



**DEPARTMENT OF
NATURAL RESOURCES**

Forest Practices Division

1111 Washington St SE
Olympia, WA 98504

360-902-1400

FPD@DNR.WA.GOV
WWW.DNR.WA.GOV

DATE January 27, 2021

TO Forest Practices Board

FROM Marc Ratcliff, Policy Section Lead *MR*

SUBJECT Rule Adoption to Correct Typographical Errors and Add Minor Clarification

At the February 10, 2021 Board meeting, staff will request the Board adopt the proposed rule language that corrects typographical errors, statute reference corrections and adds minor clarification to several rule sections in Title 222 WAC.

At the November 2020 meeting, the Board requested staff to file the CR-105 with the proposed rule amendments with the Office of the Code Reviser. The rule amendments were published in the Washington State Register on December 16.

This was an expedited rulemaking which did not require a public hearing. A comment period of 45 days from date of publication in the Register will end on February 2, 2021. To date we have not received any written objections for this rule making. If this should change by February 2, I will propose alternative future actions at the February 10 meeting.

The expedited rule making process does not require a small business economic impact statement (RCW 19.85.025) nor a cost benefit analysis (RCW 34.05.328).

If you have any questions please let me know.

MR/

Attachment: Proposed Rules

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-08-010 Purpose. The purpose of this chapter is to describe the forest practices board, its organization and administrative procedures, and to provide rules implementing RCW 34.05.220 and chapters 42.52 and 42.56 RCW. The purpose of this chapter is also to set out department of natural resources procedures for administration of the forest practices regulatory program.

AMENDATORY SECTION (Amending WSR 18-07-012, filed 3/9/18, effective 4/9/18)

WAC 222-08-032 Function, organization, and office. (1) The forest practices board was created by chapter 76.09 RCW to adopt forest practices rules as described in WAC 222-12-010.

(2) The board's membership as described in RCW 76.09.030(5), consists of thirteen members to include:

(a) The commissioner of public lands or the commissioner's designee;

(b) The director of the department of commerce or the director's designee;

(c) The director of the department of agriculture or the director's designee;

(d) The director of the department of ecology or the director's designee;

(e) The director of the department of fish and wildlife or the director's designee;

(f) An elected member of a county legislative authority appointed by the governor so long as that member serves as an elected official;

(g) A member representing a timber products union, appointed by the governor from a list of three names submitted by a timber labor coalition affiliated with a statewide labor organization that represents a majority of the timber product unions in the state; and

(h) Six members of the general public appointed by the governor, one of whom shall be a small forest landowner who actively manages his or her land, and one of whom shall be an independent logging contractor.

(3) The governor-appointed members are appointed to four-year terms.

(4) The commissioner of public lands or designee shall chair the board.

(5) General public members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(6) Staff support is provided to the board as provided in RCW 76.09.030(~~(+6)~~) (5). Staff shall perform the following duties under the general authority and supervision of the board:

(a) Act as administrative arm of the board;

(b) Act as records officer to the board;

(c) Coordinate the policies and activities of the board; and

(d) Act as liaison between the board and other public agencies and stakeholders.

(7) The administrative office of the board is located at 1111 Washington Street S.E., Olympia, Washington. The board may sit or hold hearings anywhere in the state. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday, except legal holidays and during board meetings. The board may be contacted at:

Forest Practices Board
c/o Department of Natural Resources
Forest Practices Division
P.O. Box 47012
Olympia, WA 98504-7012
Phone: 360-902-1400
Fax: 360-902-1428
Email: forest.practicesboard@dnr.wa.gov

(8) Any person may contact the board as indicated in subsection (7) of this section to obtain information on board activities.

WAC 222-12-030 Application information and classes of forest practices. Forest practices are divided into four classes as specified by RCW 76.09.050 and described in WAC 222-16-050. Review periods and application and notification requirements differ as follows:

(1) **Class I forest practices** require no application or notification, but do require compliance with all other forest practices rules.

(2) **Class II forest practices** require a notification to the department, and may begin five calendar days (or such lesser time as the department may determine) after receipt of a complete notification by the department.

(3) **Class III forest practices** must be approved or disapproved within thirty or fewer calendar days of receipt of a complete application by the department. The department is directed to approve or disapprove within fourteen calendar days Class III applications not requiring additional field review. Exceptions are:

(a) Multiyear applications must be approved or disapproved within forty-five days of receipt of a complete application by the department.

(b) Small forest landowner long-term applications are reviewed in two steps as described in WAC 222-20-016.

(c) Applications including the project types listed in WAC 222-20-017 (4)(b), concurrence review, must be approved or disapproved within sixty days of receipt of a complete application by the department.

(4) **Class IV forest practices** are divided into "Class IV-special," and "Class IV-general," and must be approved or disapproved within thirty calendar days of receipt of a complete application by the department. Exceptions are:

(a) Small forest landowner long-term applications are reviewed in two steps as described in WAC 222-20-016.

(b) Applications including the project types listed in WAC 222-20-017 (4)(b), concurrence review, must be approved or disapproved within sixty days of receipt of a complete application by the department.

(c) If a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required.

(5) In certain emergencies as defined in RCW (~~(7.09.060(7)-~~~~[76.09.060(7)]~~)) 76.09.060(7), the application or notification may be submitted within forty-eight hours after commencement of the practice.

