

1 **FOREST PRACTICES BOARD**

2 **SPECIAL MEETING**

3 May 17, 2001

4 Natural Resources Building

5 Olympia, Washington

6  
7 **Members Present:**

8 Pat McElroy, Designee for Commissioner of Public Lands, Chair of the Board

9 Lee Faulconer, Designee for Director, Dept. of Agriculture

10 John Mankowski, Designee for Director, Dept. of Fish and Wildlife

11 Bob Kelly, General Public Member

12 Steve Wells, Designee for Director, Dept. of Community, Trade and Economic  
13 Development

14 Toby Murray, General Public Member

15 Dick Wallace, Designee for Director, Dept. of Ecology

16 Judy Turpin, General Public Member

17 Keith Johnson, General Public Member/Forest Landowner of less than 500 acres

18 Fran Abel, General Public Member

19 Dave Somers, Snohomish County Council

20 Lloyd Anderson, General Public Member/Independent Logging Contractor

21  
22 **Staff:**

23 Pat McElroy, Lenny Young, Debora Brown Munguia, Paddy O'Brien, Patricia Anderson,  
24 Cindy Townley

25  
26 **CALL TO ORDER**

27 The meeting was called to order at 9:00 a.m. Pat McElroy revised the agenda in order to have  
28 executive session at 9:15 a.m. Pat McElroy introduced and welcomed Lenny Young as the new  
29 Forest Practices Division Manager. Introductions were made. Pat McElroy welcomed former  
30 Forest Practices Division manager John Edwards to the meeting.

31  
32 **Board Manual Update by Jed Herman**

33 The purpose of the update is to inform the board on progress being made in manual writing, to  
34 seek determination from the board on when action should be taken on approval of board manual  
35 sections, and to provide the board with the prioritization of the sections. Jed Herman went over  
36 the Forest Practices Board Manual Writing/Development Timeline (See Attachment A). He said  
37 that sections 1-16 are existing sections written up to the time of the emergency rule package and  
38 that these may need to be rewritten and updated. Sections 17-26 are new sections that need to be  
39 developed. The 10 sections shown in bold are sections that the stakeholder group agreed to work  
40 on first. The plan is to have a draft by the end of June to help implement rules, support training

1 and assist the training coordinator. Items not in bold either do not need to be revisited due to  
2 FFR or will take more work and will be developed throughout the summer and fall. Judy Turpin  
3 indicated that she would like to review the sections prior to the board receiving the draft. Jed  
4 Herman said that people are very interested in seeing more information produced beyond the  
5 rules in sections such as alternate plans and adaptive management and that the manual will need  
6 to follow along with how rules got developed. Judy Turpin suggested that watershed analysis be  
7 reviewed for new components listed in the agreement. There are substantial changes due to the  
8 rules and she would not mind having it delayed, but the attachment indicates no need to review  
9 or change and this is an error. Jed Herman replied that this was because the watershed analysis  
10 will take longer. Steve Wells said, consistent with Turpin's observation, there is a specific FFR  
11 requirement to consider cultural resources in the context of watershed analysis and that they  
12 don't need to worry about changing the paperwork but need to make sure we don't lose site of  
13 the fact that we have a committee working on this. Judy Turpin reminded the Board that  
14 watershed analysis is mandated. Pat McElroy said that one issue to deal with is that the forest  
15 practices staff as well as the board is in a crunch time. McElroy further stated that a decision  
16 needed to be made on whether to have interim material until the August meeting and asked the  
17 board members if they felt there is a need to be done by the end of June. Pat McElroy reminded  
18 the board that this is very time consuming and that the focus has been on getting the rule package  
19 done. McElroy stated that there isn't necessarily going to be time between training taking place  
20 and manuals being developed and he encouraged the board to allow DNR to use the draft  
21 documents as training tools and interim guidelines as work is done and build decisions on  
22 manual sections into the August schedule. John Mankowski stated that he would agree to have  
23 DNR use draft documents as staff guidance in training until the board adopts them in August.  
24 Judy Turpin said there might be a problem in August if there are substantial changes and training  
25 is done. She understands the staff problem and she would like board members to be involved in  
26 a review process as well as stakeholders. Pat McElroy would like to get it done in a timely  
27 manner and at some level dealing at the margin since emergency rules are in place. If there are  
28 changes and changes will be at the margin and relatively minor, he would rather be able to work  
29 through this way with the understanding that materials will be sent to the board as developed.  
30 Pat McElroy also mentioned that to avoid a speed bump he would like to have stakeholders work  
31 through much of the process and then take an agreement to attorneys for review. He wants  
32 attorney review during the process rather than at the end. Jed Herman said that if the board takes  
33 action on the manual sections in August, it would allow for extensive review by all parties.  
34

1 The board adjourned regular session at 9:20 a.m. The executive session to discuss with legal  
2 counsel matters in litigation was called at 9:25 a.m. The executive session adjourned at 9:40  
3 a.m. and regular session resumed at 9:45 a.m.

4  
5 **MOTION:** Dick Wallace moved to approve the February 14, 2001 minutes.

6 **SECONDED:** John Mankowski

7 **ACTION:** Motion passed unanimously.

8  
9 **MOTION:** Pat McElroy moved to approve the February 21, 2001 minutes

10 **SECONDED:** John Mankowski

11 **ACTION:** Motion passed unanimously.

12  
13 **MOTION:** John Mankowski moved to approve the March 9, 2001 minutes.

14 **SECONDED:** Dick Wallace

15 **ACTION:** Motion passed unanimously.

16  
17 **Adaptive Management – Jeff Grizzel**

18 Jeff Grizzel informed the board that the division is in the process of recruiting for the Adaptive  
19 Management Director and hopes to have it filled in July. He went over the CMER Research and  
20 Monitoring Priorities Project List. (See Attachment B). The projects are in order of priority 1-  
21 19 with a brief title for each project. Table 1 lists projects with associated costs. Table 2 shows  
22 the relationship between CMER projects and FFR priorities. Table 3 gives the board a heads up  
23 on management/regulatory implications and the last page is a list of the CMER scientific  
24 advisory group acronyms.

25  
26 **MOTION:** Pat moved that the Board approve the CMER's proposed  
27 research/monitoring projects for FY-02, which includes the top 11 projects  
28 as presented to the Board.

29 **SECONDED:** Dick Wallace

30  
31 **Board Discussion**

32 Steve Wells had a question regarding the relationship between the timing of projects and the  
33 state budget. Jeff Grizzel explained the two primary sources of funding for CMER. The first  
34 source is the state general fund, which has historically provided \$1.2 million/biennium. The  
35 second source includes federal forests and fish dollars. During the next fiscal year, this source  
36 will provide \$1.4 or \$1.5 million. There are also smaller funding sources, which include

1 USFWS bull trout and Department of Ecology. Grizzel further explained that the presence of  
2 these other sources of funding reduces the problem associated with the timing of CMER projects  
3 relative to the state general fund. Pat McElroy said that there might be a need to come back and  
4 make adjustments after the budget is finalized. Jeff Grizzel stated that CMER developed the list  
5 with an unknown budget and took a conservative approach and that if there is more funding this  
6 will need to be revisited. CMER plans to rank a second round of projects in July and present it  
7 to the Board in August. Judy Turpin asked if funding has been set aside for baseline monitoring.  
8 Jeff Grizzel responded that the monitoring design team has not yet completed its work but when  
9 it does CMER plans to provide funding for baseline monitoring. He also added that it appears a  
10 statewide monitoring bill will pass the legislature.

11  
12 **ACTION:** Motion passed unanimously.

13  
14 Dick Wallace congratulated Jeff Grizzel and CMER on their work.

15  
16 Jeff Grizzel stated that at the January meeting the board adopted the CMER committee list. He  
17 proposed that Dave Parks serve on the CMER committee until Nancy Sturhan returns.

18  
19 **MOTION:** Pat moved that the Board accept Dave Parks as recommended by the  
20 Department to serve on the CMER committee.

21 **SECONDED:** Judy Turpin

22 **ACTION:** Motion passed unanimously.

23  
24 **Water Typing Model Update – Deborah Naslund**

25 The purpose of the update is to give the board a brief background on project, key success factors,  
26 and progress to date, primary tasks and an updated schedule. Power point presentation: (See  
27 Attachment C). Jeff Grizzel stated that the RFP for the peer review is out and there is a specific  
28 time it is needed back. Judy Turpin asked a question of whether we are adding a feature or  
29 changing the character of the hydro layer in this process, since other entities utilize the hydro  
30 layer for their purposes. Deborah Naslund said that the underlying work is not changing and that  
31 they want to improve accuracy, in essence adding new features to existing data. Steve Wells  
32 mentioned a comment on the model where land was seriously disrupted. He asked that Deborah  
33 get a copy and respond. Deborah Naslund informed the board that for Eastern Washington there  
34 is no base data available and they will need to collect field survey and have not collected any to  
35 date. There will be a CMER funded project to collect survey data and they will use this data.  
36 The preliminary estimate for delivering the eastside water typing would be June 2003. The

1 board will continue to receive updates on progress. Dave Somers asked if last fish/last habitat  
2 points, as coming from existing data, were collected for the purposes of last fish/last habitat or  
3 just pulled from existing surveys? Brian Fransen, Weyerhaeuser, answered that there are some  
4 concerns about the variability of protocol, but the basic protocol used is the interim rule protocol.  
5 The statistical sub-group is going to do a thorough analysis of the data to identify if there are  
6 clusters of data collected under different protocols or different organizations. On the eastside,  
7 they are collecting data under a single protocol for this purpose. The statistical sub-group looked  
8 at the westside data to make sure it was sound. John Mankowski asked if the drought has an  
9 effect on this schedule. There is an opportunity to use the data that has been collected in  
10 previous years and compare it to this year, which could be incorporated into some adjustment to  
11 the data. There is an opportunity with a drought year to look at future years and have a good  
12 opportunity to assess annual variability in fish distributions. John Mankowski said that they are  
13 talking with NMFS and that there is a strong desire from feds to get a model in place. Pat  
14 McElroy said that it was more important to get it right than to do it quick. Our obligation is to  
15 ensure that the water typing is correct for our business and we cannot afford trying to meet others  
16 needs. Judy Turpin said that they were making incorrect assumptions.

17

### 18 **Commitment to Small Forest Landowners**

19 Pat McElroy read the following statement:

20

21 Statement by the Washington Forest Practices Board  
22 Reaffirming Commitment to Small Forest Landowners  
23 May 17, 2001

24

25 The importance of family forestry in Washington extends beyond its contribution to the state's  
26 economy. Viable family forests are integral to the health of forest ecosystems, the well being of  
27 rural communities, and the sustainable production of timber and other forest products.

