

# FPC Meeting Agenda September 2011

2. Review of Anadromous Salmonid Protection rules related to roads, and the Road Rules Task Force (RRTF) regulatory proposal.

## Nine Issues for Review Today:

- Issue 3 – Road Distance from Watercourse/WLPZs
- Issue 5 – Roads on Slopes Greater than 65%
- Issue 11 – Unstable Areas
- Issue 12 – Road Density
- Issue 16 – Definitions Edits
- Issue 19 – Maintenance Period
- Issue 24 – ASP Intent, Goals, Objectives, “Upstream Watersheds”
- Issue 29 – Road Maintenance in ASP Watersheds

## Staff Objectives

1. Complete review of as many of the nine issues from Issues Summary as possible today—preferably all nine.

### **Contingent upon completion of remaining issues at October meeting (i.e. Issue 18 and others not completed today):**

2. Seek FPC direction with review agency concurrence to prepare a “clean” draft of rule plead for review beginning at November FPC meeting.
3. Seek FPC motion for 45-day Notice of Rulemaking at November meeting with specified longer comment period.
4. Seek FPC direction to schedule rule plead review workshops and associated field visits contingent upon completion of objective #3.

## Issue Number 3 – Road Distance from Watercourse or WLPZs

### ➤ **§923.1(b) and §923.4(m) [p.27&39]**

#### Background:

- §923.1(b) – Proposed RRTF “technical” change to encapsulate portions of existing rule sections for road and landing use, construction, reconstruction in watercourses and WLPZs, but leave rules that apply to tractor roads in existing rule sections. Proposed change allows all logging road and landing-related use to be addressed in §923, *et seq.*
- §923.4(m) – Proposed RRTF new rule section that prohibits road construction or reconstruction across 100 feet or more on slopes greater than 65% or within 100 feet of WLPZ boundary on slopes greater than 50% that drain toward the WLPZ unless specific construction techniques or measures are described in the plan. “Technical” change to expand area of prohibition and require plan description appropriate to level of risk.

## Issue Number 3 – Road Distance from Watercourse or WLPZs

### ➤ **Status and Comment on Issue:**

- FPC rejected initial changes proposed by RRTF in March 2010 rule plead at May 2010 meeting.
- Commenter contends that Weaver and Hagens recommend minimum total distance between road and watercourse of 250 feet on slopes greater than 50%. Commenter suggests rule language of 923.4(m) be revised to expand minimum width from road to Class I WLPZ by 50 feet [comment 3 from Issues Summary].

### Staff Recommendation:

- **Carry issue forward for discussion in workshops and field visits.**

## Issue Number 5 – Roads on Slopes Greater than 65%

### ➤ § 923.2(a)(7) & 923.4(m) [p.34&39]:

#### Background:

- §923.2(a)(7) – RRTF proposal to carry over planning-related road rules to design and implementation road rule sections for sake of continuity and enforcement.
- §923.4(m) – Proposed RRTF new rule section that prohibits road construction or reconstruction across 100 feet or more on slopes greater than 65% or within 100 feet of WLPZ boundary on slopes greater than 50% that drain toward the WLPZ unless specific construction techniques or measures are described in the plan. “Technical” change to expand area of prohibition and require plan description appropriate to level of risk.

## Issue Number 5 – Roads on Slopes Greater than 65%

### ➤ **Status and Comment on Issue:**

- FPC has not reviewed this issue previously.
- Commenter contends that Meehan, and Weaver and Hagans recommend **not** locating roads on slopes above 50-55%. If roads are to be located on slopes above 60%, then full bench construction with no side cast is recommended. [comment 5 from Issues Summary].