WAC 222-16-080 Critical habitats (state) of threatened and endangered species. (1) Critical habitats (state) of threatened or endangered species and specific forest practices designated as Class IV-Special are as follows:

(a) Gray wolf (*Canis lupus*) - Harvesting, road construction, or site preparation within 1 mile of a known active den site, documented by the department of fish and wildlife, between the dates of March 15 and July 30 or 0.25 mile from the den site at other times of the year.

(b) Grizzly bear (*Ursus arctos*) - Harvesting, road construction, aerial application of pesticides, or site preparation within 1 mile of a known active den site, documented by the department of fish and wildlife, between the dates of October 1 and May 30 or 0.25 mile at other times of the year.

(c) Mountain (woodland) caribou (*Rangifera tarandus*) - Harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active breeding area, documented by the department of fish and wildlife.

(d) Oregon silverspot butterfly (*Speyeria zerene hippolyta*) - Harvesting, road construction, aerial or ground application of pesticides, or site preparation within 0.25 mile of an individual occurrence, documented by the department of fish and wildlife.

(e) Sandhill crane (*Grus canadensis*) - Harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active nesting area, documented by the department of fish and wildlife.

(f) Northern spotted owl (*Strix occidentalis caurina*).

(i) **Within a SOSEA boundary** (see maps in WAC 222-16-086), except as indicated in (~~(h)~~) (f)(ii) of this subsection, harvesting, road construction, or aerial application of pesticides on suitable spotted owl habitat within a median home range circle that is centered within the SOSEA or on adjacent federal lands.

(ii) **Within the Entiat SOSEA**, harvesting, road construction, or aerial application of pesticides within the areas indicated for demographic support (see WAC 222-16-086(2)) on suitable spotted owl habitat located within a median home range circle that is centered within the demographic support area.

(iii) **Outside of a SOSEA**, harvesting, road construction, or aerial application of pesticides, between March 1 and August 31 on the seventy acres of highest quality suitable spotted owl habitat surrounding a northern spotted owl site center located outside a SOSEA. The highest quality suitable habitat shall be determined by the department in cooperation with the department of fish and wildlife. Consideration shall be given to habitat quality, proximity to the activity center and contiguity.

(iv) **Small parcel northern spotted owl exemption.** Forest practices proposed on the lands owned or controlled by a landowner whose forest land ownership within the SOSEA is less than or equal to 500 acres and where the forest practice is not within 0.7 mile of a northern spotted owl site center shall not be considered to be on lands designated as critical habitat (state) for northern spotted owls.

(g) Pacific pond turtle (*Actinemys marmorata*) - Harvesting, road construction, aerial application of pesticides, or site preparation

within 0.25 mile of a known individual occurrence, documented by the department of fish and wildlife.

(h) Marbled murrelet (*Brachyramphus marmoratus*).

(i) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within an occupied marbled murrelet site.

(ii) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within suitable marbled murrelet habitat within a marbled murrelet detection area.

(iii) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within suitable marbled murrelet habitat containing 7 platforms per acre outside a marbled murrelet detection area.

(iv) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction outside a marbled murrelet detection area within a marbled murrelet special landscape and within suitable marbled murrelet habitat with 5 or more platforms per acre.

(v) Harvesting within a 300 foot managed buffer zone adjacent to an occupied marbled murrelet site that results in less than a residual stand stem density of 75 trees per acre greater than 6 inches in dbh; provided that 25 of which shall be greater than 12 inches dbh including 5 trees greater than 20 inches in dbh, where they exist. The primary consideration for the design of managed buffer zone widths and leave tree retention patterns shall be to mediate edge effects. The width of the buffer zone may be reduced in some areas to a minimum of 200 feet and extended to a maximum of 400 feet as long as the average of 300 feet is maintained.

(vi) Except that the following shall not be critical habitat (state):

(A) Where a landowner owns less than 500 acres of forest land within 50 miles of saltwater and the land does not contain an occupied marbled murrelet site; or

(B) Where a protocol survey (see WAC 222-12-090(14)) has been conducted and no murrelets were detected. The landowner is then relieved from further survey requirements. However, if an occupied marbled murrelet site is established, this exemption is void.

(2) The following critical habitats (federal) designated by the United States Secretary of the Interior or Commerce, or specific forest practices within those habitats, have been determined to have the potential for a substantial impact on the environment and therefore are designated as critical habitats (state) of threatened or endangered species.

(3) For the purpose of identifying forest practices which have the potential for a substantial impact on the environment with regard to threatened or endangered species newly listed by the Washington fish and wildlife commission and/or the United States Secretary of the Interior or Commerce, the department shall after consultation with the department of fish and wildlife, prepare and submit to the board a proposed list of critical habitats (state) of threatened or endangered species. This list shall be submitted to the board within 30 days of the listing of the species. The department shall, at a minimum, consider potential impacts of forest practices on habitats essential to meeting the life requisites for each species listed as threatened or endangered. Those critical habitats (state) adopted by the board shall be added to the list in subsection (1) of this section. See WAC 222-16-050 (1) (b).

(4) For the purpose of identifying any areas and/or forest practices within critical habitats (federal) designated by the United States Secretary of the Interior or Commerce which have the potential for a substantial impact on the environment, the department shall, after consultation with the department of fish and wildlife, submit to the board a proposed list of any forest practices and/or areas proposed for inclusion in Class IV - Special forest practices. The department shall submit the list to the board within 30 days of the date the United States Secretary of the Interior or Commerce publishes a final rule designating critical habitat (federal) in the Federal Register. Those critical habitats included by the board in Class IV - Special shall be added to the list in subsection (2) of this section. See WAC 222-16-050 (1)(b).

