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Timber Harvesting on Private Lands: The Washington Timber– Fish–Wildlife Agreement

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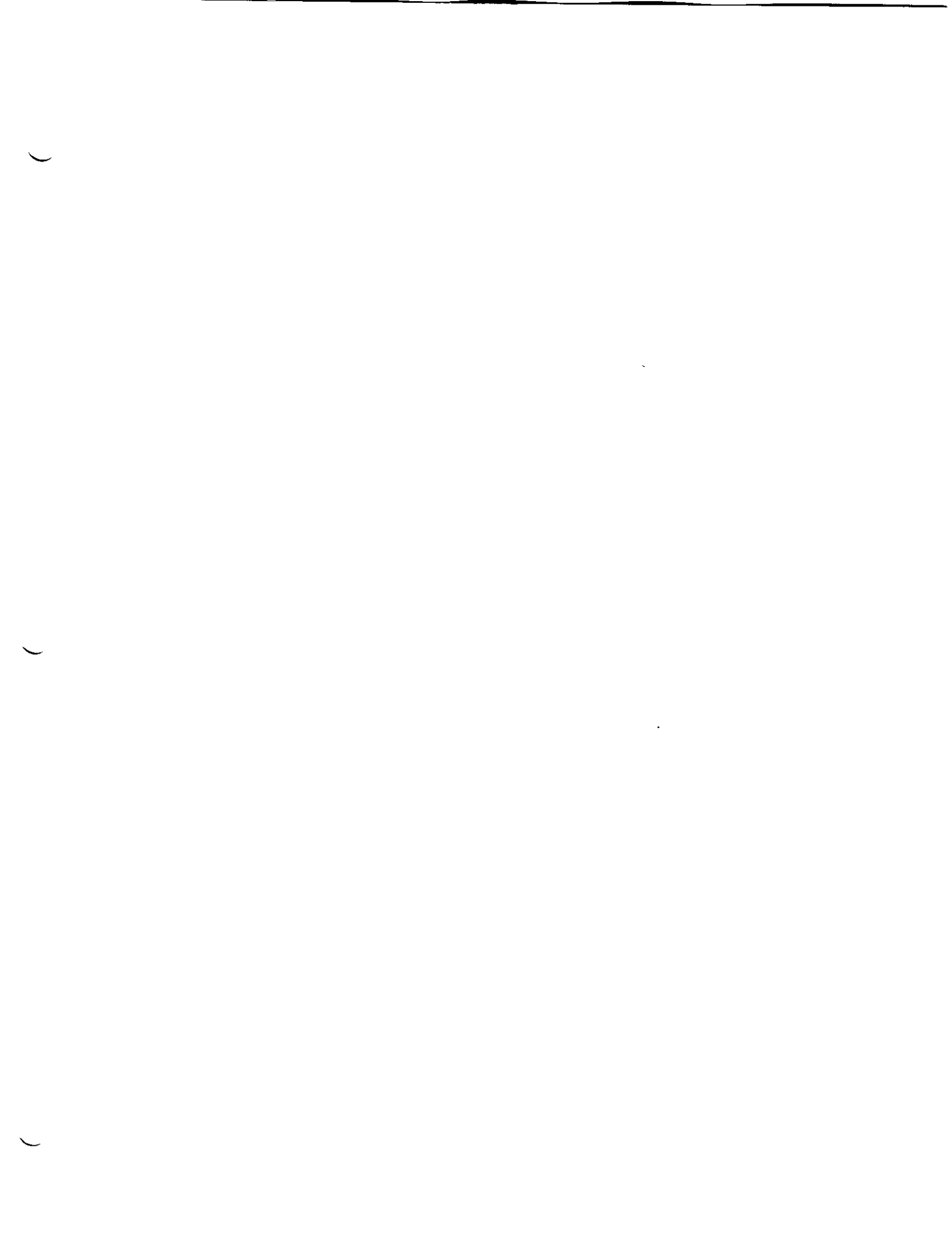
**TIMBER HARVESTING ON PRIVATE LANDS:
THE WASHINGTON TIMBER - FISH - WILDLIFE AGREEMENT**

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**WATER QUALITY CONTROL: INTEGRATING BENEFICIAL
USE AND ENVIRONMENTAL PROTECTION**

A Short Course Sponsored by the
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**TIMBER HARVESTING ON PRIVATE LANDS:
THE WASHINGTON TIMBER - FISH - WILDLIFE AGREEMENT**

John P. McMahon

I. Introduction

A. Summary

The 1974 Washington Forest Practices Act has multiple goals, including improving the economic contribution of the state's commercial forest lands, while at the same time protecting public resources, including water, fish and wildlife. Since 1974, regulation of forest practices on private and state land in Washington state has been characterized by increasingly prescriptive regulations encompassing almost all aspects of forest management. Recently the forest industry, treaty Indian tribes, environmental groups and state agencies have developed an alternative process for resolving site-specific resource management conflicts that does not solely depend upon forest practices regulations. This process has as its guiding objective an intent to

maximize the productivity of all of the state's natural resources, principally timber, fish, and wildlife. It represents an innovative approach to solving resource management conflicts, unique in the United States at this point in time.

