## **Forest Practice Committee (FPC)**

The mission of the FPC is to evaluate and promote an effective regulatory system to assure the continuous growth and harvesting of commercial forests and to protect soil, air, fish and wildland, and water resources.

### **COMPLETED OR SUBSTANTIALLY COMPLETED IN 2022:**

**1. Class II-L Determination Amendments**

**Objectives:** The current regulatory methods for determining Class II-L watercourse status are set to expire on January 23, 2023, resulting in significant issues of clarity and consistency within the Rules. This expiration date was put in place to allow further evaluation of the efficacy of Class II WLPZ widths and operational requirements in relationship to Watercourse characteristics and achievement of the goals specified in 14 CCR §§ 916.9, 936.9, and 956.9 subsection (a). The Effectiveness Monitoring Committee proposal EMC-2015-001 investigated the variability of the relationship between drainage area, active channel width, and perennial flow extent across the Anadromous Salmonid Protection (ASP) area and compared the relationships derived in (a) to the rule criteria for Class II-L identification in terms of both drainage area and average active channel width to determine if these criteria are effective in identifying perennial Class II-L watercourses in different lithologies, or if rule modifications were needed. These studies and analysis were completed and presented to the Board in 2021. In general, the proposal identified that drainage area was a much better predictor of certain watercourse values promoted by the Board’s Class II-Large designation than average active channel width. Additionally, the proposal revealed that average active channel width was, in fact, a poor predictor of certain watercourse values promoted by the Class II-L designation. The proposed rule package eliminates the regulatory method of Class II-L determination based on average active channel width. The proposed action also eliminated the regulatory sunset period for methods to determine Class II watercourse type in order to avoid future issues of regulatory clarity or inconsistency.

**Status**: This rule package has been approved by OAL and will become effective January 1, 2023.

**2. Northern Spotted Owl Take Avoidance Pathways and Habitat Definition Updates**

**Objectives:** Several of the habitat definitions related to Northern Spotted Owl are derived from the USFWS 1992 “Protocol For Surveying Proposed Management Activities That May Impact Northern Spotted Owls” and are not present in the 2012 “Protocol For Surveying Proposed Management Activities That May Impact Northern Spotted Owls”. In addition, some mechanisms for take avoidance as described in §§ 919.9 and 939.9 are no longer in effect. The definitions and take avoidance pathways should be updated to reflect current regulatory requirements from the Department and listing agencies.

**Status**: The Committee recommended rule text for Board consideration in September 2022. The 45 day notice has been submitted, and is under OAL Review. The Board anticipates effective regulations by January 2024.

**3. Spotted Owl Resource Plan Amendments**

**Objectives:** As written, the definition of “Spotted Owl Resource Plan” does not include non-industrial timberlands such as those covered by an NTMP or WFMP. The definition should be amended to reflect that this resource plan is open to all timberland landowners.

**Status**: This rule package has been approved by OAL and will become effective January 1, 2023.

**4. Notice of Intent Amendments**

**Objectives:** The Board should amend the paragraph ““A Notice of Intent shall include the following information: The acres proposed to be harvested. The regeneration methods and intermediate treatments to be used.” to include all acres where timber operations will occur, not just the area where timber will be harvested. In doing so, the Board should consider the current definition of logging area and the lack of a definition of plan area.

This requires stating the regeneration methods and intermediate treatments to be used. This paragraph may not capture all possible treatments that may occur, e.g., special prescriptions and other types of associated timber harvesting, such as road right-of-way or timberland conversion.

**Status**: This rule package has been submitted to OAL and is currently under review. If approve, it will become effective January 1, 2023.

**5. Substantially Damaged Consistency Amendments**

**Objectives**: Between these two provisions (14 CCR §§ 895.1 and 913.8), there exists an issue of clarity and consistency regarding what stocking requirements apply on Substantially Damaged Timberlands within the Southern Subdistrict of the Coast Forest District. Special Harvesting Methods in the Southern Subdistrict includes an exclusive list of stocking requirements, however the definition for and provisions of Substantially Damaged Timberland allow for stocking standards which are not included within the exclusive list in 14 CCR § 913.8

**Status**: This rule package has been approved by OAL and will become effective January 1, 2023.

**6. Santa Cruz and San Mateo Weekend Emergency**

**Objective**: To extend the allowed days of operation of chainsaws and other power-driven equipment within, and the hauling of forest products from, Timberland affected by the CZU Lightning Complex Fire of 2020 in Santa Cruz and San Mateo Counties in response to requests from those counties, as well as timber operators in those counties.