(5)(a) The critical habitats (state) of threatened and endangered species and specific forest practices designated in subsections (1) and (2) of this section are intended to be interim. These interim designations shall expire for a given species on the earliest of:

(i) The effective date of a regulatory system for wildlife protection referred to in (b) of this subsection or of substantive rules on the species.

(ii) The delisting of a threatened or endangered species by the Washington fish and wildlife commission and by the United States Secretary of Interior or Commerce.

(b) The board shall examine current wildlife protection and department authority to protect wildlife and develop and recommend a regulatory system, including baseline rules for wildlife protection. To the extent possible, this system shall:

(i) Use the best science and management advice available;

(ii) Use a landscape approach to wildlife protection;

(iii) Be designed to avoid the potential for substantial impact to the environment;

(iv) Protect known populations of threatened and endangered species of wildlife from negative effects of forest practices consistent with RCW 76.09.010; and

(v) Consider and be consistent with recovery plans adopted by the department of fish and wildlife pursuant to RCW 77.12.020(6) or habitat conservation plans or 16 U.S.C. 1533(d) rule changes of the Endangered Species Act.

(6) Regardless of any other provision in this section, forest practices applications shall not be classified as Class IV - Special based on critical habitat (state) (WAC 222-16-080 and 222-16-050 (1)(b)) for a species, if the forest practices are consistent with one or more of the following:

(a) Documents addressing the needs of the affected species provided such documents have received environmental review with an opportunity for public comment under the National Environmental Policy Act, 42 U.S.C. section 4321 et seq.:

(i) A habitat conservation plan and incidental take permit; or an incidental take statement covering such species approved by the Secretary of the Interior or Commerce pursuant to 16 U.S.C. § 1536(b) or 1539(a); or

(ii) An "unlisted species agreement" covering such species approved by the U.S. Fish and Wildlife Service or National Marine Fisheries Service; or

(iii) Other conservation agreement entered into with a federal agency pursuant to its statutory authority for fish and wildlife protection that addresses the needs of the affected species; or

(iv) A rule adopted by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service for the conservation of an affected species pursuant to 16 U.S.C. section 1533(d); or

(b) Documents addressing the needs of the affected species so long as they have been reviewed under the State Environmental Policy Act;

(i) A landscape management plan; or

(ii) Another cooperative or conservation agreement entered into with a state resource agency pursuant to its statutory authority for fish and wildlife protection;

(c) A special wildlife management plan (SWMP) developed by the landowner and approved by the department in consultation with the department of fish and wildlife;

(d) A landowner option plan (LOP) for northern spotted owls developed pursuant to WAC 222-16-100(1);

(e) A cooperative habitat enhancement agreement (CHEA) developed pursuant to WAC 222-16-105; or

(f) A take avoidance plan issued by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service prior to March 20, 2000;

(g) Surveys demonstrating the absence of northern spotted owls at a northern spotted owl site center have been reviewed and approved by the department of fish and wildlife and all three of the following criteria have been met:

(i) The site has been evaluated by the spotted owl conservation advisory group; and

(ii) As part of the spotted owl conservation advisory group's evaluation, the department's representative has consulted with the department of fish and wildlife; and

(iii) The spotted owl conservation advisory group has reached consensus that the site need not be maintained while the board completes its evaluation of rules affecting the northern spotted owl. The spotted owl conservation advisory group shall communicate its findings to the department in writing within sixty days of the department of fish and wildlife's approval of surveys demonstrating the absence of northern spotted owls.

In those situations where one of the options above has been used, forest practices applications may still be classified as Class IV-Special based upon the presence of one or more of the factors listed in WAC 222-16-050(1), other than critical habitat (state) for the species covered by the existing plan or evaluations.

(7) The department, in consultation with the department of fish and wildlife, shall review each SOSEA to determine whether the goals for that SOSEA are being met through approved plans, permits, statements, letters, or agreements referred to in subsection (6) of this section. Based on the consultation, the department shall recommend to the board the suspension, deletion, modification or reestablishment of the applicable SOSEA from the rules. The department shall conduct a review for a particular SOSEA upon approval of a landowner option plan, a petition from a landowner in the SOSEA, or under its own initiative.

(8) The department, in consultation with the department of fish and wildlife, shall report annually to the board on the status of the northern spotted owl to determine whether circumstances exist that substantially interfere with meeting the goals of the SOSEAs.

WAC 222-20-017 *Applications that include forest practices hydraulic projects. (1) **Review for consistency with fish protection standards.** The department reviews forest practices applications that include forest practices hydraulic projects in Type S and F and associated Np Waters for consistency with fish protection standards.

(2) **Preapplication consultation.**

(a) Prospective applicants are encouraged to consult with the department and the department of fish and wildlife, including site visits as needed, prior to submitting a forest practices application to the department.

(b) Preapplication consultation helps to ensure that project design and specifications meet fish protection standards.

(c) Preapplication consultation should take place well before submitting an application to the department and well before the desired work windows.

(3) **Application time limits.** Except for applications involving project types listed in subsection (4)(b) of this section, application time limits for applications that include forest practices hydraulic projects are the same as those listed in WAC 222-20-020.

(4) **Review of forest practices hydraulic projects involving Type S and F Waters by the department of fish and wildlife.** The department of fish and wildlife's review of forest practices hydraulic projects is guided by WAC ((220-110-085)) 220-660-060, and summarized in (a) and (b) of this subsection:

(a) Except for the particular review process for projects listed in (b)(i) of this subsection, the department of fish and wildlife reviews forest practices hydraulic projects involving Type S and F Waters as follows:

(i) The department of fish and wildlife either provides comments to the department or documents that the review has occurred without the need for comments.

