WASHINGTON STATE DEPARTMENT OF
Natural Resources

PETER GOLDMARK
Washington State Commissioner of Public Lands

MEMORANDUM

TO: Forest Practices Board

FROM: Marc Engel, Assistant Division Manager
Forest Practices Division, Policy and Services Section

DATE: July 25, 2011

SUBJECT: Extension of the Road Maintenance and Abandonment Plan (RMAP) Forest Road Work Completion Date Rule Making – Action Requested

On August 9th, I will request the Board's adoption of the Road Maintenance and Abandonment Plan rule making with staff recommended changes. Staff will also request the Board to consider delaying the effective date of this rule making until October 3, 2011. This delay will allow DNR to finalize the forms and provide training and outreach to staff, landowners and stakeholders. The proposal provides forest landowners the opportunity to request an extension to the due date that all forest roads must be improved and maintained to the standards of chapter 222-24 WAC.

The Board, at their August 2010 meeting, accepted Policy's recommendations for changes to the RMAP program. On May 10, 2011, the Board added to the proposed rule language the requirement that landowners use standardized forms for extension requests and for annual reporting. A summary of the proposed rule changes is as follows:

- Adds language in WAC 222-24-050 that will allow landowners to request DNR approval of extensions of up to five years;
- Adds language in WAC 222-24-051 that:
  - Requires extension requests to be made at least 120 days prior to the anniversary date of the initial submittal of the RMAP in 2014;
  - Requires extension requests to include the requested extension time period and a revised RMAP;
  - Requires DNR to provide up to forty five days for Departments of Ecology and Fish and Wildlife, affected tribes and interested parties to review the revised RMAP; and
  - Requires DNR to approve or disapprove the extension request at least thirty days prior to the anniversary date of the initial RMAP submittal;
- Adds language in WAC 222-24-051that requires DNR to require the use of standardized forms as referenced in Board Manual Section 3 for landowners requesting extensions and for annual reporting.

In addition, staff recommends changing the RMAP completion and extension date to October 31 of 2016 and 2021 (included in attached rule proposal). Maintaining the July 1 completion date gives landowners, at best, only a portion of an operating season to complete projects; an October 31 completion date provides an entire operating season.

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On May 10, 2011, the Board directed staff to proceed with the RMAP work completion date rule making by filing a CR-102 *Proposed Rule Making*. The CR-102 was filed on May 13 and hearings were held on June 23 in Sedro Woolley, June 28 in Port Angeles and June 30 in Centralia.The majority of comments were from large forest landowners in support of the RMAP extension. All of the written comments are enclosed and a summary is included in the enclosed draft Concise Explanatory Statement.

The SEPA comment period was from April 26, 2011 to June 30, 2011. The comments specific to the SEPA environmental checklist were from the Department of Ecology Southwest Regional Office. The Department of Ecology's comment focused on testing potentially contaminated media if known or suspected during construction. Also, if contamination of soil or groundwater was readily visible, or was revealed by testing, Ecology must be notified. In response, this rule proposal is not for site specific locations and will be implemented on a statewide scale.

This rule proposal will not affect public resources associated with the ten small forest landowners with approved RMAPs and who have long-term forest practices applications. This rule will give landowners with approved long-term applications and an RMAP the ability to apply for an extension for their RMAP.

Enclosed for your consideration are the rule proposal, a draft "concise explanatory statement", comment letters and the final economic analysis which does not have any changes.

ME\
Enclosures: Draft rule language
Draft concise explanatory statement
Comment Letters
Final economic analysis

Forest Practices Board
RULE PROPOSAL for
Extension of RMAP Forest Road Work Completion Date
August 2011

WAC 222-24-050 *Road maintenance and abandonment.
The goals for road maintenance are established in WAC 222-24-010. Guidelines for how to meet these goals and standards are in ~~the~~ board manual section 3. Replacement will not be required for existing culverts functioning with little risk to public resources or for culverts installed under an approved forest practices application or notification and are capable of passing fish, until the end of the culvert's functional life.

The goals for road maintenance outlined in this chapter are expected to be achieved by ~~July 1~~October 31, 2016. The strategies for achieving the goals are different for large forest landowners and small forest landowners.

For large forest landowners, all forest roads must be improved and maintained to the standards of this chapter prior to ~~July 1~~October 31, 2016; however, large or small forest landowners may request an extension of up to five years, or October 31, 2021, as outlined in WAC 222-24-051(8). Work performed toward meeting the standards must generally be even flow over the ~~fifteen-year~~performance period with priorities for achieving the most benefit to the public resources early in the period. These goals will be achieved through the road maintenance and abandonment plan process outlined in WAC ~~22-24-051~~222-24-051.

For small forest landowners, the goals will be achieved through the road maintenance and abandonment plan process outlined in WAC 222-24-0511, by participation in the state-led family forest fish passage program, and by compliance with the Forest Practices Act and rules. The purpose of the family forest fish passage program is to assist small forest landowners in providing fish passage by offering cost-share funding and prioritizing projects on a watershed basis, fixing the worst fish passage barriers first. The department, in consultation with the departments of ecology and fish and wildlife, will monitor the extent, effectiveness, and progress of checklist road maintenance and abandonment plan implementation and report to the legislature and the board by December 31, 2008, and December 31, 2013.

WAC 222-24-051 *Large forest landowner road maintenance schedule.
All forest roads must be included in an approved road maintenance and abandonment plan by July 1, 2006. This includes all roads that were constructed or used for forest practices after 1974. Inventory and assessment of orphan roads must be included in the road maintenance and abandonment plans as specified in WAC 222-24-052(4).

*(1) Landowners must maintain a schedule of submitting plans to the department that cover 20% of their roads or land base each year.

(2) For those portions of their ownership that fall within a watershed administrative unit covered by an approved watershed analysis plan, chapter 222-22 WAC, landowners may follow the watershed administrative unit-road maintenance plan, providing the roads they own are covered by the plan. A proposal to update the road plan to meet the current road maintenance standards must be submitted to the department for review on or before the next scheduled road maintenance plan review. If annual reviews are not required as part of the watershed analysis road plan, the plan must be updated by October 1, 2005. All roads in the planning area must be in compliance with the current rules by ~~July 1~~October 31, 2016 or by the extension deadline approved by the department under subsection (8) of this section.

*(3) Plans will be submitted by landowners on a priority basis. Road systems or drainages in which improvement, abandonment or maintenance have the highest potential ~~benefit~~ benefits to the public resource are the highest priority. Based upon a "worst first" principle, work on roads that affect the following are presumed to be the highest priority:

(a) Basins containing, or road systems potentially affecting, waters which either contain a listed threatened or endangered fish species under the federal or state law or a water body listed on the current 303(d) water quality impaired list for road related issues.

(b) Basins containing, or road systems potentially affecting, sensitive geology/soils areas with a history of slope failures.

(c) Road systems or basins where other restoration projects are in progress or may be planned coincident to the implementation of the proposed road plan.

(d) Road systems or basins likely to have the highest use in connection with future forest practices.

*(4) Based upon a "worst first" principle, road maintenance and abandonment plans must pay particular attention to:

(a) Roads with fish passage barriers;

(b) Roads that deliver sediment to typed water;

(c) Roads with evidence of existing or potential instability that could adversely affect public resources;

(d) Roads or ditchlines that intercept ground water; and

(e) Roads or ditches that deliver surface water to any typed waters.

*(5) Road maintenance and abandonment plans must include:

(a) Ownership maps showing all forest roads, including orphan roads; planned and potential abandonment, all typed water, Type A and B Wetlands that are adjacent to or crossed by roads, stream adjacent parallel roads and an inventory of the existing condition; and

(b) Detailed description of the first years work with a schedule to complete the entire plan within ~~fifteen years~~the performance period; and

(c) Standard practices for routine road maintenance; and

(d) Storm maintenance strategy that includes prestorm planning, emergency maintenance and post storm recovery; and

(e) Inventory and assessment of the risk to public resources or public safety of orphaned roads; and

(f) The landowner or landowner representative's signature.

