

**WAC 222-12-041 Use of approved state and federal conservation agreements for aquatic resources.** (1) Forest practices consistent with an agreement described in subsection (3) below are exempt from the forest practices rules in chapters 222-22 through 222-38 WAC if the following criteria are met:

(a) The forest practices rule pertains to a species included within aquatic resources and that species is covered by an agreement listed in subsection (3) below; and

(b) The primary risk(s) to public resources addressed by the forest practices rules (e.g., delivery of sediment to waters from roads, harvest activities, or mass wasting events; chemical contamination of waters; inadequate recruitment of large woody debris; delivery of thermal energy to waters) is addressed in the agreement. The agreement may address the risk using different prescriptions, approaches, or timing than the forest practices rule.

(2)(a) When the landowner submits an application or notification, the landowner must include a proposed list of specific rules replaced.

(b) The department will review and confirm whether the rules identified by the landowner meet the criteria identified in subsection (1) above.

(c) At the request of the department, the landowner will confer in good faith with the department and provide the department and other interested parties with information necessary to assist the department in implementing this section.

(3) This section applies to landowners who are operating consistent with one of the following agreements that covers a species included within aquatic resources provided that the agreement has received environmental review with an opportunity for public comment under the National Environmental Policy Act, 42 U.S.C. section 4321 et seq., the Endangered Species Act, 16 U.S.C. section 1531 et seq., or the State Environmental Policy Act, chapter 43.21C RCW;

(a) A habitat conservation plan and incidental take permit approved by the Secretary of the Interior or Commerce pursuant to 16 U.S.C. section 1539(a);

(b) An incidental take statement issued by the Secretary of the Interior or Commerce pursuant to 16 U.S.C. 1536(b);

(c) An "unlisted species agreement" approved by the U.S. Fish and Wildlife Service or National Marine Fisheries Service; or

(d) A candidate conservation agreement or other cooperative or conservation agreement entered into with a federal or state fish and wildlife agency pursuant to its statutory authority for fish and wildlife protection.

For any agreement with a formal application date after July 1, 2001, the landowner must have made a good faith effort to involve the department of fish and wildlife, the department of ecology, department of natural resources, and affected Indian tribes in the development of the related plan or management strategy.

[Statutory Authority: RCW 76.09.040. WSR 08-24-011, § 222-12-041, filed 11/21/08, effective 12/22/08. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). WSR 01-12-042, § 222-12-041, filed 5/30/01, effective 7/1/01.]