### Staff Recommendation:

- **Carry issue forward for discussion in workshops and field visits.**

# Issue Number 11 – Unstable Areas

## ➤ **§§ 923.1(a)(5), 923.1(d)(3)(E) [p. 27 & 30]**

### Background:

- §923.1(a)(5) – RRTF “policy” and “technical” change with proposed new rule language to require minimizing activities on unstable areas and “connected headwall swales,” rather than complete avoidance.
- §923.1(d)(3)(E) – RRTF “policy” change to connect evaluation of sensitive conditions associated with watercourses and lakes to logging roads and landings. That would allow all logging road and landing-related use to be addressed in §923, *et seq.*

# Issue Number 11 – Unstable Areas

- **Status and Comment on Issue:** [comments 11-11C from Issues Summary].
- NMFS has proposed new rule language for §923.1(d)(3)(E) in addition to more general comments about the adequacy of Forest Practice Rules to protect anadromous salmonids.

Proposed new rule language for 923.1(d)(3)(E) as follows in blue font:

- (3)** The RPF shall consider the sensitive conditions and significant existing and potential erosion sites identified by sections 14 CCR § 923.1 [943.1, 963.1] subsections(d)(1) and (2), and the measures needed to maintain and restore, to the extent feasible, the functions set forth in 14 CCR § 916.4 [936.4, 956.4], subsection (b) when planning logging roads and landings. Key factors to consider as part of developing necessary measures include:
- (E)** The erodibility of hillslope material exposed by the road, **NMFS Option: including mass wasting potential of roads in unstable areas such as, but not limited to inner gorges and headwall swales.**

## Staff Recommendation:

- **Do not incorporate NMFS Option language. Existing language is already inclusive of all possible erosion sources, further specificity unwarranted.**

# Issue Number 11 – Unstable Areas

## ➤ **Status and Comment on Issue:**

- Additional comment that the rules need to clarify whether unstable areas are to be “avoided” or activities in unstable areas or headwall swales are to be “minimized.”

## Staff Recommendation:

- **Carry this particular comment/question forward for discussion in workshops and field visits.**

# Issue Number 12 – Road Density

## ➤ § 923.1(a)(1) [p.27]:

### Background:

- §923.1(a)(1) – RRTF “clerical, non-substantive” change to existing language of §923.(b) – see page 123 of current Forest Practice Rulebook. Existing and proposed RRTF language is virtually identical.

### ➤ **Status and Comment on Issue:**

- One commenter questioned whether or not this section is a “road density requirement?”
- A second commenter suggests that the road rules should address road density as it is a surrogate for watershed health.

### Staff Recommendation:

- **Carry issue forward for discussion in workshops and field visits.**

# Issue Number 16 – Definitions Edits

- § 895.1 [p.2-8]: Proposed Definitions:
  - DFG Option: “Inside Ditch Hydraulic Capacity” means the ability of an inboard ditch to contain flow from a runoff event without overflowing to the road surface or substantially downcutting the inboard ditch. [term used in DFG Option for §923.7(m)]
  - “Road Maintenance” means activities involving manipulation of the logging road prism to maintain stable operating surfaces, functioning logging road drainage facilities and structures, and stable cutbanks and fill slopes. DFG Option: Examples of road maintenance include shaping and/or rocking a road surface; *outsloping*, installation and maintenance of rolling and critical dips; restoring functional capacity of inboard ditches, cross drains, or culverts; and repairing water bars. [“outsloping” suggested for inclusion by commenter]
  - DFG Option: “Road Prism” means all parts of a road including cut banks, ditches, road surfaces, road shoulders, and road fills.
  - DFG Option: “Scour” means the process of erosion by flowing water.

