

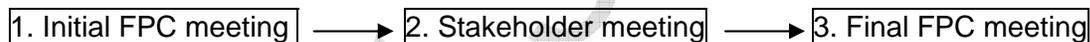
# Process for Threaten or Impaired Watershed Regulations Review<sup>1</sup>

## Staff Draft March 24, 2008 For Consideration at the April 2, 2008 Forest Practice Committee Meeting

**Executive Summary:** California Forest Practice Rules related to protection of watersheds with anadromous salmonid species, termed the “Threatened or Impaired Watershed” rules (T/I rules), are under review by the State Board of Forestry and Fire Protection. The T/I rules are being reviewed for determining their adequacy in protecting the species, meeting the Forest Practice Act, and to establish permanent rules as the current rules expire on January 1, 2010.

The Board’s Forest Practice Committee will conduct the review and has drafted a rule review process. The review process involves evaluating groups of similar rules against specific criteria, including current science literature. Each of the five rule groups would have at least three public meetings.

### Meeting sequence



Review of current scientific literature is important part of the rule validation process. To facilitate an expedited review of science literature, submission by stakeholders of science literature related the non-riparian sections of the T/I rules should be delivered to the Board by May 2, 2008.

The FPC intends to complete the review by January 2009. Following the review the Board will begin any regulatory adoption procedures. Final adoption of any regulatory amendments would be completed by October 2009.

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<sup>1</sup> Threaten or Impaired Watershed Regulations is board designated term for a suite of regulations within the California Forest Practice Rules that address requirements for protection of anadromous salmonid species during timber harvesting operations. See **Appendix 1** for the list of relevant regulations.

**Background:** In 2000, the California Forest Practice Rules were amended by the State Board of Forestry and Fire Protection (Board) in 11 rule sections for protection of watersheds with anadromous salmonid species. They were termed the “Threatened or Impaired Watershed” rules (T/I rules) and included rules for projects in watersheds listed as impaired under the 303(d) listing process. These rule changes were done in part as a response to National Marine Fishery Services deliberations on listing steelhead species. They apply to commercial forest harvesting operations on private land and State Forest in any watershed where listed anadromous salmonids are found.

Since their adoption in 2000, these regulations have been modified and extended through Board action four times and are currently set to expire on December 31, 2008. Board rulemaking action extending the rules for an additional year will be noticed on April 11, 2008. Minor amendments were made to these rules in 2006 regarding plan review requirements.

Substantive provisions of the T/I regulations were adopted by the Board in 2007 for facilitating incidental take of coho salmon through DF&G §2112 regulation in a separate regulatory action. The rules adopted in 2007 apply only to coho salmon watersheds, which are a subset of the T/I rules geographic area, and they do not have an expiration, or “sunset” date.

The T/I rules have not been comprehensively reviewed since their inception. Such a review is statutorily required under Public Resource Code 4553. The Board intends to review the existing all anadromy T/I rules for purposes of determining their adequacy in protecting the species and meeting other goals under Article 1 of the Forest Practice Act. To facilitate at this review the Board to date has

1. appointed a Technical Advisory Committee to oversee a contracted review of current scientific literature on forest management effects on the riparian zone of anadromous salmonid fisheries.
2. directed staff to design an additional review process to facilitate review of the T/I rules beyond direct effects in the riparian zone.
3. appointed other groups including the Monitoring Study Group and the Road Rules Committee to in part provide information on forest management effects on anadromous salmonid fisheries.

4. received testimony at Board meetings from state and federal agencies regarding the adequacy of the forest management regulations, specifically the Threatened or Impaired watershed regulations.
5. adopted “coho specific” regulations for take under CESA in 2007 in cooperation with Department of Fish and Game.

**Project Goals:**

- Conduct a review of the existing all anadromy T/I rules for purposes of determining their adequacy in protecting the species and meeting other goals under Article 1. of the Forest Practice Act.
- Conduct and complete review consistent with this review process.
- Following completion of review, develop regulatory amendments as needed.
- Completed rule amendments for regulatory noticing action on March 2009.
- Final adoption of modified regulations by Board in September 2009.
- Rules would become effective on January 2010.
- Develop regulations, when consistent with the Board’s authorities, that support other regulatory agency needs (Regional Water Boards, DFG, NMFS)
- Rules adopted shall be permanent with no expiration date.