(ii) Prior to commenting, or as soon as reasonably practical, the department of fish and wildlife will communicate with the applicant regarding any concerns relating to consistency with fish protection standards.

(iii) The department of fish and wildlife will also strive to maintain communications with the department as concerns arise, and inform the department of its communications with applicants.

(b) Concurrence review.

(i) The following project types involving Type S and F Waters are subject to the department of fish and wildlife conducting a concurrence review according to the process outlined in WAC ((220-110-085)) 220-660-060(3):

- Culvert installation or replacement, and repair at or below the bankfull width in Type S and F Waters that exceed five percent gradient;

- Bridge construction or replacement, and repair at or below the bankfull width of unconfined streams in Type S and F Waters; or

- Fill within the flood level-100 year of unconfined streams in Type S and F Waters.

(ii) After review of these projects, the department of fish and wildlife must provide written notification of concurrence or nonconcurrence to the department within thirty days of the department offi-

cially receiving a complete application, stating whether or not the project is consistent with fish protection standards and including any proposed changes needed to meet fish protection standards.

(iii) As indicated in WAC 222-20-020 (1)(e), the department approves, conditions, or disapproves such applications within sixty days of officially receiving an application. The department of fish and wildlife's review is completed within the first thirty days.

(5) **Disapproval.**

(a) An application will be disapproved if the department determines, after consultation with the department of fish and wildlife, that a forest practices hydraulic project in the application will result in direct or indirect harm to fish life, unless:

(i) Adequate mitigation can be assured by conditioning the application for the project; or

(ii) The project is modified satisfactorily.

(b) If disapproved, the department will provide a statement to the applicant in writing of the specific reason(s) why, and how the proposed project would adversely affect fish life.

WAC 222-21-030 Documentation and standards. (1) **Forest practices application.** Prior to submitting a forestry riparian easement application, the landowner must have an approved forest practices application or an application that was disapproved because of forests and fish rule restrictions.

(2) **Forestry riparian easement application.** The landowner will provide the following information in a forestry riparian easement application:

(a) County tax parcel numbers of the property in the proposed easement premises;

(b) A list of all forest practices application numbers of approved and/or disapproved forest practices applications;

(c) The landowner's signature certifying that the landowner meets the criteria of a qualifying small forest landowner and documenting that the landowner is willing to sell or donate such easements to the state; and

(d) Documentation that qualifying timber (~~is harvested~~) within or immediately adjacent to, or physically connected to a commercially reasonable harvest area, cannot be harvested because of forests and fish rule restrictions, or is uneconomic to harvest because of forests and fish rule restrictions. See WAC 222-21-032 for additional information about these eligibility criteria.

The small forest landowner office may require additional information from the applicant to process the application and evaluate the eligibility of the proposed easement premises and the landowner.

(3) **Baseline documentation.** The small forest landowner office will gather baseline documentation that will describe the features and current uses on the proposed forestry riparian easement premises and the qualifying timber. The documentation will include but not be limited to:

(a) A summary of cruise information consistent with the standards and methods in WAC 222-21-040; and

(b) An assessment to determine site condition and potential liabilities associated with the proposed riparian easement premises.

(4) **Forestry riparian easement contract.** The forestry riparian easement contract will identify the parties, describe the land, locate the easement, state the terms and conditions, and provide a statement of consideration. The contract will include language consistent with RCW 76.13.120(5) concerning the preservation of all lawful uses of the easement premises by the landowner. The easement will be for a term of fifty years from the date the completed forestry riparian easement application is submitted to and received by the small forest landowner office.

(5) **Land description standards.**

(a) The forestry riparian easement contract will include a description of the easement premises using a land survey provided by the department unless the cost of securing the survey would be unreasonable in relation to the value of the easement conveyed.

(b) When the small forest landowner office determines a land survey is not required, the department will prepare a written description that suitably and accurately depicts the location of the easement conveyed, or the department may consider other methods, such as producing a map, to accurately describe the easement premises.

WAC 222-21-032 Eligibility criteria. (1) Qualifying small forest landowners must complete a timber harvest to be eligible for a forestry riparian easement, unless a commercially reasonable harvest is not possible according to subsection (5) of this section or the only timber available to harvest meets the criteria of uneconomic to harvest according to subsection (6) of this section.

(2) The easement premises cannot contain unacceptable liabilities as determined by the small forest landowner office. Unacceptable liabilities include, but are not limited to, the presence of hazardous substances on the land or other conditions that may create a liability to the department, any existing uses of the property that may jeopardize the protection of the easement premises and qualifying timber, and situations in which the applicant is unwilling or unable to provide reasonable protection against financial loss to the state.

(3) Where more than one person has an interest in property to be covered by a forestry riparian easement, all persons holding rights to control or affect the easement premises and qualifying timber must execute the easement documents or otherwise subordinate their interest to the easement being acquired by the state. This includes tenants in common, joint tenants, holders of reversionary interests, lien holders, and mortgages.