# Issue Number 16 – Definitions Edits

## ➤ § 895.1 [p.2-8]:

### Staff Recommendations:

- **Endorse proposed DFG Option definition of “Inside Ditch Hydraulic Capacity” only if you intend to endorse proposed DFG Option for 923.7(m).**
- **Endorse proposed DFG Option for definition of “Road Maintenance” incorporating commenter’s suggestion for inclusion of word “outsloping.”**
- **Endorse proposed DFG Option for definition of “road prism.”**
- **Do not endorse proposed DFG Option for definition of “scour,” as the term is not used significantly anywhere else in rule proposal.**

# Issue Number 19 – Maintenance Period

## ➤ § 923.7 and 923.16 [p.53&76]

### Background:

- §923.7 – RRTF relied upon existing rule language without modification for prescribed erosion control monitoring and maintenance period.
- §923.16 – RRTF created this new section as a “clerical” change to apply existing monitoring and maintenance period standards to logging road watercourse crossings, specifically.

### ➤ **Comment on Issue:**

- One commenter suggested that the required maintenance period should extend beyond three years and that all permanent roads and crossings, “should be maintained throughout their useful life.” This comment was based upon review of the 1999 Scientific Review Panel Report, and the Weaver and Hagans publication: Handbook for Forest and Ranch Roads.

# Issue Number 19 – Maintenance Period

## ➤ § 923.7 and 923.16 [p.53&76]

### Staff Recommendation:

- **Staff agrees with the commenter that maintenance is a perpetual responsibility of the landowner. Staff would also suggest that the majority of forest landowners who actively manage their holdings fulfill this responsibility.**
- **Staff recommends that this issue be carried forward for discussion in workshops and field visits. However, it must be understood that the Forest Practice Rules can only be made to apply for the lifespan of the permitting document. While a Nonindustrial Timber Management Plan has a long lifespan, conventional Timber Harvesting Plans do not. This is a limitation that cannot be adjusted without statutory modification.**

## Issue Number 24 – ASP Intent, Goals, Objectives, “Upstream Watersheds”

### ➤ § 923 and 916.9 [p.13&22]:

#### Background:

- Proposed RRTF reorganization extracted road-related portions of ASP Rules, §916.9, and placed them in the new rule sections under §923. The express purpose for this was in keeping with the RRTF charge: to locate all road-related rules in one place and organize them into appropriate sections.

#### ➤ **Comment on Issue:**

- NMFS commented that all intent, goals and objectives language of ASP Rule sections, e.g. salmonid restoration, should also be incorporated into new Road Rules.
- NMFS and CGS proposed rule language modifications to **§923, Intent for Logging Roads, Landings, and Logging Road Watercourse Crossings**, as follows:

§923(a) All logging roads, landings, and logging road watercourse crossings in the logging area shall be planned, constructed, reconstructed, used, maintained, removed, abandoned, and deactivated in a manner that:

(1) Is consistent with long-term enhancement and maintenance of the forest  
NMFS Option: and aquatic CGS Option: natural resource.

## Issue Number 24 – ASP Intent, Goals, Objectives, “Upstream Watersheds”

### ➤ **§ 923 and 916.9 [p.13&22]:**

#### Staff Recommendation:

- **Do not adopt either proposed option: the existing RRTF language of “...is consistent with long-term enhancement and maintenance of the *forest resource*” [emphasis added] is adequately inclusive.**
- **As noted by CGS, both “fish and wildlife habitat” and “water quality and the beneficial uses of water are specifically identified in §923(b).**
- **The express purpose of RRTF effort was to locate and reorganize all of the road-related rules into one distinct location for the benefit of the regulated and regulator alike. The proposal does nothing to diminish the express intent of the ASP Rule Sections and adequately distinguishes rule sections that apply to ASP watersheds from those that apply to all other watersheds. Staff contends that duplication of ASP Rule intent in RRTF plead would begin to revert road-related rules back into rules indistinguishable from all other rules.**

## Issue Number 29 – Road Maintenance in ASP Watersheds

### ➤ **§ 923.7(m)(1) [p. 58-60]**

#### Background:

- **Proposed RRTF reorganization of Rule § 916.9(k)(5) to allow all logging road and landing-related use to be addressed in § 923.**
- **RRTF did not propose a change to existing language. DFG proposes optional language.**

# Issue Number 29 – Road Maintenance in ASP Watersheds

- **§ 923.7(m)(1) – Existing RRTF language as follows:**
- (m) In watersheds with listed anadromous salmonids and in planning watersheds immediately upstream of, and contiguous to, any watershed with listed anadromous salmonids, the following shall apply:
- (1) Grading logging roads or landings to obtain a drier running surface more than one time before reincorporation of any resulting berms back into the road surface is prohibited.