**Status**: The Board responded to requests from these stakeholders to provide temporary regulatory relief to facilitate fire cleanup efforts through the adoption of emergency regulations in May of 2021 to extend allowable periods of timber operations in these counties to include Saturdays and Sundays. These regulations were submitted to the Office of Administrative Law (OAL) on May 21, 2021 and became effective on May 26, 2021. The regulations expired on September 22, 2022.

**7. Emergency Notice RPF Amendments:**

**Objective**: The December 23, 2019 “Report On Emergency Notice Of Timber Operations Monitoring Results And Exemption Notice Use” identified sites of surface erosion and sediment delivery which resulted from Emergency Notice Timber Operations. The report indicated that Forest Practice Rule non-compliance and the lack of RPF involvement in those operations may have been contributing factors to those sites. The Committee reviewed these findings and associated regulations for opportunities to improve operational outcomes and overall compliance in Emergency Notice Timber Operations.

**Status**: The Board adopted emergency regulations titled “Emergency RPF responsibilities” to modify existing Emergency Notice processes to address the current needs for improved compliance with the Rules in all Emergency Notice timber harvests. The rulemaking requires the Timber Owner or operator retain an RPF to provide professional advice and that the RPF be present on site at a sufficient frequency to know the progress of operations and advise the Timber Owner or LTO. The increased presence of the RPF and subsequent increase in compliance and implementation of the Rules was intended to avoid impacts to water quality resulting from non-compliance. The rulemaking additionally addressed potential inadequacies of fuel treatment timelines and wildfire risks in the Emergency Notice for Fuel Hazard Reduction. The emergency regulations were adopted by the Board in July, 2021, submitted to OAL on July 29, 2021, and were approved on August 5, 2021. The Certificate of Compliance was approved on May 5, 2022. Permanent regulations will become effective January 1, 2023.

### **Priority 1 for 2022:**

**1. 14 CCR § 917.2 [937.2, 957.2] Treatment of Slash to Reduce Fire Hazard [All Districts]**

**Objective**: At least one CAL FIRE Unit has identified the timing and extent of Slash treatment as contributing to additional hazardous fuel conditions. In one documented instance on the Dixie Fire this year, multiple Slash piles created by Timber Operations that had been awaiting chipping for multiple years adjacent to a public road were ignited and became part of the fire. Regulations related to hazard reduction should be evaluated for efficacy.

**Status**: The Committee has begun deliberation on this item

**2. Review of Forest Practice Northern Spotted Owl (NSO) Rules:**

**Objective:** The FPC recommended publication of a 45 Day Notice of Rulemaking for the “Activity Center Definition” rule proposal in 2013. The Board subsequently authorized the publication of the 45 Day Notice. However, publication was postponed as the Fish and Game Commission considered a petition requesting in state listing of NSO. The Commission accepted the petition and has determined that state listing for the NSO is warranted.

The FPC discussed the issue of NSO extensively during 2022. Two rulemaking packages “Spotted Owl Resource Plan Amendment” and “Northern Spotted Owl Habitat Definitions and Take Avoidance Mechanisms” were approved for full board consideration, the first has been accepted by OAL and will go into effect in 2023, the second has been approved for noticing.

Currently, CAL FIRE, CDFW, and USFWS are developing tools to assist timberland owners with conserving NSO and their habitat. The Forest Management Task Force’s “California’s Wildfire and Forest Resilience Action Plan” requires the Board to assist in this effort through the development of a strategy to incorporate the management of Barred Owl intrusion into Northern Spotted Owl habitat.

**Status**: The Board continues to gather information related to this issue but has not begun to address Barred Owl intrusion as of 2022.

**3. 14 CCR § 1034, Contents of Plan:**

**Objectives:** 14 CCR § 1034(r): How are the requirements of 14 CCR § 1032.7(f) to be met? The reference to 1032.7(f) is obsolete since it refers to the past requirement that the RPF distributes and publishes a copy of the NOI.

14 CCR § 1034(x)(7): On a plan map, show the location of all crossings of classified watercourses except temporary crossings of Class III watercourses without flowing water during timber operations. The Board should consider revising 1034 to make Class III watercourse crossings a required mapping feature within a Plan.