B. General References

1. Forest Practices Regulation

Washington State Forest Practices Board, "Washington Forest Practices Rules and Regulations" (1988)

Washington Department of Natural Resources, "Forest Practices Rules and Regulations, Draft and Final Environmental Impact Statements" (1987)

Washington Forest Practices Act, Chapter 76.09.040 RCW (1974)

Washington Hydraulic Code, Chapter 75.20.100 RCW (1949)

Waldo, "Timber-Fish-Wildlife, a Better Future in Our Woods and Streams, Final Report," Northwest Renewable Resources Center, Seattle WA 98104 (1987)

Washington State Environmental Policy Act, Chapter 43.21C.020 (1971)

Ice, "Procedures for Assessing the Effectiveness of Best Management Practices in Protecting Water and Stream Quality Associated with Managed Forests," Technical Bulletin No. 538, National Council of the Paper Industry for Air and Stream Improvement, Inc., New York NY 10016 (1988)

Dick, "Washington State Pioneers New Management Approach," Journal of Forestry (August, 1987)

2. Forestry Environmental Research and Interactions

Salo and Cundy, "Streamside
Management: Forestry and Fishery
Interactions," University of Washington
College of Forest Resources (1987)

Brown, "Management of Wildlife and Fish
Habitats in Forests of Western Oregon
and Washington." USDA Forest Service,
Pacific Northwest Region (1985)

Geppert, Lorenz, and Larson,
"Cumulative Effects of Forest Practices
on the Environment," Department of
Natural Resources, Olympia WA 98504
(1984)

"Forest Riparian Habitat Study,"
Department of Natural Resources,
Olympia WA 98504 (1984)

Thomas, "Wildlife Habitats in Managed
Forests, the Blue Mountains of Oregon
and Washington," Agriculture Handbook
No. 553, USDA Forest Service (1979)

II. Background

A. The Washington Forest Practices Act

1. While the State of Washington required reforestation of private lands as early as 1945, and prior to that time regulated forest fire protection, the Washington Forest Practices Act that was enacted into law in February 1974 represented a significant milestone in regulation of forest practices on private lands in the state. For the first time the scope of forest practices regulation was expanded to include protection of public resources, water, fish, wildlife and public capital improvements.

2. Authority to promulgate forest practices regulations was vested in an (11) member Forest Practices Board, with responsibility for enforcement assigned to the Department of Natural Resources and with the Department Ecology given a back-up enforcement role for water quality protection if

the Department of Natural Resources fails to enforce regulations pertaining to water quality.

3. With few exceptions, responsibility for forest practices regulation was reserved to state government, and county authority to regulate forest practices was explicitly limited.

4. The Forest Practices Act established four classes of forest practices with increasing degrees of potential for environmental impact. The Forest Practices Board determines via regulations, the types of forest practices that fall into each of the four classes. Class IV forest practices which have the potential for substantial impact on the environment require an evaluation by the DNR as to whether a detailed environmental statement must be prepared pursuant to the State Environmental Policy Act, (SEPA, RCW 43.21C).

B. The Evaluation of Forest Practice
Regulations, 1975-1986

1. The initial set of regulations under the Forest Practices Act were promulgated in January 1975, with major revisions adopted in June 1976 based upon the recommendations of an advisory committee, and following six public hearings across the state.

2. In January 1979, a county superior court decision in the case of Noel vs. Cole found that the Forest Practices Board's definition of the Class IV forest practices was too restrictive, and did not provide for adequate review, under the State Environmental Policy Act (RCW 43.21C) of those practices that had the potential for a substantial impact on the environment. The Forest Practices Board then appointed a technical committee to examine thirteen priority subject areas and make recommendations for further regulation, including operations on unstable slopes in domestic watersheds,

and those affecting fish hatcheries and critical wildlife habitat.