**General information:**

- A review process, described below, is established to ensure a uniform and complete review of the T/I rules. The Board’s Forest Practice Committee will conduct a review consistent with this process.
- Routine public stakeholder and agency workshops would be held to review each rule

section. Stakeholder comments will be accepted at any time during the rule review process or the official regulatory noticing period.

- Public stakeholder meetings will be held to review each T/ rule or rule group. The meetings will be formally noticed in accordance with the open meeting act requirements. Notice will include e-mailing or hardcopy mailing to a Board prepared stakeholder list and posting on the Board web site.
- Forest Practice Committee members, and other Board members, will attend stakeholder meetings and provide direction and to ensure proper decorum.
- The Forest Practice Committee wishes to obtain consensus opinions and recommendations from stakeholders when possible. Non-consensus opinions shall be noted in minutes.
- Forest Practice Committee will consider whether to apply any recommendations coming from the T/I rules to the recently adopted “coho” regulations.
- Forest Practice Committee will review progress of rule review at each regularly scheduled meeting.
- Responsible agencies will be contacted inviting their participation and comments prior to review of any T/I rule.
- All staff information background articles and meeting minutes shall be posted on the board web in a highly visible link on the front page of the web site.
- Retain T/I current organizational format when possible and preferred, with consideration from road rule committee suggestions.

**Review process: See Flow Chart in Appendix 2**

**1. Rule groups:** T/I rules as is currently displayed in the Forest Practice Rules will be grouped according to similar topics (**see Appendix 3**).

**2. Time frame:** FPC will adopt a time frame/schedule to review groups of rules. (See

**Appendix 4 Rule Review Time Frame).** Discussion and review of any T/I rule within a group may be extended beyond the time frames established for its review, as directed by the Forest Practice Committee. Rules will be reviewed sequentially or concurrently if necessary or logical.

**3. Meetings:** Each rule section or group of rule sections will have up three review meetings: two Forest Practice Committee meetings and a one stakeholder meeting.

#### Meeting sequence



The number and content of meetings for each rule group at a minimum includes:

**1<sup>st</sup> FPC Meeting:** An initial introductory meeting at the Forest Practice Committee regular scheduled monthly meeting. Groups of rules will be presented at the initial introductory Forest Practice Committee meeting. At a minimum, the meeting will include

- a. the text of the Forest Practice Rules being reviewed;
- b. public comments and revision suggestions received to the Board as of date of FPC meeting;
- c. supporting technical papers and science reports presented to Board staff and/or assembled by the Board staff;
- d. assignment of technical assistance teams, including any science review team such as the TAC;
- e. direction from FPC on relevant key questions for science review and identification of “rule review criteria”; and
- f. new public comment.

**1<sup>st</sup> Stakeholder Meeting:** A stakeholder meeting conducted before the next regularly monthly Forest Practice Committee meeting. This meeting will be held on the Monday prior to the regularly scheduled Tuesday Forest Practice Committee meeting. Stakeholder meeting will include at a minimum:

- a. presentations of a report from technical review teams;
- b. evaluation of “rule review criteria” stated in this charter applicable to the rule

- section; and
- d. public input.

**2<sup>nd</sup> FPC Meeting:** A concluding meeting at the regular scheduled Forest Practice Committee meeting following the first meetings described above. The final meeting would include:

- a. staff update to the Forest Practice Committee on previous meetings;
- b. completion of any items held over from previous two meetings;
- c. draft rule proposals;
- d. public input; and
- e. Forest Practice Committee decisions or recommendations.

Stakeholders meetings will be formally noticed to the BOF contact list established for the project. Individual invitations will be offered to responsible agencies including the Central Valley Regional Water Quality Control Board, National Marine Fisheries Service, Department of Fish and Game, Central Coast Regional Water Quality Control Board, North Coast Region Quality Water Control Board, and State Water Quality Control Board.

**4. Technical review and science literature submissions:** Science, policy, legal, regulatory or other types review will be conducted as part of the overall T/I. Review requests will identify and assigned by the FPC to the Technical Advisory Committee (TAC) or other group (i.e. Monitoring Study Group, road rules committee, interagency mitigation and monitoring program, legal counsel) at each initial FPC meeting.

The TAC will be reviewing additional science literature on T/I rules that are not related to riparian buffer function (literature on riparian buffer function is already being reviewed as part of the contracted literature review contract.). FPC will be specific in terms of the nature of the topics requested for non-riparian science review and will provide key questions for which science review is requested.