28

29 **With this statement, the Washington Forest Practices Board reaffirms its commitment to**  
30 **enable small forest landowners to successfully implement all components of the Forests and**  
31 **Fish rule package.** The Board is committed to dealing with real problems and addressing real  
32 issues as they arise. **The Board hereby establishes a committee to focus on small forest**  
33 **landowner issues and needs.**

34

35 The following programs and issues have been identified as critical to the success of small forest  
36 landowners:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

**Forestry Riparian Easements**

During the past six months, over 200 landowners have inquired about Forestry Riparian Easements; there are currently 32 easements underway. This indicates interest in this incentive-based program. However, during public testimony on the new and revised Forest Practices permanent rules, small forest landowners voiced several concerns about the easement program. Of these concerns, compliance costs, compensation levels, and forest practices application restrictions were most often cited. Substitute House Bill 2105 helps alleviate some of these concerns. **Accordingly, the Board commits to implement Substitute House Bill 2105 through an emergency rule at its August 8, 2001 meeting.** The Board will provide the Small Forest Landowner Office Advisory Committee opportunity to review and comment on a draft of this emergency rule before it is implemented.

**Alternate Plans**

Small forest landowners have expressed several concerns about the alternate planning process. **In response to these concerns, the Board commits to further review the alternate planning process and, for this purpose, establish a joint policy-technical task force.**

**Long-Term Planning**

Small forest landowners have stated their need for rules specific to their demographic that provide long-term regulatory certainty. **The Board commits to explore planning mechanisms that recognize and support the long-term commitments small landowners necessarily make to manage their forest resources.**

Currently there are an estimated 50,000 to 100,000 small forest landowners in Washington, assisted by 12 staff in the Department of Natural Resources' Small Forest Landowner Office. Adequate staffing and funding will be critical to the success of existing and future programs. Ongoing training of agency personnel with regard to small landowner issues and needs will help ensure that landowner needs do not go unaddressed.

**MOTION:** Pat McElroy moved to submit the statement as intent to reaffirm the Forest Practices Board's commitment to small landowners.

**SECONDED:** Keith Johnson

1 **Board Discussion**

2 Judy Turpin questioned if circulation of emergency rules would include board members and  
3 others as well as Small Forest Landowner Advisory Committee. Pat McElroy responded that  
4 this would be the case. Dave Somers asked if the intent of the language under forestry riparian  
5 easement program is to consider implementation through an emergency rule. Pat McElroy  
6 responded that it is and reminded the board that this is a statement of intent, not a rule, and that  
7 the idea is that the board will take action, at the August 8<sup>th</sup> meeting, assuming everything comes  
8 together. Steve Wells asked if the planning mechanisms referred to under long term planning  
9 were land use planning mechanisms. Dick Wallace stated that the idea was relating to long term  
10 permits not local land use, more to capture long term forestry plans into streamlined or longer  
11 term permit type processes. Judy Turpin stated that the Board has had discussions at length with  
12 small landowners regarding multi-year permit provisions. Pat McElroy said that there are a  
13 number of mechanisms and basically it is being said that they want to identify and use those.

14

15 **ACTION:** Motion passed unanimously.

16

17 **Permanent Rule Making – Terry Ruff**

18 The board worked from the draft permanent rules document dated 5/9 which includes minor edits  
19 and corrections that the board authorized the Department staff to make at its February 21, 2001  
20 meeting. (See Attachment D).

21

22 **MOTION:** Pat moved that the Department staff, the Board attorney and the Code  
23 Reviser have the authority to continue to make such changes to the rules  
24 as are necessary to give meaning to the intent of the Board. Such changes  
25 include correcting spelling errors, errors in punctuation and syntax that do  
26 not change the intended meaning of the rule, and further have the authority  
27 to correct WAC, RCW and manual references, and do such renumbering  
28 of the rules as are necessary.

29 **SECONDED:** Toby Murray

30 **ACTION:** Motion passed unanimously.

31

32 Terry Ruff introduced the panel of stakeholders including: Sherry Fox (WFFA), Helen Bresler  
33 (DOE), Pete Heide (WFPA), Dave Price (WDFW) and Allen Pleus (NWIFC). Terry Ruff  
34 provided the board with an overview of the public comment summary. The summary took a lot  
35 of staff time and was compiled in two weeks. There were over 883 commenters and 1760 actual  
36 comments. Judy Turpin said she appreciated the work done by Terry and staff. She further

1 stated that she did read all of the public comments and that she tends to weigh differently those  
2 comments with signatures that someone else has prepared, and comments regarding personal  
3 landowners and how they would be affected by the rules. She further stated that a count of all  
4 the comments as equal is not the way that she reflects comments and that she spent more time on  
5 those where people have made it clear as to how the rules would effect them and what the results  
6 would be. Pat McElroy said that he also read all of the comments and that all comments are  
7 valid and of concern. He further stated that one theme he noticed was the issue of complexity.  
8 The professional foresters working on the ground tended to indicate that they are complex but  
9 understandable.

10  
11 **MOTION:** Pat McElroy moved that the board approve for final adoption, the  
12 permanent rule proposal in the May 9, 2001 document for **chapter 222-08**  
13 **WAC** as amended today.

14 **SECONDED:** Toby Murray

15  
16 **MOTION:** Pat McElroy moved that the board amend language in WAC 222-08-035  
17 on page 2.

18 **SECONDED:** Judy Turpin

19  
20 *(4) Compliance monitoring. The department shall conduct compliance monitoring that*  
21 *addresses the following key question: "Are forest practices being conducted in compliance with*  
22 *the rules?" The department shall provide statistically sound, biennial compliance audits and*  
23 *monitoring reports to the board for consideration and support of rule and guidance analysis.*  
24 *Compliance monitoring shall determine whether forest practices rules are being implemented on*  
25 *the ground. An infrastructure to support compliance will include adequate compliance*  
26 *monitoring, enforcement, training, education and budget.*

27 **ACTION:** Motion passed unanimously amending language in WAC 222-08-035.

28  
29 **ACTION:** Motion passed unanimously adopting chapter 222-08 WAC as amended  
30 by the board today.

31  
32 **MOTION:** Pat McElroy moved that the board approve for final adoption, the  
33 permanent rule proposal in the May 9, 2001 document for **chapter 222-10**  
34 **WAC** as amended today.

35 **SECONDED:** Keith Johnson



1 MOTION: Pat McElroy moved that the board amend language in WAC 222-10-030  
2 on page 4.

3 SECONDED: Judy Turpin  
4

5 **Board Discussion**

6 Pat McElroy stated that it is very difficult to recruit and hire a qualified expert with five years of  
7 experience. His assessment is that the Forests and Fish Report is calling for substantial field  
8 experience as opposed to a specific amount of years.  
9

10 *(5) Qualified expert for the purposes of this section means a person with a master's degree in*  
11 *geology or geomorphology or a related field, or a significant amount of postgraduate course or*  
12 *thesis work or other training in geomorphology or mass movement, and, in either case, an*  
13 *additional 3 years of field experience in the evaluation of relevant problems in forested lands.*  
14

15 ACTION: Motion passed unanimously amending language in WAC 222-10-030.  
16

17 ACTION: Motion passed unanimously adopting chapter 222-10 WAC as amended  
18 by the board today.  
19

20 MOTION: Pat McElroy moved that the Board approve for final adoption, the  
21 permanent rule proposal in the May 9, 2001 document for **chapter 222-12**  
22 WAC as amended today.

23 SECONDED: Dick Wallace  
24

25 MOTION: Bob Kelly moved that the board amend language in WAC 222-12-046 on  
26 page 16.

27 SECONDED: Judy Turpin  
28

29 ~~*(4) The board is considering measures to further protect cultural resources and wildlife*~~  
30 ~~*resources. The board shall continue consultation with the departments of ecology, fish and*~~  
31 ~~*wildlife, natural resources, forest landowners, and federally recognized tribes on these resource*~~  
32 ~~*issues to further protect cultural resources and wildlife resource issues.*~~  
33

34 **Board Discussion**

35 Bob Kelly stated that his understanding is that the board removed this language at a previous  
36 meeting. Terry Ruff informed the board that indeed this was stakeholder language taken out by

1 the board and that the stakeholders were not against reinserting the language. Dave Price said  
2 that Steve Wells made the motion to remove the language. John Mankowski stated that his  
3 recollection was that it was struck because it spoke to the board's agenda over the next year or  
4 so. He further said that he is not opposed to reinserting it but by doing so implies a whole work  
5 plan and that the issue is a matter of having a work plan in the WAC. Dick Wallace said that he  
6 believed part of what Wells' issue was that the committee is looking at other things than  
7 watershed analysis under cultural resources. Judy Turpin said that her recollection was that the  
8 first sentence struck was not rule language. She further stated that she would support the  
9 amendment due to the importance of the continuing work if a party feels it is important to have  
10 the language there because the board is continuing consultation on those two issues as part of  
11 cumulative effects response and it strengthens the rules in terms of the board's continuing  
12 obligation to address cumulative effects separate from watershed analysis. Steve Wells  
13 mentioned that curious grammar is used because the number 4 is one of a list of four actions.  
14 The language states that these approaches have been taken and to say that we have taken an  
15 approach that we will take is curious grammar. He supports the ongoing support of the cultural  
16 resources committee and it is not his intent in any way to limit that activity. Pat McElroy agreed  
17 with Wells that under the title of cumulative effects the purpose of the section is to identify how  
18 the rules address changes to the environment. He doesn't think this statement, while good and  
19 something they should be doing and continue to do, actually does that. It is not something that  
20 identifies how the rules address changes. The idea is right, the placement does not make sense in  
21 context of what this particular rule is all about. John Mankowski said that adding it does not hurt  
22 if said in the context that the board continues its commitment to consult with the tribes and Fish  
23 and Wildlife to work on cultural resources and wildlife issues. Pat McElroy stated that the  
24 proposal is not related to the subject matter.

25

26 **AMENDING**

27 **MOTION:** Steve Wells moved to delete the parenthesis and number 4 from the  
28 proposed amendment so it appears in the section as a stand-alone  
29 statement.

30 **SECONDED:** Dave Somers

31

32 ~~The board is considering measures to further protect cultural resources and wildlife resources.~~  
33 The board shall continue consultation with the departments of ecology, fish and wildlife, natural  
34 resources, forest landowners, and federally recognized tribes on these resource issues to further  
35 protect cultural resources and wildlife resource issues.

36

1 ACTION: Motion passed unanimously modifying proposed amendment language.

2  
3 ACTION: Motion passed unanimously amending language in WAC 222-12-046.

4  
5 MOTION: Pat McElroy moved that the board amend language in WAC 222-12-0405  
6 page #14.

7 SECONDED: Dick Wallace

8  
9 *(1) Audits. The department will conduct audits of landowner's compliance with the terms of*  
10 *alternate plans. The department will specifically review and approve each landowner's*  
11 *scheduled performance reports, if a performance report is required, by checking the reports*  
12 *themselves or by implementing a more extensive audit involving field verification. The*  
13 *department audit program for alternate plans will be designed to be consistent with the terms of*  
14 *any agreements with the federal government regarding fish and water quality.*

15  
16 ACTION: Motion passed unanimously amending language in WAC 222-12-0405.

17  
18 MOTION: Pat McElroy moved that the board amend language in WAC 222-12-045  
19 on page 19.