*(6) Priorities for road maintenance work within plans are:

(a) Removing fish passage barriers beginning on roads affecting the most habitat first, generally starting at the bottom of the basin and working upstream;

(b) Preventing or limiting sediment delivery (areas where sediment delivery or mass wasting will most likely affect bull trout habitat will be given the highest priority);

(c) Correcting drainage or unstable sidecast in areas where mass wasting could deliver to public resources or threaten public safety;

(d) Disconnecting road drainage from typed waters;

(e) Repairing or maintaining stream-adjacent parallel roads with an emphasis on minimizing or eliminating water and sediment delivery;

(f) Improving hydrologic connectivity by minimizing the interruption of surface water drainage, interception of subsurface water, and pirating of water from one basin to another; and

(g) Repair or maintenance work which can be undertaken with the maximum operational efficiency.

*(7) Initial plans must be submitted to the department during the year 2001 as scheduled by the department.

*(8) Requests to extend the completion date of road maintenance and abandonment plans may lead to the reapproval of the road maintenance and abandonment plan for up to five years, or October 31, 2021.

(a) Landowner requests must be made at least one hundred twenty days prior to the plan's anniversary date by 2014 and must include:

(i) The length of time for the extension period; and

(ii) A revised road maintenance and abandonment plan according to subsections (3) through (6) of this section.

(b) The department shall provide forty five days for the departments of ecology and fish and wildlife, affected tribes and interested parties to review a revised road maintenance and abandonment plan.

(c) The approval or a denial of a road maintenance and abandonment plan's extension request will occur at least thirty days prior to the anniversary date of the initial plan's submittal.

(d) A landowner with an approved extension and revised road maintenance and abandonment plan must report work accomplished in accordance with subsection (9) of this section.

*(9) Each year on the anniversary date of the plan's submittal, landowners must report work accomplished for the previous year and submit to the department a detailed description of the upcoming year's work including modifications to the existing work schedule.

The department's review and approval will be conducted in consultation with the departments of ecology~~, the department of~~ and fish and wildlife, affected tribes and interested parties. The department will:

(a) Review the progress of the plans annually with the landowner to determine if the plan is being implemented as approved; and

(b) The plan will be reviewed by the department and approved or returned to the applicant with concerns that need to be addressed within forty-five days of the plan's submittal.

(c) Additional plans will be signed by the landowner or the landowner's representative.

(10) The department shall require the use of standardized forms as referenced in board manual section 3 for landowners requesting extensions under subsection (8) and for annual reporting under subsection (9) of this section.

*(~~9~~11) The department will facilitate an annual water resource inventory area (WRIA) meeting with landowners, the departments of fish and wildlife~~, the department of~~ and ecology, affected tribes, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, affected counties, local U.S. Forest Service, watershed councils, and other interested parties. The purpose of the meeting is to:

(a) Suggest priorities for road maintenance and abandonment planning; and

(b) Exchange information on road maintenance and stream restoration projects.

*(~~10~~12)Regardless of the schedule for plan development, roads that are currently used or proposed to be used for timber hauling must be maintained in a condition that prevents potential or actual damage to public resources. If the department determines that log haul on such a road will cause or has the potential to cause material damage to a public resource, the department may require the applicant to submit a plan to address specific issues or segments on the haul route.

*(~~11~~13) If a landowner is found to be out of compliance with the work schedule of an approved road maintenance and abandonment plan and the department determines that this work is necessary to prevent potential or actual damage to public resources, then the department will exercise its authority under WAC 222-46-030 (notice to comply) and WAC 222-46-040 (stop work order) to restrict use of the affected road segment.

(a) The landowner may submit a revised maintenance plan for maintenance and abandonment and request permission to use the road for log haul.

(b) The department must approve use of the road if the revised maintenance plan provides protection of the public resource and maintains the overall schedule of maintenance of the road system or basin.

*(~~12~~14) If a landowner is notified by the department that their road(s) has the potential to damage public resources, the landowner must, within 90 days, submit to the department for review and approval a plan or plans for those drainages or road systems within the area identified by the department.

*(15) The department will notify the departments of ecology~~,~~ and fish and wildlife, affected tribes and interested parties if actions taken under this section result in a change to an approved road maintenance and abandonment plan.

(16) When the department approves or denies a road maintenance and abandonment plan extension under subsection (8) of this section, that decision may be appealed to the appeals board in accordance with RCW 43.21B.110 and 43.21B.230.

STATE OF WASHINGTON **PO Box 47012**
FOREST PRACTICES BOARD **Olympia, WA 98504-7012**

As required by
the Administrative Procedure Act
Chapter 34.05 RCW

DRAFT

CONCISE EXPLANTORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF
CHAPTER 222-24 WAC, Road Construction and Maintenance
WACs 222-24-050 and 222-24-051

Prepared by: Donelle Mahan
July 2011

Introduction
In August 2010, the Adaptive Management Program's Forests and Fish Policy Committee made a recommendation for a rule amendment to the Forest Practices Board (Board) to extend the road maintenance and abandonment plan (RMAP) performance period to July 1, 2021.

The recommendation included:

- A comprehensive approach to responding to forest landowner cash flow challenges resulting from the economic recession;
- Development of a board manual;
- Development of an operational plan; and
- An agreement by all caucuses to collaboratively pursue federal funding to accelerate fish passage barrier repairs through the Family Forest Fish Passage Program (FFFPP) and for county access roads.

The rule changes affect the following sections of the Forest Practices Rules, Title 222 WAC:

WAC 222-24-050 Road maintenance and abandonment.
WAC 222-24-051 Large forest landowner road maintenance schedule.

Adoption date of the rule: (to be determined)
Effective date of the rule: (to be determined)

Describe Differences Between Proposed and Final Rule

The proposed rule provides forest landowners with the opportunity to request an extension to the due date that all forest roads must be improved and maintained to the standards of chapter 222-24 WAC.

A summary of the proposed rule changes is as follows:

- Adds language in WAC 222-24-050 that will allow landowners to request DNR approval of extensions of up to five years, or July 1, 2021;
- Adds language in WAC 222-24-051 that:
    - Requires extension requests to be made at least 120 days prior to the anniversary date of the initial submittal of the RMAP in 2014;
    - Requires extension requests to include the requested extension time period and a revised RMAP;
    - Requires DNR to provide up to forty five days for departments of ecology and fish and wildlife, affected tribes and interested parties to review the revised RMAP; and
    - Requires DNR to approve or disapprove the extension request at least thirty days prior to the anniversary date of the initial RMAP submittal.

*(**Note:** The difference between the proposed and final rule language will be determined after adoption of the proposed rule language.)*

Summary of Comments

The Board heard from 12 commenters representing private timber companies and landowner organizations, and one commenter from DNR state lands Northwest Region. Most expressed support for extending the RMAPs performance period for landowners that need it. Some said the most important fish habitat has already been opened and protected from sediment delivery from roads because of following the "worst first" principle. Several expressed concerns related to new reporting requirements. Those and other comments are summarized below, along with an explanation of how the final rule reflects the Board's consideration of the comments.

Comment: Timber harvest revenue is used for RMAP work. The depressed timber market has made it difficult to obtain revenue to continue RMAP work spread out over the remaining time period to meet the current RMAP deadline. The extension will provide the needed economic relief to complete the RMAP work and spread the remaining costs over a broader timeframe.

> **Response:** Your comment is noted. The Board is undertaking this rule amendment to ease the burden on landowners who are unable to meet their RMAP obligation due to the economic recession.

Comment: Requiring new forms for landowners that are not applying for an extension is not consistent with DNR's statements that costs for these landowners will not be significant. Standardized forms will necessitate significant costs to collect the data and complete new forms. Suggest encouraging, rather than requiring the use of standardized forms.