**To facilitate an expedited review of technical science literature, submission by stakeholders of science documents should be delivered to the Board by May 2, 2008.**

Literature should be submitted to the following address:

Board of Forestry and Fire Protection  
Attn: Christopher Zimny  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460

or hand delivered to:

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA

or sent via facsimile to:

(916) 653-0989

or sent via e-mail a to:

[board.public.comments@fire.ca.gov](mailto:board.public.comments@fire.ca.gov)

Evaluation of technical information provided by any technical assistance teams will be conducted and presented to FPC prior to any decision/recommendations. Science review teams will focus on assessing certainty of existing science and report back on both certainty of findings and those with less certain information. Acceptable science literature to be included for this T/I review will be screened by TAC using screening criteria created for the contracted literature review.

**5. Rule review criteria:** Each rule or a rule group will be evaluated in public by staff and with Forest Practice Committee and stakeholders input. Each rule section or group of rules will be assigned rule review criteria by the FPC (see **Appendix 5** for assigned criteria for each rule). The criteria used for the evaluation will include the following:

- a. establishment of problem and necessity;
- b. specific purpose of rule as currently written;
- c. science literature supporting regulatory prescriptions;
- d. identification of strengths and weakness of rule sections from a science basis;
- e. FPR organization;
- f. duplication with existing rules;

- e. economic and fiscal impact;
- f. legal perspective;
- g. environmental impacts of the rule section; and
- h. consistency with other regulatory agency needs.

**6. Rule amendment and alternatives:** Potential rule amendments will be developed by staff and presented to the Forest Practice Committee following the evaluation stated above. Alternatives will be identified. Stakeholder shall be provided opportunity to provide alternatives at this point in time to the Forest Practice Committee.

**7. FPC rule recommendations:** FPC will make recommendations on any proposed rule amendments to staff who will prepare those amendments. Amendments will be incorporated into a complete regulatory package that will be presented to the full board at the culmination of the T/I review process beginning in January 2009.

## Appendix 1

### Regulations related to “Watersheds with Threatened or Impaired Values” Title 14 of the California Code of Regulations

	<u>(All anadromy)</u>
§ 895.1	Definitions
§ 898	Feasibility Alternatives
§ 898.2	Special Conditions Requiring Disapproval of Plans
§ 914.8 [934.8, 954.8]	Tractor Road Watercourse Crossing
§ 916 [936, 956]	Intent of Watercourse and Lake Protection
§ 916.2 [936.2, 956.2]	Protection of the beneficial Uses of Water and Riparian Functions
§ 916.9 [936.9, 956.9]	Protection and Restoration in Watersheds with Threatened or Impaired Values
§ 916.11 [936.11, 956.11]	Effectiveness and Implementation Monitoring
§ 916.12 [936.12, 956.12]	Section 303(d) Listed Watersheds
§ 923.3 [943.3, 963.3]	Watercourse Crossings
§ 923.9 [943.9, 963.9]	Roads and Landings in Watersheds with Threatened or Impaired Values
	<u>(Coho watersheds only)</u>
§ 916.9.1[936.9.1]	Minimization and Mitigation Measures for Protection and Restoration in Watersheds with Coho Salmon

§ 916.9.2 [936.9.2]

Additional Measures to Facilitate Incidental Take  
Authorization in Watersheds with  
Coho Salmon

§ 916.11.1 [936.11.1]

Monitoring for Adaptive Management in  
Watersheds with Coho Salmon

§ 923.9.1 [943.9.1]