20 SECONDED: Judy Turpin

21  
22 **Board Discussion**

23 Dick Wallace stated that there was a committee working on this in which he participated along  
24 with key players that feel the language is consistent with Forests and Fish. He further stated that  
25 the language adds additional detail into adaptive management that makes it more clear  
26 particularly on the board activities. Pat McElroy commended the committee on the work done.

27  
28 ***This rule language is a total substitution to the language in the 5/9/01 draft.***

29 ***\*Adaptive management program.*** *In order to further the purposes of chapter 76.09 RCW, the*  
30 *board has adopted and will manage a formal science-based program, as set forth in WAC 222-*  
31 *08-035(2). Refer to board manual section 22 for program guidance and further information.*

32  
33 *(1) Purpose: The purpose of the program is to provide science-based recommendations and*  
34 *technical information to assist the board in determining if and when it is necessary or*  
35 *advisable to adjust rules and guidance for aquatic resources to achieve resource goals and*  
36 *objectives. The board may also use this program to adjust other rules and guidance. The*

1 goal of the program is to affect change when it is necessary or advisable to adjust rules and  
2 guidance to achieve the goals of the Forests and Fish Report or other goals identified by the  
3 board. There are three desired outcomes: certainty of change as needed to protect targeted  
4 resources; predictability and stability of the process of change so that landowners,  
5 regulators and interested members of the public can anticipate and prepare for change; and  
6 application of quality controls to study design and execution and to the interpreted results.  
7

8 (2) **Program Elements:** By this rule, the board establishes an active, ongoing program  
9 composed of the following initial elements, but not to exclude other program elements as  
10 needed:  
11

12 (a) **Key Questions and resource objectives:** Upon receiving recommendations from the  
13 TFW Policy committee, or similar collaborative forum, the board will establish key  
14 questions and resource objectives and prioritize them.

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

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

20 (A) Support harvestable levels of salmonids;

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

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

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

29 (iv) Resource objectives are intended for use in adaptive management, rather  
30 than in the regulatory process. Best management practices, as defined in  
31 the rules and manual, apply to all forest practices regardless of whether or  
32 not resource objectives are met at a given site.  
33

34 (b) **Participants:** The board will manage the program and has empowered the following  
35 entities to participate in the program: The Cooperative Monitoring Evaluation and  
36 Research Committee (CMER), the TFW Policy committee (or similar collaborative

1 forum), the adaptive management program administrator, and other participants as  
2 directed to conduct the independent scientific peer review process. The program will  
3 strive to use a consensus-based approach to make decisions at all stages of the  
4 process. Specific consensus-decision stages will be established by CMER and  
5 approved by the board. Ground rules will follow those established by the TFW process  
6 as defined in the board manual.

7  
8 (i) **CMER.** By this rule, the board establishes a Cooperative Monitoring Evaluation  
9 and Research (CMER) Committee to impose accountability and formality of  
10 process, and to conduct research and validation and effectiveness monitoring to  
11 facilitate achieving the resource objectives. The purpose of CMER is to advance  
12 the science needed to support adaptive management. CMER also has ongoing  
13 responsibility to continue research and education in terrestrial resource issues.  
14 CMER will be made up of members that have expertise in a scientific discipline  
15 that will enable them to be most effective in addressing forestry, fish, wildlife, and  
16 landscape process issues. Members will represent timber landowners,  
17 environmental interests, state agencies, county governments, federal agencies and  
18 tribal governments from a scientific standpoint, not a policy view. The board will  
19 approve CMER members. This will not preclude others from participating in and  
20 contributing to the CMER process or its subcommittees. CMER shall also  
21 develop and manage as appropriate:

22 (A) Scientific advisory groups and sub-groups,

23 (B) Research and monitoring programs;

24 (C) A set of protocols and standards to define and guide execution of the  
25 process including, but not limited to, research and monitoring data,  
26 Watershed Analysis reports, interdisciplinary team evaluations and  
27 reports, literature reviews, and quality control/quality assurance  
28 processes;

29 (D) A baseline data set used to monitor change; and

30 (E) A process for policy approval of research, monitoring, and assessment  
31 projects and use of external information, including the questions to be  
32 answered and the timelines.

33  
34 (ii) **TFW Policy committee (Policy).** TFW, or a similar collaborative forum, is  
35 managed by a policy committee (hereafter referred to in this section as "Policy").  
36 Policy membership is self-selecting, and at a minimum should include

1 *representatives of the following caucuses: Timber landowners (industrial and*  
2 *non-industrial private landowners); environmental community; tribal*  
3 *governments; county governments; state departments (including fish and wildlife,*  
4 *ecology, and natural resources); and federal agencies (including National Marine*  
5 *Fisheries Service, U.S. Fish and Wildlife Service, U.S. Environmental Protection*  
6 *Agency and U.S. Forest Service). Policy members will participate without*  
7 *compensation or per diem.*

8  
9 **(iii) Adaptive management program administrator (program administrator).** *The*  
10 *department will employ a full-time independent program administrator to oversee*  
11 *the program and support CMER. The program administrator will have*  
12 *credentials as a program manager, scientist, and researcher. The program*  
13 *administrator will make reports to the board and have other responsibilities as*  
14 *defined in the board manual.*

15  
16 **(c) Independent scientific peer review process.** *By this rule, the board establishes an*  
17 *independent scientific peer review process to determine if the scientific studies that*  
18 *address program issues are scientifically sound and technically reliable; and provide*  
19 *advice on the scientific basis or reliability of CMER's reports. Products that must be*  
20 *reviewed include final reports of CMER funded studies, certain CMER*  
21 *recommendations, and pertinent studies not published in a CMER-approved, peer-*  
22 *reviewed journal. Other products that may require review include, but are not*  
23 *limited to, external information, work plans, requests for proposal, subsequent study*  
24 *proposals, the final study plan, and progress reports.*

25  
26 **(d) Process:** *The following stages will be used to affect change for managing adaptive*  
27 *management proposals and approved projects. If participants cannot reach*  
28 *consensus at any stage, the issue will be addressed within the dispute resolution*  
29 *process.*

30  
31 **(i) Proposal initiation:** *Adaptive management proposals can be initiated at this stage*  
32 *by any of the participants listed in Section (2)(b) of this rule to the program*  
33 *administrator, or initiation may be proposed by the general public at board*  
34 *meetings. Proposals must provide the minimum information as outlined in the*  
35 *board manual and demonstrate how results of the proposal will address key*  
36 *questions and resource objectives or other program rule and/or guidance issues.*

1            *The board may initiate proposals or research questions in the course of fulfilling*  
2            *their duties according to statute.*

3  
4            **(ii) Proposal approval and prioritization:** *The program administrator will manage*  
5            *the proposal approval and prioritization process at this stage and consult with*  
6            *CMER on the program work plan. The program administrator will forward*  
7            *CMER proposals to Policy and then to the board. The board will make the final*  
8            *determination regarding proposal approvals and prioritization. The board will*  
9            *act on proposal approval and prioritization in a timely manner.*

10  
11           **(iii) CMER implementation of proposal:** *Board approved proposals are*  
12           *systematically implemented through CMER at this stage by the program*  
13           *administrator.*

14  
15           **(iv) Independent scientific peer review:** *An independent scientific peer review*  
16           *process will be used at identified points within this stage of implementation*  
17           *depending upon the study and will be used on specified final studies or at the*  
18           *direction of the board.*

19  
20           **(v) CMER committee technical recommendations:** *upon completion, the program*  
21           *administrator will forward final CMER reports and information at this stage to*  
22           *Policy in the form of a report that includes technical recommendations and a*  
23           *discussion of rule and/or guidance implications.*

24  
25           **(vi) Policy petitions for amendment:** *Upon receipt of the CMER report, Policy will*  
26           *prepare program rule amendments and/or guidance recommendations in the form*  
27           *of petitions for amendment. When completed, the petitions and the original*  
28           *CMER report and/or other information as applicable will be forwarded by the*  
29           *program administrator to the board for review and action. Policy*  
30           *recommendations to the board will be accompanied by formal petitions for*  
31           *rulemaking (RCW 34.05.330). Policy will use the CMER results to make specific*  
32           *petitions to the board for amending:*

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

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

36                    *(C) The resource objectives; and*

1 (D) *CMER itself, adaptive management procedures, or other mechanisms*  
2 *implementing the recommendations contained in the most current Forests*  
3 *and Fish Report.*

4  
5 (vii) **Board action to adopt petitions for amendment:** *Upon receiving a formal*  
6 *petition for amendment to rules and/or guidance, the board will take appropriate*  
7 *and timely action. There will be a public review of all petitions as applicable.*  
8 *The board will make the final determination.*

9  
10 (e) **Biennial fiscal and performance audits.** *The board shall require biennial fiscal and*  
11 *performance audits of the program by the department or other appropriate and*  
12 *accepting independent state agency.*

13  
14 (f) **CMER 5-year peer review process.** *Every five years the board will establish a peer*  
15 *review process to review all work of CMER and other available, relevant data,*  
16 *including recommendations from the CMER staff. There will be a specified, but*  
17 *limited, period for public review and comment.*

18  
19 (g) **Funding.** *Funding is essential to implement the adaptive management program,*  
20 *which is dependent on quality and relevant data. The department shall request*  
21 *biennial budgets to support the program priority projects and basic infrastructure*  
22 *needs including funding to staff the adaptive management program administrator*  
23 *position. A stable, long term funding source is needed for these activities.*

24  
25 (h) **Dispute resolution process.** *If consensus cannot be reached through the adaptive*  
26 *management program process, participants will have their issues addressed by this*  
27 *dispute resolution process. Potential failures include, but are not limited to: the*  
28 *inability of Policy to agree on research priorities, program direction, or*  
29 *recommendations to the board for uses of monitoring and/or research after receiving*  
30 *a report from CMER; the inability of CMER to produce a report and*  
31 *recommendation on schedule; and the failure of participants to act on Policy*  
32 *recommendations on a specified schedule. Key attributes of the dispute resolution*  
33 *process are:*

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



1 (ii) The dispute resolution process will be staged in three parts and may be applied at  
2 any level of the adaptive management process. Any participant, or the board,  
3 may invoke each succeeding stage, if agreement is not reached by the previous  
4 stage, within the specified time (or if agreements are not substantially  
5 implemented) as follows:

6 (A) Stage one will be an attempt by CMER and Policy to reach consensus. On  
7 technical issues, CMER shall have up to six months to reach a consensus  
8 unless otherwise agreed upon by Policy. Parties may move the process to  
9 stage two after an issue has been before Policy for six months unless  
10 otherwise agreed. The time periods commence from referral of technical  
11 issues to CMER, report by CMER to Policy, or the raising of a non-technical  
12 issue (or matter not otherwise referable to CMER) directly at Policy.

13 (B) Stage two will be either informal mediation or formal arbitration. Within one  
14 month, one or the other will be picked, with the default being formal unless  
15 otherwise agreed. Stage two will be completed within three months (including  
16 the one month to select the process) unless otherwise agreed.

17 (C) If stage two does not result in consensus, stage three will be action by the  
18 board. The board will consider Policy and CMER reports, and majority and  
19 minority thinking regarding the results and uses of the results can be brought  
20 forward to the board. The board will make the final determination regarding  
21 dispute resolution.

