

19. Appendix



Appendix #1

Monthly Summary of Clean Water Act Projects – July 2012						
			Updated 6/28/2012			
Project # /Name	Project Lead	Project Description	Percent (%) Complete	Completed on Time	Original Due Date	Comments
1 - Revised CMER Work Plan	Hotvedt	By July 2009, and in subsequent budget and planning years, the AMP Administrator with the assistance from the Policy and CMER committees will send to the Forest Practices Board a revised CMER work plan and budget that places key water quality studies as high priorities as described in section II(c) regarding the adaptive management program.	100% - for current FY	Yes	July 09	This is an annual task that has been completed successfully twice and signed off on by Ecology through 2010. (See DOE letter dated 10/4/10).
2 – Table 1 Projects	Hotvedt	By July 2009, and in subsequent planning years, the projects identified by Ecology in Table 1 will be reflected in the CMER budget and work plan in a manner that establishes a priority schedule for study development. Failure to meet any of the milestones identified without prior consent by Ecology may be viewed as a basis to revoke the CWA assurances at that point in time.	100%- for current FY	Yes	July 09	This is annual task that has been completed successfully twice and signed off on by Ecology through 2010. (See DOE letter dated 10/4/10).

Project # /Name	Project Lead	Project Description	Percent (%) Complete	Completed on Time	Original Due Date	Comments
3 – AMP Funding Strategy	Hotvedt	The Forest and Fish Policy Budget Committee will identify a strategy that will be implemented with caucus principal support to secure stable, adequate, long-term funding for the AMP.	100%	Yes	September 09	Project is complete. The Forests and Fish Policy Committee developed the strategy they would use to seek out sufficient long term stable funding for the Adaptive Management Program. That strategy, while thus far unsuccessful in finding long term funds, satisfies milestone number 3 according to Ecology. (See DOE letter dated 10/4/10).
4 - Compliance Monitoring Stakeholder Charter	Obermeyer	DNR will complete the Charter for the Compliance Monitoring Stakeholder Guidance Committee and determine which issues identified herein related to compliance monitoring will be dealt with by the committee. This is intended to help move these issues forward on schedule as well as to flag the items for which an alternative process for resolution is needed.	100%	Yes	October 09	Project is complete. Ecology provided final project sign-off on 12/10/09 (see email).

Project # /Name	Project Lead	Project Description	Percent (%) Complete	Completed on Time	Original Due Date	Comments
5 - Protocols and Standards Training	Hotvedt	The AMP program administrator, with the assistance of CMER and Policy, will complete the ongoing training sessions on the AMP protocols and standards for CMER, and Policy. This is intended to remind participants of the agreed upon protocols. Opportunity should also be provided to identify portions of the protocols and associated rules that need revision to improve performance or clarity. Any identified improvements to the Board Manual or regulations should be implemented at the soonest practical time. Subsequent to this effort, the administrator will offer to provide this training to the Board.	75%	No	December 09	Five new members were appointed to the Forest Practices Board at the beginning of 2012 and all five were given training on the Adaptive Management Program after their first Forest Practices Board meeting on February 14. New members have been and will continue to be trained as they are appointed to the Board. Efforts to identify portions of the protocols and associated rules that need revision to improve performance and clarity have been undertaken by the AMPA and Policy and CMER co-chairs. Policy and CMER co-chairs and the AMPA have itemized and prioritized issues resulting from AMP training and from the Stillwater Report. CMER is currently revising its Protocols and Standards Manual, taking into consideration comments and recommendations from the Stillman Report and others.

Project # /Name	Project Lead	Project Description	Percent (%) Complete	Completed on Time	Original Due Date	Comments
6 - CMER Project Flagging Process	Hotvedt	The AMP Manager with the assistance of the co-chairs of Policy and CMER will initiate a process for flagging projects for the attention of Policy that are having trouble with their design or implementation. This process should identify projects not proceeding on a schedule reflecting a realistic but expedient pace (i.e., a normal amount of time to complete scoping, study design, site selection, etc.).	100%	No	December 09	Project is completed. A briefing on the product was provided to CMER at the August 24, 2010. The milestone was completed with a briefing to Forests and Fish Policy at their October 2010 monthly meeting. The process was accepted by Mark Hicks, Department of Ecology on Nov. 3, 2010.
7 - Rule Element Sampling	Obermeyer	DNR in partnership with Ecology and with the aid of the CMP stakeholder guidance committee will develop general plans and timelines for exploring options and data collection methods for assessing compliance with rule elements such as water typing, shade, wetlands, haul roads and channel migration zones. The goal is to initiate these programs by December 2011.	100%	No	December 09	Project is completed. Final plan delivered to Ecology on March 31, 2010. Ecology sent an e-mail accepting the plan on March 31, 2010.

Project # /Name	Project Lead	Project Description	Percent (%) Complete	Completed on Time	Original Due Date	Comments
8 - Field Dispute Resolution	Obermeyer	DNR with assistance of Ecology and WDFW, will evaluate the existing process for resolving field disputes and identify improvements that can be made within existing statutory authorities and review times. Although resolution of the specific issue at hand should be a goal, the overarching purpose of this milestone is to establish a process that will identify the basis for the dispute and to put in place revised guidance, training, reporting pathways, other measures that will minimize the reoccurrence of similar disputes in the future. This process should consider how to best involve the appropriate mix of both policy and technical participants to thoroughly resolve the issue at hand.	100%	No	January 10	Project complete. Final document sent to Mark Hicks at Ecology. Mark Hicks approved the completion of the milestone. See email dated 11/3/10.
9 - Stakeholder RMAP Participation	Mahan	As part of the RMAP annual meeting process, DNR should ensure opportunities are being provided in all the regions to obtain input from Ecology, WDFW, and tribes formally participating in the forest and fish process regarding road work priorities.	100%	No	January 10	Project completed on 8/9/11 when the forest practices board agreed to process changes and board manual changes in the RMAP process. Mark Hicks signed off on completion on 9/2/11.

Project # /Name	Project Lead	Project Description	Percent (%) Complete	Completed on Time	Original Due Date	Comments
10 - Water Type Modification Review Process	Tasker	DNR in consultation with WDFW, Ecology, and the tribes will develop a prioritization strategy for water type modification. The intent of this strategy will be to manage the number of change requests sent to cooperating agencies for 30-days review so it is within the capacity of those cooperators to respond to effectively. The strategy should consider standardizing the current ad hoc process of holding monthly coordination meetings with agency and tribal staff in all the DNR regions. This should allow group knowledge and resources to be more efficiently used to evaluate change requests.	100%	Yes	February 10	Project is complete. The Regions have been conducting their WTR Team meetings and implementing the process. See Hicks email dated 11/24/10 for final DOE approval.
11 - Water Typing On-Line Guidance	Mahan	DNR Forest Practices will establish online guidance that clarifies existing policies and procedures pertaining to water typing. The intention is to ensure regional staff and cooperators remain fully aware of the most current requirements and review processes for changing water type and coordinating the review of multidisciplinary teams.	95%	No	May 10	FPD will post the guidance on the website. Projected date - Summer 2012.

Project # /Name	Project Lead	Project Description	Percent (%) Complete	Completed on Time	Original Due Date	Comments
12 - Certification Framework	Mahan	DNR with consultation with Ecology and WDFW (or with the CMP stakeholder guidance committee), will establish a framework for certification and refresher courses for all participants responsible for regulatory or CMP assessments. This will be focused on aiding in the application of rules regarding bankfull width, CMZ boundaries, application of road rules, and wetlands. Consideration should be given to including a curriculum of refresher courses on assessing difficult situations.	30%	No	June 10	DNR Executive Management is reviewing the position request. DNR plans on hiring the training position by March 2012. Intent is to have training program manager develop course curriculum with input from DNR Region staff, WDFW, Ecology and other interested parties.
13a, b, c - Individual Landowner Tracking	Casey	By June 2010, DNR, Ecology, and WDFW will meet to review existing procedures and recommend improvement needed to more effectively track compliance at the individual landowner level. The goal will be to ensure the compliance pattern of individual landowners can be effectively examined. This should consider the types and qualities of enforcement actions that occur (e.g., conference notes, notices of correction, stop work orders, penalties.)	13a - 100% 13b - 100% 13c - 100%	Yes Yes Yes	Jun-2010 Oct-2010 May-2012	The project was broken into three separate milestones with individual due dates: 13a - By June 2010: This project is completed - the group evaluated the current data base that is used to track compliance and determined that it is acceptable. See DOE acceptance in 11/3/10 email. 13b - By October 2010: This project is completed. DNR, Ecology, and WDFW conducted an initial assessment of trends in compliance and enforcement actions taken at the individual landowner level. The process to review compliance and enforcement trends for individual landowners was established and