(4) **Commercially reasonable harvest.** The small forest landowner office will consider the following criteria to determine if an area covered by a forest practices application involves a commercially reasonable harvest. The proposed harvest must meet all five of the following requirements:

(a) The harvest unit is immediately adjacent to or physically connected to qualifying timber;

(b) The application is for a forest practice involving a timber harvest and the harvest would not result in a conversion to a use other than commercial timber operation;

(c) The landowner is not eligible for the twenty acre exemption under WAC 222-30-023;

(d) The value of the timber in the harvest unit, excluding qualifying timber, equals or exceeds one thousand dollars (~~(, which is the minimum required by department of revenue for taxing purposes)~~); and

(e) The value of the taxable harvest equals or exceeds the value of the qualifying timber established under WAC 222-21-045 unless otherwise approved by the small forest landowner office.

(5) **Commercially reasonable harvest is not possible.** The small forest landowner office will consider the following criteria to determine if a forest practices application for harvest may qualify for the forestry riparian easement program because it involves an area where a commercially reasonable harvest is not possible. The proposed harvest must meet all four of the following requirements:

(a) The forest practices application has been disapproved because the area covered by the application cannot be harvested due to forests and fish rule restrictions;

(b) The forest practices application involves a proposed timber harvest and the harvest would not result in a conversion to a use other than commercial timber operation;

(c) The landowner is not eligible for the twenty acre exemption under WAC 222-30-023; and

(d) The value of the qualifying timber equals or exceeds one thousand dollars (~~(, which is the minimum required by the department of revenue for taxing purposes)~~).

(6) **Uneconomic to harvest.** The small forest landowner office will consider the following criteria to determine whether timber is qualifying timber because the forests and fish rules made it uneconomic to harvest. The proposed harvest must meet all four of the following requirements:

(a) The timber could have been included in a commercially reasonable harvest unit if there were no additional requirements imposed by the forests and fish rules;

(b) The area is not reasonably accessible economically because of requirements imposed by the forests and fish rules;

(c) There is no reasonable unit size alternative which, if used, would make the area economical to harvest; and

(d) The cost to access the harvest unit plus the cost to harvest would equal or exceed thirty-five percent of the stumpage value in the portion of the unit considered uneconomic. The small forest landowner office will determine these costs and values consistent with WAC 222-21-045. Costs include harvest, construction of nonpermanent roads and/or water crossing structures, and associated expenses. When using the small harvester tax return method to calculate stumpage values and allowable costs, the landowner may include actual timber appraisal and sale layout costs incurred as part of the cost calculations.

AMENDATORY SECTION (Amending WSR 12-11-106, filed 5/22/12, effective 6/22/12)

WAC 222-21-045 Valuation. (1) **The small forest landowner office will calculate the compensation amount for** forestry riparian easements by determining a value for the qualifying timber. The office will use data gathered from or adjusted to the date the office received the complete forestry riparian easement application. The office will use the stumpage value determination method described in (a) of this subsection for qualifying timber that cannot be harvested because of forests and fish rule restrictions. For qualifying timber approved for harvest, the office will use both the stumpage value determination method and the small harvester tax return method to determine the highest compensation amount for the landowner.

(a) **Stumpage value determination method.** The small forest landowner office will create and maintain value tables to determine stumpage value of the qualifying timber. These tables will be created using a method coordinated with the department of revenue. The values will closely approximate the stumpage value for logs on the date the office received a complete forestry riparian easement application. The landowner will provide:

(i) The reference for the stumpage value table and any other needed information for use of the table; and

(ii) Any information the landowner would like the office to consider in its cruise and valuation of the qualifying timber.

(b) **Small harvester tax return method.**

(i) The landowner must provide comprehensive mill or buyer information for each harvest unit associated with the forestry riparian easement including:

- (A) The delivered value by species;
- (B) The total volume by species; and
- (C) The actual harvesting and marketing costs as defined in the department of revenue small harvester instructions.

This information must be verifiable as proceeds from the timber harvests from documents such as mill receipts and/or forest excise tax returns. If the small forest landowner office does not receive a comprehensive packet of mill or buyer information or is not satisfied with the source of the documentation, the office will determine the qualifying timber value using the stumpage value determination method.

(ii) The office will use a time adjustment index to determine the qualifying timber value based on the date the office received the complete forestry riparian easement application. The office will generate a time adjustment index for each harvest associated with the easement based on log price changes.

(iii) The office will determine the adjusted stumpage value by subtracting the average logging and hauling cost per thousand board feet (MBF) from the value of the time adjusted mill or buyer information. The office will then determine the value of the qualifying timber by multiplying the time adjusted stumpage value of each species in the harvest unit by the net volume for each corresponding species in the inventory of qualifying timber.

(iv) The department determines the values of the timber species that exist in the easement premises ((will be valued)), not the species in the harvest area. The ((timber species in)) department determines the easement ((premises will be valued)) value by multiplying the determined cruise volume of qualified timber in the easement premises by the appropriate stumpage value of those species shown on the appropriate table used for timber harvest excise tax purposes per RCW 84.33.091.

(2) **Determining the forestry riparian easement compensation.** The small forest landowner office uses a "high impact regulatory threshold" to calculate the compensation offered for a forestry riparian easement. This threshold is determined by multiplying the value of all timber covered under a forest practices application by 19.1 percent for timber in western Washington and 12.2 percent for timber in eastern Washington.

(a) When the percentage of the qualifying timber value to the total value of all timber covered under a forest practices application is equal to or less than the applicable high impact regulatory threshold (19.1 percent or 12.2 percent), the compensation offered for an easement will be fifty percent of the qualifying timber value.