Response: The Board added a new subsection to the rule proposal at the May 10, 2011 meeting – subsection 10 in WAC 222-24-051. It requires the use of standardized forms for all RMAP accomplishment reporting regardless of the RMAPs performance period.

Standardized forms were a condition of the Adaptive Management Program's Policy committee recommendations for "common, standardized reporting requirements." During the development of the recommendations, members of the Policy committee noticed it was difficult to assess the status of RMAPs, both individually and for the overall program, due to the lack of a standardized reporting system. As a result, the agreement to recommend a rule change was contingent in part on requiring a standardized and compatible system for all RMAP data collection, documentation and reporting.

This condition was met through modifying the current RMAP forms that were initially developed in 2001. The new forms are intended to provide the level of information necessary for DNR and interested stakeholders to verify that the "even flow" and "worst first" requirements are being met regardless of when the performance period ends.

Comment: Providing shapefiles to DNR to upload into the RMAP database would be divulging proprietary information.

Response: GIS shapefiles are not required to be provided to the DNR. Landowners have a choice between three reporting options, GIS shapefile, electronic spreadsheet, and/or paper maps.

Comment: The use of Adaptive Management to address economic issues sends a clear message to forest land investors that the Washington regulatory system provides regulatory certainty without compromising the scientific underpinnings of the rules.

Response: Your comment is noted.

Comment: The extension process has facilitated a broader discussion on how stakeholders can view information and participate in the annual planning processes to help coordinate restoration efforts in local watersheds. It also provided a forum to support funding for the Family Forest Fish Passage Program.

Response: Your comment is noted.

Comment: The RMAP due date in rule language should be adjusted from July 1 to October 31 for years 2016 and 2021 to allow a full operating season to complete RMAP work.

Response: (*Note: Information regarding the Board's decision about the due date will be inserted after the August 9, 2011 Board meeting.*)

Summary of public involvement opportunities

09/15/10	Preproposal Statement of Inquiry (CR–101) published in the Washington State Register.
11/10/10 – 12/13/10	Thirty day review of draft language by counties, WDFW (per RCW 76.09.040(2)), and tribes.
08/10 – 07/11	Forest Practices Division conducted rule and board manual development sessions with interested stakeholders and tribal caucus.
06/01/11	Proposed Rule Making (CR-102) published in Washington State Register.
06/01/11	Notice of Public Hearings
04/26/11 – 06/30/11	SEPA checklist and threshold determination distributed
06/23/11	Public hearing, Sedro Woolley
06/28/11	Public hearing, Port Angeles
06/30/11	Public hearing, Centralia

From:	Tom Nelson
To:	ANDERSON, PATRICIA (DNR)
Cc:	Dan Tomascheski; Barry Armstrong; CLEVELAND, BEN (DNR)
Subject:	RMAP extensions
Date:	Monday, June 27, 2011 4:07:36 PM
Attachments:	RMAP letter 6-11, final pdf.pdf

Patricia-
As we promised at the recent public hearing in Sedro-Woolley, attached are our written comments on the proposed rule-making process for RMAP extensions. At that same meeting, the DNR announced that they are also advocating for an “end date” of October (rather than July) and we also support that change, but not include in our formal comments. Please call or contact me via email if you have questions or comments.
Tom

Tom Nelson
Washington Timberlands Manager
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Patricia Anderson, DNR Forest Practices Division
PO Box 47012
Olympia, WA 98504-7012

June 24, 2011

Subject: Proposed Rulemaking (RMAP Extensions)

Dear Board members:

Thank you for the opportunity to comment on the proposed rulemaking package for RMAP extensions. We commend you for your efforts in response to the unprecedented economic challenges presently facing our industry and offer the following comments in an attempt to clarify and expedite the successful implementation of your stated goals:

1. **The rule, as proposed, will require landowners who choose not to request extensions to expend additional time and resources to comply with the approved RMAP program they are already completing (and have been operating under for 10 years). Moreover, any landowner who wishes to extend their RMAP plan to achieve the stated objectives of this Board, will be compelled to expend considerable time and financial expenditures to comply – these costs might outweigh any financial benefits anticipated by the Board thru implementation of this rule.**

During discussions at the recent public hearing on this rules package in Sedro-Woolley, the DNR expressly stated that the rules, Board manual language, and Instructions package were specifically designed so that any landowner currently enrolled in the RMAP program would NOT have to incur new costs, nor gather new data in order to either continue under the current RMAP schedule or request an extension. This would seem to fit with the stated goal of your Board (in the Original Notice for Proposed Rule Making), to change this rule ***"because of the financial hardship forest landowners have experienced since the 2008 economic downturn and its effect on home construction and timber prices"***. The DNR reiterates this point within the Small Business Economic Impact Statement (4/21/11, on page 10 of 13) where they conclude that:

> ***"Landowners who elect to apply for an RMAP time extension would incur the costs of revising and updating their road maintenance and abandonment plan(s). The remaining RMAP work to be completed would need to be arranged into a new, longer time schedule. This cost should not be significant since the base information already exists in the current approved RMAP." (emphasis/underlining added)***

While we concur with this analysis, the actual procedures you have proposed will not be consistent with this objective. Specifically, the noticed rule (page 4, OTS 3954.2) states that:

> ***"(10) The department shall require the use of standardized forms as referenced in board manual section 3 for landowners requesting extensions under subsection (8) of this section and for annual reporting under subsection (9) of this section."***

The ***"standardized form"*** being circulated within the RMAP Information and Instructions (6-17-11) actually includes a new requirement for a substantial amount of new information. If this information is not readily available to a landowner, it necessitates a significant amount of costs to collect this data for inclusion on the new standardized form.

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Mount Vernon, WA 98273

In order to make the language consistent with the stated intent of the Board, we suggest that Section (10) of the published rule be amended to read as follows:

> ***"(10) The department shall encourage the use of standardized forms as referenced in board manual section 3 for landowners requesting extensions under subsection (8) of this section."***

In addition, we believe it would be helpful to clearly state the intent of the Board, as reiterated by DNR at the Sedro hearing, that there would be no obligation on landowners to gather or report new information and data – whether they choose to continue on their current RMAP schedule or to request an extension under these rules.

2. **<u>The rule, as proposed, may require private landowners to submit information on their land that could be considered privileged and proprietary in order to comply with this rule.</u>**

There appears to be an underlying goal built into the rule, draft Board Manual, and Instructions for DNR to build a database for private ownerships that would be made available to selected members of the public. Specifically, Part 2.1 (page B3-8) of the Draft Board Manual states the following:

> ***"Furthermore, the forest Practices RMAP database has been created by the DNR to track large landowners' progress towards meeting RMAP obligations. RMAP stakeholders can use the database to review the work being completed by landowners on their RMAP(s). A year is assigned to each data location communicating when the work is planned or was completed. This database can be represented spatially in GIS. <u>This will allow stakeholders to run limited queries on a watershed basis.</u> This database and its narrative can be found on the DNR's website at https://fortress.wa.gov/dnr/fpars/public/FPAForms.aspx." <u>(emphasis/underlining added)</u>***

Our company is privately owned and we have spent a substantial amount of money to collect data and build our GIS system for the inventory and management of our ownership. While we routinely provide paper copies of the information necessary to receive approval for both RMAP and harvest FPA's, we do not donate shapefiles or other GIS information (gathered at our own cost and considered privileged information) to DNR for inclusion into their own GIS system. Such a system might allow both our competitors and our detractors to access proprietary information that was acquired at a substantial cost to us.

We suggest that DNR consult legal experts in the area of privileged information, trade secret laws, and intellectual property statutes before proceeding with this objective to build a database of information gathered from private property owners in order to comply with this rule.

Again, we commend the Board and Policy Group for seeking to alleviate some of the hardships we are currently facing. The present economic downturn in our industry is the worst we have seen in six decades and housing starts last year were at the lowest rate since World War II. While we remain committed to the continuance of the accomplishments we have already achieved after 10 years of RMAP, we hope to spread our RMAP costs forward, as your Board intended, and hope you find our suggestions helpful toward this unified goal.