Project # /Name	Project Lead	Project Description	Percent (%) Complete	Completed on Time	Original Due Date	Comments
						<p>accepted by Mark Hicks, Department of Ecology on Nov. 3, 2010.</p> <p>13c - By May 2012: This project is completed and accepted by Mark Hicks, Department of Ecology via email on June 8, 2012. Ecology accepted a spreadsheet that "documents an effective format for tracking and communicating patterns of compliance at the individual landowner level. Maintaining compliance data in this straightforward format will readily allow the information to be examined at both annual and longer time scales."</p>

Project # /Name	Project Lead	Project Description	Percent (%) Complete	Completed on Time	Original Due Date	Comments
14 - Riparian Non-Compliance	Obermeyer/Jackson	DNR with the assistance of Ecology, will assess the primary issues associated with riparian noncompliance (using the CMP data) and formulate a program of training, guidance, and enforcement believed capable of substantially increasing the compliance rate - with a goal of getting greater than ninety percent compliance by 2013. Ecology will consider the rating of noncompliance since not all infractions have the same effect on public resources (e.g., is it predominately at levels within reasonable field method limits or likely to occur even with due diligence) when determining if this compliance target rate milestone has been satisfied.	97%	No	Jul-10	Final draft sent to Ecology for review.
15 - SFL Road Risk Evaluation Strategy	Hicks/Engel	Ecology, in partnership with DNR, and in consultation with the SFL advisory committee, will develop a plan for evaluating the risk posed by SFL roads for the delivery of sediment to waters of the state.	10%	No	Jul-10	DNR's Small Forest Landowner Office has submitted a grant proposal to the Northwest Fish and Wildlife Foundation to aid in achieving this milestone.

Project # /Name	Project Lead	Project Description	Percent (%) Complete	Completed on Time	Original Due Date	Comments
16 - Type N Rules Evaluation Strategy	Engel	Policy, in consultation with CMER, will develop a strategy to examine the effectiveness of the Type N rules in protecting water quality at the soonest possible time. This strategy needs to include at a minimum: 1. Ranking and funding of the Type N studies as highest priorities for CMER research. 2. By July 2012, developing a protocol for identifying with reasonable accuracy the uppermost point of perennial flow, or develop documentation demonstrating the spatial and temporal accuracy of the existing practice used to identify this point. 3. By Sept. 2012, completing a comprehensive literature review examining the effects of buffers on streams physically similar to the Type Np waters in the forest practices rules prior to completion of the Type N basalt effectiveness study. This should be conducted or overseen by CMER (or conducted by an independent research entity).	25%	No	Jul-10	In Fall 2011, Forest and Fish Policy developed a chartered process that serves as a strategy to complete this milestone. That process is now being implemented through the simultaneous efforts of both technical and policy subgroups. Completion can be reasonable be expected by September 2012, which would substantially meet this milestone.

Project # /Name	Project Lead	Project Description	Percent (%) Complete	Completed on Time	Original Due Date	Comments
17 - Alternate Plan Evaluation	Anderson/ Engel/ Miketa	DNR, in partnership with Ecology, and in consultation with WDFW, the Tribes, and the SFL advisory committee, will design a sampling plan to gather baseline information sufficient to reasonably assess the success of the alternate plan process. This sampling plan should include how to select sample sites, how to best document the content and assumptions contained in the alternate plan, what to monitor and how frequently to do so, and responsibilities for who will conduct the sampling. The goal of this effort is to initiate data collection in the 2011 field season.	95%		Oct-10	Two trial alternate plans were identified, one in Northeast region and the other in Pacific Cascade region. Northeast region trial is now finished, including shade plot photos. Pacific Cascade region trial was approved with Forest Practices Forester Andy Aschenbrenner supplying all the paperwork less the completed after-action review. This will occur upon completion of tree planting next year. While invited, Ecology (Olympia) did not participate in the process in NE region. The after-action review was completed in April 2012.
18- Independent AMP Review	Hotvedt	The AMP Program administrator shall initiate the process of obtaining an independent review of the AMP. This review shall be done by representatives of an independent, third party research organization.	20%	No	Dec-10	A LEAN event was completed in May 2012 that recommended a streamlined approach to developing CMER study designs. The approach would continue to require CMER approval of final study designs, but excluded multiple intermediate decision points associated with the current review and approval processes. The recommended process will be tested using a pilot on a CMER project, yet to be determined.

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19 - Water Type Modification Strategy Review	Mahan	DNR in consultation with WDFW, Ecology, and the Tribes will complete an evaluation of the relative success of the water type change review strategy. Results of this review would be used to further refine the strategy.	95%	Yes	Dec-11	"Request to move the due date for the project was granted by Ecology (see 11/24/10 email). The due date was changed from 2/2011 to 12/2011. Dec. 2011 - Project lead finished collecting comments for the Working Group regarding how the procedure is working. Mark Hicks stated the implementation issues needed to be addressed prior to completion. DNR will hold a final meeting with the working group to discuss resolutions to implementation issues. Tasker passed duties on to Jed Herman. Upon completion of this meeting Mark Hicks stated he would be willing to accept this milestone as complete (see email 12).
20 -RMAP Summary	Potter	DNR with the assistance of large landowners, will provide summary information for all industrial landowners having RMAPs. The summary information will include at a minimum: Date RMAP completed, total miles of road covered under the RMAP, total miles describing the strategy for bringing all roads into compliance by 2016 that demonstrates evenflow or otherwise provides confidence that compliance will be	100%			Project complete on 8/9/11. The Forest Practices Board agreed to process changes, and Board Manual changes that completed this Milestone. Mark Hicks signed off as complete on 9/2/11.

Project # /Name	Project Lead	Project Description	Percent (%) Complete	Completed on Time	Original Due Date	Comments
		attained by 2016. If reasonable and feasible, the summary will show the annual progress on road and barrier improvement that has occurred since the inception of the RMAP, and DNR will provide a master summary for all industrial landowners combined.				
21-SFL Roads Report	Hicks/ Engel/ Mahan	Ecology in partnership with DNR, and in consultation with the SFL advisory committee will prepare a summary report that assesses the progress of SFLs in bringing their roads into compliance with road best management practices, and any general risk to water quality posed by relying on the checklist RMAP process for SFLs. If a significant portion of SFL roads are estimated to pose a risk of damage to public resources, then a report will be prepared in time to brief the Legislature in December 2013.	0%		13-Nov	This report is due to the legislature in 2013. A plan on how to obtain the data needs to be agreed upon, funding to execute the plan obtained and the report written so that it can be submitted in 2013 to the legislature.
22-Unstable Slopes Rules Compliance	Mahan	Initiate a program to assess compliance with the unstable slopes rules.	10%		2012	This new "forest practices program" milestone was transferred to the program milestone list in July 2011. It was originally listed by Ecology under CMER milestones. Initial discussion with Ecology scheduled for 10/24/2011. 1/2012 Working with Leslie Lingley on Post-Mortem partially buffered areas to verify unstable slope with FPA. Expect to have more information 2/2012.

Appendix #2

INFORMATION

 dnr.wa.gov/sflo

 dnr.wa.gov/sflo

FAMILY FOREST FISH PASSAGE Program Partners

PROGRAM OUTREACH
Department of Natural Resources
Small Forest Landowner Office
Mail Stop 47012
Olympia, WA 98504-7012
Phone: 360-902-1404
Fax: (360) 902-1428
Email: sflo@dnr.wa.gov
www.dnr.wa.gov/sflo

**PROJECT EVALUATION
AND RANKING**
Department of Fish and Wildlife
Habitat Management Program
www.wdfw.wa.gov

PROGRAM FUNDING
Recreation and Conservation Office
www.rco.wa.gov

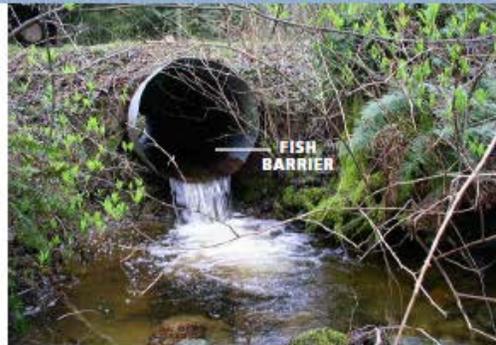
LANDOWNER ORGANIZATION
Washington Farm
Forestry Association
www.wafarmforestry.com

Apply online today



* The three agencies above are responsible for implementing the program. The Washington Farm Forestry Association joins the agencies on a steering committee.

