

December 20, 2006

How The Scientific Literature Review Process May Complement Proposed 2112 Regulation Implementation

Background:

The Board of Forestry and Fire Protection (Board) has convened a technical advisory committee (TAC) to help better inform the Board on matters related to the *Interim Threatened and Impaired Watershed Rules*. At the October, 2006 TAC meeting, subcommittees were formed to develop questions for a contractor¹ that will guide the examination and compilation of published literature on issues related to: heat transfer, wood transfer, sediment transfer, nutrient transfer, water transfer and biotic transfer. The contractor's work products will be forwarded to the Board upon completion. The Board may conduct public workshops to help evaluate the information presented by the contractor. After the workshop(s), the Board may choose to modify or append existing forest practice rules through its normal rule making process.

Agency/Department Perspectives:

With fewer rules being Forest District specific rules being passed by the Board, critics state that the rules may provide too much or too little protection in some cases, and does not account for site factors which might justify some other form of mitigation or impact avoidance strategy. The inclusion of an adaptive management/monitoring component that applies under both the T&I and 2112 rules, and coupled with an informative scientific literature review process will be a positive step to apply rules more site specifically.

Agency proponents of the 2112 rule package believe the TAC's scientific literature review should be conducted simultaneously with the 2112 rulemaking process. Review of the literature as it pertains to all forest practice rules (including the proposed 2112 rules) should not be considered mutually exclusive. Any relevant information resulting from the literature review and consideration by the Board can be used to modify proposed rules before or shortly after adoption, depending on the supporting evidence and policy direction of the Board. If in fact, any prescriptive rule or performance standard is shown to be inadequate or ineffective, the rule can be addressed by the Board, irregardless of whether or not the rule is a standard rule, T&I rule, or proposed 2112 rule.

If the Board chooses to adopt the 8/30/06 2112 rule package, no sunset provisions would be necessary because the new rules would address the protection for all anadromy. However, if the Board allows the T&I rules to sunset, the synchronization and processing of incidental take permits (ITPs) and timber harvesting plans (THPs) would be disrupted and decoupled without DFG adoption of their own 2112 rules. The Department of Fish and Game has determined that the T&I rule standards included in the 12/20/06 rule proposal should be considered the minimum requirements for issuance under F&G Code § 2081(b) for incidental take of coho salmon.

Secretary Chrisman's comments before the Fish and Game Commission and Board of Forestry in July, 2006 provide a clear road map for making real steps toward integration of CESA protections

¹ CDF intends to work with the TAC in developing a contract once the full scope of work has been identified and work projected can be accomplished within budgetary limitations.

for coho salmon into the regulatory procedures of the Forest Practice Rules. Based upon the Secretary's direction, both DFG and CDF have worked to harmonize the proposed coho regulations with existing Board rules. This harmonization has been presented to the Board at the special Board workshop in August and again at the full Board meeting in December (2006). The Department's continued position is that application of the T&I rules and 2112 enhancements should be viewed as a minimum starting place for meeting the incidental take permit issuance criteria under section 2081(b).