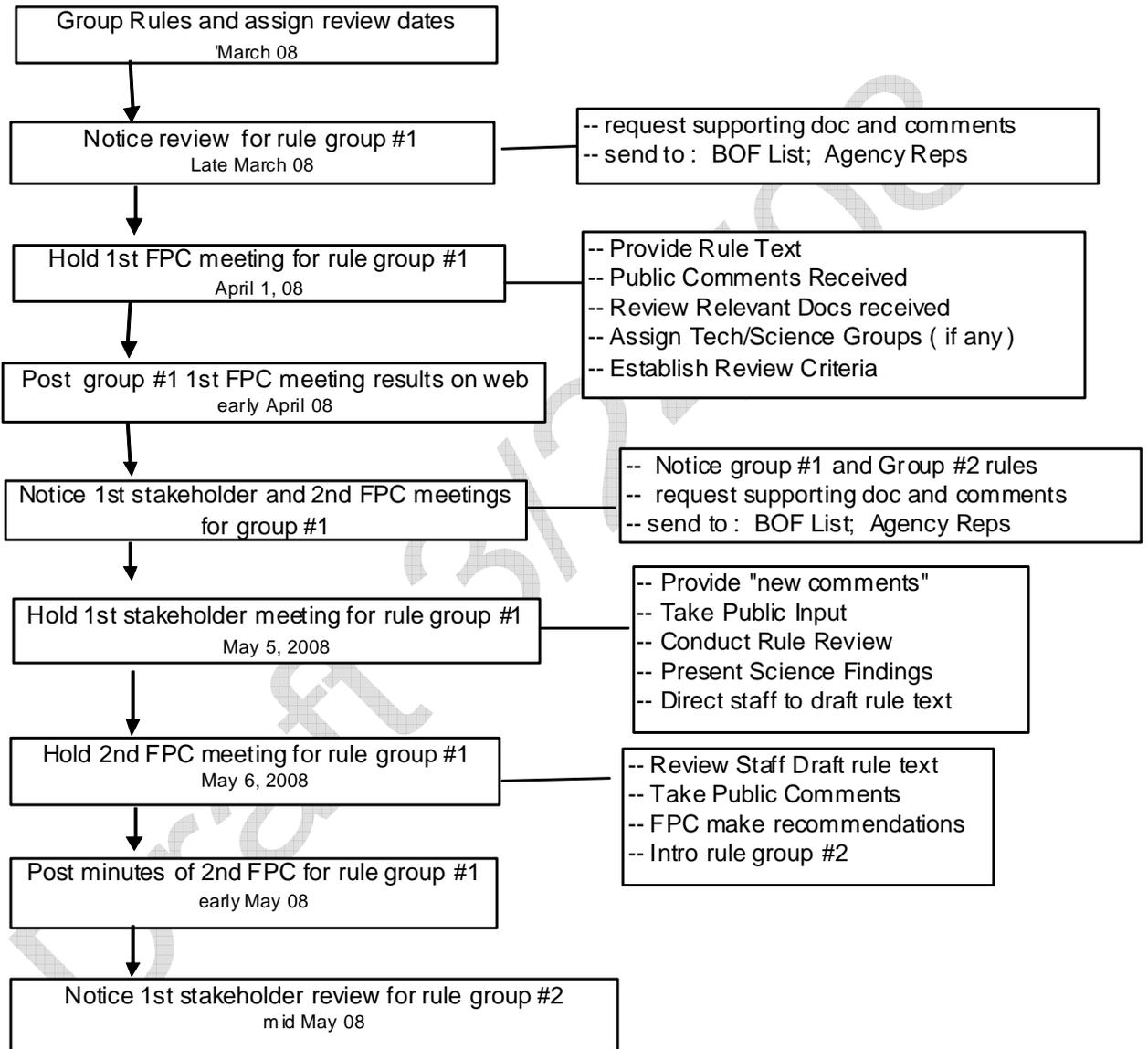
Minimization and Mitigation Measures for  
Roads and Landings in Watersheds with  
Coho Salmon

§ 923.9.2 [943.9.2]

Additional Measures to Facilitate Incidental Take  
Authorization in Watersheds with Coho Salmon

## Appendix 2

### Rule review process flow chart



continue cycle

## Appendix 3

### Major topics of the 2000 T/I rules and the subsequent amendments

#### Group #1

##### Goals/Intent

- **intent language specificity for beneficial use protection:** (916, 916.2): goals relevant to entire watershed geographic areas (riparian zone and upland)

##### Watershed Definitions

- **new definitions** (895.1): includes specific riparian zone characteristics, and operating surface conditions (for all areas).

#### Group #2

##### Geographic Scope

- **new definitions** (895.1): includes T/I watershed definition.

##### Plan Preparation

- **plan content , consultation requirements, disapproval thresholds** (898.2)

#### Group #3

##### Cumulative Impacts

- **cumulative effects analyses for entire watershed** (898.1,916.9 b)
- **Assessments in Section 303(d) Listed Watersheds:** Require further assessments and recommendations for watersheds to meeting TMDL goals.