22  
23 ACTION: Motion passed unanimously amending language in WAC 222-12-045.

24  
25 MOTION: Bob Kelly moved that the board amend language in WAC 222-12-120.

26 SECONDED: John Mankowski  
27

28 (4) The department shall send to the affected Indian tribe or tribal agency, within 2 business  
29 days of receipt, a copy of any notification or application for forest practices in the registered  
30 area of interest established by the tribe. The department shall also designate contact personnel  
31 to promptly respond to concerns raised by any affected Indian tribe.

### 32 33 Board Discussion

34 Paddy O'Brien stated that this section has not been advertised for changes. Judy Turpin asked if  
35 it would be possible to make substantial changes based on public comment. Paddy O'Brien  
36 responded that the section would need to be advertised and would require a public hearing that

1 could be held at the end of June. John Mankowski said that he is unsure of the problem that the  
2 amendment is trying to fix. Terry Ruff stated that he did not remember discussing this with the  
3 stakeholders and that the two day notice is a DNR procedure, not in rule. Pat McElroy  
4 questioned if this has been discussed in stakeholder meetings or if it came up in public comment.  
5 McElroy further stated that he wanted to discuss this with department staff and that he was  
6 uncomfortable giving the department direction without a clear understanding. Dick Wallace  
7 spoke against the amendment but suggested putting it on a list for future rule making. Wallace  
8 went on to say that at this point he does not want to launch separate rule making on just one item.  
9 He would like to hear the clarification of the department's position and the extent at which this  
10 can be covered administratively by the department. He continued to say that he thinks all  
11 support the intent of very timely notification of the tribes and a designated contact personnel for  
12 a prompt response is important but he is not sure how much is needed in rule making. Pat  
13 McElroy said that the department would need to take a look at the process. Bob Kelly suggested  
14 moving it to chapter 20. Pat McElroy said that the bigger issue is to understand what is trying to  
15 be fixed and see if there are other ways to deal with it and move it into a different arena other  
16 than rule making today. He further said that he would need to assess the impact on the  
17 department and is not sure if it could be done even if directed by the board. Bob Kelly  
18 responded that the issue is not whether it could be done but whether the board felt it should be  
19 done. Pat McElroy stated that the department believes it should notify the tribes in a timely  
20 manner but it is a matter of whether it can be done as the language describes but he needs to  
21 understand the impact. The department will continue to do the best to notify all stakeholders.  
22 Pat McElroy directed division staff to add this on a list of future items for board discussion.

23

24 **ACTION:** Motion failed amending language in WAC 222-12-120, 3 support/9  
25 oppose.

26

27 **ACTION:** Motion passed unanimously adopting chapter 12 WAC as amended by the  
28 board today.

29

30 **MOTION:** Pat McElroy moved that the board approve for final adoption, the  
31 permanent rule proposal in the May 9, 2001 document for **chapter 16**  
32 WAC as amended today.

33 **SECONDED:** Bob Kelly

34

35 **MOTION:** Pat moved that the board amend language in WAC 222-16-010 page 25.

36 **SECONDED:** Dick Wallace

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

"Bankfull width" means:

(a) For streams - the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual).

(b) For lakes, ponds, and impoundments - line of mean high water.

(c) For salt tidal water - line of mean high tide.

(d) For periodically inundated areas of associated wetlands - line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

**ACTION:** Motion passed unanimously amending language in WAC 222-16-010.

**MOTION:** Move that the board amend language in WAC 222-16-010 on page 29.

**SECONDED:** John Mankowski

"Cross drains Drainage structure" means a drainage structure construction technique or feature that is built to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A cross drain drainage structure is not intended to carry any typed water. Cross drains Drainage structures include structures such as; cross drains, relief culverts, ditch diversions, and water bars, or other such structures demonstrated to be equally effective.

**ACTION:** Motion passed unanimously amending language in WAC 222-16-010.

**Board Discussion**

Judy Turpin had a question on the definition of CMZ on page 27. She is troubled by the vague term and description of near term. She would like some indication of how the department reads it so there is some sense of what is being said. It is important that the definition is clear to avoid misunderstanding. Allen Pleus suggested it be handled in the board manual. Jed Herman stated that in terms of desired future condition, a mature forest definition is 140 years and that is the assumption taken. Pat McElroy suggested stakeholders weigh in and discuss this with Jed Herman. John Mankowski stated a picture explains it better than words and he would not want to lock in 140 years. Judy is comfortable as long as the board manual reference is clear.

1 MOTION: Pat moved that the board adopt option 1 regarding fish passage in WAC  
2 222-16-010 on page 34.

3 SECONDED: Dick Wallace  
4

5 **Board Discussion**

6 Judy Turpin stated that her impression was that there was going to be a reference to the WAC.  
7 Dick Wallace spoke in favor of the motion and acknowledged that the definition does occur in  
8 the Hydraulics Code. He also expressed concern about adding a reference to a WAC that will be  
9 changed in the future. Paddy O'Brien responded that you could cite the reference to the WAC  
10 but the rule would need to be updated each time the referenced rule was changed. John  
11 Mankowski recommended generally citing the Hydraulics Code but not speak to a specific  
12 WAC. Judy Turpin asked what the major differences are between option 2 and what is currently  
13 in the Hydraulics Code. John Mankowski responded that the difference is pretty big, the code  
14 provides specifications on how activities should occur to insure fish passage, and said that the  
15 department may in the future develop WACs that define more generally passage or impassable  
16 culverts. The distinction is not between option 2 and the Hydraulics Code it is between option 2  
17 and the Forests and Fish language. Judy Turpin asked if the Hydraulics Code is concerned with  
18 both adult and juvenile fish. John Mankowski responded that it is as well as the report. The  
19 WACs and the manual say passage of fish at all life stages and they are suggesting that is as far  
20 as forest practices rules should go and the Hydraulics Code picks up physical criteria for all life  
21 stages of all fish.  
22

23 ACTION: Motion passed adopting option 1 regarding fish passage, 11 support/1  
24 oppose.  
25

26 MOTION: Judy Turpin moved that the board amend language in WAC 222-16-010  
27 on page 42.

28 SECONDED: Dave Somers  
29

30 **Board Discussion**

31 Judy Turpin stated that the reference is to the comments submitted by National Marine Fisheries  
32 Service that do not support the separation of equipment limitation zone from inclusion in the  
33 general definition of riparian management zones as negotiated in the FFR Appendix A. She  
34 continued to say that it was important to pay attention to the comments from the services on  
35 these key issues and that the FFR RMZ definition did include equipment limitation zone on Type  
36 Np and Ns Waters. Turpin said that there would be opportunities later in the rule package to

1 pick up two particular areas where equipment limitations zones are not protected in stream-  
2 adjacent parallel roads and broadcast burning. However, there are two ways of accomplishing  
3 this objective, either change the RMZ definition to include equipment limitation zones, or insert  
4 them in these two particular areas. Dick Wallace spoke in favor of picking it up throughout the  
5 rules and said that this was the assumption of the stakeholder group. He expressed concern  
6 about inserting it under definition due to the possible ripple effect throughout the rules and  
7 unintended consequences. John Mankowski said that he has a few minor amendments that will  
8 help fix this throughout the rules that the stakeholder group missed.

9  
10 **Judy Turpin withdrew her motion.**

11  
12 **MOTION:** Pat moved that the board adopt option 1 regarding stream-adjacent parallel  
13 roads in WAC 222-16-010 on page 47.

14 **SECONDED:** Toby Murray

15  
16 **AMENDING**

17 **MOTION:** Judy Turpin moved that the board modify option 1 regarding stream-  
18 adjacent parallel roads in WAC 222-16-010 on page 47 line 27 to include  
19 sensitive site and equipment limitation zone.

20 **SECONDED:** Fran Abel

21  
22 **Board Discussion**

23 Judy Turpin said that the effect of making the change is primarily in the area of the location of  
24 new roads. The rules discuss equipment limitation zones in terms of harvest activities, not other  
25 forest practices. The effect of eliminating the equipment limitation zone is the ability to disturb  
26 the soil by constructing a stream adjacent parallel road within the 30-foot equipment limitation  
27 zone while requiring mitigation if dragging a log disturbs the soil. The amendment is consistent  
28 with the idea of treating the equipment limitation zones as they would have been treated under  
29 the other definition of RMZ. She said that she understood that the stakeholder group would add  
30 language referencing the manual with regard to the roads best management practice. Pete Heide  
31 responded that it was the policy group's recommendation and referenced two places in the board  
32 manual where roads near streams are mentioned. The first one is under watershed analysis  
33 surface erosion modules, which requires a certain type of assessment for sediment delivery  
34 referring to any road within 200 feet, and the other location is in the road maintenance and  
35 culvert/cross-drain location which talks about the filtration ability of the forest floor. The two  
36 definitions are separate issue, it is possible to beef up the manual to ensure that people don't

1 believe that 200 feet is invalidated by the way stream-adjacent roads are defined. John  
2 Mankowski stated that he shares part of Judy Turpin's concern that allowing parallel roads  
3 within equipment limitation zones is a concern. He further said that he believes the Forests and  
4 Fish Report covered this generally when including equipment limitation zones in the RMZ  
5 definition but did not explicitly say that this was the right fix for the issue. The current option 1  
6 does leave a gap, that within, the equipment limitation zone there is no prohibition to road  
7 construction. He looked at a fix to this under WAC 222-24-020 on page 130 lines 1-8. Judy  
8 Turpin said she believed that amendment would have the same impact. Dave Somers questioned  
9 if it was necessary in both places. Dick Wallace stated that he supported the intent but preferred  
10 to deal with it in the roads section due to unintended consequences. Pat McElroy suggested the  
11 board adopt the chapter and continue to move through the rules with the understanding that the  
12 board will revisit this if the issues are not adequately addressed.

13

14 **Judy Turpin withdrew her amending motion.**

15

16 **ACTION:** Motion passed unanimously adopting option 1 regarding stream adjacent  
17 parallel roads in WAC 222-16-010.

18

19 **MOTION:** John Mankowski moved that the board adopt option 1 regarding electro-  
20 shocking in WAC 222-16-031 on page 57.