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Family Forest Fish Passage Program

A Funding Program for
Small Forest Landowners
to Improve Fish
Passage

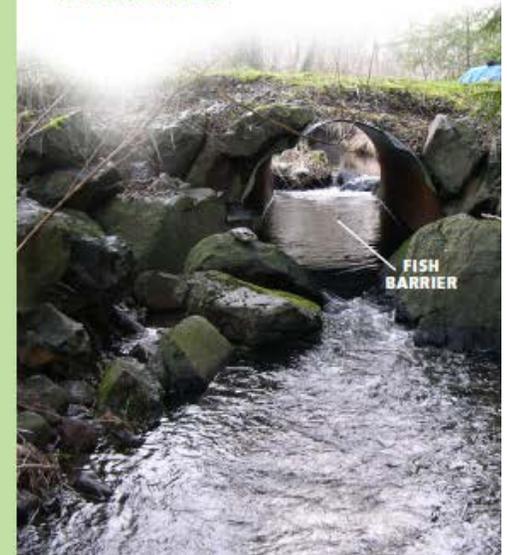


DO YOU HAVE ROADS WITH STREAM CROSSINGS ON YOUR FORESTLAND?

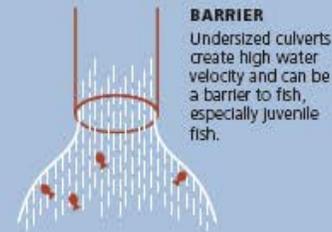
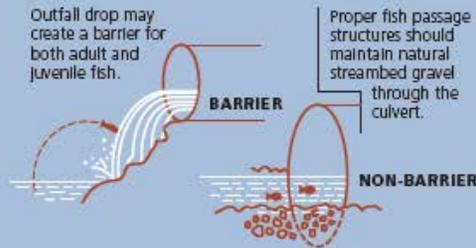
Many miles of stream are inaccessible to fish because of barrier culverts. Our goal is to help restore declining salmon and trout populations by replacing barriers with new structures that allow fish to migrate upstream.

By signing up for the Family Forest Fish Passage Program, a landowner is relieved of any Forest Practices obligation to fix a fish barrier.

 Not sure if your culvert is a barrier to fish? Apply to the program to have it evaluated.



What makes a culvert a fish barrier?



“ I AM ABSOLUTELY TICKLED WITH THE QUALITY OF THIS PROJECT. WE ARE THANKFUL FOR THE FAMILY FOREST FISH PASSAGE PROGRAM, TO HAVE FISH RETURNING TO OUR CREEK AFTER 50 YEARS, AND A NEW BRIDGE TO OUR TREE FARM!”

HERB & DOLORES WELCH
Small forest landowners

Who's eligible for funding?

You qualify for the program if:

You are a private, small forest landowner.
You harvest less than 2 million board feet of timber each year from lands you own in Washington.

and

The culvert is on forestland and associated with a road.
The land is capable of supporting a merchantable stand of timber and is not being used for anything incompatible with growing timber.

and

The culvert is on a fish-bearing stream.



Any stream wider than 2 feet in Western Washington (*3 feet in Eastern Washington) with a gradient less than 20 percent is considered potential fish habitat. Smaller or steeper streams may also be fish-bearing; this will be determined by a site evaluation.

How does the program work?

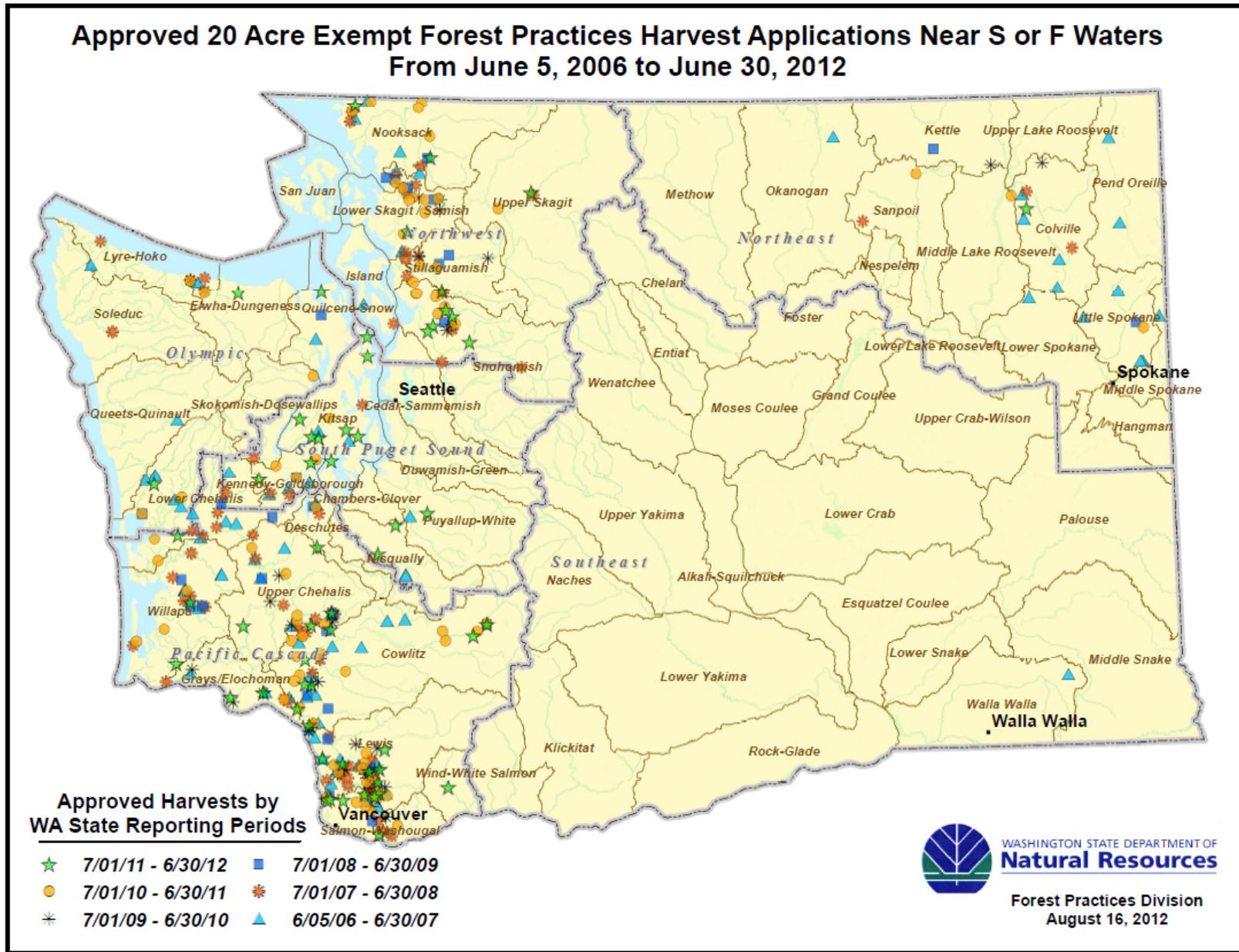
- 1 Landowner applies for evaluation



surveymonkey.com/fffpp

You can also contact us by phone or email:
360-902-1404
sflo@dnr.wa.gov

- 2 Culvert is evaluated and prioritized
A field technician will contact you to make a site visit to assess the culvert.
- 3 Project is funded when it is a high priority
The barriers presenting the highest benefit to fish habitat are fixed first.
- 4 Project sponsor manages the project
The program provides a project sponsor who will manage all aspects of a project, including engineering, permits, contractors and accounts.



Appendix #4

WAC 222-20-120 Notice of forest practices that may contain cultural resources to affected Indian tribes. [Effective 3/18/2012]

(1) The department shall notify affected Indian tribes of all applications in geographic areas of interest that have been identified by such tribes, including those areas that may contain cultural resources.

(2) Where an application is within a tribe's geographic area of interest and contains cultural resources the landowner, at the tribe's discretion, shall meet with the affected tribe(s) prior to the application decision due date with the objective of agreeing on a plan for protecting the archaeological or cultural value.

(3) The department will consider the requirements in subsection (2) complete if prior to the application decision due date:

(a) The landowner meets with the tribe(s) and notifies the department that a meeting took place and whether or not there is agreement on a plan. The department shall confirm the landowner's information with the tribe(s); or

(b) The department receives written notice from the tribe(s) that the tribe(s) is declining a meeting with the landowner; or

(c) The tribe(s) does not respond to the landowner's attempts to meet and the landowner provides to the department:

(i) written documentation of telephone or e-mail attempts to meet with the tribe's designated cultural resources contact for forest practices, and

(ii) a copy of a certified letter with a signed return receipt addressed to the tribe's cultural resources contact for forest practices requesting a meeting with the tribe; or

(d) The department receives other acceptable documentation.

(4) The department may condition the application in accordance with the plan.