(916.12)

#### **Group #4**

##### **Operational Requirements**

- **tractor crossings standards for riparian zones** (914.8)
- **logging operations in riparian zones and other upland areas** (916.9): goals and standards contained in this section represent most substantive operational change requirements of all t/l rule amendments.
- **road and landings management practice** (923.3, 923.9): established construction standards to accommodate life stage all life stages, sediment deposited movement, road width, road drainage, cuts and fills, steep road segments, and other low risk design structures and vulnerable watershed areas. Regulations apply to both riparian areas and upland areas.

#### **Group #5**

##### **Monitoring**

- **monitoring and adaptive management** (916.11): established postharvest monitoring for operations in a WLPZ and in upland areas for monitoring roading.

**Appendix 4**

**Rule Review Time Frame**

**T/I Rule Review Schedule**

Edited 3/12/08

<u>Date</u>	<u>Activity</u>	<u>Activity</u>
April 1, 2008	1st FPC: <b>Goals/Intent and Definitions</b>	
May 5, 2008	1st Stakeholder: <b>Goals/Intent and Definitions</b>	
May 6, 2008	2nd FPC: <b>Goals/Intent</b>	1st FPC: <b>Geo Scope and Plan Prep</b>
June 4, 2008	1st Stakeholder: <b>Geo Scope and Plan Prep</b>	
June 5, 2008	2nd FPC: <b>Geo Scope and Plan Prep</b>	1st FPC: <b>Cumulative Impacts</b>
July 7, 2008	1st Stakeholder: <b>Cumulative Impacts</b>	
July 8, 2008	2nd FPC: <b>Cumulative Impacts</b>	1st FPC: <b>Operational Requirements</b>
August 4, 2008	1st Stakeholder: <b>Operational Requirements</b>	
August 5, 2008	2nd FPC: <b>Operational Requirements</b>	
September 8, 2008	2nd Stakeholder: <b>Operational Requirements</b>	
September 9, 2008	3rd FPC: <b>Operational Requirements</b>	
October 6, 2008	3rd Stakeholder: <b>Operational Requirements</b>	
October 7, 2008	4th FPC: <b>Operational Requirements</b>	1st FPC: <b>Monitoring</b>
November 3, 2008	1st Stakeholder: <b>Monitoring</b>	
December 1, 2008	2nd FPC: <b>Monitoring</b>	
January FPC 09	<b>Staff Present All Initial Recommendations from FPC</b>	
February FPC 09	<b>Committee Deliberations/Input to Staff</b>	
March FPC 09	<b>Staff Present edits</b>	
April, 2009	<b>Full Board Action on FPC final proposal</b>	

**Appendix 5**

**Rule review criteria assignments**

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**T&I Rule Review Criteria Assignments**

Rule #	Title or Subject	Review Task or Issues	Needs Science Review	Other Technical Review (policy, costs, clarity, enforcement)	Assigned Review Group
§ 895.1	Definitions -	Do the definitions still apply to any changes to the rules?	N	Y	ALL
§ 898	Feasibility Alternatives	Is this still needed given the expanded role of RWQCB or should this substitute for waiver and WDR requirements?	N	Y	Forest Practices Committee
§ 898.2	Special Conditions Requiring Disapproval of Plans	Review for appropriate policy.	N	N	Forest Practices Committee
§ 914.8 [934.8, 954.8]	Tractor Road Watercourse Crossing	Is the rule clear and are all class I streams included? (domestic water sources?)	N	Y	Roads Task Force Forest Practices
§ 916 [936, 956]	Intent of Watercourse and Lake Protection	Review for appropriate policy.	N	N	Forest Practices Committee
§ 916.2 [936.2, 956.2]	Protection of the Beneficial Uses of Water and Riparian Functions	Review for appropriate policy.	N	N	Forest Practices Committee
§ 916.9 [936.9, 956.9]	Protection and Restoration in Watersheds with Threatened or Impaired Values				