Please contact me at this office if you have questions regarding this matter.

Sincerely,

Thomas C. Nelson

Tom Nelson
Washington Timberlands Manager
Sierra Pacific Industries

Cc; Dan Tomascheski, VP-Resources

14353 McFarland Road
Mount Vernon, WA 98273

6/30/11 RMAP hearing

11-08

My name is Rob Fancher. I work for Rayonier and I am talking in support of the RMAP deadline extension. Rayonier owns about 400,00 acres in Western Washington and is SFI certified. Rayonier has taken our RMAP obligations very seriously and worked very hard to identify and fix fish passage and sedimentation issues. Since the December 2007 storm markets have been down. When revenues and harvest levels go down so must the costs. RMAP budgets were reduced, not eliminated because we were still working to complete within the required timeframe. However, the reality is that the spending levels we would have to meet to complete RMAP by 2016 are extreme and somewhat prohibitive. The extension will allow us to complete RMAP projects at a more manageable rate and also to correspond with regular operations. The economy looks to be uncertain for several more years and extending RMAP will help ease the load. To date we have completed almost half of fish passage barriers, mass wasting segments, and surface erosion issues. With the extension we will complete salmon barriers by 2016 and complete RMAP by 2021.

RMAP
11-08

WASHINGTON FOREST PROTECTION ASSOCIATION
724 Columbia St NW, Suite 250
Olympia, WA 98501
Phone: 360-352-1500
Fax: 360-352-4621

June 30, 2011

Washington Forest Practices Board
c/o Patricia Anderson, DNR Forest Practices Division
1111 Washington Street SE
PO Box 47012
Olympia, WA 98504-7012

Comments on the Proposed RMAP Extension

First, I want to thank staff and the Board for moving this proposed extension of the RMAP completion date as quickly as possible through the rule process. WFPA supports the RMAP extension rule as proposed by the Board at the May meeting with one addition that I will mention in a moment.

It was in November 2009 that WFPA realized that the economic crisis that began a year earlier was striking a severe and lasting blow to the users of our members' products. The construction lumber market evaporated and the demand for Pacific Northwest logs virtually disappeared. Prices had fallen to a point where they could not support the cost of harvest. Lack of cash flow raised the concern that some of our members may not survive. What became clear is that there was no way forest landowners could maintain the pace of RMAP repairs and upgrades necessary to meet the 15-year commitment of Forests and Fish.

WFPA began to prepare to go to the 2010 Legislature to get relief from the 2016 deadline. At that point, we were reminded that we have an adaptive management process in our forest practices system here in Washington for changes in circumstances like the financial crisis we were facing. We held off on legislation and made our case to the stakeholders on the Forests and Fish Policy Committee. The response was cautious but positive and, in good order, a Policy staff committee was dispatched to put together available information on economic conditions of the industry, and the statistics that could measure RMAP work progress to that point. The staff's report to the Policy Committee was enough to convince the committee that some action to provide relief was warranted. However, the report also revealed that data on individual RMAPs and all RMAPs by DNR region was not readily available in a consistent format. The status of individual RMAPs and the program overall could be estimated but not verified to the satisfaction of some stakeholders.

A year ago, Policy brought a recommendation to the Board and rule making began. Simultaneously, the DNR started work on revamping the data recording and management system for the 100 plus active RMAPs across the six agency regions. Standardized forms have been developed and the regions have agreed on a data handling process. Board Manual Section 3 has been revised with a provision to implement data collection and a reporting system. New and revised language has been added for updating road surveys for landownership changes that have occurred since the initial planning cycle ended in 2006, and for roads damaged by storms that occurred before RMAP work was completed.

Economic conditions in the industry have improved, thanks primarily to a robust export market for logs and manufactured wood products. But the core business remains dependent on housing, and housing is not recovering. Reuters reported that nationwide new home mortgage activity dropped almost 3% in May and existing home sales fell to a six month low. We have all heard that Washington State economist Arun Raha estimated that the economic troubles in our state will continue through 2013.

The dip in progress toward RMAP completion over the last three years cannot be made up in time for the current 2016 deadline. An extension is still needed. Not all landowners will need an extension; some are on their way to finishing by 2016. But despite continuing to complete what they could during the recession, several landowners will need more time. As a sidelight, I want to point out that in the spirit of our agreement to the Forests and Fish Report, WFPA members pledge to put the highest priority on salmon and steelhead passage barriers and to the best of their ability get those barriers repaired by 2016, regardless of whether or not they need more time to finish all of their work.

The additional change in the rule that we would like to see is moving the initial deadline from July 1, 2016 to October 1, 2016 and the extended deadline from July 1, 2021 to October 1, 2021. It makes sense to provide a full season for the last year of the program, particularly because the window for fish passage repair usually occurs in mid- to late summer and work in the streams cannot occur during spring spawning season.

Finally, I would like to especially thank the Forest Practices Division operation staff, IT staff and the regional RMAP coordinators for their hard work in getting an efficient and compatible data system in place for the remainder of the RMAP program. Thank you for your time this evening.

Sincerely,

Peter Heide

Peter Heide
Senior Director of Forest Policy

Longview Timber, Corp.
P.O. Box 667
10 International Way
Longview, WA 98632
Phone (360) 442-4350
Fax (360) 575-5932

June 29, 2011

Patricia Anderson
Forest Practice Rules Coordinator
Washington Department of Natural Resources
PO Box 47012
Olympia, WA 98504-7012

Submitted via electronic mail

Re: Public Comment on revisions to WACs 222-24-050 and 222-24-051 pertaining to the extension of the performance period for road maintenance and abandonment plans (RMAPs).

Dear Ms. Anderson:

Longview Timber, Corp. appreciates the opportunity to provide comment on the proposed rule changes of WACs 222-24-050 and 222-24-051 considered by the Forest Practice Board. Longview Timber, Corp. manages over 315,000 acres in Washington State, including approximately 2,800 miles of roads, all of which are subject to the RMAP regulations. Longview Timber, Corp. supports the extension of the performance period for the following reasons:

- While Longview Timber, Corp. has maintained our commitment to meeting the RMAP requirements, the unprecedented economic downturn has significantly impacted our available financial resources. This extension will provide needed economic relief by allowing us to spread out the remaining RMAP costs over a broader timeframe.

- This rule proposal provides relief to landowners without negatively impacting the environment. All of the road work committed to in the Forests and Fish Agreement will still be completed. By following and maintaining the "worst first" principle, the extension delays the implementation of repairs only on roads with the least amount of environmental risk.

- The use of Adaptive Management to address an economic issue sends a clear message to forest land investors that the Washington regulatory system not only provides for regulatory certainty, but also can also change to address economic concerns, without compromising the scientific underpinnings of the rules.

- The extension process has facilitated a broader discussion on how stakeholders can view information and participate in the annual planning processes to help coordinate restoration efforts in local watersheds. It also has provided the necessary forum to support efforts for funding of the Family Forest Fish Passage Program. Longview Timber, Corp. will continue to support these efforts into the future.

Additionally, Longview Timber, Corp. would support moving the final deadline for RMAP completion, irrespective of the year, from June to October to allow for the entire work season to be fully utilized.

Sincerely,

Adrian Miller
Manager of Policy and Sustainability

RMAP
11-12

Patricia Anderson, FPB Rules Coordinator
Dept of Natural Resources
Forest Practice Division
PO Box 47012
Olympia, WA 98504

Forest Practice Board Members:

Please see the following testimony on proposed forest practice rules affecting WAC 222-24-050 and 222-24-051 pertaining to the extension of the performance period for road maintenance and abandonment plans. Examples are from a 15,000 acre tree farm near Mt. St. Helens.