December 16, 2011

Addressed to Tribal Chair

Subject: Tribal Review of Forest Practices Rule Makings and Forest Practices Applications/Notifications

Dear Chairman

The Department of Natural Resources (DNR) provides staff to the Forest Practices Board (Board) to complete forest practices rule makings. During the rule making process there are two opportunities for tribes to make comment. The first occurs when the Board directs staff to send proposed rule language to the Department of Fish and Wildlife and counties for a 30-day review pursuant to the Forest Practices Act (RCW 76.09.040). By a long standing practice, we have included the tribes in this review process. The second opportunity for comment occurs when the Board initiates rule making pursuant to the Administrative Procedures Act (chapter 34.05 RCW).

The tribal contact list for the 30-day review is kept within the Forest Practices Division and it is essential that this list is up to date at all times. The current list of reviewers for your tribe is attached for your review. Please contact Patricia Anderson at 360.902.1413 or patricia.anderson@dnr.wa.gov to place staff on or update your tribal staff list of those who will receive draft rule proposals to review and potentially provide comments prior to the initiation of rule making by the Board.

When the Board initiates rule making, tribes again have the opportunity to comment through testimony at rule making hearings and/or written comment to the Board. I encourage tribes wanting to receive notification of Board rule makings, to register the email addresses of all participating tribal staff through the Forest Practices rule making webpage at: http://www.dnr.wa.gov/BusinessPermits/Topics/ForestPracticesRules/Pages/fp_rules_activity.aspx. On the webpage, click on "E-Subscribe" under "Related Links" and select the subjects of interest, including rule makings, for notification. DNR purchases the service of "E-Subscribe" through GovDelivery who maintains the e-subscription lists. This means that each tribe must monitor and maintain those staff subscribed to this service. Individual e-mail addresses will be used only to register for e-mail notifications and to allow access to each person's account. A subscription can be changed or cancelled at any time, either by selecting the cancellation link in any notification email or by updating a user profile.

The Board has initiated rule making to amend WAC 222-20-120 "*Notice of Forest Practices Applications to Affected Indian Tribes*". At present, this rule making is in the public review phase and is open for written comment until January 6, 2012. Rule making hearings will be held starting at 6:00 p.m. on January 3, 2012 in Olympia in Room 172 of the Natural Resources Building, located at 1111 Washington Street S.E.; and January 5, 2012 in Ellensburg at the Department of Natural Resources

Tribal Chair
December 16, 2011
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Southeast Region office located at 713 E. Bowers Road. Additional information about the Notice to Tribes rule making can be found at:
http://www.dnr.wa.gov/BusinessPermits/Topics/ForestPracticesRules/Pages/fp_rules_activity.aspx.

The proposed amendments in the “*Notice of Forest Practices Applications to Affected Indian Tribes*” rule making are the result of recommendations from the Timber/Fish/Wildlife Cultural Resources Roundtable (Roundtable) to resolve issues with the landowner-tribe meeting for applications involving cultural resources. The amendments clarify that a landowner-tribe meeting is to be held “at the tribe’s discretion” when a forest practices application (FPA) having cultural resource(s) within the proposed forest practices activities boundary are located in the “tribe’s geographic area of cultural interest”.

To assure the success of this rule making, each tribe must have the opportunity to review FPAs that correspond to the tribe’s cultural resources interests. This is accomplished through tribal staff notification of FPAs through the Forest Practices Application Review System (FPARS). If your tribe has not already done so, please consider creating an FPARS Reviewer Profile for essential staff members to review proposed FPAs within your tribe’s cultural resources geographic areas of interest. When created, the profile identifies your tribe’s cultural resources contact(s) and the geographic area of interest in which your tribe would most likely want a landowner – tribe meeting for those FPAs containing cultural resources. Your tribe’s current Reviewer Profile(s), enclosed for your convenience, identifies your tribal staff that have enrolled in FPARS and their choice of the types of pending FPAs to receive notification. If you have not already done so, please confirm which profile(s) is your cultural resources profile.

For your convenience, a blank FPARS Reviewer Profile is enclosed. Profiles are available on DNR’s website at http://www.dnr.wa.gov/Publications/fp_form_fpars_revprofile.pdf

Thank you for your time and consideration. Should you have questions or concerns about the review process for applications involving cultural resources, please contact Darin Cramer, Forest Practices Division Manager, at darin.cramer@dnr.wa.gov or 360-902-1088.

Sincerely,



Bridget Moran
Deputy Supervisor for Aquatics and Environmental Protection

Enclosures (3)

cc: Lenny Young, Department Supervisor
Rodney Cawston, Tribal Relations Manager
Darin Cramer, Forest Practices Division Manager
Forest Practices Board
Jeffrey Thomas, co-chair, TFW Cultural Resources Roundtable
Peter Heide, co-chair, TFW Cultural Resources Roundtable

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FAX: (360) 902-1775 • TTY: (360) 902-1125 • TEL: (360) 902-1000
Equal Opportunity Employer / Affirmative Action Employer

Settlement Agreement Conservation Caucus, State of Washington, and Washington Forest Protection Association

I. Recitals

1.1 By letter dated December 21, 2011, the Conservation Caucus (CC)¹ notified the State of Washington (the Governor, the Commissioner of Public Lands, and the Director of the Department of Ecology) (collectively the State), the Regional Administrator for NOAA Fisheries, the Manager of the local U.S. Fish and Wildlife Service (USFWS) (collectively the Services), and the Region 10 Administrator of the U.S. Environmental Protection Agency (EPA) that the CC maintains several legal concerns with the Forest Practices Habitat Conservation Plan (FPHCP), and the associated Incidental Take Permits (ITPs), Implementing Agreement, and Biological Opinions (collectively the FPHCP). The CC also identified concerns with the Clean Water Act assurances provided to the state forest practices program. The CC's December 21, 2011, letter notified the State and Services that the CC would take legal action challenging these federal approvals before the expiration of the statute of limitations if improvements were not made. The statute of limitations will lapse on May 26, 2012, for the USFWS ITP and June 5, 2012, for the NOAA Fisheries ITP.

1.2 The State denies the CC's allegations, but views the CC's December 21, 2011, letter as an opportunity to improve the FPHCP's adaptive management processes and provide clarity to the funding provisions of the Implementing Agreement.

1.3 The Washington Forest Protection Association (WFPA) is an association of Washington forest landowners whose members have a strong interest in and commitment to the success of the FPHCP. WFPA denies the allegations in the CC's December 21, 2012 letter. WFPA also believes an opportunity exists to improve the FPHCP's adaptive management processes and provide clarity to the funding provisions of the FPHCP Implementing Agreement to obtain long-term regulatory certainty for the timber industry.

1.4 The CC, WFPA, and the State recognize that the CC's threatened legal challenge raises a risk that a failure of assurances under RCW 77.85.190 may occur. The CC, WFPA, and the State all agree that they want to avoid such a failure, and that preservation of the FPHCP is important to them.

1.5 The CC, WFPA, and the State recognize a successful resolution is more likely with the active participation and support of Washington's federally recognized Indian Tribes (Tribes) as well as the forest stakeholders. The State has a strong commitment to and interest in a respectful government-to-government relationship with the Tribes and will collaborate with interested Tribes in a manner consistent with this commitment.

¹ The CC consists of the Washington Environmental Council, Conservation Northwest, Wild Fish Conservancy, Sierra Club, Olympic Forest Coalition, and the Pacific Rivers Council, and is represented by the Washington Forest Law Center.

1.6 The CC, WFPA, and the State (collectively the Parties) have agreed upon a set of recommended improvements to the existing Implementing Agreement and adaptive management process. These improvements are set forth in this Agreement.

1.7 The State agrees to propose to the Services the clarification of the Implementing Agreement that was developed by the Parties as set forth in Section III of this Agreement immediately upon the execution of this Agreement.

NOW THEREFORE, in consideration of the mutual promises and commitments contained herein, the Parties enter into this Agreement as follows.

II. Conservation Caucus Commitments.

2.1 In consideration of the State and WFPA's commitments contained in this agreement, the CC covenants it will not file any action in any manner, or support any party participating in such challenge, challenging the Services' 2006 decisions granting the State's Incidental Take Permits for the FPHCP. This waiver includes claims that the Services Biological Opinions were not sufficient to support the ITP issuance decisions.

2.2 The CC will not for 3.5 years from the date of execution of this Agreement file any action under the Clean Water Act against the Department of Ecology or EPA or support any party participating in such challenge alleging that the Washington State forest practices rules do not meet federal Clean Water Act requirements or state water quality standards. For an additional six (6) months after this 3.5 year period lapses, the CC will not file any CWA action under this section if the CC believes that progress has been made by the adaptive management program relating to the Clean Water Act studies and their implementation.