21 **SECONDED:** Dick Wallace

22

### 23 **Board Discussion**

24 John Mankowski said that the comments reflected a lot about the use of electro-shocking,  
25 including a landowner's need to continue the use of electro-shockers. He also heard that NMFS  
26 is concerned as well as people of the general community about the use of shocking listed fish and  
27 also heard from scientists that the use of electro-shockers doesn't cause a high level of mortality  
28 or have a significant impact on population. He believes the best path to pursue is to continue to  
29 push hard for the water typing model which eliminates the need for electro-shockers. His  
30 suggestion is in the interim continue with the current physical criteria for fish bearing waters in  
31 the emergency rule and in the cases that it continues to overestimates fish, allow the limited  
32 option of electro-shocking recognizing that shocking will be more and more difficult to do.  
33 WDFW and NMFS are discussing modification of the permit process. He concluded that the  
34 Department of Fish and Wildlife supports option 1. Keith Johnson said that he was not overly  
35 concerned with mortality and asked about the effects on fish habitat. John Mankowski  
36 responded that the fish model generally will set the fish/no fish boundary but will focus more on

1 habitat and that the landowners want to continue shocking for the current situation. Keith  
2 Johnson asked what happens if shocking determined no fish, and later habitat modeling  
3 determined potential for fish? Could the no fish determination on the base of electro-shocking  
4 be changed? John Mankowski mentioned a couple of problems with shocking at this particular  
5 time affected by drought conditions and by a depressed population and said that the department  
6 reviews results to make sure guidelines were met and if the department thinks the shocking was  
7 legitimate and the data is supportive, it would be treated as non fish bearing for that particular  
8 forest practices application. If fish presence is later determined, the classification would be  
9 upgraded for future timber harvests. Judy Turpin noted that NMFS supports option 2. While  
10 there is a concern to make sure shocking is done by qualified personnel, the concern she has is  
11 the concept of dealing with fish presence rather than moving to the concept of habitat, which is  
12 really the intent of these rules. She also said that the FFR directly addressed that in the interim,  
13 when the model would not be in place, electro-shocking would not be used. Dick Wallace  
14 responded that while looking at FFR the “no electro-shocking” was tied directly to an interim  
15 water typing system that would more accurately over or under predict habitat versus fish  
16 presence, whereas the emergency rule over predicts fish habitat and the idea of FFR is that in the  
17 interim it would come much closer (plus or minus 5 percent). Wallace went on to say that the  
18 technical people said with all good intentions they could not come up with this interim approach.  
19 He spoke for the amendment on option 1 and said that the current emergency rule carried  
20 forward is very conservative in regards to habitat, and there are checks and balances on where  
21 people can or cannot shock, protocols to follow, and permits required which will significantly  
22 limit where it is done. Pat McElroy said that he realized this was not the most desirable situation  
23 but spoke in favor of the amendment.

24

25 **ACTION:** Motion passed, 7 support/5 oppose, adopting option 1 regarding electro-  
26 shocking in WAC 222-16-031.

27 Regular session adjourned for lunch at 12:30 p.m. Regular session resumed at 1:00 p.m.

28

29 **MOTION:** Dick Wallace moved to adopt option 1 regarding Type 4 and 5 Waters in  
30 WAC 222-16-031 on page 58.

31 **SECONDED:** Pat McElroy

32

### 33 **Board Discussion**

34 Judy Turpin said that the comments from the Skagit System Coop support option 2 and the  
35 concern with a substantial change with the description of typed waters was raised. Dick Wallace  
36 said that his impression is that relying solely on the 52 acres would be a concern and that he



1 thinks 52 is a default. The comments are good and valid and this is something we need to look at  
2 in the adaptive management program. Wallace further said that in those areas where 52 acres  
3 might not be the choice, to focus on actual point of perennial flow instead of default. Judy  
4 Turpin questioned which is better—take less protection and then review or more protection and  
5 then review. Pat McElroy said that he does not believe protection is reduced and that this can be  
6 worked through the adaptive management process. Steve Wells asked why the policy group was  
7 not able to make a recommendation. Pete Heide responded that not everyone could reach  
8 agreement. Steve Wells asked what the counter argument is. Pat McElroy said that it is a policy  
9 question of which one reflects FFR. Allen Pleus said that the buffer protection is better. Terry  
10 Ruff said that option 1 is close to the emergency rule and that option 2 is the 1998 rule. John  
11 Mankowski spoke in favor of option 1. Steve Wells said that it is identified on the CMER  
12 project list as east side project #10, west side project #5. Terry Ruff reminded the board that this  
13 is an interim rule, not a permanent rule.

14

15 **ACTION:** Motion passed, 10 support/2 oppose, adopting option 1 regarding Type 4  
16 and 5 Waters in WAC 222-16-031.

17

18 **MOTION:** Pat moved that the board adopt option 1 regarding critical habitat in WAC  
19 222-16-080 as modified.

20 **SECONDED:** Bob Kelly.

21

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

25

26 **ACTION:** Motion passed unanimously adopting option 1 regarding critical habitat in  
27 WAC 222-16-080 as modified by the board today.

28

29 **ACTION:** Motion passed unanimously adopting chapter 222-16 WAC as amended  
30 by the board today.

31

32 **MOTION:** Pat McElroy moved that the board approve for final adoption, the  
33 permanent rule proposal in the May 9, 2001 document for **chapter 222-20**  
34 **WAC** as amended today.

35 **SECONDED:** John Mankowski



1 ACTION: Motion passed unanimously adopting chapter 222-20 WAC as written in  
2 the May 9, 2001 document.

3  
4 MOTION: Pat moved that the board approve for final adoption, the permanent rule  
5 proposal in the May 9, 2001 document for **chapter 222-21 WAC** as  
6 amended today.

7 SECONDED: Dick Wallace

8  
9  
10 MOTION: Pat McElroy moved that the board amend language in WAC 222-21-010  
11 on page 94.

12 SECONDED: John Mankowski

13  
14 *(7) "High impact regulatory threshold" means the threshold where the value of qualifying*  
15 *timber is greater than ~~25.6%~~ 19.1% (for timber in Western Washington) or ~~31%~~ 12.2% (for*  
16 *timber in Eastern Washington) of the value of the harvested timber and qualifying timber under*  
17 *the approved forest practices application covering the qualifying timber. This threshold will be*  
18 *revised after preparation of the final small business economic impact statement (SBEIS)*  
19 *prepared under chapter 19.85 RCW.*

20  
21 ACTION: Motion passed amending language in WAC 222-21-010.

22  
23 MOTION: Pat McElroy moved that the board amend language in WAC 222-21-020  
24 on page 96.

25 SECONDED: John Mankowski

26  
27 ~~(1) (e) The small forest landowner office has received an application for a forestry riparian~~  
28 ~~easement;~~

29 ~~(c) The small forest landowner has a final, approved forest practices application including~~  
30 ~~qualifying timber on the easement premises;~~

31  
32 ACTION: Motion passed amending language in WAC 222-21-020.

33  
34 SHB 2105 does not take effect until July 22, 2001. FPB does not have authority until the law  
35 goes into effect.

36

1 MOTION: Pat McElroy moved that the board amend language in WAC 222-21-020  
2 on page 97 and WAC 222-21-035 on page 107.

3 SECONDED: Dick Wallace  
4

5 ~~(b) Where the department does not have satisfactory access to the easement premises, the~~  
6 ~~landowner must designate the access route on the forest practice application base map;~~  
7

8 (5) Where the department does not have satisfactory access to the easement premises, the  
9 landowner must designate the access route on the forest practice application base map;  
10

11 ACTION: Motion passed unanimously amending language in WAC 222-21-020 and  
12 WAC 222-21-035.  
13

14 MOTION: Pat McElroy moved that the board amend language in WAC 222-21-045  
15 on page 108 and 109.

16 SECONDED: John Mankowski  
17

18 ***The proposed rule language is a total substitution to the language in the 5/9/01 draft.***

19 ***Valuation. (1) This section is designed to establish methods and standards for valuation of***  
20 ***forestry riparian easements for purposes of establishing the compensation. It applies only to the***  
21 ***department, small forest landowners, and the small forest landowner office in connection with***  
22 ***the forestry riparian easement program.***

23 ***(2) The small forest landowner office will calculate the fair market value of the forestry***  
24 ***riparian easement as of the date of receipt of the forest practices application associated with the***  
25 ***qualifying timber. Data obtained or maintained by the department of revenue under RCW***  
26 ***84.33.074 and 84.33.091 will be used and adjusted to the date of receipt of the forest practices***  
27 ***application associated with the qualifying timber. The small forest landowner must indicate***  
28 ***whether valuation will be calculated using method (a) or (b) below. In either, the time***  
29 ***adjustment index will be based on log price changes. The small forest landowner office will***  
30 ***determine the specific log species and/or sorts and the log price reporting service to use after***  
31 ***consultation with the small forest landowner advisory committee established under RCW***  
32 ***76.13.110(4) and the department of revenue. The small forest landowner office will generate an***  
33 ***index that reflects the time adjustments using information and data obtained from a log price***  
34 ***reporting service determined by the department in consultation with the small forest landowner***  
35 ***committee.***  
36

1 (a) **Stumpage value determination.** The small forest landowner office will create and  
2 maintain value tables to determine stumpage value of the qualifying timber. These tables  
3 will be created using a method coordinated with the department of revenue. The values  
4 will closely approximate the stumpage value for logs that would be sold in the ordinary  
5 course of business for the date of receipt of the forest practices application. The  
6 landowner must provide the small forest landowner office with:

- 7 (i) The reference for the stumpage value table and any other needed information for use  
8 of the table (see the board manual for details); and  
9 (ii) Any information the small forest landowner would like the department to consider in  
10 its cruise and valuation of the qualifying timber.

11 (b) **Small harvester tax return.** The landowner must provide mill or buyer information to  
12 the department on the sale breakdown. This includes:

- 13 (i) The volume and scaling bureau log grades of each species harvested;  
14 (ii) The amount received for each species; and  
15 (iii) The actual harvesting and marketing costs as defined in the department of revenue  
16 small harvester instructions.

17 The price received for the timber is adjusted to the date of receipt of the forest practices  
18 application using the time adjustment index and then the average logging and hauling cost per  
19 MBF is subtracted to arrive at the stumpage value. The value of the qualifying timber is  
20 determined by multiplying the time adjusted stumpage value of each species in the harvest unit  
21 by the net volume for each corresponding species in the inventory of qualifying timber. A  
22 residual value approach is used to determine the value of species in the easement, which are not  
23 present in the harvest area. The prices for species not present in the harvest unit are based on  
24 the delivered log price report approved by the small forest landowner office that corresponds  
25 closest to the date of the forest practices application, minus the average logging and hauling  
26 costs.

27 (3) **Reduced valuation.**

28 (a) For an easement that allows one or more harvests of qualifying timber during the  
29 term of the easement, a reduced valuation rate will be applied to the values obtained  
30 using either method in subsection (2) of this section. The reduced rate adjusts the values  
31 for reserve and replacement qualifying timber. The rate is based on the proportionate  
32 economic value lost to the small forest landowner from the regulatory requirements and  
33 adjusted for future harvest options during the term of the easement.