Economic Condition of Timber Industry
RMAP work normally coincides with timber harvest. A portion of the cash flow from timber harvest is used for RMAP work. The work may be associated with a timber sale, or just prioritized projects defined in a plan. In a good timber market, more income is distributed to costs like RMAP and silviculture—RMAP being the highest cost. In the past two to three years, the depressed timber market has made it difficult to obtain cash for continuing operations. If this trend continues, less money can be spent on all tree farm operations—including RMAP. Due to its importance however; RMAP is still one of the last budgets to be cut. In the last four years approximately 25%-30% of each years net revenue generated from forest products has been spent on RMAP.

Limited Work Window
Work to be completed in or within ¼ mile of a type F stream requires an HPA. Most HPA's allow a work window July-September. Road maintenance contractors are hard to come by during this time because they are very busy. Also, on this particular tree farm, due to its high elevation and restricted access, equipment can only access a majority of the area mid July through September.

Unexpected cost
Different interpretations of type F stream definitions have increased the amount of F streams, thus increasing the number of fish barriers. Streams that now meet the type F definition upstream of natural fish barriers were overlooked during the beginning stages of RMAP budgeting. These streams need to be proven to have no fish—through stream shocking--or potential barriers need to be replaced with fish passable ones. Fish barrier removal is the highest cost RMAP item on the tree farm. Fish barriers that remain on the tree farm are on the upper reaches of seasonal streams with an average gradient of 16%-20%. Delaying the completion of these fish barriers on streams with marginal habitat comes at a minimal cost to the resource.

Work Completed
Roads with the potential to deliver sediment through mass wasting were the main target since the purchase of the property in 2004. Most of the high risk roads have been taken care of along with removal of fish barriers on the most productive fish streams.

Even though we are on track to be completed by 2016, an extension would ensure completion in the case that the industry does not emerge from the current recession.

Thank you,

Casey Wheeler
Green Crow Management Services
PO Box 2159
Vancouver, WA 98668

From:	Kenneth D. Osborn
To:	ANDERSON, PATRICIA (DNR)
Cc:	ROAMES, RICK (DNR)
Subject:	RE: RMAP
Date:	Tuesday, July 05, 2011 10:53:00 AM

Dear Patricia,

We manage Grandy Lake Forest, a 22,000 acre forest primarily in Skagit County. Sorry I missed the meeting last week but I did get forward materials presented at that meeting, and I would like to comment briefly on the proposal.

First, we are on schedule to complete RMAP upgrades within the scheduled time period. And up until now, our reporting methods have met with approval from the DNR.

Therefore we are upset that in mid stream of this program, there is a proposed requirement to alter our reporting methods. This is unnecessary paperwork that interferes with our management. It might sound a small thing to those who proposed it but it takes time away from getting the real work done.

Most of us have systems already in place which track progress on upgrades which we've used effectively over the last 10 years.

Why should those of us who are not requesting extensions have to be burdened with this? Forest management almost always has low overhead and a finite time to accomplish tasks, therefore is extremely sensitive to additional such requirements.

Thank you for the opportunity to comment.

Regards,
Ken Osborn

ECONOMIC ANALYSIS
Forest Practices Board
Rule Making Affecting Road Maintenance and Abandonment Plans

By Craig Calhoon, Economist
Department of Natural Resources
August 2011

OBJECTIVES

The Forest Practices Board is considering a rule change to allow forest landowners who have Road Maintenance and Abandonment Plans (RMAPs) to apply for an extension of the deadline for up to five years. The proposed rule change would amend WAC 222-24-050 and -051, changing the completion date for RMAPs from July 1, 2016 to July 1, 2021.

The Board's objective is to be responsive to a request from private forest landowners with RMAPs to adjust the RMAP completion schedule to provide relief from a reduced cash flow situation in Washington's timber industry due to the recent economic recession without reducing the legal commitment to complete forest road improvements necessary to protect and restore water quality and fish habitat.

CONTEXT

Existing Rule on Road Maintenance and Abandonment Plans

In 1999 the Washington State Legislature enacted the Salmon Recovery Act (Chapter 4, Laws of 1999). In it, the Forest Practices Board was strongly encouraged to follow the recommendations of the April 29, 1999 Forests and Fish Report when adopting rules for the protection of aquatic resources. The rules were to accomplish a variety of policies listed in RCW 76.09.010 "without jeopardizing the economic viability of the forest products industry" (RCW 76.09.370).

The Board fulfilled this mandate by adopting emergency rules in early 2000 and permanent rules in 2001. These rules, commonly referred to as the Forests and Fish rules, included a requirement for forest landowners to assess the roads on their properties and plan for ongoing maintenance of existing roads, abandonment of certain roads, and repair or replacement of fish passage structures. The purpose of the road maintenance and abandonment plan was to ensure that management of all forest roads would maintain or provide passage for fish in all life stages, provide for the passage of woody debris likely to be encountered in a 100-year flood event, and meet water quality standards by limiting and controlling sediment delivery and surface runoff to typed waters, protecting stream bank stability, and diverting most road runoff to the forest floor.[1] The rules specified a deadline of July 1, 2006 for landowners to complete these road maintenance and abandonment plans and a deadline of July 1, 2016 for completing the work identified in the plans. These deadlines followed the recommended timelines in the Forests and

[1] WAC 222-24-010(2) and Forests and Fish Report, Appendix D, section I (a), April 29, 1999.

Fish Report of five years after the adoption date of the rules for completing the road plans and 15 years after the rule adoption date for completing the road work.

According to the May 2010 report by the "Staff Group" to the Road Policy Work Group of the Forests and Fish Policy Committee entitled "Information Compiled to Help Evaluate the Consequences of Extending the Implementation Period for Road Maintenance and Abandonment Plans in Washington" (hereinafter referred to as "Policy Staff Group" report)[2], the 15 year RMAP performance period was not based on science (p. 16). At the time the Forest and Fish rules were developed, 15 years of "worst-first" implementation was considered a reasonable time frame to balance economic and resource protection considerations.

In 2003 the Legislature amended the forest practices statute to simplify the requirements of road maintenance planning for small forest landowners and to establish a cost-share program to help fund the removal of fish blockages on their lands (Second Substitute House Bill 1095). Rules implementing this legislation are codified in WAC 222-24-0511 which describes road maintenance planning requirements for small forest landowners[3]. Small forest landowners were exempted from the requirement to complete a formal road maintenance and abandonment plan and were only required to submit a "checklist" RMAP when they submit a forest practices application. Small forest landowners who own a total of 80 acres or less of forest land in the state are not required to submit any type of road maintenance and abandonment plan for any block of land that contains 20 contiguous acres or less.

Large forest landowners[4] are still required to complete a road maintenance and abandonment plan and complete all RMAP work by July 1, 2016. This work requires significant expenditures each year and is primarily financed by revenues generated from timber harvests. For many timber companies, the economic recession of the past several years has slowed the cash flow necessary to fund the annual RMAP work required for forest road improvements and fish passage barrier repairs. In the summer of 2010, the Forests and Fish Policy Committee recommended that the Board amend the RMAP rules to allow large forest landowners[5] to apply

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[2] This report is available at http://www.dnr.wa.gov/Publications/bc_fp_materials_20100810.pdf, "F&F Policy's RMAPS Proposal Recommendation–Hotvedt."

[3] "Small forest landowner" is defined in WAC 222-16-010 as "a forest landowner who at the time of submitting a forest practices application or notification meets all of the following conditions:

- Has an average annual timber harvest level of two million board feet or less from their own forest lands in Washington state;
- Did not exceed this annual average harvest level in the three year period before submitting a forest practices application or notification;
- Certifies to the department that they will not exceed this annual harvest level in the ten years after submitting the forest practices application or notification."

[4] "Large forest landowner" is defined in WAC 222-16-010 as a forest landowner who is not a small forest landowner.