The Board should consider amending 14 CCR § 1034 when it adopts or amends any rule that adds elements that are considered a required portion of a harvesting plan. This ensures a central location where the RPF can find essential information that must be included in a harvesting document. The Board may want to consider a rule package that consolidates all required plan contents under 14 CCR §§ 1034, 1051, 1090.5, and 1092.09.

The Board received a comment in response to its 2019 Annual Call for Regulatory Review that expresses concern over a lack of proper proof of ownership on Timber Harvest Plans or other harvesting permits. Parcel numbers or other proofs of ownership are not generally required but may assist in long-term tracking of ownerships, as well as inspection and enforcement.

The Board should consider adopting regulatory standards for digital mapping submission requirements in timber harvesting documents, including geospatial data, LiDAR, or other remote sensing systems.

**Status**: The Committee began discussion on this item in January 2020, but logistical demands imposed by the COVID-19 situation saw the item removed from further agendas.

**4. Watercourse and Lake Protection Rule Review (14 CCR § 916):**

**Objectives:**

* Mapping of Class III Watercourse crossings. Language in 14 CCR §§1034(x)(7) and 916.4 [936.4,956.4] needs to be considered and potentially reconciled for purposes of consistency.
* Review the necessity and utility of assessing and mapping standards of 14 CCR § 916.4 for spawning and rearing habitat for anadromous salmonids.
* Consider revision of watershed restoration standards.
* Consider examination of watercourse protections and potential new rules that allow for vegetative fuel reduction, mosaic vegetation patterning, scarified soil created by machinery and fuel discontinuity to better protect watercourse related resources during fire events.

**Status**: No reportable action in 2022.

**5. Addition of Botanical Resource Considerations to the Forest Practice Rules**

**Objective:** CDFW requests that the Board prioritize strengthening the Forest Practice Rules to include specific rules for botanical resources. CDFW initially made this request to the Board in November 2018, and it was further supported by a related presentation at the May 2019 Board meeting in Chico.

The Forest Practice Rules contain no botany-specific regulations. Instead, the timber harvesting process relies on guidance documents written by CDFW and CAL FIRE to fill in the regulatory gaps. The omission of scoping, mitigation, and management practices for botanical resources creates regulatory uncertainty and results in avoidable impacts to these resources. Augmenting the Forest Practice Rules would provide clear direction to applicants prior to plan submittal, reduce plan review time, and lead to more flexible management strategies for these resources. CDFW is ready to collaborate with the Board and stakeholders to develop rules for the disclosure and protection of California’s botanical resources.

**Status**: The Committee evaluated several options for addressing this issue in 2022, including a potential guidance document, and has chosen to table the issue incumbent on input from other agencies.

### **PRIORITY 2 FOR 2022:**

**1. Challenges Associated with Discretionary Elements in Ministerial Projects**

**Objective:** Exemptions and Emergency Notices are ministerial notices accepted by the Department that are bound by prescriptive standards for protection of natural and cultural resources. The Department has a short timeframe in which to conduct a ministerial review of the notices and determine whether to accept them. Despite their ministerial nature however, not every notice is devoid entirely of a discretionary element. In certain instances, there are also rule standards for these notices that direct or imply discretion by the Department.

**Status**: The Committee has not begun deliberation on this item.

**2. 14 CCR § 915.4 [935.4, 955.4] Site Preparation Addendum [All Districts]**

**Objective**: At least one CAL FIRE Unit has identified the concern that certain Site Preparation Addendums drafted by RPFs are not consistent with the definition of “Site Preparation” in 14 CCR § 895.1. This has caused some timberland owners and RPFs to believe that silviculture objectives may be achieved by Timber Operations after the harvest document has expired. It is difficult for a CAL FIRE Forest Practice Inspector to enforce the Forest Practice Rules on an expired harvest document. Completion reporting requirements should be evaluated and potential regulatory solutions considered.

**Status**: The Committee has not begun deliberation on this item.

### **PRIORITY 3 FOR 2020:**

**1. Regulatory Amendments to 14 CCR § 1032.10 – Request for Domestic Water Supplies:**

“The THP submitter shall provide notice by letter to all other landowners within 1,000 feet downstream of the THP boundary whose ownership adjoins or includes a Class I, II, or IV watercourse(s) which receives surface drainage from the proposed timber operations. The notice shall…”

**Objectives:** CAL FIRE has requested the following items be potentially addressed regarding Notice of Timber Operations:

* Overland flow or channel flow.
* Publication may need to be given in a newspaper of general circulation. CAL FIRE assumes this requires notification as defined in Government Code §§ 6000-6027.
* A tie should be made with the requirement to provide protection to domestic water supplies, as required per 14 CCR § 916.10 [936.10, 956.10].
* Require more current notification in which the post-marked date is no more than one year prior to submittal of the plan.
* Does a plan have to be returned if the RPF requests an exemption from one of the noticing requirements and CAL FIRE does not accept the request? The rule requires at least ten days passing after notification before submission of the plan.