(b) When the percentage of the qualifying timber value to the total value of all timber covered under a forest practices application exceeds the applicable high impact regulatory threshold (19.1 percent or 12.2 percent), the compensation offered for an easement will be more than fifty percent of the qualifying timber value up to the applicable high impact regulatory threshold, plus full compensation (one hundred percent) for the qualifying timber value that exceeds the high impact regulatory threshold. This is mathematically represented as follows:

Where:

Vq = the value of qualifying timber;

Vh = the value of harvested timber; and

t = the high impact of regulatory threshold (19.1 percent for western Washington, 12.2 percent for eastern Washington);

The compensation for easement = $((Vq/(Vq + Vh)) - t) * (Vq + Vh) + (t * (Vq + Vh)/2)$.

WAC 222-22-080 *Approval of watershed analysis. (1) Upon receipt of the recommended prescriptions and management strategies resulting from a level 1 assessment under WAC 222-22-050, a level 2 assessment under WAC 222-22-060, or a reanalysis under WAC 222-22-090, the department shall select prescriptions. The department shall circulate the draft watershed analysis to the departments of ecology and fish and wildlife, affected Indian tribes, local governmental entities, forest landowners in the WAU, and the public for review and comment. The prescriptions recommended by the field managers' team shall be given substantial weight. Within thirty days of receipt of the recommended prescriptions and management strategies, the department shall review comments, revise the watershed analysis as appropriate, and approve or disapprove the watershed analysis for the WAU.

* (2) The department should notify any governmental agency or Indian tribe having jurisdiction over activities which are not regulated under chapter 76.09 RCW but which are identified in the draft analysis as having a potential for an adverse impact on identified fish, water, capital improvements of the state or its political subdivisions, or cultural resources.

* (3) The department shall approve the draft watershed analysis unless it finds:

(a) For any level 1 assessment or level 2 assessment, that:

(i) The team failed in a material respect to apply the methodology, indices of resource condition, or checklists set forth in the manual; or

(ii) A team meeting the criteria promulgated by the department and using the defined methodologies, indices of resource conditions, and checklists set forth in the manual could not reasonably have come to the conclusions identified in the draft level 1 or level 2 assessment; and

(b) The prescriptions ((~~r~~)) will not accomplish the purposes and policies of this chapter and chapter 76.09 RCW.

(c) In making its findings under this subsection, the department shall take into account its ability to revise assessments under WAC 222-22-090.

* (4) If the department disapproves the draft watershed analysis, it shall set forth in writing a detailed explanation of the reasons for its disapproval.

(5) To become final under subsection (1) of this section, all watershed analyses must be reviewed under SEPA on a nonproject basis. SEPA review may take place concurrently with the public review in subsection (1) of this section. See WAC 222-10-035.

(6) As of July 1, 2011:

(a) Existing interim or draft prescriptions will expire; and

(b) A new draft watershed analysis or reanalysis will expire if the requirements in subsections (1) and (5) of this section are not met.

These expirations sunset the draft watershed analysis for the WAU and do not require SEPA review. The department shall notify the landowners in the WAU that the watershed analysis has expired.

(7) The department will not review or approve cultural resource management strategies because their implementation is voluntary.

WAC 222-30-020 *Harvest unit planning and design. (1) Preapplication consultation and harvest-related forest practices hydraulic projects.

(a) Landowners contemplating forest practices hydraulic projects related to timber harvest are encouraged to consult with the department and the department of fish and wildlife prior to submitting an application to help ensure that project plans and specifications meet fish protection standards.

(b) Harvest-related forest practices hydraulic projects include, but are not limited to, projects associated with:

(i) Felling and bucking (WAC 222-30-050);

(ii) Cable yarding (WAC 222-30-060); and

(iii) Large woody material removal or repositioning (WAC 222-30-062).

(2) **Logging system.** The logging system, including forest biomass removal operations, should be appropriate for the terrain, soils, and timber type so that yarding or skidding can be economically accomplished and achieve the ecological goals of WAC 222-30-010 (2), (3) and (4) in compliance with these rules.

* (3) **Landing locations.** Locate landings to prevent damage to public resources. Avoid excessive excavation and filling.

* (4) **Western Washington riparian management zones.** (See WAC 222-30-021 and 222-30-023.)

* (5) **Eastern Washington riparian management zones.** (See WAC 222-30-022 and 222-30-023.)

* (6) **Riparian leave tree areas.** (See WAC 222-30-021, 222-30-022, and 222-30-023.)

* (7) **Forested wetlands.** Within the wetland, unless otherwise approved in writing by the department, harvest methods shall be limited to low impact harvest or cable systems. Where feasible, at least one end of the log shall be suspended during yarding.

(a) When forested wetlands are included within the harvest area, landowners are encouraged to leave a portion (thirty to seventy percent) of the wildlife reserve tree requirement for the harvest area within a wetland. In order to retain undisturbed habitat within forested wetlands, these trees should be left in clumps. Leave tree areas should be clumped adjacent to streams, riparian management zones, or wetland management zones where possible and they exist within forested wetlands. Green recruitment trees should be representative of the size and species found within the wetland. Leave nonmerchantable trees standing where feasible.

(b) If a RMZ or WMZ lies within a forested wetland, the leave tree requirement associated with those areas may be counted toward the percentages in (a) of this subsection.

(c) Where riparian associated wetlands are present in the outer zone of a RMZ, trees may be left in the zone to maximize wetland function. See WAC 222-30-021 *(1)(c)(ii).

(d) If the conditions described in (a) and (b) of this subsection are met, the distribution requirements for wildlife reserve trees and green recruitment trees (subsection ~~((11))~~ (12)(e) of this section) are modified as follows: For purposes of distribution, no point within the harvest unit shall be more than one thousand feet from a wildlife reserve tree and green recruitment tree retention area.