[5] As part of the negotiations among Forests and Fish Policy Committee members on moving this proposed rule forward, the State of Washington agreed not to seek an RMAP time extension on public lands managed by the Department of Natural Resources and the Department of Fish and Wildlife, even though the proposed rule change language would allow it.

for an extension of the RMAP deadline for up to five years, or until July 1, 2021, without reducing the legal commitment to complete RMAP work necessary to protect and restore water quality and fish habitat.[6] On August 10, 2010, the Board directed staff to begin the rulemaking process.

Road Maintenance and Abandonment Plan Work Status

The current requirement is for all RMAP work to be done within a 15 year period, from July 1, 2001 to July 1, 2016. The work is to be undertaken and accomplished at an "even-flow" rate, with landowners making sufficient progress each year so that all the necessary work is completed by the July 1, 2016 deadline. The RMAP work items are to be prioritized under a "worst first" principle to achieve the most benefit to public resources earlier in the RMAP period.

The Department of Natural Resources' (DNR's) "RMAP Accomplishment Summary for 2001 through 2010"[7] contains information on the progress made on RMAP work on forest land ownerships under 262 road maintenance and abandonment plans through December 2010, as shown in **Figure 1**. The data is for the first 9 ½ years, or 63%, of the 15 year period in which

FIGURE 1. RMAP Work Accomplished As of 12-31-10

Years Into 15-Year RMAP Work Period	Miles of Forest Roads Assessed	Miles of Road Improvement	Miles of Road Abandon-ment	Miles of Orphaned Roads	Total Number of Fish Passage Barriers Identified	Number of Structures Fixed on Fish Habitat Streams	Miles of Fish Stream Habitat Opened
9 1/2	57,442	20,494	2,915	2,333	7,025	3,769	1,772
63%						54%	

RMAP work is to be completed under current Forest Practices rules. The data show that 20,494 miles of road improvement work were completed in this time period (through 2010). Road segments totaling 2,915 miles of road were abandoned. A total of 3,769 fish passage barriers were fixed, or 54% of the total number of 7,025 identified as needing to be addressed in RMAPs.

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[6] In addition to the proposed rule change allowing for an RMAP time extension, the Forests and Fish Policy Committee members agreed to other RMAP program initiatives to be implemented outside of rules. Most notably, RMAP reporting requirements and data management will be improved with DNR developing and maintaining a standardized system to receive, track, and report RMAP accomplishments. Improvements in project tracking will help DNR, stakeholders, and tribes evaluate RMAP project priorities and scheduling. In addition, the Forests and Fish Policy Committee members agreed to collaboratively work to seek additional state and federal funding for road maintenance and fish passage improvements on small forest landowners' lands and under county roads.

[7] This report is available from the Department of Natural Resources Forest Practices Division at (360) 902-1400.

This data suggests that the RMAP fish passage barrier removal work may be behind the even flow rate.

In a separate February 2010 survey of large private and public forest landowners, the Washington Forest Protection Association (WFPA) found that 56% of fish passage barriers located specifically on salmon, steelhead, and bull trout waters had been removed. This supports the conclusion in the DNR report that 54% of all fish passage barriers needing replacement had been removed as of the end of 2010.

Another measure of the state of progress on RMAP work is given in the May 2010 "Policy Staff Group" report. In April 2010, a survey regarding RMAP completion was sent to DNR's six region RMAP specialists who answered based on a representative sample of RMAPs in each of the regions. The results indicated that while most RMAPs (59%) had experienced significant implementation delays and while 21% were still significantly behind schedule, the majority–79%–were now either on or ahead of schedule (pp. 7-9). There was no discernable difference in completion rate among the four RMAP landowner categories–large industrial, small industrial, public agency, and small forest landowner.

PROPOSED RULE

The rule proposal affects WACs 222-24-050 and -051. It allows forest landowners with road maintenance and abandonment plans to apply for an extension of the timeline for completion of work specified in their RMAPs for up to five years, or until July 1, 2021 at the latest. In addition, it specifies a process for landowners requesting a time extension and a process for DNR to allow for a multi-stakeholder review of a landowner's request for a time extension:

- Landowners may request time extensions at least 120 days prior to their initial RMAP anniversary date in 2014, specify the length of time for the extension period, and include a revised plan that follows the existing requirements outlined in WAC 222-24-051, subsections (3) through (6). Generally, the schedule of work is to be based on an "even-flow" pace and a "worst first" principle: road work with the highest potential to benefit public resources is required to be given the highest priority in plans.

- DNR will provide a 45-day review period for the Departments of Ecology and Fish and Wildlife, affected tribes, and interested parties to review and comment on revised plans. DNR will then approve or deny RMAP time extension requests at least 30 days prior to the anniversary date of an initial plan.

If any actions are taken that result in a change to a revised plan after approval, DNR will notify the Departments of Ecology and Fish and Wildlife, affected tribes, and interested parties.

COST-BENEFIT ANALYSIS

The Administrative Procedure Act (RCW 34.05.328) requires agencies to complete a cost-benefit analysis before adopting a significant legislative rule. An agency cannot adopt a significant legislative rule unless it:

- Determines that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented; and

- Determines, after considering alternative versions of the rule, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives of the statute that the rule implements.

Benefits

The proposed rule change is intended to provide relief to large forest landowners for whom the recent economic recession has compromised their ability to get their required RMAP work done by the current July 1, 2016 deadline. The rule change would allow them to delay some of their work for up to an additional five years, thereby reducing the near-term annual cost of RMAP compliance. It does not change the total amount of expenditures required, but it does reduce the present value of the future expenditures by spreading them over a longer future period. In addition to this financial benefit, the time extension would also provide some additional business flexibility.

As stated previously, the State of Washington has agreed not to seek an RMAP time extension on lands managed by the Department of Natural Resources and the Department of Fish and Wildlife. Also as stated before, the Forest Practices rules were previously amended to exempt small forest landowners from the more extensive RMAP requirements. Therefore the economic impacts of the proposed RMAP rule change are limited to large private forest landowners, which is the regulated community in this case.[8]

The May 2010 "Policy Staff Group" report (p. 12) cites a survey by the Washington Forest Protection Association (WFPA) of its membership which consists of large private forest landowners on 4.04 million acres (representing about 88% of all large forest landownership). In early 2009, WFPA asked its members to estimate the cost of finishing their remaining RMAP work, based on the requirement to complete all work by July 1, 2016. From the survey results, WFPA estimated that, in 2009 dollars, its members would spend approximately $133 million to complete their remaining required RMAP work.

In order to assess the economic benefit of the RMAP time extension to large private forest landowners, the WFPA estimate of remaining RMAP costs is first updated to correspond to the effective date of the proposed rule (if it should be adopted). An effective date of October 1, 2011

[8]There are some small forest landowners who elected to plan under a full RMAP pursuant to WAC 222-24-050; those landowners would be authorized to request an extension just as large forest landowners would under the proposed rule.

is assumed based on a presumption that the Board would adopt the rule at its August 9, 2011 meeting. Therefore almost three annual outdoor construction seasons will have elapsed from the time of the WFPA survey in early 2009 to the effective date of October 1, 2011. The May 2010 "Policy Staff Group" report cites another survey by the WFPA of its membership of large private forest landowners in April 2010 which concluded that these large private forest landowners spent an average of $13.10 million per year on RMAP work through 2009 on their 4.04 million acres. Even though timber stumpage prices had moved dramatically down in 2008, these companies spent $14.98 million on RMAP work that year. But because of the cumulative impact of the economic recession, they spent only $8.44 million on RMAP work in 2009. Given that timber stumpage prices have since recovered from their periodic lows in 2008 and the first half of 2009, we are assuming that RMAP expenditures by the WFPA membership increased somewhat to $10 million in the 2010 construction season (still considerably below the average annual expenditure). We also assume that $12 million will be spent in the 2011 construction season (still below the average annual expenditure) as timber stumpage prices continue to rebound. It is therefore estimated that WFPA member forest landowners will need to spend approximately $102.56 million ($133 million - $8.44 million - $10 million - $12 million) to complete their RMAP work by the current deadline.