(916.9 (a))	<ul style="list-style-type: none"> <li>Establish goals that prevent deleterious interference with watershed conditions, including sediment load increases thermal load increases, losses of large woody debris, and substantial increases in peak flows.</li> </ul>	Review for appropriate policy.	N	Y	Forest Practices Committee
(916.9 (a))	<ul style="list-style-type: none"> <li>Establish standards for conduct including compliance with the sediment TMDLs, no measurable decrease in stability of channels, no blockage of migratory routes, no measurable stream flows reductions during water drafting, protection of snags and down logs in riparian zone, and vegetative canopies for shading.</li> </ul>	Are these appropriate indicators of no significant impact to listed fisheries?	Y	N	Technical Advisory Committee
(916.9 (b))	<ul style="list-style-type: none"> <li>Established minimum cumulative effect assessments requirements</li> </ul>	Review based on new science or a better understanding of riparian function.	Y	Y	Technical Advisory Committee
(916.9 (c))	<ul style="list-style-type: none"> <li>Stream course buffer widths and harvest restrictions</li> </ul>	Review based on new science or a better understanding of riparian function.	Y	Y	Technical Advisory Committee
(916.9 (d))	<ul style="list-style-type: none"> <li>Plan content for preferential measures for protection of beneficial use</li> </ul>	Review for appropriate policy.	N	N	Forest Practices Committee
(916.9 (e))	<ul style="list-style-type: none"> <li>Channel zone timber operations prohibitions</li> </ul>	Review for appropriate policy.	N	Y	Technical Advisory Committee
(916.9 (f))	<ul style="list-style-type: none"> <li>WLPZ width )</li> </ul>	Review based on new science or a better understanding of riparian function.	Y	Y	Technical Advisory Committee
((916.9 (g))	<ul style="list-style-type: none"> <li>Canopy covers</li> </ul>	Review based on new science or a better understanding of riparian function.	Y	Y	Technical Advisory Committee
(916.9 (h))	<ul style="list-style-type: none"> <li>Specifications and requirements for class one crossings)</li> </ul>	Review based on new science or a better understanding of riparian function.	Y	Y	Roads Task Force

		Review based on new science or a better understanding of riparian function.	Y	Y	Technical Advisory Committee
(916.9 (i))	Standards for recruitment of large woody debris				
		Review based on new science or a better understanding of riparian function.	Y	Y	Technical Advisory Committee
(916.9 (j))	Special management zones for inner gorges				
(916.9 (k))	Winter period operations plans	Review for appropriate policy.	N	Y	ALL Forest Practices Committee
(916.9 (l and m))	Logging in tractor Road, specifications and	Review for appropriate policy.	N	Y	Committee
916.9 (n)).	WLPZ soil erosion treatments	Are the the rules efficient and effective?	N	Y	Roads Task Force
		Is this still needed given the expanded role of RWQCB or should this substitute for waiver and WDR requirements?	N	Y	Forest Practices Committee
916.9 (o)	Riparian zone, and upland active erosion site identification				
(916.9 (p))	Erosion control, maintenance period	Review for appropriate policy.	N	Y	Committee Forest Practices
(916.9 (q))	Site preparation standards	Review for appropriate policy.	N	Y	Committee
(916.9 (r))	Water drafting standards	Review based on new science or a better understanding of riparian function.	Y	Y	Technical Advisory Committee
(916.9 (s))	Timber harvest limitations for exemption notices	Review based on new science or a better understanding of riparian function.	Y	Y	Forest Practices Committee
(916.9 (t))	Timber harvest limitations for emergency notices)	Review based on new science or a better understanding of riparian function.	Y	Y	Forest Practices Committee
(916.9 (u))	Salvage harvesting requirements	Review based on new science or a better understanding of riparian function.	Y	Y	Forest Practices Committee
(916.9 (v,w, x))	Waivers, exceptions, alternatives ect requirements	Review based on new science or a better understanding of riparian function.	Y	Y	Forest Practices Committee

		Exclusion of requirements for plans			Forest	
(916.9 (y))		with HCP ITPs	Review for appropriate policy.	N	N	Committee
§ 916.11 [936.11, 956.11]	<b>Effectiveness and Implementation Monitoring</b>		Should the new Monitoring and Adaptive Management rules be substituted for this section?	N	Y	Forest Practices Committee
§ 916.12 [936.12, 956.12]	<b>Section 303(d) Listed Watersheds</b>		Is this still needed given the expanded role of RWQCB or should this substitute for waiver and WDR requirements?	N	Y	Forest Practices Committee
§ 923.3 [943.3, 963.3]	<b>Watercourse Crossings</b>		Are the rules efficient and effective?	Y	Y	ALL
§ 923.9 [943.9, 963.9]	<b>Roads and Landings in Watersheds with Threatened or Impaired Values</b>		Are the rules efficient and effective?	Y	Y	Roads Task Force

End