3. Following the technical committee's report, the Forest Practices Board developed proposed rule changes in October 1981, and after nine public hearings adopted several substantive changes to the regulations in June 1982, with emphasis on:
 - . Road construction and road maintenance practices
 - . Water quality protection for both fisheries and domestic water supply purposes
 - . Application of forest chemicals
 - . Protection of threatened or endangered species
4. At the time of the June 1982 revision to the regulations, the Forest Practices Board identified two subject areas that required further study,

riparian habitat, and cumulative effects of multiple forest practices. Subsequently, the Board authorized a new technical committee to examine riparian habitat requirements in-depth from both a fisheries and wildlife perspective and assess how riparian habitats are affected by forest practices. Secondly, the Board contracted with a consultant to develop background information and recommendations on the subject of cumulative effects.

5. In April 1985, the riparian habitat technical committee published their report and in June 1985, the Forest Practices Board directed the Department of Natural Resources staff to develop alternative forest practices regulations to provide for increased protection of riparian habitat. In February 1986, following two workshops with the technical committee, the Board adopted proposed rules, initiated preparation of a draft EIS and solicited public comment. However, the

proposed rules did not, at that point, reflect a consensus among Board members.

III. The Timber - Fish - Wildlife Agreement

A. Dissatisfaction with the February 1986 regulation proposal led several directly affected interest groups to meet for a three-day retreat in July 1986 to determine if a better solution to resource management conflicts could be found, rather than adopting the regulations then being proposed by the Forest Practices Board. The groups participating in this session included representatives of forest landowners, treaty Indian tribes, environmental groups and the state Departments of Natural Resources, Fisheries, Wildlife and Ecology. This group became known as the Timber-Fish-Wildlife Group, and after adopting an agreed-upon set of goals, met more than 60 times during the last half of 1986, and developed a series of recommendations to the Forest Practices Board and the state resource management agencies.

B. The goals of the Timber-Fish-Wildlife Group were to:

1. Provide the greatest diversity of habitats (particularly riparian, wetlands and old growth) and to assure the greatest diversity of species within those habitats for survival and reproduction of enough individuals to maintain the native wildlife of Washington forest lands.
2. Provide long-term productivity for natural and hatchery fish and the protection of hatchery water supplies.
3. Provide water quantity and quality needs for people, fish and wildlife.
4. Inventory, evaluate, preserve and protect traditional cultural and archaeological spaces in managed forests and assure tribal access.

5. Provide continued growth and development of the forest products industry and long-term productivity of the public and private forest land base.

C. The recommendations presented to the Forest Practices Board by the Timber-Fish-Wildlife Group in December 1986 included improvements in administrative procedures, provision for accomplishing some goals through voluntary cooperation, and specific changes in the forest practices regulations.

D. Administrative improvements included:

1. Reorganizing Department of Natural Resources staff to strengthen field inspection and enforcement.
2. Expanding the use of inter-disciplinary teams of fish and wildlife biologists, geologists, and forest engineers to perform site-specific reviews of complex or high-risk forest practices.

3. Establishing a process for cooperative monitoring and evaluation of forest practices, and cooperative research to assess the effects of forest practices on other resources and identify ways in which both forest management and fish and wildlife management can be successfully accomplished. It was the intention of the Timber-Fish-Wildlife Group and the Forest Practices Board that monitoring, evaluation and research be the means of addressing questions such as cumulative effects in an objective manner, and would form the basis for future modifications to the forest practices rules and regulations where warranted.

E. Voluntary provisions of the Timber-Fish-Wildlife Agreement include:

1. Sharing of resource management plans for a particular watershed among interested state agencies, treaty tribe and environmental group representatives and major forest land-owners, as a means of allowing each party to under-

stand each other's management plans in advance of the time when an actual forest practices application is filed.

2. Reserving small, scattered and low value areas of timberland from timber harvest as a means of providing some older age class timber to enhance wildlife habitat and species diversity.

F. Specific changes in the forest practices regulations implemented by the Forest Practices Board on January 1, 1988 as a result of the Timber-Fish-Wildlife process include:

1. Establishing expanded minimum widths and leave tree requirements for riparian zones adjacent to fish-bearing streams to improve habitat for wildlife as well as fish.
2. Further strengthening regulations regarding road construction, road maintenance, and road abandonment to reduce risk of adverse affects on water quality and fish and wildlife habitat

due to road failures, erosion and sedimentation.

3. Strengthening the protection of riparian zones and streams from aerial application of herbicides and insecticides.
4. Providing additional time for the Department of Natural Resources to approve or disapprove some forest practices to allow for on-site evaluation and modification of proposed actions if necessary.