Next, the amount estimated to complete RMAP work on WFPA members' forest lands must be adjusted to account for all large forest landowners' lands. According to the May 2010 "Policy Staff Group" report, there are approximately 600,000 acres of industrial forest land on which RMAPs are likely required beyond the 4.04 million acres owned by WFPA members. Assuming that the additional 600,000 acres have similar attributes to the WFPA members' lands, the amount of funds required to complete RMAP work on all large forest land ownerships is estimated to be $117.8 million ($102.56 million x 4.64 million acres / 4.04 million acres = $117.8 million).

Finally, to assess the economic benefit of the RMAP time extension to large private forest landowners, the present value of the amount needed to fund the annual payments for $117.8 million in RMAP work prior to July 1, 2016 (the current deadline) is compared with the present value of the amount needed to fund the annual payments for the same $117.8 million in RMAP work prior to July 1, 2021 (the proposed deadline). Even though the time periods starting October 1 and ending July 1 do not correspond with the beginning and end of the annual construction period, it is assumed that there are five years of work remaining under the current deadline and ten years of work remaining under the proposed deadline. To complete the remaining work in five years would require expenditures of $23.6 million per year and in ten years $11.8 million in annual payments would be required to complete the work. The current values of amounts required under the two scenarios, assuming a five percent discount rate, are shown in **Figure 2**.

The total potential benefit to large private forest landowners is $11.1 million ($102.2 million minus $91.1 million) in net present value in current dollars. This means that they would need $11.1 million less in current funds in order to meet their RMAP obligations under the proposed time extension as opposed to the current deadline.

FIGURE 2. Current Amount of Funds Necessary to Cover Remaining RMAP Expenditures on Private Large-Owner Forestlands Under Alternative Deadlines

RMAP Completion Deadline	Years of RMAP Work Remaining	Annual Expenditures	Current Value
July 1, 2016 (current deadline)	5	$23.6 million	$102.2 million
July 1, 2021 (proposed deadline)	10	$11.8 million	$ 91.1 million
Net Present Value			$ 11.1 million

The actual benefit is likely to be much less because it is likely that not all of the landowners with RMAPs will elect to apply for time extensions. For example, if landowners representing half the acreage under RMAPs decide to proceed with their RMAP work by the current deadline of July 2016, then the realized benefit of the proposed rule would be only half as much, or $5.6 million in net present value.

In addition to this financial benefit to the landowner community, costs to landowners who are unable to complete RMAPs by 2016 may be averted if this rule is adopted. If the proposed rule change is not adopted and a landowner is found to have not completed the required RMAP work by 2016, DNR may need to take compliance or enforcement action (for example, notices to comply or stop work orders) to ensure public resource protection. This is a very costly process for both the state and the landowner, particularly when there are compliance issues across several forest road networks which would need to be addressed on a site-by-site basis. Extending the deadline for landowners who have a legitimate need will maintain a schedule for landowners to complete the required road work necessary to protect public resources and for DNR to comply it. Ensuring RMAP work will be conducted within a structured RMAP schedule will prevent costly enforcement processes.

Costs

The purpose and overall goal of the road maintenance and abandonment plans and the associated road maintenance and abandonment work and fish passage barrier work is to protect and restore water quality and fish habitat. The sooner the work is completed, the sooner the habitat improves or becomes accessible. The main cost of the proposed rule change is the delay in realizing these intended environmental benefits that would result from a delay in completion of RMAP work. Under the proposed rule, the work would still be required to be done but it could be spread out over five additional years.

This economic analysis relies on the associated Environmental Checklist and Determination of

Nonsignificance[9] for the proposed rule as the source for more detailed information about its environmental impacts (delayed benefits). The Environmental Checklist does not quantify the environmental impacts of a delay in the remaining RMAP work in terms of physical effects (e.g., sediment input, habitat quality) or biological response (e.g., fish populations) and it is also not conclusive about the qualitative impacts on fish populations that would be caused by extending the RMAP deadline. The checklist is hereby incorporated by reference and its findings are summarized below.

The Environmental Checklist concludes the following about sediment from roads and the impact on water quality:

- The rule proposal is not expected to cause increases in discharge of sediment from forest roads. The existing forest practices rules require roads to be constructed and maintained so as not to result in sediment and surface water delivery from forest roads to any typed water in amounts that preclude achieving desired fish habitat and water quality.

- There is the potential that some delay in road improvements could cause a delay in addressing previously unidentified road-related sediment discharges to streams, which could affect fish habitat.

The Environmental Checklist concludes the following about fish passage barriers and the impact on fish populations:

- Barriers to fish passage in a stream system prevent the system from reaching its natural productive capacity for fish.

- Barrier removal may increase fish access to potential upstream habitat, which in turn may facilitate increased fish populations by providing access to historic habitat.

- The number and geographic location of inadequately sized water crossing structures that would remain in place after 2016 cannot be precisely known.

- Assessing the proposal's impacts on fish, including salmonids, is an extremely difficult endeavor. Forest road networks cross many different land ownerships, only some of which are subject to Forest Practices Act jurisdiction. Fish passage barriers are ubiquitous on stream systems on Washington forest lands. Complicating things, some fish are anadromous species and spend their lives in both freshwater and saltwater environments. This variety of habitats can present an enormous array of environmental pressures on fish, only one of which is fish passage barriers in the forest environment. It is not possible to isolate the impacts of a five-year delay in the remediation of these barriers from other environmental impacts that fish encounter.

[9] The Environmental Checklist and threshold determination (Determination of Nonsignificance) can be found at http://www.dnr.wa.gov/BusinessPermits/Topics/ForestPracticesRules/Pages/fp_rules_activity.aspx, under the heading, "Extension of RMAP Forest Road Work Completion Date."

The Environmental Checklist discusses the following about possible failures of inadequately engineered stream crossing structures:

- Storm events and the likelihood that existing stream crossing structures will fail are impossible to predict; thus, whether structures that are allowed to remain beyond 2016 will fail and cause impacts, is speculative.

- There is the chance this will occur in one or more locations, having a localized and temporary impact on the downstream environment. A possible impact is that some culverts and bridges could fail during the time that their replacement is delayed, thereby increasing the possibility of impacts on environmentally sensitive sites downstream.

Other factors discussed in the Environmental Checklist are relevant to the cost benefit analysis because they tend to reduce the potential adverse environmental impacts (costs):

- A majority of RMAPs are now either on or ahead of schedule. Twenty of the 262 RMAPs statewide have already been completed and, according to the Forest Practices 2010 RMAP Accomplishment Report, with six years remaining under the current 2016 deadline over half of the fish passage barriers had been removed (3,769 out of more than 7,000), over 1,700 miles of fish habitat have been opened, and over 20,000 miles of roads had been improved to meet standards.

- The work already completed under the RMAP process has been found effective in minimizing sediment delivery to streams. A 2008 study performed for the WFPA found that 73 percent of the forest roads sampled had a low probability of delivering sediment to a typed water course and that 82 percent of the road length studied had either low delivery potential or was hydrologically disconnected. This result was attributed to the road planning, relocation, abandonment, and disconnection activities that had already occurred under the RMAP program at that time.

- Concurrent with this rule making DNR is developing a statewide RMAP status database, in part to help provide certainty that the road work in RMAPs will be accomplished on a worst first and even flow basis. We believe this measure, along with the involvement of landowners and stakeholders in providing input to DNR in the decision to allow RMAPs schedule adjustments, and the 2014 deadline to request an extension of an RMAPs schedule, will help ensure that the road work with most potential to prevent damage to public resources will be given the highest priority in adjusted schedules if the rule is adopted.

