



RULE-MAKING ORDER

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

Agency: Washington Department of Fish and Wildlife

Permanent Rule Only

Effective date of rule:

Permanent Rules 13-49

31 days after filing.

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

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

Yes No If Yes, explain:

Purpose: The purpose of this proposal is to develop rules defining the procedures that WDFW biologists will use to review and provide concurrence determinations to the Department of Natural Resources (DNR) on specific forest practices hydraulic projects identified in Second Engrossed Substitute Senate Bill (2ESSB) 6406 (2012). The rules direct WDFW's internal procedures only and include guidelines for the manner in which WDFW biologists will work with DNR and applicants to help ensure that projects meet fish protection standards. The rules do not provide any legal requirements for outside entities.

Reasons supporting proposal: This rule adoption was mandated by 2ESSB 6406 (2012) and fulfills one of WDFW's obligations associated with integrating the agency's hydraulic code fish protection standards into DNR's forest practices rules.

Citation of existing rules affected by this order:

Repealed:
Amended:
Suspended:

Statutory authority for adoption: RCW 77.04.020 and 77.12.047

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 13-03-120 on January 18, 2013 (date).

Describe any changes other than editing from proposed to adopted version: None other than minor word changes for clarity.

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

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

Date adopted: March 5, 2013

NAME (TYPE OR PRINT)

Philip Anderson

SIGNATURE

TITLE

Director, Washington Department of Fish and Wildlife

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 11, 2013

TIME: 9:46 AM

WSR 13-07-016

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

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

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>1</u>	Amended	_____	Repealed	_____

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

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

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

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

NEW SECTION

WAC 220-110-085 Integration of hydraulic project approvals and forest practices applications. (1) **Description.** In 1999, the *Forests and Fish Report* and Engrossed Substitute House Bill 2091, which amended the Forest Practices Act, chapter 76.09 RCW, envisioned a more integrated approach to permitting hydraulic projects that also require forest practices applications (FPAs). In May 2001, the forest practices board adopted permanent forest practices rules in Title 222 WAC, which incorporated fish protection measures normally included in hydraulic project approvals (HPAs) for projects in nonfish-bearing waters.

In April 2012, the legislature, through Second Engrossed Substitute Senate Bill 6406, amended the Forest Practices Act in chapter 76.09 RCW and the hydraulic code statutes in chapter 77.55 RCW. The amendment requires integration of hydraulic code rule fish protection standards (Title 220 WAC) into the forest practices rules for hydraulic projects in fish-bearing waters on forest land. As codified in RCW 77.55.361 and 76.09.040, the requirements of the hydraulic code rules will no longer apply to any forest practices hydraulic project as soon as fish protection standards have been integrated into the forest practices rules, and technical guidance has been developed and approved for inclusion in the *Forest Practices Board Manual*. Thereafter, forest practices hydraulic projects will be regulated under forest practices rules. The amended statutes also include a requirement that the department of fish and wildlife (department) adopt rules establishing the procedures for the concurrence review process. This process is outlined in subsection (3) of this section.

(2) **General review and comment on forest practices hydraulic projects.**

(a) The department may review and provide comments on any FPA.

(b) For FPAs that include a forest practices hydraulic project involving fish-bearing waters or shorelines of the state, the department must review the forest practices hydraulic projects and either provide comments to the department of natural resources (DNR), or document that the review has occurred without the need for comments. Prior to commenting, the department will strive to communicate with the applicant regarding any concerns relating to consistency with fish protection standards. The department will also strive to maintain communications with DNR as concerns arise and to inform DNR of communications with applicants.

(c) The department will encourage forest landowners to consult with department biologists, including site visits as needed, prior to submitting an FPA containing a hydraulic project. This will help ensure that project design plans and specifications meet fish protection standards. Preapplication collaboration with the

department will result in more efficient and successful outcomes for forest landowners and their proposed hydraulic projects.

In addition to the general review and comment process for forest practices hydraulic projects described in this subsection, hydraulic projects meeting the criteria described in subsection (3)(a) of this section will follow the concurrence review process.

(3) Concurrence review process.

(a) The department must review forest practices hydraulic projects meeting the following criteria and provide written comments to DNR on the project's ability to meet fish protection standards:

(i) Culvert installation or replacement, and repair at or below the bankfull width, as that term is defined in WAC 222-16-010 on July 10, 2012, in fish-bearing rivers and streams that exceed five percent gradient;

(ii) Bridge construction or replacement, and repair at or below the bankfull width, of fish-bearing unconfined streams; or

(iii) Fill within the flood level - 100 year, as that term is defined in WAC 222-16-010 on July 10, 2012, of fish-bearing unconfined streams.

(b) After the department receives notification from DNR that a FPA includes one or more hydraulic projects meeting the criteria in (a) of this subsection, the department has thirty days to review the forest practices hydraulic project(s) for consistency with fish protection standards.

(c) Within five business days following notification from DNR, or as soon as possible thereafter, the department will determine whether all information, needed for assessing the hydraulic project's consistency with fish protection standards, is included in the application.

(d) If information is missing, the department will immediately contact the applicant to request the missing information. The department will also provide written notification to DNR, indicating that specific information is missing and that the applicant has been notified. The department may issue a nonconcurrence on a proposed project if the applicant fails to provide missing information in a timely manner so that the department can complete its review within the required thirty-day time frame.

(e) If, during the thirty-day concurrence review period, the department determines that a forest practices hydraulic project may not be consistent with fish protection standards, the department will attempt to work with the applicant to modify the proposed project. The department will strive to include DNR participation on site visits with the applicant as needed.

(f) The department must provide written notification of concurrence or nonconcurrence to DNR within the thirty-day review period, stating whether or not the hydraulic project is consistent with fish protection standards. As part of the written notification to DNR, the department must provide information about the outcomes of any meetings with the applicant, including agreements or disagreements, any missing information requested, and any proposed changes needed to meet fish protection standards.

(g) The department will recommend that DNR deny the FPA when efforts described in (e) of this subsection have not resulted in a successful outcome, the project will result in direct or indirect harm to fish life, and adequate mitigation cannot be assured by modifying the hydraulic project proposal or by DNR's agreement to add appropriate provisions to the FPA.