full-time independent program administrator to oversee the program and support CMER. The program administrator will have credentials as a program manager, scientist, and researcher. The program administrator will:

(A) Make reports to the board and have other responsibilities as defined in the board manual.

(B) Work with the policy committee and CMER to develop the CMER master project schedule and present it to the board at their regular May 2014 meeting;

(C) Report to the board every two years, beginning at their regular May 2015 meeting on:

(I) Progress made to implement the CMER master project schedule and recommended revisions;

(II) The status of ongoing projects including adherence to scheduled timelines; and

(III) Policy committee's responses to all final CMER reports.

(iv) **Forest practices board (board)**. The board, among other responsibilities, shall:

(A) Require the program to complete work according to the CMER master project schedule as amended by the board;

(B) Determine whether the program is in substantial compliance with the CMER master project schedule every two years, beginning at the regular August 2014 meeting; and

(C) Notify the National Marine Fisheries Service and the U.S. Fish and Wildlife Service by letter within thirty days after the regular August meeting if the board determines the program is not in substantial compliance with the CMER master project schedule.

(c) **Independent scientific peer review process**. By this rule, the board establishes an independent scientific peer review process to determine if the scientific studies that address program issues are scientifically sound and technically reliable; and provide advice on the scientific basis or reliability of CMER's reports. Products that must

be reviewed include final reports of CMER funded studies, certain CMER recommendations, and pertinent studies not published in a CMER-approved, peer-reviewed journal. Other products that may require review include, but are not limited to, external information, work plans, requests for proposal, subsequent study proposals, the final study plan, and progress reports.

(d) **Process:** The following stages will be used to ~~((affect))~~ effect change for managing adaptive management proposals and approved projects. If consensus cannot be reached by participants at any stage, the issue will be addressed within the dispute resolution process as defined in (h) of this subsection.

(i) **Proposal initiation:** Adaptive management proposals can be initiated at this stage by any of the participants listed in ~~((+2))~~(b) of this subsection to the program administrator, or initiation may be proposed by the general public at board meetings. Proposals must provide the minimum information as outlined in the board manual and demonstrate how results of the proposal will address key questions and resource objectives or other program rule and/or guidance issues. The board may initiate proposals or research questions in the course of fulfilling their duties according to statute.

(ii) **Proposal approval and prioritization:** The program administrator will manage the proposal approval and prioritization process at this stage and consult with CMER on the program workplan. CMER proposals will be forwarded by the program administrator to policy and then to the board. The board will make the final determination regarding proposal approvals and prioritization. The board will act on proposal approval and prioritization in a timely manner.

(iii) **CMER implementation of proposal:** Board approved proposals are systematically implemented through CMER at this stage by the program administrator.

(iv) **Independent scientific peer review:** An independent scientific peer review process will be used at identified points within this stage of implementation depending upon the study and will be used on specified final studies or at the direction of the board.

(v) **CMER committee technical recommendations:** Upon completion, final CMER reports and information will be forwarded at this stage by the program administrator to policy in the form of a report that includes technical recommendations and a discussion of rule and/or guidance implications.

(vi) **Policy committee petitions ~~((for amendment))~~ and recommendations to the board:** Upon receipt of ~~((the))~~ a CMER report or a board requested action, the policy committee will prepare ~~((program))~~ a report for the board outlining recommended actions including additional research, rule ~~((amendments))~~ petitions, and/or guidance recommendations ~~((in the form of petitions for amendment))~~. When completed, the recommendations including rule petitions and the original CMER report and/or other information as applicable will be forwarded by the program administrator to the board for review and action. Policy committee recommendations for rule amendments to the board will be accompanied by formal petitions for rule making (as described in WAC 222-08-100 and RCW 34.05.330). The policy committee will use the CMER results to make specific ~~((petitions))~~ recommendations to the board ~~((for amending))~~ on:

(A) The regulatory scheme of forest practices management (Title 222 WAC rules and board manual);

(B) Voluntary, incentive-based, and training programs affecting forestry;

(C) The resource objectives; and

(D) CMER itself, adaptive management procedures, or other mechanisms implementing the recommendations contained in the most current forests and fish report.

(vii) **Board action to ~~((adopt))~~ accept petitions for ~~((amendment))~~ rule making and/or recommendations from the policy committee:** Upon receiving ~~((a formal petition))~~ recommendations from the policy committee for ~~((amendment to))~~ rule(s) petitions and/or recommendations for guidance, the board will take appropriate and timely action. There will be a public review of all petitions as applicable. The board will make the final determination.

(e) **Biennial fiscal and performance audits.** The board shall require biennial fiscal and performance audits of the program by the department or other appropriate and accepting independent state agency.

(f) **CMER five-year peer review process.** Every five years the board will establish a peer review process to review all work of CMER and other available, relevant data, including recommendations from the CMER staff. There will be a specified, but limited, period for public review and comment.

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

(h) **Formal dispute resolution process for CMER and policy committee.** If consensus cannot be reached through the adaptive management program process, participants will have their issues addressed by this dispute resolution process. Potential failures include, but are not limited to:

- The inability of policy to agree on research priorities, program direction, or recommendations to the board for uses of monitoring and/or research after receiving a report from CMER;

- The inability of CMER to produce a report and recommendation on schedule; and

- The failure of participants to act on policy recommendations on a specified schedule.

Key attributes of the dispute resolution process are:

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

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

(A) Stage one dispute resolution will be an attempt by CMER ~~((and))~~ or the policy committee, as applicable, to reach consensus. ~~((On technical issues,))~~ CMER ~~((shall))~~ and the policy committee have up to ~~((six))~~ two months to reach ~~((a))~~ consensus under stage one; unless otherwise agreed upon by CMER or the policy committee if substantive progress is being made. ~~((Parties))~~ Any party may move the proc-

ess to stage two after an issue has been in dispute resolution before CMER or the policy committee for ~~((six))~~ two months ~~((unless otherwise agreed))~~. The time periods commence from ~~((referral of technical issues to CMER, report by CMER to policy, or the raising of a nontechnical issue (or matter not otherwise referable to CMER) directly at policy))~~ the date the dispute resolution process is invoked.

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

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

(D) If stage two dispute resolution within the policy committee does not result in consensus, ((stage three will be action by the board. The board will consider policy and CMER reports, and)) the program administrator will report the majority and minority ((thinking regarding the results and uses of the results can be brought forward to the board)) recommendations to the board. The board will make the final determination regarding dispute resolution.