2.3 The CC will not for 3.5 years from the date of execution of this Agreement file any action against the Services seeking re-initiation of consultation under Section 7 of the implementation of Endangered Species Act (ESA) regarding the FPHCP or any other citizen suit under the ESA regarding the FPHCP or support any party participating in such challenge. If the clarifications to the FPHCP Implementing Agreement in section III are adopted, this commitment does not apply to any action related to those clarifications initiated after the process identified in Implementing Agreement Section 7.1 is completed. For an additional six (6) months after this 3.5 year period lapses, the CC will not file any ESA action under this section if the CC believes that progress has been made by the adaptive management program relating to studies and their implementation.

2.4 If the adaptive management proposals identified in Attachments 2 and 3 do not result in a change consistent with the commitments in Section IV approved by Forest and Fish Policy and the Forest Practices Board by December 31, 2013, then the CC commitments in paragraphs 2.2 and 2.3 above are withdrawn.

2.5 In the event the CC files an action as described in sections 2.2 or 2.3 of this Agreement, then WFPA may decline to jointly advocate under sections 4.10 and 4.11 of this Agreement, or discuss its legislative goals and objectives under section 4.13 of this Agreement.

III. Clarifications to FPHCP Implementing Agreement

3.1 The State agrees to request from the Services the clarifications to the FPHCP Implementing Agreement set out in Attachment 1 using the process for a minor modification outlined in the Implementing Agreement paragraph 11.1 once this Agreement is signed.

3.2 The State agrees to request that if the Services approve these clarifications to the Implementing Agreement, the changes become effective May 25, 2012.

3.3 If the CC does not receive a confirmation from the Services that the Services will approve the proposed Implementing Agreement minor modification by May 30, 2012, this Agreement shall become null and void.

IV. Joint Adaptive Management Proposals.

4.1 The Parties have collaboratively agreed to numerous process related improvements to the FPHCP's adaptive management program. It will, however, take time for Forest and Fish Policy to consider and recommend improvements to the Forest Practices Board for review and approval.

4.2 Attachment 2 identifies the Adaptive Management Proposal for Improvements to the Program's Process for Making Decisions. This Attachment 2 is incorporated into this Agreement by reference.

4.3 Attachment 3 identifies the Adaptive Management Proposal for a Master Schedule of Cooperative Monitoring, Evaluation & Research Committee (CMER) work. This Schedule is based, in large part, on CMER's current work plan, as approved by Policy and the Forest Practices Board. This schedule will change over time as projects are completed and/or re-prioritized. This Attachment 3 is incorporated into this Agreement by reference.

4.4 The State, CC, and WFPA agree to initiate the joint adaptive management proposals in Attachment 2 and 3 with the Forest and Fish Policy Committee as soon as possible, but no later than the August, 2012 Forest and Fish Policy Meeting.

4.5 If another Caucus opposes these proposals, the CC, State, and WFPA will work collaboratively within the adaptive management program to present the case for these proposals to the dissenting Caucus. This includes using the dispute resolution process.

4.6 The State, CC, and WFPA agree to advocate for proposals contained in this Agreement (including the Master Schedule) in the adaptive management process and before the Forest Practices Board. The Parties understand the adaptive management process must be used for the proposals to be recommended to the Forest Practices Board, and that these proposals could be modified by that process.

4.7 The Parties will work to ensure that Policy will expeditiously implement the prioritized work plan as recommended annually by Policy and adopted by the Forest Practices Board.

4.8 The State, CC, and WFPA agree that if the proposal in Attachment 3 results in a Forest Practice Board's requirement to review and approve the CMER Master Schedule, or a Board determination about compliance with the Schedule, then the Forest Practices Board failure to act as required, as well as the Board's approval of the schedule or determination about compliance with the Schedule, would be reviewable under RCW 34.05.570(4).

4.9 The State, CC, and WFPA agree, to the extent permitted by applicable law, to seek legislative funding levels to ensure the Washington State Department of Natural Resources (DNR) is allocated no less than a minimum forest practices regulatory program biennial budget of \$22.7 million, which is necessary to support the FPHCP, including working together to develop a legislative proposal for a dedicated source of funds.

4.10 The Parties will advocate before the Legislature for continued funding at historic levels for the Forest and Fish Support Account participation grants (including non-profit organizations).

4.11 WFPA and CC will make advocacy to achieve enhanced funding for the DNR forest practices regulatory program a high priority in its annual government advocacy program.

4.12 The Parties acknowledge additional resources are necessary for DNR to more effectively administer the forest practice regulatory program. To the extent permitted by applicable law, the Parties shall work collaboratively to develop a legislative advocacy strategy that obtains additional funds that will strengthen implementation of the forest practices regulatory program.

4.13 The Parties will meet within ninety (90) days from the commence of each regular legislative session to discuss their respective legislative goals and priorities relating to matters covered by this Agreement, and will attempt to reach consensus on these goals and priorities. During this meeting, the Parties will discuss, among other things, a joint strategy for achieving the funding goals and objectives contemplated in this Agreement.

V. Additional Terms and Conditions

5.1 Final Agreement. This Agreement embodies the final and entire understanding of the Parties pertaining to this subject matter and supersedes all prior agreements and understandings, except that all confidentiality agreements related to this dispute are unchanged by this Agreement.

5.2 Severability. If any term or provision in this Agreement is determined to be illegal or unenforceable, all other terms and provisions in this Agreement shall remain effective and shall be enforced to the full extent permitted by law.

5.3 Jointly Drafted. The Parties agree that this Agreement was jointly drafted, that the Agreement shall not be deemed prepared or drafted by any one Party, and no inference or rule of construction shall be applied based on the assumption that any individual Party or subset of the Parties drafted any provision in this Agreement.

5.4 Modification. This Agreement may not be modified, altered, or amended, except pursuant to an instrument in writing signed by all Parties.

5.5 Good Faith. All Parties shall exercise their good faith and diligence in cooperating to carry out the provisions of this Agreement.

5.6 Jurisdiction for Disputes. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought under this Agreement shall be in Superior Court for Thurston County.

5.7 Settlement Represents Agreement of the Parties – No Admissions Re Merit of Claims. This Agreement is the product of compromise of disputed claims, and it is not to be construed as an admission regarding the correctness of any claims asserted by the CC, WFPA, or the State.

5.8 Media Statements. The Parties agree to cooperate in the preparation of any press releases or statements to the media regarding this Agreement.

5.9 Public Disclosure. The Parties acknowledge that this Agreement, once finalized, is subject to public disclosure under the Public Records Act.

5.10 Informal Dispute Resolution. Prior to seeking judicial review of any dispute under this Agreement, the Parties will first attempt to resolve any dispute under this Agreement through informal dispute resolution procedures. The Party claiming a dispute shall provide notice to the other parties of any claimed dispute. Thereafter, the Parties will meet within thirty (30) days from receipt of the notice to discuss a process and procedures for resolving the dispute. Thereafter, the Parties will meet within fifteen (15) days after the initial meeting to engage in dispute resolution. At the conclusion of this dispute resolution meeting, any Party may elect to pursue any judicial remedy available to that Party.

5.11 Notice. Any notice required under this Agreement shall be in writing, and it shall be provided to the representatives of the Parties via email and certified mail. The notice shall be deemed effective upon receipt by both of the other Parties.

5.12 Representatives. The representatives of the Parties under this Agreement are as follows. These representatives may be changed at any time by providing written notice to each of the other Parties:

To the State: Commissioner of Public Lands
Washington State Department of
Natural Resources
1111 Washington Street SE
MS 47001
Olympia, WA 98504

Director
Washington State Department
of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Deputy Supervisor for Aquatics
Washington State Department of
Natural Resources
1111 Washington Street SE
MS 47001
Olympia, WA 98504

Division Chief
AGO Natural Resources Division
P.O. Box 40100
Olympia, WA 98504-0100

EXECUTION VERSION

ToWFPA: Executive Director
724 Columbia St. NW
Suite 250
Olympia, WA 98501

With a copy to: Jim Lynch, Counsel
925 Fourth
AAve. Suite
2900
Seattle, WA 98104

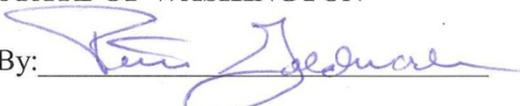
ToCC: Peter Goldman, Counsel
Washington Forest Law Center
615 Second Avenue, Suite 360
Seattle, Washington 98104-2245

With a copy to: Parties listed in
Attachment 4.

5.13 Counterpmis. This agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the signatory Parties to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures, and may be attached to another counterpmi of this Agreement identical in form having attached to it one or more signature pages.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized representatives, intending to be bound legally.