34 (b) The value of the qualifying timber that may be harvested during the term of the  
35 easement will be reduced based on the following formula. Variables will include

- 1 (i) the 29 or more trees in the inner zone
- 2 (ii) the outer zone leave trees
- 3 (iii) other regulatory requirements
- 4

5 
$$\text{Reduced valuation rate} = \frac{1 - \left( \frac{1}{(1 + I)^N} \right)}{1 - \left( \frac{1}{(1 + I)^{50}} \right)}$$

6 *Where:*

- L -- Is the rate of return on 30 year treasury bills, as reported by the Federal Reserve Statistical Release H15 less the rate of increase in the Consumer Price Index for all Urban Consumers as published by the U.S. Department of Labor Bureau of Labor Statistics for the previous 12 months less the anticipated rate of growth expected on the portion of the easement subject to reentry, but not less than zero or greater than 6 percent.*
- N -- is the number of years when the landowner is scheduled to re-enter the property. The single time limit established by the Small Forest Landowner Office.*

7

8 (c) *The reduced rate will not be applied to the department of revenue tax data values if*

9 *the landowner does not intend to re-enter the easement area during the length of the 50-*

10 *year easement. The harvest at the time of the re-entry is not required to meet the*

11 *requirements in WAC 222-21-060(5)(6).*

12

13 **Board Discussion**

14 Steve Stinson informed the board that after going through the easement process, changes were

15 needed with valuation and that these changes reflect simpler and a more fair value given to the

16 landowner. Pat asked if this is considered a significant change. Paddy O'Brien responded that

17 the existing proposed language is inconsistent with the statute. She said that she reviewed this

18 section and that the change is to correct an error. She added that the Small Forest Landowner

19 Advisory Committee had also reviewed and agreed.

- 1
- 2 ACTION: Motion passed unanimously amending language in WAC 222-21-045.
- 3
- 4 MOTION: Pat McElroy moved to amend language in WAC 222-21-050 on page 109
- 5 and WAC 222-21-065 on page 111.
- 6 SECONDED: Judy Turpin
- 7
- 8 (1)(a)

Where:  
*V<sub>q</sub>* = value of qualifying timber;  
*V<sub>h</sub>* = value of harvested timber;  
*T* = high impact of regulatory threshold (25.6%  
 19.1% for Western Washington, 31% 12.2% for  
 Eastern Washington);  
*TV* = total value of all timber covered under FPA  
 = *V<sub>q</sub>* + *V<sub>h</sub>*; and  
*HIO* - high impact override = (*V<sub>q</sub>*/*TV*)-*t*;

9

$$10 \text{ Compensation for easement} = \left( \frac{HIE \ HIO}{2} * TV \right) + \left( \frac{t * TV}{2} \right)$$

11

12 **Uneconomic to harvest.** The small forest landowner office will use the following criteria to  
 13 determine whether timber is qualifying timber because it is rendered uneconomic to harvest by  
 14 rules adopted under RCW 76.09.055 or 76.09.370. The proposed harvest must meet all of the  
 15 following requirements:

- 16
- 17 ACTION: Motion passed unanimously amending language in WAC 222-21-050 and
- 18 WAC 222-21-065.
- 19 ACTION: Motion passed unanimously adopting chapter 222-21 WAC as amended
- 20 by the board today.
- 21
- 22 MOTION: Pat McElroy moved that the board approve for final adoption, the
- 23 permanent rule proposal in the May 9, 2001 document for **chapter 222-22**
- 24 **WAC** as amended today.
- 25 SECONDED: Dick Wallace
- 26 ACTION: Motion passed unanimously adopting chapter 222-22 WAC as written in
- 27 the May 9, 2001 document.
- 28

1 MOTION: Pat McElroy moved that the board approve for final adoption, the  
2 permanent rule proposal in the May 9, 2001 document for **chapter 222-23**  
3 **WAC** as amended today.

4 SECONDED: Dick Wallace

5  
6 MOTION: John Mankowski moved that the board adopt option 2 in WAC 222-23-  
7 025 on page 125 as modified.

8 SECONDED: Judy Turpin

9  
10 ***The proposed rule language is a total substitution to the language in the 5/9/01 draft.***  
11 *(1) Priorities for conveyances. The legislature recognized, in RCW 77.85.180(4), that the*  
12 *adoption of forest practices rules consistent with the forests and fish report will impose*  
13 *substantial burdens on forest landowners. The purpose of this program, which will be*  
14 *administered by the department, is to compensate landowners and provide for ecological*  
15 *protection and fisheries enhancement. The department shall prioritize applications under this*  
16 *section based on the following criteria (not in priority order): order of receipt, ecological value*  
17 *(including importance to salmonids, water quality benefits, quality of habitat, site significance,*  
18 *etc.), and immediacy of need. If funding is or becomes unavailable to consummate a conveyance*  
19 *with respect to otherwise qualifying CMZ lands, the application may (at the landowner's option)*  
20 *be kept on file at the department pending the future availability of funding. . The department will*  
21 *consult with representatives of affected Indian tribes, department of fish and wildlife, and*  
22 *department of ecology as necessary for technical expertise. The board will include, in its reports*  
23 *to the legislature required in RCW 76.09.380, a review of this program with recommended*  
24 *amendments, as necessary, to accomplish the goals of this program.*

25  
26 ACTION: Motion passed unanimously adopting option 2 regarding riparian open  
27 space in WAC 222-23-025 as modified by the board today.

28  
29 ACTION: Motion passed unanimously adopting chapter 222-23 WAC as amended  
30 by the board today.

31  
32 MOTION: Pat McElroy moved that the Board approve for final adoption, the  
33 permanent rule proposal in the May 9, 2001 document for **chapter 222-24**  
34 **WAC** as amended today.

35 SECONDED: Bob Kelly

36

1 MOTION: Judy Turpin moved that the board amend language in WAC 222-24-010  
2 on page 127.

3 SECONDED: Dave Somers  
4

5 **Board Discussion**

6 John Mankowski was concerned about such a specific reference and reminded the board about  
7 referencing a WAC that might change. Dick Wallace recommended the reference be to Chapter  
8 220 WAC. Pat McElroy and Paddy O'Brien agreed.  
9

10 **AMENDING**

11 MOTION: John Mankowski moved that the board modify the WAC reference with  
12 specific language to be determined by Paddy O'Brien.  
13

14 ACTION: Motion passed unanimously amending language in WAC 222-24-010.  
15

16 *Providing for fish passage at all life stages (see Washington state department of fish and wildlife*  
17 *hydraulics code, Title 220 WAC)*  
18

19 MOTION: Pat moved that the board amend language in WAC 222-24-020 on page  
20 130.

21 SECONDED: Dick Wallace  
22

23 **AMENDING**

24 MOTION: Judy Turpin moved that the board modify the proposed amendment in  
25 WAC 222-24-020 on page 130 line 2 to include equipment limitation  
26 zones.  
27

28 SECONDED: Bob Kelly  
29

29 **Board Discussion**

30 Pete Heide said that the negotiations on existing wording applied to RMZ around fish bearing  
31 water and believes it is an extension of Forests and Fish.  
32

33 *\* (2) (( ~~Minimize roads along or within narrow canyons, riparian management zones, wetlands~~*  
34 *and wetland management zones. (a)) Except ((where)) for crossings ((are necessary)), new*  
35 *stream-adjacent parallel roads shall not be located within natural drainage channels, channel*  
36 *migration zones, sensitive sites, equipment limitation zones and riparian management zones*

1 when there would be substantial loss or damage to fish or wildlife habitat unless the department  
2 has determined that other alternatives will cause greater damage to public resources. Proposals  
3 with new stream-adjacent parallel roads will require an on-site review by an interdisciplinary  
4 team. The appropriate federal representative(s) will be invited to attend the interdisciplinary  
5 team to determine if the proposal is in compliance with the Endangered Species Act.

6  
7 ACTION: Motion passed unanimously to modify amendment to include equipment  
8 limitation zones in WAC 222-24-020.

9  
10 ACTION: Motion passed unanimously amending language in WAC 222-24-020.

11  
12 MOTION: John Mankowski moved that the board amend language in WAC 222-24-  
13 035 on page 136.

14 SECONDED: Dick Wallace

15  
16 ***\*(1) Landing location:***

17 *Locate landings to prevent potential or actual damage to public resources. Avoid excessive*  
18 *excavation and filling. Landings shall not be located within natural drainage channels, channel*  
19 *migration zones, RMZ core and inner zones, Type Np RMZs, sensitive sites, equipment limitation*  
20 *zones, and Type A or B Wetlands or their wetland management zones. Minimize placement and*  
21 *size of landings within forested wetlands. (~~Landings shall not be located in Type A or B~~*  
22 *~~Wetlands or their wetland management zones.~~) (See WAC 222-24-015, Construction in*  
23 *wetlands.)*

24  
25 ACTION: Motion passed unanimously amending language in WAC 222-24-035.

26  
27 MOTION: Pat McElroy moved that the board amend language in WAC 222-24-040  
28 on page 138.

29 SECONDED: Dave Somers

30  
31 ***\*(1) (f) Wood removed from the upstream end of culverts and bridges will be placed at the***  
32 ***downstream end of such culverts and bridges in such a way as to minimize obstruction of fish***  
33 ***passage and to the extent practical while avoiding significant disturbance of sediment, in***  
34 ***connection with maintenance activities.***

35  
36 ACTION: Motion passed unanimously amending language in WAC 222-24-040.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

MOTION: Pat McElroy moved that the board amend language in WAC 222-24-040 on page 139.

SECONDED: Bob Kelly

*\*~~(3)~~(c) If the department determines that because of unstable slopes the culvert size shown (~~on that table is~~) in the board manual, section 3, "Determining Culvert Size, Method A" would be inadequate to protect public resources, it may require a larger culvert (~~sizes in accordance with the nomograph (chart) contained in the forest practices board manual or with other~~) designed using generally accepted engineering principles that meet the standards in (a) and (b) above.*

ACTION: Motion passed unanimously amending language in WAC 222-24-040.

MOTION: Pat McElroy moved that the board amend language in WAC 222-24-040 on page 141.

SECONDED: Dave Somers

*\*~~(4)~~(d)(iii) At other times, when the department and applicant can agree to specific dates of installation and removal and the extended dates result in equivalent levels of resource protection.*

ACTION: Motion passed unanimously amending language in WAC 222-24-040.

MOTION: Pat McElroy moved that the board amend language in WAC 222-24-052 on page 150.

SECONDED: Bob Kelly

*\*~~(1)~~ (h) During the regular course of road maintenance on stream-adjacent parallel roads, down wood that is blocking vehicle passage shall be placed on the side of the road closest to the adjacent water.*

ACTION: Motion passed unanimously amending language in WAC 222-24-052.

MOTION: Pat McElroy moved that the board amend language in WAC 222-24-060 on page 152.

SECONDED: Bob Kelly

1  
2 *\*(3) **Pit drainage.** During construction and use of rock quarries, gravel pits, or borrow pits,*  
3 *runoff water shall be either diverted onto ((the)) a stable portion of the forest floor or be passed*  
4 *through one or more settling basins as approved by the department.*

5  
6 *\*(6)(a) The spoils shall be placed to provide drainage onto a stable portion of the forest floor*  
7 *without water ponding within the disposal area;*

8  
9 **ACTION:** Motion passed unanimously amending language in WAC 222-24-060.

10  
11 **ACTION:** Motion passed unanimously adopting chapter 222-24 WAC as amended  
12 by the board today.

13  
14 **MOTION:** Pat McElroy moved that the board approve for final adoption, the  
15 permanent rule proposal in the May 9, 2001 document for **chapter 222-30**  
16 **WAC** as amended today.

17 **SECONDED:** John Mankowski

18 **MOTION:** Pat McElroy moved that the board adopt option 1 regarding wildlife  
19 reserve trees in WAC 222-30-020 on page 162.