Additionally, some stakeholders have requested a shortening of this period from 10 to 5 days.

**Status**: No reportable actions were made on this topic in 2022.

**2. Review of Stocking Reporting & Procedure**

**Objective:** Evaluate current stocking sampling regulations in regard to their application within very small, or partially harvested, logging areas.

Evaluate silvicultural requirements for restoration of areas not normally bearing commercial species provided that these areas are excluded from stocking requirements.

**Status**: The Committee has not begun deliberation on this item.

**3. Geospatial Completion Reporting Requirements for Exemption and Emergencies**

**Objective:** Evaluate the value of required improved geospatial reporting for all timber harvesting activities to allow state agencies and research institutions an opportunity for improved assessment of ecological performance measures.

**Status**: The Committee has not begun deliberation on this item.

**4. Review of Regulations pertaining to Archaeological Training, Identification and Protection of Sites (14 CCR § 929 et seq.)**

**Objective**: CAL FIRE indicates that existing Board regulations are not clear in terms of when a 5-year refresher training course for identification and protection of archaeological resources must be completed. It is recommended to review the existing rules to determine if further regulatory clarity or protection of these resources could be achieved.

Additionally, CAL FIRE has archaeological or historical sites along appurtenant roads that are not specifically associated with the commercial harvesting of forest products, but are associated with operations such as road construction, re-construction or maintenance. Considering these findings, CAL FIRE has requested a review of the definitions of Site Survey Area and Logging Area, balanced against the definition of timber operations in PRC § 4527, to address the issue of potential impacts to archaeological resources located along appurtenant roads where commercial harvesting is not occurring.

Comments have been received which request review of archaeological coverage mapping rules within 14 CCR § 895.1 to consider excluding existing sites which are not significant.

Furthermore, comments have been received which request a reduction in the required 10-day period between Native American notification and plan submission.

**Status:** No reportable actions were made on this topic in 2021.

**5. Road Construction Restrictions**

**Objective:** Evaluate regulations related to the construction of roads used in Timber Operations under permitting vehicles other than the THP for the purposes of thinning and fire prevention.

**Status**: The Committee has not begun deliberations on this issue.

**6. Board Policy Review:**

**Objective**: The Board currently has many policies in place, some dating back decades. The Board aspires to review and contemporize all policies and make them available to the public via the Board’s website. Board policies cover a myriad of topics; committee assignment of this ongoing policy review will be based upon the subject matter of the individual policy under review.

**Status:** Ongoing.

**7. Revision of Emergency Notice for Fuel Hazard Reduction**

**Objective:** Evaluate requirements that an RPF develop fuels treatments to meet the objectives of a community fuelbreak area (per 14 CCR § 895.1) or other objectives which have the written concurrence of a public fire agency.

Additionally, evaluate the current regulatory effective period of an emergency notice (1 year) for efficacy and suitability of modern Emergency Notice timber operations.

**Status:** The Committee has not begun deliberation on this item.

**8. Review RPF Marking Requirements**

**Objective:** Evaluate existing requirements for RPF tree marking & sample marking where narrative descriptions and operator selection may improve operational efficiencies.

**Status:** The Committee has not begun deliberation on this item.

### **RESULTS OF THE 2022 CALL FOR REGUALTORY REVIEW**

1. **Tractor use in Cable Yarding Section 914.3 [934.3, 954.3](e)**

**Objective:** Prior to amendment of this rule section, it was common in the Coast Forest District for RPF’s to propose exceptions pursuant to this former rule section, particularly to allow for tractor yarding in areas of poor deflection and hard to reach corners in cable corridors. As a result of the amendments to this section and 14 CCR § 914.2(f)(5), the RPF may not propose alternatives to § 14 CCR 914.2(f)(5) and tractor yarding, either tethered or non-tethered, may not be used in areas designated for cable yarding.