(e) Approximate determination of the boundaries of forested wetlands greater than three acres shall be required. Approximate boundaries and areas shall be deemed to be sufficient for harvest operations.

(f) The department shall consult with the department of fish and wildlife and affected Indian tribes about site specific impacts of forest practices on wetland-sensitive species in forested wetlands.

* (8) **Wetland management zones (WMZ)**. These zones shall apply to Type A and B Wetlands, as indicated in (a) of this subsection, and shall be measured horizontally from the wetland edge or the point where the nonforested wetland becomes a forested wetland, as determined by the method described in the board manual section 8, and shall be of an average width as described in (a) of this subsection. These zones shall not be less than the minimum nor more than the maximum widths described in (a) of this subsection. When these zones overlap a riparian management zone the requirement which best protects public resources shall apply.

* (a) Wetland management zones (WMZ) shall have variable widths based on the size of the wetland and the wetland type, described as follows:

Wetland Management Zones

Wetland Type	Acres of Nonforested Wetland*	Maximum WMZ Width	Average WMZ Width	Minimum WMZ Width
A (including bogs)	Greater than 5	200 feet	100 feet	50 feet
A (including bogs)	0.5 to 5	100 feet	50 feet	25 feet
A (bogs only)	0.25 to 0.5	100 feet	50 feet	25 feet
B	Greater than 5	100 feet	50 feet	25 feet
B	0.5 to 5			25 feet
B	0.25 to 0.5	No WMZ required	No WMZ required	

* For bogs, both forested and nonforested acres are included.

(b) Within the WMZ, leave a total of seventy-five trees per acre of WMZ greater than six inches dbh in Western Washington and greater than four inches dbh in Eastern Washington, twenty-five of which shall be greater than twelve inches dbh including five trees greater than twenty inches dbh, where they exist. Leave trees shall be representative of the species found within the WMZ.

(c) Retain wildlife reserve trees where feasible. Type 1 and 3 wildlife reserve trees may be counted among, and need not exceed, the trees required in (b) of this subsection. Leave all cull logs on site.

(d) Partial-cutting or removal of groups of trees is acceptable within the WMZ. The maximum width of openings created by harvesting within the WMZ shall not exceed one hundred feet as measured parallel to the wetland edge. Openings within WMZs shall be no closer than two hundred feet. Landowners are encouraged to concentrate leave trees within the WMZ to the wetland edge.

* (e) Tractors, wheeled skidders, or other ground based harvesting systems shall not be used within the minimum WMZ width without written approval of the department.

* (f) When ten percent or more of a harvest unit lies within a wetland management zone and either the harvest unit is a clearcut of thirty acres or less or the harvest unit is a partial cut of eighty acres or less, leave not less than fifty percent of the trees required in (b) of this subsection.

* (9) **Type A or B Wetlands.** Within the boundaries of Type A or B Wetlands the following shall apply:

(a) Individual trees or forested wetland areas less than 0.5 acre in size may occur. These trees have a high habitat value to the non-forested wetland. Leave individual trees or forested wetlands less than 0.5 acre. These trees may be counted toward the WMZ requirements.

(b) Harvest of upland areas or forested wetlands which are surrounded by Type A or B Wetlands must be conducted in accordance with a plan, approved in writing by the department.

(c) No timber shall be felled into or cable yarded across Type A or B Wetlands without written approval of the department.

(d) Harvest shall not be allowed within a Type A Wetland which meets the definition of a bog.

(10) **Future productivity.** Harvesting shall leave the land in a condition conducive to future timber production except:

(a) To the degree required for riparian management zones; or

(b) Where the lands are being converted to another use or classified urban lands as specified in WAC 222-34-050.

(11) **Wildlife habitat.** This subsection is designed to encourage timber harvest practices that would protect wildlife habitats, provided, that such action shall not unreasonably restrict landowners action without compensation.

(a) The applicant should make every reasonable effort to cooperate with the department of fish and wildlife to identify critical habitats (state) as defined by the board. Where these habitats are known to the applicant, they shall be identified in the application or notification.

(b) Harvesting methods and patterns in established big game winter ranges should be designed to ensure adequate access routes and escape cover where practical.

(i) Where practical, cutting units should be designed to conform with topographical features.

(ii) Where practical on established big game winter ranges, cutting units should be dispersed over the area to provide cover, access for wildlife, and to increase edge effect.

(12) **Wildlife reserve tree management.** In areas where leaving wildlife reserve trees under this section will not create a significant fire hazard, or significant hazard to overhead power lines and operations that are proposed in the vicinity of wildlife reserve trees will not create a significant safety or residential hazard nor conflict with achieving conformance with the limitation of or performance with the provisions of chapter 76.04 RCW (snag falling law) and chapter 49.17 RCW (safety), wildlife reserve trees will be left to protect habitat for cavity nesting wildlife in accordance with the following:

(a) For the purposes of this subsection the following defines eastern and western Washington boundaries for wildlife reserve tree management. Beginning at the International Border and Okanogan National Forest boundary at the N1/4 corner Section 6, T. 40N, R. 24E., W.M., south and west along the Pasayten Wilderness boundary to the west line of Section 30, T. 37N, R. 19E.,

Thence south on range line between R. 18E. and R. 19E., to the Lake Chelan-Sawtooth Wilderness at Section 31, T. 35N, R. 19E.,