STATE OF WASHINGTON

By: 

Date: 5/24/2012

Peter Goldmark, Commissioner of Public Lands

By: 

Date: 5-24-12

Ted Sturdevant, Director
Washington Department of Ecology

By: 

Date: 5/24/2012

Patricia Hickey O'Brien
Senior Assistant Attorney General
Counsel for State of Washington

WASHINGTON FOREST PROTECTION ASSOCIATION

By: _____

Date: _____

Mark Doumit, Executive Director

Its Counsel: _____

Date: _____

WASHINGTON FOREST PROTECTION ASSOCIATION

By: Mark de Doumit

Date: 5/24/12

Mark Doumit, Executive Director

Its Counsel: [Signature]

Date: 5/24/12

WASHINGTON ENVIROMENTAL COUNCIL

By: _____

Date: _____

Joan Crooks, Executive Director

Its Counsel: _____

Date: _____

CONSERVATION NORTHWEST

By: _____

Date: _____

Its Counsel: _____

Date: _____

WASHINGTON STATE CHAPTER OF SIERRA CLUB

By: _____

Date: _____

Its Counsel: _____

Date: _____

WILD FISH CONSERVANCY

By: _____

Date: _____

Its Counsel: _____

Date: _____

PACIFIC RIVERS COUNCIL

By: _____

Date: _____

Its Counsel: _____

Date: _____

OLYMPIC FOREST COALITION

By: _____

Date: _____

Its Counsel: _____

Date: _____

EXECUTION VERSION

WASHINGTON ENVIRONMENTAL COUNCIL

By: [Signature] Date: 5/24/12

Joan Crooks, Executive Director
Its Counsel: [Signature] Date: 5/24/12

CONSERVATION NORTHWEST

By: [Signature] Date: 5-23-12

Its Counsel: [Signature] Date: 5/24/12

WASHINGTON STATE CHAPTER OF SIERRA CLUB

By: _____ Date: _____

Its Counsel: _____ Date: _____

WILD FISH CONSERVANCY

By: [Signature] Date: 5/24/12

Its Counsel: [Signature] Date: 5/24/12

PACIFIC RIVERS COUNCIL

By: [Signature] Date: 5/24/12

Its Counsel: [Signature] Date: 5/24/12

OLYMPIC FOREST COALITION

By: [Signature] Date: 5/24/12

Its Counsel: [Signature] Date: 5/24/12

Attachment 1

Potential Clarifications to the FPHCP Implementing Agreement

The State will request the following clarification to IA §. 7.1:

7.1 State Funding.

7.1.1 The State will use its best efforts to obtain such funds as may be needed for the State to fully implement the HCP. The appropriations of State funding shall be within the sole discretion of the State Legislature. The amount of State funding expended in the 2003-2005 Biennium for administration of the Department of Natural Resources' forest practices regulatory program was \$16.9 million, and the amount of federal funding expended by the State in the 2003-2005 Biennium for administration of the Department of Natural Resources' forest practices regulatory program was \$5.8 million, both measured in 2005 dollars.

The State will promptly notify the Services of any appreciable reduction in available funding below \$22.7 million measured in 2005 dollars calculated using Personal Consumption Expenditures Price Deflators ("PCE"), or any material change in its financial ability to fulfill its obligations under the HCP (Minimum Funding). For the purposes of section 7.1, the forest practices regulatory program includes region operations, region support, GIS support, FPARS administration, compliance monitoring, training, the Forest Practices Board, the Small Forest Landowner Office, and the adaptive management program.

7.1.2 The State and Services will use the following process if Minimum Funding is not achieved in a specific legislative session:

- (a) Within thirty (30) days after the effective date of the legislation causing a funding reduction below Minimum Funding, the State will notify the Services in writing that a funding reduction or material change in financial ability has occurred. If deemed necessary by the Services, the Services will, within ten (10) days after receipt of the State's notice, specify any short-term mitigation measures the State must take to avoid suspension or revocation of the permit until the end of the next legislative session.
- (b) The State will convene a process to develop a plan to address the reduced funding ("Plan"). Within thirty (30) days after giving the notice in (a) above, the State will convene a meeting of the Forest and Fish caucus leaders, including the Services, to collaborate on development of the Plan. The Plan will presume that the restoration of the Minimum Funding is required, but may include an explanation of why restoring the Minimum Funding is not necessary to enforce the forest practices regulatory program, including the adaptive management program, or achieve the conservation goals of the HCP for reasons including, but not limited to, improvements or efficiencies in DNR's forest practices regulatory and enforcement program, reductions in

timber harvest, or completion of adaptive management CMER projects. The Plan will also identify a strategy to restore funding to the forest practices regulatory program, including, to the extent permitted by applicable law, a joint advocacy strategy. The State shall complete its Plan by approximately August 15 and forward it to the Services. If the Plan does not restore funding to Minimum Funding, the State must include an explanation of why the funding reduction is not materially necessary to enforce the forest practice regulations, including the adaptive management program, and must also identify alternatives to funding that minimize any adverse effects of the funding reduction on the achievement of the conservation goals of the HCP. As part of the collaboration, if the Services conclude that the funding reduction could provide less on-the-ground protection for covered species or would have a material adverse impact on the achievement of the conservation goals of the HCP, the Services will advise the State so that the State can modify the Plan before it is finalized. The Services may also provide guidance to the State on funding priorities until the end of the next legislative session.

- (c) By September 15 in the year prior to the next regular legislative session, the State will submit the Plan to the Services, the Governor, the Legislature, and the Forest Practices Board.
- (d) Concurrently, the Services will send the Governor, the Legislature, and the Forest Practices Board a letter that explains the consequences, including suspension or revocation of the incidental take permits that may result from a failure to provide the necessary funds to implement the Plan.
- (e) The State will notify the Services within thirty (30) days after the end of the next regular legislative session whether the Plan has been successfully funded and implemented.
- (f) If the Plan is not fully funded or implemented, within thirty (30) days of receipt of the notice in (e), the Services will provide the State with an initial assessment of whether the Plan, as funded or implemented, would enable the State to implement the forest practices regulatory program, including the adaptive management program, at comparable levels and rates to those analyzed by the Services in the Forest Practices Habitat Conservation Plan and their Biological Opinions for Permit issuance.
- (g) If the State objects to the Services' initial assessment conducted in (f), within thirty (30) days after the State receives this initial assessment, the Services and State shall use dispute resolution under Par. 12.3.2 of this Agreement for a period not to exceed sixty (60) days.
- (h) If the dispute is not resolved by the expiration of this period, the Services shall notify the State in writing whether or not one or both of the Incidental Take Permits will be suspended or revoked. The Services will consider the

following non-exclusive factors when considering whether to suspend or revoke the Incidental Take Permit: (1) the reason(s) for the State's non-achievement of the Plan; (2) DNR's most recent compliance report and the trend of previous years' compliance reports; (3) the number of adaptive management projects conducted, completed, and (if necessary) enacted into rule; (4) the backlog of uncompleted adaptive management projects and the reasons for this backlog; (5) DNR staffing levels; and (6) the extent of the State's monetary shortfall and the prospects for curing this shortfall in the Legislature. The State's successful funding and implementation of the adaptive management program is a mandatory element of the HCP. The Services shall reinitiate consultation pursuant to 50 C.F.R. §401.16 (or its successor provision), on issuance of the ITP, unless the Services determine, based on the best available scientific information, that any deficiencies in the State's funding or implementation of adaptive management would not have a material effect on listed species or their critical habitat.

Attachment 2
Adaptive Management Proposal
Improvements to the Program's Process for Making Decisions

- I. Policy:
- a. All participants make a renewed commitment to participation, collaboration and striving for consensus.
 - b. Change Policy committee to FPB appointment of official members as nominated by the respective caucus (voting) that are caucus principals or their designee (alternates should also be designated). The Policy committee will be composed of caucus principles or their designee. The Policy committee will act as a consensus-based body.
 - c. For purposes of this representation, the following will each have one position on the committee: One designee representing both WDFW and Ecology, Commissioner of Public Lands or designee, Eastside Tribes, Westside Tribes, Conservation Caucus, Industrial Forest Landowners, Small Forest Landowners, Federal Agencies, Local Government.
 - d. Though Policy committee members may have support staff that can be consulted, Policy members or alternates are the primary participants at Policy meetings.
 - e. DNR will, by September, 2012, retain an independent neutral facilitator at Policy. As consistent with State contracting laws and requirements, before hiring this Facilitator, DNR will give the Policy committee, or a subcommittee thereof, the opportunity to interview and consider all of the candidates. In making a hiring decision, DNR will give strong consideration to Policy's consensus opinion or, if consensus cannot be reached, to the opinion of the majority of the Policy committee. The Facilitator will be brought in under the following circumstances:
 - i. During Stage 1 of Dispute Resolution,
 - ii. At the discretion of the co-chairs in anticipation of a substantial issue being discussed,
 - iii. Two times per year for a meeting of the caucus principles, and
 - iv. For up to nine months following implementation of this agreement in order to enhance the participants' ability to work together as new members are appointed.
- II. Work Priorities:
- a. Require Policy to develop and implement a prioritized work plan to be adopted by the FPB.