- Without the proposed rule, the RMAPs performance period will expire, and water crossing and road condition issues will need to be addressed by DNR using administrative enforcement actions on a road-by-road, location by location basis. By allowing RMAP time extensions for landowners who need them, the proposed rule will help to ensure that their remaining forest road repairs will be completed on a worst-first, even-flow schedule and in a coordinated, orderly manner. This would achieve the best possible results for fish as soon as possible.

In summary, the Environmental Checklist indicates that the proposal will allow some portion of the existing fish passage barriers and inadequately engineered water crossing structures to remain on the landscape for up to five years beyond 2016. The Checklist also recognizes that many of the problematic structures would also remain on the landscape even without the rule change (due to the fact that some landowners fell behind on RMAP progress during the recession). If there were no rule change, however, DNR would need to address the problematic stream crossings through costly site-by-site enforcement actions.

After assessing the environmental effects of the proposal along with landowners' progress to date, the effectiveness of that work on public resources, and new administrative measures to help provide certainty that the road work in RMAPs will be accomplished on a worst first and even flow basis, the Board in its Determination of Nonsignificance has determined it will not result in significant adverse environmental impacts.[10]

There are two additional cost impacts, but they are considered minor:

- Landowners who elect to apply for an RMAP time extension would incur the costs of revising and updating their road maintenance and abandonment plan(s). The remaining RMAP work to be completed would need to be rearranged into a new, longer time schedule. This cost should not be significant since the base information already exists in the current approved RMAP.

- Although the proposed rule does not change the overall cost of RMAP road work remaining to be completed, it does impact the timing of the costs because it will move some of the road construction work forward in time. As described above, this deferring of costs into the future is a benefit to landowners. However, it represents a cost to road construction businesses and workers because some of the work they would otherwise be doing by 2016 would be deferred into the future. It is estimated that almost all of the RMAP road work is contracted out to road construction businesses rather than being done internally by the landowners with their own employees and equipment. Under the proposed rule and to the extent that landowners elect to apply for time extensions on their RMAPs work, there will be fewer road construction jobs and income in 2011-2016 and more in 2016-2021.

Comparison of Benefits and Costs

The total potential benefit to large private forest landowners due to the ability to extend the RMAP deadline is estimated to be $11.1 million net present value in current dollars. The actual benefit is likely to be less because it is likely that not all landowners will elect to apply for RMAP time extensions. An additional benefit is that landowners will avoid the costs associated with enforcement and/or compliance actions in cases where they are not able to complete RMAP work by 2016.

[10] Ibid.

The main cost of the proposal is the delay in realizing the intended environmental benefits of RMAPs (the protection and restoration of water quality and fish habitat) that would result from a delay in completion of RMAP work. The work associated with RMAPs would still be required to be done, but for some landowners it would be spread over five additional years. The Board has determined, after assessing the environmental effects of the proposal along with other measures to ensure public resource protection that the proposed rule will not result in significant adverse environmental impacts.

Therefore, it is reasonable to conclude that the probable benefits of the proposal are greater than its probable costs.

Alternatives to Rule Making and Consequences of Not Adopting the Rule

In their work, the Sub-Policy Group to the Forests and Fish Policy Committee which developed the recommended rule change reviewed two other alternatives for extending the RMAP completion deadline.

The first was to allow landowners to decide whether to update RMAPs to meet an extended deadline (up to five years) that would be tied to economic indicators (e.g., new housing starts or timber stumpage prices). The Group reviewed economic data and projections and contemplated an adjustable schedule but a number of members thought this was not a desirable or appropriate method for determining the duration of a time extension.

The other alternative considered was to extend the deadline by five years and provide a tax incentive to encourage landowners to complete their RMAP work sooner. This option was deemed to be problematic given the need for enacting legislation and the current grim condition of state and county budgets due to dramatically reduced tax revenues.

In addition, both of these alternatives would require additional data reporting and tracking requirements.

If the proposed rule change is not adopted, certain large private forest landowners who remain significantly negatively financially impacted by the recent economic recession may not be able to complete their RMAP work by July 1, 2016. If a landowner is found to be out of compliance with the RMAP work schedule and DNR determines that this work is necessary to prevent potential or actual damage to public resources, DNR would need to take compliance or enforcement action (for example, notices to comply or stop work orders).

Least Burdensome Alternative

The Administrative Procedure Act states that agencies cannot adopt a significant legislative rule unless it determines after considering alternative versions of the rule that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives of the statute that the rule implements.

The proposed rule change is not burdensome on the regulated community and it is less burdensome than the other alternatives described above. It is less burdensome than the alternative of not adopting the rule change because it gives the forestland owner the choice of whether to apply for the up-to-five-year time extension. It is less burdensome than the alternative of tying the termination of the time extension to economic indicators because the length of the extended period could be cut short depending on the economic indicators selected (for example, timber stumpage prices have recovered sharply in the second half of 2009 and 2010 from their periodic lows in 2008 and the first half of 2009). It is less burdensome than the alternative of extending the deadline by five years and providing a tax incentive to encourage landowners to complete their RMAP work sooner because of the high degree of uncertainty surrounding the possibility and timing of actually getting such a tax break legislatively enacted.

SMALL BUSINESS IMPACTS

A small business economic impact statement is required by the Regulatory Fairness Act (chapter 19.85 RCW) to consider the impacts on small businesses of administrative rules adopted by state agencies. The statute defines small businesses as those with 50 or fewer employees. To determine whether the proposed rule will have a disproportionate cost impact on small businesses, the impact statement compares the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rule.

Small Business Analysis

There are no new or additional requirements or costs imposed on any members of the regulated community by the proposed rule change since it affords the opportunity for large forest landowners to elect to apply for an extension of the RMAP performance period of up to five years. Choosing whether to extend the RMAP performance period is voluntary on the part of the business (landowner), whether it is a large business, a small business, or an individual. Therefore there is no disproportionate cost impact on small businesses[11].

Reducing Costs for Small Businesses

RCWs 19.85.030 and .040 address an agency's responsibility in rule making to consider how costs may be reduced for small businesses, based on the extent of disproportionate impact on the small businesses. As stated above, there is no disproportionate impact on small businesses.

Estimated Number of Jobs Created or Lost

RCW 19.85.040 (2)(d) requires that the small business economic impact statement include "(a)n estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule."

[11] "Small businesses" for the purpose of this analysis are those members of the regulated community (large forest landowners) with 50 or fewer employees and is not to be confused with "small forest landowners" which has a distinct statutory definition.

The proposed rule does not result in any jobs being created or lost. However, as described above, the number of road construction jobs involved in doing RMAP work would be fewer in 2011-2016 and those jobs lost the first five years would be shifted forward into the last five years, when there would have been no RMAP-related jobs.

SUMMARY

The total potential benefit to large private forest landowners due to the ability to extend the RMAP deadline is estimated to be $11.1 million in net present value in current dollars. The actual benefit is likely to be less because it is likely that not all landowners will elect to apply for RMAP time extensions. An additional benefit is that landowners will avoid the costs associated with enforcement and/or compliance actions in cases where they are not able to complete RMAPs by 2016.

The main cost of the proposal is the delay in realizing the intended environmental benefits of RMAPs (the protection and restoration of water quality and fish habitat). The work associated with RMAPs would still be required to be done, but for some landowners would be spread over five additional years. The Board has determined, after assessing the environmental effects of the proposal along with other measures to ensure public resource protection that the proposed rule will not result in significant adverse impacts.

Therefore, it is reasonable to conclude that the probable benefits of the proposal are greater than its probable costs.

Two alternatives to adopting this rule were considered and rejected: tying the proposed RMAP time extension to economic indicators and providing a tax incentive for landowners to complete RMAPs work sooner during an extended period. For reasons explained in the “Least Burdensome Alternatives” section, they were rejected as being undesirable. The proposed rule change is not burdensome on the regulated community and it is less burdensome than the other alternatives.

There is no disproportionate cost impact on small businesses. Choosing whether to extend the RMAP performance period is voluntary on the part of the business (landowner).

The proposed rule does not result in any jobs being created or lost.