## Issue Number 29 – Road Maintenance in ASP Watersheds

### Proposed DFG Option: [§ 923.7(m)(1-5)] –

- (1) Inboard ditches shall be graded only when they are blocked or lack adequate inside ditch hydraulic capacity, or driver safety is a concern. Where feasible, blading the segment of ditch between the watercourse and first drainage facility shall be avoided.
- (2) Grading logging roads or landings to obtain a drier running surface more than one time before reincorporation of any resulting berms back into the road surface is prohibited. Grading of logging road surfaces shall occur only when necessary to achieve a uniform, stable, and well-drained operating surface. Grading logging roads or landings to obtain a drier running surface is prohibited.
- (3) The erosion control maintenance period on permanent and seasonal logging roads and associated landings that are not abandoned or deactivated in accordance with 14 CCR § 923.8 [943.8, 963.8] shall be three years.
- (4) All logging roads within the plan area and appurtenant to proposed operations shall be inspected:
  - (A) by the LTO at least twice annually – once outside the extended wet weather period, and at least once during the extended wet weather period following the first storm event producing bankfull stage and prior to completion of operations; Information produced for other permitting requirements may be used to satisfy this subsection.
  - (B) by the timberland owner during the same time periods for the remainder of the prescribed maintenance period. The inspection shall be started as soon as conditions permit access to ensure that drainage structures and facilities are functioning to hydrologically disconnect the road prism from waters. Inspection results and follow up corrective measures shall be documented and shall be provided to CAL FIRE.
  - (C) Forest floor discharge sites below the outlets of drainage facilities on all roads within the plan area and appurtenant to proposed operations shall be inspected by the LTO for evidence of sediment delivery to Class I, II, or III watercourses and lakes. If evidence of sediment delivery is present, additional cross drains, waterbars, or rolling dips shall be installed to reduce the discharge volume to the site.
- (5) Decommissioned roads shall be inspected following the first storm event producing bankfull stage after decommissioning and again prior to filing the completion report. The purpose of the inspection will be to verify the effectiveness of treatments in preventing sediment discharges to waters and to ensure treatments are functioning to restore natural drainage and hillslope stability. If treatments are found to be ineffective prior to the end of the prescribed maintenance period, further treatments shall be applied if the volume of sediment prevented from entering a channel by additional treatments is greater than that incurred by re-entering the site.

# Issue Number 29 – Road Maintenance in ASP Watersheds

## ➤ § 923.7(m)(1) -

### Staff Recommendation:

- **Retain existing RRTF language below without proposed DFG Option. Optional language is redundant to remainder of 923.7 and would likely be superseded by Regional WQ waiver and WDR storm event forensic inspection standards.**
- (m) In watersheds with listed anadromous salmonids and in planning watersheds immediately upstream of, and contiguous to, any watershed with listed anadromous salmonids, the following shall apply:
- (1) Grading logging roads or landings to obtain a drier running surface more than one time before reincorporation of any resulting berms back into the road surface is prohibited.

# Next Steps In Review Process

- **Finish up language review under Issue 18, “Watercourse Crossings,” and continue staff work on minor editorial modifications.**
- **Create “clean” version of plead with all options endorsed to date incorporated in standard plead format.**
- **Prepare draft 45-day Notice of Rulemaking for public circulation.**
- **Schedule workshops and field visits for comprehensive review of rule plead.**

## FPC Meeting Agenda September 2011

3. New and unfinished business, review of direction to staff.

Adjourn