III. Decision Timelines/Dispute Resolution:

- a. Revise dispute resolution (DR) timeline to a maximum of two (2) months in Stage 1 for both CMER and Policy and three (3) months for Stage 2.
- b. Allow CMER to utilize stage 2 of DR.
- c. If a consensus decision is not reached by CMER in stage 2, the issue will be forwarded to Policy by the Adaptive Management Program Administrator for a decision.
- d. These changes result in a maximum 5 month DR process, though timelines may be extended by consensus of the committee if substantive progress is being made.

In the event the Policy committee cannot reach consensus following stage 2 dispute resolution on an issue and the issue advances to the Forest Practices Board, the AMPA shall deliver the respective majority and minority recommendations to the Forest Practices Board without a separate formal recommendation. The Forest Practices Board shall reserve its right to ask questions of the AMPA relating to these matters.

Attachment 2-1 is a flow chart that illustrates this proposal.

Attachment 3

Adaptive Management Proposal Master CMER Schedule

Attached is a proposed Master Schedule of Cooperative Monitoring, Evaluation & Research Committee (CMER) work (Attachment 3-1). This schedule is based, in large part, on CMER's current work plan (2013) as approved by the Forest and Fish Policy and the Forest Practices Board. The following are components of this proposal:

- 1) The Master Schedule will be adopted using the adaptive management program (AMP). The proposal would be approved by the Forest Practices Board, reviewed periodically, and likely changed over time as projects are completed and/or re-prioritized.
- 2) Once the Master Schedule is approved by Forest and Fish Policy and the Forest Practices Board, it must be reviewed and updated at least every four years. The Master Schedule will prioritize projects for the next 20 years at each 4-year review.
- 3) The AMP will complete work according to the Master Schedule once approved by the Forest Practices Board, or as it is amended by the Board after using the adaptive management program.
- 4) By the May 2014 Forest Practices Board meeting and every two years thereafter, the AMP administrator will report to the Forest Practices Board on the progress of the adaptive management program. The report will include a description of the progress made in implementing the Master Schedule, including work completed, projects that are ongoing and on schedule, those projects that are behind schedule, and the Policy response to final CMER reports.
- 5) At the next regular Forest Practices Board meeting after presentation of the progress report, the Forest Practices Board will make a final determination whether the AMP is in substantial compliance with the Master Schedule.
- 6) The Forest Practices Board determination and findings will be included in the DNR annual report to the Services in the year the determination is made.
- 7) If the Board determines that the AMP is not in substantial compliance with the Master Schedule, the Board shall so notify the Services by letter within 30 days of that determination
- 8) When this proposal is finalized, it should include any recommended changes to the adaptive management process that detail the development of the Master Schedule, review and approval, and how it will be used to guide AMP work.
- 9) By 2031, all of the prioritized projects on the Master Schedule, as amended by the Board, will be completed in accordance with this proposal. By 2040, all of the projects on the Master Schedule, as amended by the Board, will be completed in accordance with this proposal.

Attachment 4

FORESTS AND FISH CONSERVATION CAUCUS

MEMBERS:

Washington Environmental Council
Joan Crooks, Executive Director
1402 Third Avenue, Suite 1400
Seattle, WA 98101
joan@wecprotects.org

Conservation Northwest
Mitch Friedman, Executive Director
1208 Bay Street, #201
Bellingham, WA 98225
mitch@conservationnw.org

Olympic Forest Coalition John Woolley, President
PO Box 461
Quilcene, WA 98376
woolley@tfon.com

Sierra Club
Ellen Medlin, Associate Attorney
85 Second Street, Second Floor San Francisco, CA 94105
ellen.medlin@sierraclub.org

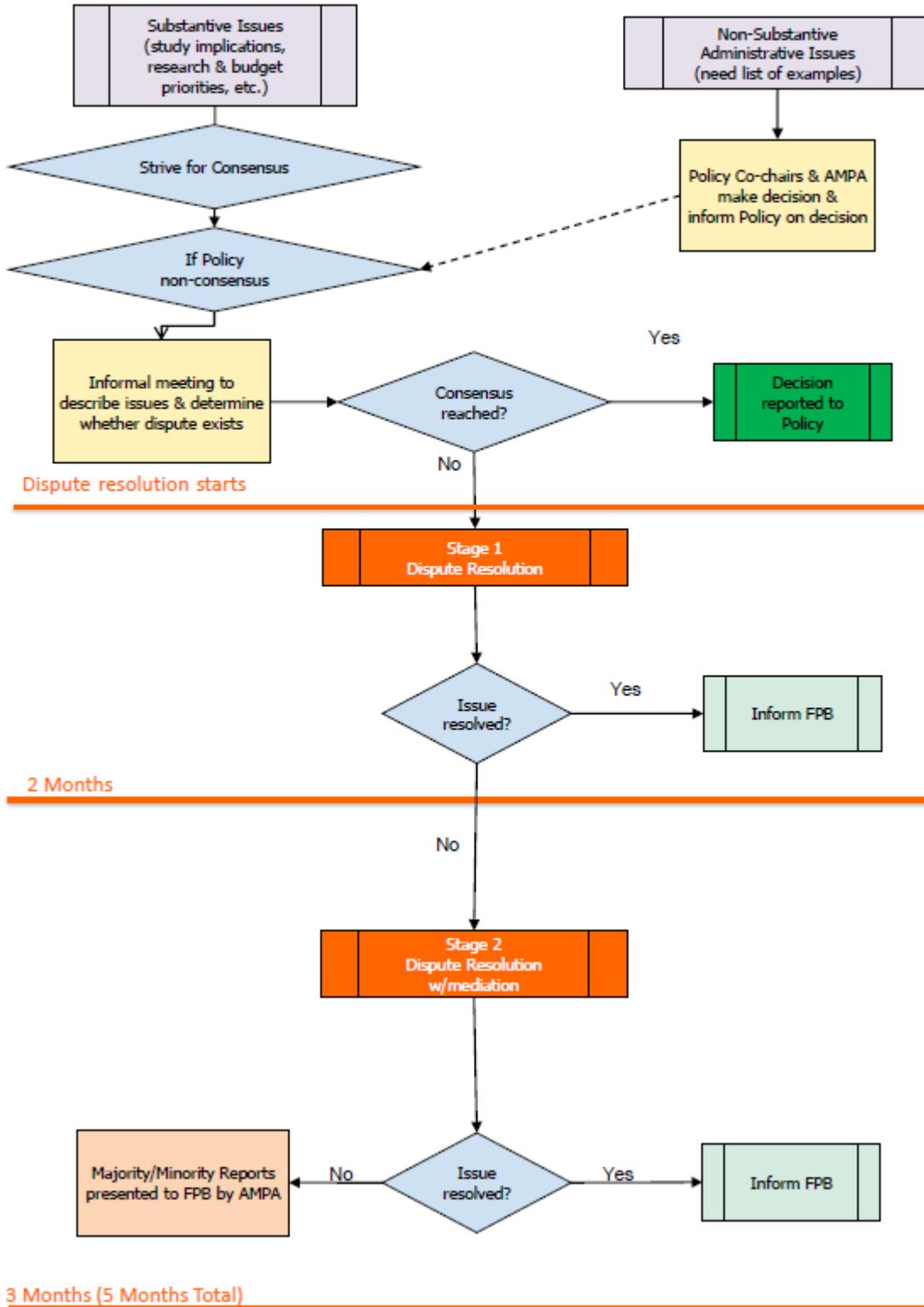
Pacific Rivers Council
John Kober, Executive Director
317 SW Alder Street, Suite 900
Portland, OR 97204
john@pacificrivers.org

Wild Fish Conservancy
Kurt Beardslee, Executive Director
15629 Main Street NE P.O. Box 402
Duvall, WA 98019
kurt@wildfishconservancy.org

OF COUNSEL:

Washington Forest Law Center
Peter Goldman, Director and Staff Attorney
Wyatt Golding, Staff Attorney
615 Second Avenue, Suite 360
Seattle, WA 98104
pgoldman@wflc.org

Attachment 2-1 Policy Decision-Making Process for Non-CMER Proposal





STATE OF WASHINGTON

May 24, 2012

Ms. Theresa Rabot
Assistant Regional Director, Ecological Services
United States Fish and Wildlife Service
Pacific Region
911 N.E. 11th Avenue
Portland, Oregon 97232-4181

Mr. William W. Stelle, Jr.
Regional Administrator
NOAA National Marine Fisheries Services
7600 Sand Point Way NE
Seattle, Washington 98115-0070

Sent Electronically and via U.S. Mail, Registered and Return Receipt Requested

RE: Notice and Request for Minor Modification to Implementing Agreement for
Washington State Forest Practices Habitat Conservation Plan (USFWS Permit
TE 121202-0, NMFS Permit 1573)

Dear Ms. Rabot and Mr. Stelle:

The State of Washington requests that the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service accept this proposal for a minor modification to clarify section 7 of the Implementing Agreement (IA) for the Washington State Forest Practices Habitat Conservation Plan (HCP). In accordance with the procedures for a minor modification in IA paragraph 11.1, this letter includes the reasons for the proposed modification and an attachment with the suggested language.