20 **SECONDED:** Dick Wallace

21 **ACTION:** Motion passed unanimously adopting option 1 regarding wildlife reserve  
22 trees in WAC 222-30-020.

23  
24 **MOTION:** Judy Turpin moved to amend language in WAC 222-30-021 on page 174.

25 **SECONDED:** Bob Kelly

26  
27 **Board Discussion**

28 There was a proposed modification to remove riparian management in the first sentence, change  
29 harvest systems to forest practices, and delete (i). Pat McElroy proposed modifying the  
30 amendment to say “forest practices which utilize equipment.” Lloyd Anderson said that there  
31 are other forest practices that do not utilize equipment. Pete Heide said that it is clearly outside  
32 FFR and that the equipment limitation zone is described as a 30-foot wide zone from the edge  
33 and that the landowner must mitigate for disturbance of 10% soil as used in ground based  
34 equipment. Allen Pleus said that there are different interpretations and that the equipment  
35 limitation zone is similar to the inner and outer zone of a RMZ except that leave trees are zero.

1 Judy Turpin said that the equipment limitation zone is part of RMZ in FFR and that she would be  
2 fine going back to harvest systems.

3  
4 Dick Wallace suggested “other forest practices that are specifically limited by this rule to protect  
5 aquatic resources.”

6  
7 **AMENDING**  
8 **MOTION:** Pat McElroy moved to modify the amendment by striking “to protect  
9 aquatic resources and remaining riparian functions for the prevention of  
10 sediment delivery into the channel.

11 **SECONDED:** Lloyd Anderson

12  
13 **ACTION:** Motion passed, 8 support/4 opposed, to modify amendment.

14  
15 **Board Discussion**

16 Keith Johnson asked what is gained by striking the statement. Pat McElroy responded that it is  
17 outside FFR, as he understands it. Pete Heide said that the only difference is that the  
18 requirement for equipment limitation zone is the mitigation of the disturbance. Keith Johnson  
19 said that it is mitigating after damage is done as opposed to preventing damage being done. Pete  
20 Heide said that he would not want to spend time mitigating rather avoiding disturbance and that  
21 FFR is clear on avoiding disturbance.

22  
23 *(2)(a) An equipment limitation zone is a 30-foot wide zone measured horizontally from the outer*  
24 *edge of the bankfull width of a type Np or Ns water where equipment use and other forest*  
25 *practices are specifically limited by these rules. It applies to all perennial and seasonal streams.*

26  
27 **ACTION:** Motion passed unanimously amending language in WAC 222-30-021 as  
28 modified.

29  
30 **MOTION:** Pat McElroy moved that the board amend language in WAC 222-30-023  
31 on page 191.

32 **SECONDED:** Dave Somers.

33  
34 **MOTION:** Dick Wallace moved to modify the amendment by changing Type 1, 2, 3  
35 to Type S and F Waters.

36 **SECONDED:** John Mankowski

1  
2 (4) For the purposes of this section RMZ means: a specified area alongside Type S and F Waters  
3 where specific measures are taken to protect water quality and fish and wildlife habitat.

4  
5 ACTION: Motion passed unanimously to modify amendment.

6 ACTION: Motion passed unanimously amending language in WAC 222-30-023.

7  
8 MOTION: Pat McElroy moved that the board amend language in WAC 222-30-030  
9 on page 193.

10 SECONDED: John Mankowski

11  
12 In the RMZ core zone along all Typed Waters, the operator shall:

13 (1) Avoid disturbing brush and similar understory vegetation;

14 (2) Avoid disturbing stumps and root systems and any logs embedded in the bank;

15 (3) Leave high stumps where necessary to prevent felled and bucked timber from entering the  
16 water.

17 (4) Leave trees which display large root systems embedded in the bank.

18  
19 ACTION: Motion passed unanimously amending language in WAC 222-30-030.

20 [NOTE: see further amendment below]

21  
22 MOTION: Pat McElroy moved that the board amend language in WAC 222-30-045  
23 on page 195.

24 SECONDED: John Mankowski

25  
26 (4) **Salvage logging in the outer zone.** Salvage may not take place within the outer zone if the  
27 riparian leave tree requirements cannot be met by the residual stand standing or down trees. If  
28 the proposed salvage involves tree(s) that are down that originated from the outer zone, salvage  
29 may only be permitted of down wood if the down wood was not needed to meet riparian leave  
30 tree requirements in the outer zone.

31  
32 ACTION: Motion passed unanimously amending language in WAC 222-30-045.

33  
34 MOTION: John Mankowski moved that the board amend language in WAC 222-30-  
35 060 on page 197.

36 SECONDED: Dave Somers

1  
2 *\*~~(1)~~ Type ~~((1,2))~~ S and ~~((3))~~ F Waters and sensitive sites. No timber shall be cable yarded in or*  
3 *across ~~((A))~~ Type ~~((1,2))~~ S or ~~((3))~~ F Waters except where the logs will not materially damage*  
4 *the bed of waters, banks of sensitive sites, or riparian management zones ~~((and removals from~~*  
5 *Type 1, 2 or 3 Water have hydraulic project approval of the department of fish and wildlife)). If*  
6 *yarding across Type S or F Waters is permitted, then yarding is limited to cable or other aerial*  
7 *logging methods. Any work in or above Type S or F Waters requires a hydraulics project*  
8 *approval (HPA). Any work in or above a Type Np or Ns Water may require a HPA. Logs must be*  
9 *fully suspended above the water unless otherwise allowed in the applicable HPA. Yarding*  
10 *corridors must be no wider or more numerous than necessary to accommodate safe and efficient*  
11 *transport of logs. Generally, yarding corridors should be located no closer to each other than*  
12 *150 feet (measured edge to edge) and should be no wider than 30 feet. Safety is a prime*  
13 *consideration in the location of yarding corridors. Total openings resulting from yarding*  
14 *corridors must not exceed 20% of the stream length associated with the forest practices*  
15 *application. When changing cable locations, care must be taken to move cables around or clear*  
16 *of the riparian vegetation to avoid damage to riparian vegetation.*

17  
18 **ACTION:** Motion passed unanimously amending language in WAC 222-30-060.

19  
20 **MOTION:** Pat McElroy moved that the board amend language in WAC 222-30-060  
21 on page 197.

22 **SECONDED:** Dick Wallace

23  
24 *\*~~(2)~~ Type A or B Wetlands. No timber shall be cable yarded in or across Type A or B Wetlands*  
25 *without written approval from the department and may require a hydraulic project approval*  
26 *from the department of fish and wildlife.*

27  
28 **ACTION:** Motion passed unanimously amending language in WAC 222-30-060.

29  
30 **MOTION:** Pat McElroy moved that the board amend language in WAC 222-30-060  
31 on page 197.

32 **SECONDED:** Bob Kelly

33  
34 *\*~~(3)~~ **Deadfalls.** ~~Any~~ Logs which are firmly embedded in the bed or bank of a Type ~~((1, 2, 3))~~ S, or*  
35 *F ~~((4))~~ Np Waters shall not be removed or unnecessarily disturbed without hydraulic project*

1 approval ~~of from~~ the department of fish and wildlife. Such activities in Type Np or Ns Waters  
2 may require a hydraulic project approval.

3  
4 ACTION: Motion passed unanimously amending language in WAC 222-30-060.

5  
6 MOTION: Judy Turpin moved that the board revisit the amendment to WAC 222-30-  
7 030 on page 193 and make modification.

8 SECONDED: John Mankowski  
9

10 In the RMZ core zone along all Typed Waters for S and F Waters and the RMZ for Np Waters,  
11 the operator shall:

12 (1) Avoid disturbing brush and similar understory vegetation;

13 (2) Avoid disturbing stumps and root systems and any logs embedded in the bank;

14 (3) Leave high stumps where necessary to prevent felled and bucked timber from entering the  
15 water.

16 (4) Leave trees which display large root systems embedded in the bank.  
17

18 ACTION: Motion passed unanimously amending language in WAC 222-30-030.

19  
20 MOTION: Pat McElroy moved that the board amend language in WAC 222-30-060  
21 on page 197.

22 SECONDED: Dick Wallace  
23

24 ***\* (4) Yarding in riparian management zones, sensitive sites, and wetland management zones.***  
25 *Where timber is yarded from or across a riparian management zone, sensitive site, or wetland*  
26 *management zone reasonable care shall be taken to minimize damage to the vegetation*  
27 *providing shade to the stream or open water areas and to minimize disturbance to understory*  
28 *vegetation, stumps and root systems. Where practical and consistent with good safety practices,*  
29 *logs shall be yarded in the direction in which they lie and away from Type A or B Wetlands or*  
30 *Type ((1, 2 and 3)) S, or F or Np Waters until clear of the wetland management zone or riparian*  
31 *management zone.*  
32

33 ACTION: Motion passed unanimously amending language in WAC 222-30-060.

34  
35 MOTION: Judy Turpin moved that the board adopt option 2 regarding ground-based  
36 logging in Type A and B Wetlands in WAC 222-30-070 on page 199.

1 SECONDED: Bob Kelly  
2 ACTION: Motion passed unanimously adopting option 2 regarding ground based  
3 logging in Type A and B Wetlands in WAC 222-30-070.  
4

5 MOTION: Pat McElroy moved that the board amend language in WAC 222-30-070  
6 on page 200.

7 SECONDED: Bob Kelly  
8

9 *\*~~(1) (d) Within all wetlands Where harvest in wetlands is permitted, ground-based logging~~*  
10 *~~systems shall be limited to low impact harvest systems. Ground-based logging systems operating~~*  
11 *~~in wetlands shall only be allowed with wetlands during periods of low soil moisture or frozen~~*  
12 *~~soil conditions.~~*

13  
14 ACTION: Motion passed unanimously amending language in WAC 222-30-070.  
15

16 MOTION: Pat McElroy moved that the board amend language in WAC 222-30-070  
17 on page 200.

18 SECONDED: Bob Kelly  
19

20 *\*~~(4) Deadfalls. Repositioning of any Logs firmly embedded in the bed or bank of Type ((1, 2, 3))~~*  
21 *~~S or ((4)) F Waters ((shall not be removed or unnecessarily disturbed without hydraulic project~~*  
22 *~~approval of the departments of fisheries or wildlife)) shall not be removed or disturbed without~~*  
23 *~~hydraulic project approval from the department of fish and wildlife. and Such activities in Type~~*  
24 *~~Np or Ns Waters where such activities may affect fish habitat or fish life must comply with may~~*  
25 *~~require a hydraulic project approval.~~*

26  
27 ACTION: Motion passed unanimously amending language in WAC 222-30-070.  
28

29 MOTION: Pat McElroy moved that the board adopt option 1 regarding slash disposal  
30 in equipment limitation zone in WAC 222-30-100 on page 202.