CAL FIRE Unit and Region Forest Practice staff have heard concerns expressed by RPFs of record on harvesting plans about the implications of this rule change. As previously noted by the Department, it appears there may have been an unintended consequence in adoption of the amended language excluding use of tractors for yarding in cable settings. To ensure the regulated public is afforded an opportunity to express their perspectives on this matter, the Department suggests the Forest Practice Committee place this topic on its agenda for discussion at a future meeting. This would allow for a full vetting of the concerns heard by the Department and provide an opportunity for closure of the matter.

2. **“Ford” and other related crossings Definitions**

**Objective:** Although the term “ford” was defined as part of the Road Rules 2013 package, the definition is somewhat ambiguous which has led to confusion in the field. The definition in 14 CCR 895.1 states: Ford means a Logging Road Watercourse crossing where the road grade dips through the Watercourse channel. This definition is ambiguous because it is not clear whether it means where the road grade dips through the native watercourse channel, or whether it may include flowing water across a constructed dip in the road grade, which is designed to act as the watercourse channel.

Many THPs use the term “ford” to refer to any crossing where the watercourse is intended to flow across the roadway, whether in its native channel or a constructed dip. At least one industry road manual, which is commonly used by RPFs, uses the term “ford” to encompass both of the “Rock-fill crossing” and “Rock-armored crossing” in the 100-yr Crossing Manual. The Handbook for Forest, Ranch, and Rural Roads uses still another set of definitions.

The inconsistent terminology leads to confusion in the field, where the RPF writing the THP may envision one type of crossing, the agency inspector reviewing the plan may envision another type of crossing, and the operator implementing the plan may envision something entirely different from either the RPF or agency reviewer.

3. **Emergency Notice Expiration Term**

Proposed change to the existing rules would be to make emergency notices a two year expiration term rather than 1 year with a 1 year extension. With the shortages of available logging capacity it is very difficult to schedule or even find logging capacity. A two year time period would help alleviate those difficulties.

4. **“Operational provisions” as used in Exemptions (14 CCR 1038) and Emergency Notices (14 CCR 1052(b) and 1052.5(b)), and “applicable provisions” as used in Conversion Exemptions (14 CCR 1104.1)**

Forest Practice Rules Exemption and Emergency Notice sections state that "Timber Operations … shall comply with all operational provisions of the FPA and District Forest Practice Rules applicable to 'Timber Harvest Plan', 'THP', 'and Plan'…" but neither “Operational provisions” as used in Exemptions and Emergency Notices, nor “applicable provisions” as used in Conversion Exemptions, is defined. The lack of any definition creates problems both for operators who must work without clear direction and for agency staff since the terms, lacking clear definitions, are difficult to enforce.

The State and Regional Water Boards suggest the Board of Forestry should either A) define which provisions are “operational” and “applicable” or B) direct the Department to create a list of “operational” and “applicable” provisions to be distributed to the regulated public and the agencies.

**5. Regulatory Review Issue #3: “Approved Watercourse crossings” as used in Anadromous Salmonid Protection Rules Exemption and Emergency Notices (14 CCR 916.9(s)(4) and 14 CCR 916.9(t)(4)).**

Emergency Notices of Timber Operations at times necessitate the construction or reconstruction of roads and watercourse crossings in order for the activity to occur. The language in these sections for the Forest Practice Rules requires the approval of watercourse crossings, by a process outside of the Emergency Notice authorization. It is unclear how a watercourse crossing is approved, and which agency provides approval under exemption and emergency notice ministerial permits. Board of Forestry and Fire Protection staff stated in the Final Statement of Reasons for the ‘Emergency Notice Fuel Treatment and RPF Responsibilities,’ March 2022, that the approval of watercourse crossing construction or reconstruction activities is delegated to the California Department of Fish and Wildlife (CDFW).” If that is the BOF’s intent, it should be stated explicitly rather than simply inferred.

This delegation to CDFW, however, does not recognize that road or watercourse crossing construction or reconstruction activities conducted under an Exemption or Emergency Notice project would also require approval from the Water Board. Watercourse crossing construction and reconstruction is likely to place earthen material within the watercourse and to create discharges of sediment to waters of the state, which requires regulatory authorization as part of a Water Board permit. To avoid potential confusion with applicants, this section should include not only explicit reference to CDFW approval, but also Water Board approval.

The State and Regional Water Boards suggest 14 CCR 916.9(s)(4)and 14 CCR 916.9(t)(4) state explicitly what constitutes an “approved Watercourse crossing” and from where the approval is derived. The BOF should consider modifying the Forest Practice Rules to address the void in regulatory coverage for road and watercourse crossing construction or reconstruction activities that are not currently authorized under an Emergency Notice.