The language being clarified occurs in IA paragraph 7.1 (State Funding). The State is requesting to clarify the existing provisions regarding the minimum funding level and specify a series of procedural steps to follow should funding fall below the minimum threshold. While the existing language narratively describes the minimum funding level by reference to the 2003-2005 funding biennium (in 2005 dollars), the requested amendment identifies this funding level with a specific dollar figure and includes a way to calculate whether that funding level is met. The clarification adds procedural steps for a process that will allow others interested in forestry regulation in Washington to participate in the planning process to address any appreciable reduction in funding.

This proposal arises out of discussions which occurred shortly after the Conservation Caucus's December 21, 2011, letter threatening to challenge the USFWS's and National Marine Fisheries Service's decisions approving Incidental Take Permits for the Forest Practices HCP. Those decisions were made nearly six years ago, and the State, along with other interested parties, have been working to arrive at a mutually agreeable solution that avoids federal litigation on this and other issues before the closure of the federal statute of limitations period. Your staff have been

Ms. Theresa Rabot
Mr. William W. Stelle, Jr.
May 24, 2012
Page 2 of 2

included in these discussions, and we understand that they support the proposed minor modifications.

The State of Washington has not fallen below any critical funding levels with respect to this HCP and believes that the provision addressed in this minor amendment never needs to be implemented during the remaining 44 years of this agreement. Still, we believe these proposed changes will provide clarity to those administering or implementing this agreement and will provide peace of mind to those interested in the HCP that if a funding shortfall arises, the planning process to address the shortfall will be inclusive.

If your agencies can approve these changes, the State would like them to be effective on or before May 25, 2012, due to the statute of limitations issue mentioned above. Thank you for your thoughtful consideration and speedy approval of this minor modification proposal.

Sincerely,



CHRISTINE O. GREGOIRE
Governor



PETER GOLDMARK
Commissioner of Public Lands

cc: Ken Berg, Manager, USFWS, Washington Fish and Wildlife Office
Steve Landino, NMFS, Washington State Habitat Director

I. IA §. 7.1 would be changed as follows:

7.1 State Funding.

7.1.1 The State will use its best efforts to obtain such funds as may be needed for the State to fully implement the HCP. The appropriations of State funding shall be within the sole discretion of the State Legislature. The amount of State funding expended in the 2003-2005 Biennium for administration of the Department of Natural Resources' forest practices regulatory program was \$16.9 million, and the amount of federal funding expended by the State in the 2003-2005 Biennium for administration of the Department of Natural Resources' forest practices regulatory program was \$5.8 million, both measured in 2005 dollars.

The State will promptly notify the Services of any appreciable reduction in available funding below \$22.7 million measured in 2005 dollars calculated using Personal Consumption Expenditures Price Deflators ("PCE"), or any material change in its financial ability to fulfill its obligations under the HCP (Minimum Funding). For the purposes of section 7.1, the forest practices regulatory program includes region operations, region support, GIS support, FPARS administration, compliance monitoring, training, the Forest Practices Board, the Small Forest Landowner Office, and the adaptive management program.

7.1.2 The State and Services will use the following process if Minimum Funding is not achieved in a specific legislative session:

- (a) Within thirty (30) days after the effective date of the legislation causing a funding reduction below Minimum Funding, the State will notify the Services in writing that a funding reduction or material change in financial ability has occurred. If deemed necessary by the Services, the Services will, within ten (10) days after receipt of the State's notice, specify any short-term mitigation

measures the State must take to avoid suspension or revocation of the permit until the end of the next legislative session.

- (b) The State will convene a process to develop a plan to address the reduced funding ("Plan").

Within thirty (30) days after giving the notice in (a) above, the State will convene a meeting of the Forest and Fish caucus leaders, including the Services, to collaborate on development of the Plan. The Plan will presume that the restoration of the Minimum Funding is required, but may include an explanation of why restoring the Minimum Funding is not necessary to enforce the forest practices regulatory program, including the adaptive management program, or achieve the conservation goals of the HCP for reasons including, but not limited to, improvements or efficiencies in DNR's forest practices regulatory and enforcement program, reductions in timber harvest, or completion of adaptive management CMER projects. The Plan will also identify a strategy to restore funding to the forest practices regulatory program, including, to the extent permitted by applicable law, a joint advocacy strategy. The State shall complete its Plan by approximately August 15 and forward it to the Services. If the Plan does not restore funding to Minimum Funding, the State must include an explanation of why the funding reduction is not materially necessary to enforce the forest practice regulations, including the adaptive management program, and must also identify alternatives to funding that minimize any adverse effects of the funding reduction on the achievement of the conservation goals of the HCP. As part of the collaboration, if the Services conclude that the funding reduction could provide less on-the-ground protection for covered species or would have a material adverse impact on the achievement of the conservation goals of the HCP, the Services will advise the State so that the State can modify the Plan before it is finalized. The Services may also provide guidance to the State on funding priorities until the end of the next legislative session.

- (c) By September 15 in the year prior to the next regular legislative session, the State will submit the Plan to the Services, the Governor, the Legislature, and the Forest Practices Board.
- (d) Concurrently, the Services will send the Governor, the Legislature, and the Forest Practices Board a letter that explains the consequences, including suspension or revocation of the incidental take permits that may result from a failure to provide the necessary funds to implement the Plan.
- (e) The State will notify the Services within thirty (30) days after the end of the next regular legislative session whether the Plan has been successfully funded and implemented.
- (f) If the Plan is not fully funded or implemented, within thirty (30) days of receipt of the notice in (e), the Services will provide the State with an initial assessment of whether the Plan, as funded or implemented, would enable the State to implement the forest practices regulatory program, including the adaptive management program, at comparable levels and rates to those analyzed by the Services in the Forest Practices Habitat Conservation Plan and their Biological Opinions for Permit issuance.
- (g) If the State objects to the Services' initial assessment conducted in (f), within thirty (30) days after the State receives this initial assessment, the Services and State shall use dispute resolution under Par. 12.3.2 of this Agreement for a period not to exceed sixty (60) days.
- (h) If the dispute is not resolved by the expiration of this period, the Services shall notify the State in writing whether or not one or both of the Incidental Take Permits will be suspended or revoked. The Services will consider the following non-exclusive factors when considering whether to suspend or revoke the Incidental Take Permit: (1) the reason(s) for the State's non-achievement of the Plan; (2) DNR's most recent compliance report and the trend of previous years' compliance reports; (3) the number of adaptive management projects

conducted, completed, and (if necessary) enacted into rule; (4) the backlog of uncompleted adaptive management projects and the reasons for this backlog; (5) DNR staffing levels; and (6) the extent of the State's monetary shortfall and the prospects for curing this shortfall in the Legislature. The State's successful funding and implementation of the adaptive management program is a mandatory element of the HCP. The Services shall reinitiate consultation pursuant to 50 C.F.R. §401.16 (or its successor provision), on issuance of the ITP, unless the Services determine, based on the best available scientific information, that any deficiencies in the State's funding or implementation of adaptive management would not have a material effect on listed species or their critical habitat.

Appendix #8



National Marine Fisheries Service
7600 Sand Point Way N.E.
Seattle, Washington 98115

United States Department of Commerce
National Marine Fisheries Service
United States Department of the Interior
U.S. Fish and Wildlife Service



U.S. Fish and Wildlife Service
911 NE 11th Avenue
Portland, Oregon 97232

May 25, 2012

Governor Christine O. Gregoire
State of Washington
PO Box 40002
Olympia, WA 98504-0002

Peter Goldmark
Commissioner of Public Lands
PO Box 47000
Olympia, WA 98504-7000

RE: Your notice and rationale for minor modification to the Implementation Agreement for the Washington State Forest Practices Habitat Conservation Plan (USFWS Permit TE 121202-0, NMFS Permit 1573)

Dear Governor Gregoire and Commissioner Goldmark:

We recently received your request, dated May 24, 2012, for a minor modification to the referenced Implementation Agreement. We concur with your request, and therefore the Implementation Agreement is modified effective today, May 25, 2012.

Sincerely,

A handwritten signature in blue ink, appearing to read "William W. Stelle, Jr.".

William W. Stelle, Jr.
Regional Administrator
NOAA Fisheries

A handwritten signature in blue ink, appearing to read "Theresa Rabot".

Theresa Rabot
Assistant Regional Director
U.S. Fish and Wildlife Service