Thence south and east along the eastern wilderness boundary of Lake Chelan-Sawtooth Wilderness to the west line of Section 18, T. 31N, R. 19E. on the north shore of Lake Chelan,

Thence south on the range line between R. 18E. and R. 19E. to the SE corner of T. 28N, R. 18E.,

Thence west on the township line between T. 27N, and T. 28N to the NW corner of T. 27N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the Alpine Lakes Wilderness at Section 31, T. 26N, R. 17E.,

Thence south along the eastern wilderness boundary to the west line of Section 6, T. 22N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the SE corner of T. 22N, R. 16E.,

Thence west along township line between T. 21N, and T. 22N to the NW corner of T. 21N, R. 15E.,

Thence south along range line between R. 14E. and R. 15E. to the SW corner of T. 20N, R. 15E.,

Thence east along township line between T. 19N, and T. 20N to the SW corner of T. 20N, R. 16E.,

Thence south along range line between R. 15E. and R. 16E. to the SW corner of T. 18N, R. 16E.,

Thence west along township line between T. 17N, and T. 18N to the SE corner of T. 18N, R. 14E.,

Thence south along range line between T. 14E. and R. 15E. to the SW corner of T. 14N, R. 15E.,

Thence south and west along Wenatchee National Forest boundary to the NW corner of T. 12N, R. 14E.,

Thence south along range line between R. 13E. and R. 14E. to the SE corner of T. 10N, R. 13E.,

Thence west along township line between T. 9N, and T. 10N to the NW corner of T. 9N, R. 12E.,

Thence south along range line between R. 11E. and R. 12E. to the SE corner of T. 8N, R. 11E.,

Thence west along township line between T. 7N, and T. 8N to the Gifford Pinchot National Forest boundary,

Thence south along forest boundary to the SE corner of Section 33, T. 7N, R. 11E.,

Thence west along township line between T. 6N, and T. 7N to the SE corner of T. 7N, R. 9E.,

Thence south along Skamania-Klickitat County line to Oregon-Washington.

(b) In Western Washington, for each acre harvested three wildlife reserve trees, two green recruitment trees, and two down logs shall be left. In Eastern Washington for each acre harvested two wildlife reserve trees, two green recruitment trees, and two down logs shall be left. Type 1 wildlife reserve trees may be counted, at the landowner's option, either as a wildlife reserve tree or as a green recruitment tree. If adequate wildlife reserve trees are not available, no additional green recruitment trees will be required as substitutes. Landowners shall not under any circumstances be required to leave more than two green recruitment trees per acre for the purpose of wildlife reserve tree retention, or be required to leave Type 3 or 4 wildlife reserve trees.

(c) In Western Washington, only those wildlife reserve trees ten or more feet in height and twelve or more inches dbh shall be counted toward wildlife reserve tree retention requirements. In Eastern Washington, only those wildlife reserve trees ten or more feet in height and ten or more inches dbh shall be counted toward wildlife reserve tree retention requirements. Green recruitment trees, ten or more inches dbh and thirty or more feet in height and with at least one-third of their height in live crown, left standing after harvest may be counted toward green recruitment tree requirements. Green recruitment

trees and/or wildlife reserve trees left to meet other requirements of the rules or those left voluntarily by the landowner shall be counted toward satisfying the requirements of this section. Large, live defective trees with broken tops, cavities, and other severe defects are preferred as green recruitment trees. Only down logs with a small end diameter greater than or equal to twelve inches and a length greater than or equal to twenty feet or equivalent volume shall be counted under (a) of this subsection. Large cull logs are preferred as down logs.

(d) In the areas where wildlife reserve trees are left, the largest diameter wildlife reserve trees shall be retained to meet the specific needs of cavity nesters. Where the opportunity exists, larger trees with numerous cavities should be retained and count as recruitment trees.

(e) In order to facilitate safe and efficient harvesting operations, wildlife reserve trees and recruitment trees may be left in clumps. For purposes of distribution, no point within the harvest unit shall be more than eight hundred feet from a wildlife reserve tree or green recruitment tree retention area. Subject to this distribution requirement, the location of these retention areas and the selection of recruitment trees shall be at the landowner's discretion. Closer spacing of retention areas through voluntary action of the landowner is encouraged. Wildlife reserve tree and green recruitment tree retention areas may include, but are not limited to, riparian management zones, riparian leave tree areas, other regulatory leave areas, or voluntary leave areas that contain wildlife reserve trees and/or green recruitment trees.

(f) In order to provide for safety, landowners may remove any Type 3 or 4 wildlife reserve tree, which poses a threat to humans working, recreating, or residing within the hazard area of that tree. In order to provide for fire safety, the distribution of wildlife reserve tree retention areas, described in (e) of this subsection, may be modified as necessary based on a wildlife reserve tree management plan proposed by the landowner and approved by the department.

* (13) **Channel migration zones.** No harvest, construction or salvage will be permitted within the boundaries of a channel migration zone except for the construction and maintenance of road crossings in accordance with applicable rules and the creation and use of yarding corridors consistent with WAC 222-24-020(6), 222-30-060(1), and 222-30-045(2).

(14) **Bankfull width.** No harvest or construction will be permitted within the bankfull width of any Type S or F Water or any buffered length of Type Np Water, except for the construction and maintenance of road crossings in accordance with applicable rules and creation and use of yarding corridors consistent with WAC 222-30-020 *(6) and 222-24-060(1). No salvage may take place within the bankfull width of any typed water (see WAC 222-30-045).