IV. Expectations and Experience to Date

- A. The expectations of the participants in the Timber-Fish-Wildlife Agreement can be summarized as follows:

1. Forest landowners

The forest landowners, as the group directly affected by the forest practices regulations, wanted any new rules and regulations to be opera-

tionally and economically feasible. Secondly, they saw in the T-F-W Agreement a means of building stability into the regulatory process, and increasing the likelihood that future regulations would be based upon the results of monitoring and research. They also believed that the T-F-W process offered an opportunity to promote better understanding of each other's objectives among all of the state's natural resource managers.

2. Treaty Indian tribes

The Washington treaty tribes, whose historical fishing rights are protected by treaty and were reaffirmed by the Boldt decision (U.S. vs. Washington), were primarily interested in securing a stronger participatory role in the state forest practices regulation process and in having a means of discussing their interests in watershed management with the major forest landowners. They also wanted to feel confident that the responsible state

agencies were protecting tribal interests in watershed management as it related to the productivity of the anadromous fisheries resource.

3. State environmental groups

The principal environmental groups in Washington state, represented by the Washington Environmental Council and the Audubon Society, wanted to see specific provision made for protecting riparian habitat and in strengthening habitat protection for nongame wildlife. They also wished to see a more formalized inter-disciplinary review of some forest practices, with more state agency authority to modify or condition forest practices applications where deemed necessary to protect public resources.

4. State Fisheries and Wildlife Agencies

The state Departments of Fisheries and Wildlife, while having been involved in review of forest practices applications

for several years, and having participated in the development of forest practices regulations, wanted improved protection of riparian habitat, and reduced risk of road failures due to sub-standard road construction or maintenance practices. They also wished to have an opportunity to participate on inter-disciplinary forest practices review teams and to review and comment on the operating plans of the major forest landowners in advance of having to act on specific forest practices applications.

5. The Department of Natural Resources

As the agency responsible for administration and enforcement of the forest practices regulations, the DNR wished to fulfill the expectations of the Forest Practices Board, the tribal and environmental groups, and other state agencies in having new regulations and procedures adopted that would address the needs identified by the riparian habitat and cumulative effects

studies. Secondly, this agency needed to strengthen its lead role in administration and enforcement of the forest practices regulations, while at the same time fulfilling its responsibility under the Forest Practices Act to encourage productive private timberland management while simultaneously protecting public resources.

B. Experience to-date with the Timber-Fish-Wildlife Agreement

1. The Timber-Fish-Wildlife Agreement was concluded on February 17, 1987. The associated revised forest practices regulations were adopted by the Forest Practices Board on November 2, 1987, and became effective on January 1, 1988. Since that time there have been several tangible examples of landowner-agency-tribal and environmental group cooperative efforts that have taken place, including:

- . Forest industry sponsored briefings on the T-F-W Agreement

and the new regulations for forest landowners.

- . Training sessions for agency personnel as well as landowners, tribal biologists and environmental group representatives conducted by the Department of Natural Resources.

- . Development of the riparian habitat regulations for eastern Washington was completed through the joint efforts of an interdisciplinary team of foresters and biologists from the forest industry, Colville and Yakima tribes, and the state agencies.

- . Several operating plan reviews for the T-F-W participants have been conducted by industry forest managers.

- . Numerous on-site inspections of riparian zone and road location plans have been conducted by inter-disciplinary teams.
 - . The monitoring, evaluation and research committee has been established.
2. In the relatively brief period of time since the T-F-W Agreement has been in effect, the initial phases of implementation have proceeded as expected. Where there have been problems with interpretation of the Agreement intent, they have been resolved through concerted effort by the parties. To-date there has been a consistent effort made to make the Agreement work and none of the parties has lost interest in, or reduced their commitment to the process. In fact, there is a high degree of pride among the participants that this is the first example in the country where the forest industry and the environmental community and state agencies have developed a process for resolving differences between multiple

resource management objectives on state and private lands on a state-wide basis.

V. Conclusion

The development of the Timber-Fish-Wildlife Agreement in the state of Washington represents a significant milestone in the evolution of forest practices regulation on state and private forest lands. The unique feature is its focus on maximizing the output of all resources, timber, fish and wildlife, rather than emphasizing a single resource at the expense of other important resource objectives. Secondly, it provides a process for resolving resource management conflicts in a professional manner without always having to rely on written regulations to solve a site specific problem on the ground. Lastly, it recognizes that intelligent and effective forest practices regulation requires ongoing monitoring, evaluation, and research to determine whether practices or regulations need to be changed. All of these features make the Washington Timber-Fish-Wildlife Agreement an innovative and unique approach to addressing forest practices regulation at the state level.