31 SECONDED: Bob Kelly  
32  
33  
34

35 AMENDING

- 1 MOTION: Dick moved to modify option 1 by adding “DNR approval through a  
2 burning permit is required for burning with an equipment limitation zone”  
3 as the last sentence.
- 4 SECONDED: Bob Kelly
- 5 ACTION: Motion passed to amend motion.
- 6 ACTION: Motion passed adopting option 1 regarding slash disposal in equipment  
7 limitation zone in WAC 222-30-100 as modified by the board today, 7  
8 support/4 opposed.
- 9
- 10 ACTION: Motion passed unanimously adopting chapter 222-30 WAC as amended  
11 by the board today.
- 12
- 13 MOTION: Pat moved that the Board approve for final adoption, the permanent rule  
14 proposal in the May 9, 2001 document for **chapter 222-34 WAC, chapter**  
15 **222-46 WAC, chapter 222-50 WAC** as amended today.
- 16 SECONDED: John Mankowski
- 17 ACTION: Motion passed unanimously adopting chapter 222-34 WAC, chapter 222-  
18 46 WAC and chapter 222-50 WAC as is written in the May 9, 2001  
19 document.
- 20
- 21 MOTION: Pat moved that the Board approve for final adoption, the permanent rule  
22 proposal in the May 9, 2001 document for **chapter 222-38 WAC** as  
23 amended today.
- 24 SECONDED: John Mankowski
- 25 MOTION: John Mankowski moved that the board amend language in WAC 222-38-  
26 030 on page 215.
- 27 SECONDED: Judy Turpin
- 28
- 29 *\*(2) Riparian management zone, sensitive sites and wetland management zone. Fertilizer*  
30 *treatments within a riparian management zone, sensitive site, or wetland management zone shall*  
31 *be by hand unless the department has approved a site specific plan with another method of*  
32 *treatment.*
- 33
- 34 John Mankowski withdrew his motion
- 35



1 ACTION: Motion passed unanimously adopting chapter 222-38 WAC as written in  
2 the May 9, 2001 document.  
3

4 Pat McElroy stated that the Forest Practices Board: finds that these rules are consistent with the  
5 Forest and Fish Agreement except for WAC 222-30-023, the 20 acre exemption; and finds that  
6 these rules are not substantially different from the April 4, 2001 publication.  
7

8 MOTION: Pat McElroy moved that the Forest Practices Board adopt the proposed  
9 rule package for Chapter 222 in its entirety as presented and amended by  
10 the Board today, and that staff file it with the Code Reviser so that the  
11 rules have an effective date of July 1, 2001.

12 SECONDED: Dick Wallace  
13

#### 14 Board Discussion

15 Dick Wallace read a statement regarding adoption of the permanent forest practices rules by the  
16 Forest Practices Board on May 17, 2001  
17

- 18 1. Department of Ecology concurs with adoption of those sections of the permanent rules that  
19 address water quality.  
20
- 21 2. Ecology's concurrence is required because the rules are designed to meet both the broad  
22 purposes of the Forest Practices Act and the state water quality standards, including anti-  
23 degradation.  
24
- 25 3. Ecology believes that implementation of the rules will protect water quality and put us on a  
26 trajectory toward meeting standards where they are not currently being met.  
27
- 28 4. There is a new section of the forest practices rules that has the potential for degradation of  
29 water quality—this is the 20-acre exempt rule.
  - 30 • This section was directed by the legislature in RCW 76.13.130, but was not included in  
31 the Forests and Fish Report.
  - 32 • The 20-acre exempt rule allows certain small landowners to harvest based on the  
33 permanent RMZ rules in effect on January 1, 1999, while adding 15% to the width of the  
34 buffer and to the leave tree count.

- 1       • This exemption was not necessarily designed with water quality or protecting stream and  
2       riparian functions in mind, so, as indicated by EPA in its comment letter, the Clean Water  
3       Act assurances do not apply to landowners claiming the exemption.
- 4       • The 20-acre exempt rules may or may not result in water quality standards violations  
5       depending on the number and timing of harvests in a particular basin.
- 6       • Effectiveness of this rule will need to be monitored to determine whether its application  
7       will result in water quality standards violations. Therefore, we will work with DNR to  
8       track where this option is exercised.
- 9       • Completed Total Maximum Daily Loads (TMDLs) that show a watershed or stream reach  
10      is shade deficient may give DNR evidence that water quality will be adversely affected if  
11      shade is further reduced by timber harvest in the area covered by the TMDL.
- 12      • Using evidence from completed TMDLs and other site-specific information, Ecology will  
13      work with DNR to identify those sites where additional steps may be necessary to address  
14      the potential for water quality standards violations.
- 15
- 16 5. Because our knowledge about the effects of forest practices will evolve and improve through  
17 time, successful implementation of the adaptive management program is essential. A well-  
18 functioning adaptive management program will result in rules based on the most current  
19 scientific knowledge. We must continue our commitment to making changes to the rules in  
20 response to new information.
- 21       • These rules rely on best management practices, but they also are performance-based. If  
22       the resulting implementation of the rules does not achieve compliance with water quality  
23       standards, additional requirements will be developed through the adaptive management  
24       process.
- 25       • Ecology is nearing the end of a multi-year process to develop new water quality  
26       standards. When these standards take effect, the adaptive management process will be  
27       used to determine whether changes to the forest practices rules are necessary.
- 28       • As an example, one change that may be required will be to revise the shade nomographs  
29       in the Forest Practices Board Manual, which are presently calibrated to meet the existing  
30       temperature standards. Additional work may also be necessary to implement changes in  
31       the anti-degradation elements of the standards.
- 32       • Finally, we believe it is very important that water quality projects continue to be a high  
33       priority for study in the adaptive management process. Of special interest to Ecology is  
34       determining the effectiveness of the riparian buffers in meeting water quality standards,  
35       both numeric and narrative, on Type N streams. Type N/F Stream effectiveness

1 monitoring is #6 on CMER's recommended priority list. We want to be sure it remains a  
2 Forest Practices Board priority and moves expeditiously.

- 3  
4 6. We have enjoyed the opportunity to work with the Board, the stakeholder group, and the  
5 general public in developing this permanent rule package. This is a major accomplishment in  
6 protecting the water quality of Washington State. (end of statement)

7  
8 Judy Turpin said that she would be voting in favor of the rules. She has some reservations but  
9 recognizes that the board is constrained by legislative action in latitude that could be taken. She  
10 said she was encouraged by the changes to the adaptive management rules, which significantly  
11 strengthened an important part of the program. She stated her concern with the position that  
12 some support with regards to watershed analysis and that it might simply go away. She was  
13 involved with initial rules and all the changes since then and has tried consistently to take an  
14 approach that looks at differences among watersheds and is troubled by the possibility of moving  
15 away from that and looking at application by application. It is hard to get an appropriate picture  
16 with a one size fits all approach and she thinks we have backed off from a promising approach.

17  
18 John Mankowski said that the package adopted today is a tremendous step forward for fish  
19 recovery. He realizes that there may be some mistakes, omissions and some unintended  
20 consequences but with the process in place at the board, the process built through adaptive  
21 management, and the commitment by stakeholders and public members, it gives him confidence  
22 that those will be fixed. As he steps back as a representative of WDFW, relative to other parts of  
23 the state, it gives him an appreciation of the enormity of what is being done today.

24  
25 Lloyd Anderson spoke in favor of the motion and said after listening to and reading the  
26 comments it occurred to him that while we are about to embark on one of the nation's most  
27 rigorous set of forest practices rules, it is still not a perfect package. There are many aspects of  
28 the rules that he does not agree with and that in voting for this set of rules he is putting all of his  
29 heart and soul into the adaptive management process. He thinks, in the structure of CMER and  
30 the scientific advisory group and scientific review committee this process can work and can end  
31 up with modified rules that are science-based. He thanked the stakeholders and their support  
32 staff as well as DNR. He concluded by inviting the environmental community back to the table.

33  
34 Fran Abel said that the process has been very interesting and she has come to respect everybody  
35 at the board, public arena, staff and stakeholders. She expressed her concern with the complexity  
36 of the rule and that it is not based on good science. She said that they are taking a high-risk

1 solution when she believes they should be taking a low risk solution. She would rather protect  
2 fish and back off as opposed to the other way. Philosophically she thinks the way the board is  
3 going is a bad way to go. She is very concerned for small landowners and lives in an area  
4 surrounded by small landowners and is seeing them drop out like flies. She liked the resolution  
5 but feels it was a little bit too little too late. She also expressed concern regarding cumulative  
6 effects. She stated that she is not going to support the package although she realizes the  
7 legislative mandate, which is part of the reason she has not been happy with the process all  
8 along.

9  
10 Bob Kelly said that he was not sure how to vote until recently and that he would be voting in  
11 favor.

12  
13 Dave Somers said that although he had been out of the process for few years, he was involved  
14 with TFW and was a primary author of the first watershed analysis for the board, he thanked all  
15 and said he believed they were heading in a better direction and hopes it works for landowners as  
16 well as the environment. He is concerned with cumulative effects and said that watershed  
17 analysis needs to be carried forward.

18  
19 **Pat McElroy's comments to the Forest Practices Board prior to final adoption of the**  
20 **permanent rules:**

21 The Forest Practices Board has a unique statutory duty. It is obligated to develop rules which not  
22 only provide protection for public resources, including the aquatic resources which are the  
23 subject of the Forests and Fish Agreement, but which also provide for the economic viability of  
24 the forest industry. This calls for using the best available science to provide protection for  
25 threatened and endangered species and to ensure compliance with the Clean Water Act and a  
26 keen understanding of the economic impacts and operational effects of proposed rules.

27  
28 This rule package has been subject to thousands of hours of meetings, discussions, debate and  
29 thoughtful consideration. It is, almost in its entirety, a consensus product. It does utilize the best  
30 available science and considers the economic impacts of the proposal. It provides for change  
31 over time through adaptive management, using the best available science as it emerges from  
32 ongoing study. I understand and appreciate the impact these rules have on owners of small  
33 woodland parcels, but believe the Alternate Plans section, along with other economic incentives,  
34 and the statement of intent adopted by the board, and the resulting actions, will help mitigate  
35 those impacts. I believe the body of the permanent rule package, when taken in its entirety, does

1 provide a delicate balance between meeting the requirements of the Endangered Species Act and  
2 Clean Water Act, and maintaining the viability of the forest products industry.

3

4 Toby Murray said he was part of a habitat conservation plan on his property that took about 3  
5 years and that this process is similar. Although there is some concern on what is not in the  
6 package, focus should be on what things are in. This is not a small step, this is a dramatic  
7 alteration of forest practices and he said that this was going to take time to get through and that  
8 the key is the strong adaptive management process. He said that he was proud to be associated  
9 with the effort, thanked the board and all associated staff and parties and said that this was a  
10 phenomenal accomplishment.

11

12 VOTE: In Favor: Pat McElroy, Lee Faulconer, John Mankowski, Bob Kelly,  
13 Toby Murray, Dick Wallace, Judy Turpin, Keith Johnson, Dave  
14 Somers, Lloyd Anderson.

15 Opposed: Fran Abel

16 ACTION: Motion passed, 10 support/1 opposed. Permanent rules adopted as amended by  
17 the board today. Steve Wells was absent at time of final vote.

18

19 **CLOSING REMARKS**

20 The next regular meeting is scheduled for August 8, 2001, beginning at 9:00 a.m. at the Natural  
21 Resources Building in room 172

22

23

24

