FOREST PRACTICES BOARD

REGULAR BOARD MEETING
August 9, 2011
Natural Resources Building
Olympia, Washington

Members Present
Bridget Moran, Chair of the Board, Department of Natural Resources
Anna Jackson, Designee for Director, Department of Fish and Wildlife
Bill Little, Timber Products Union Representative
David Herrera, General Public Member
Mark Calhoon, Designee for Director, Department of Commerce
Norm Schaaf, General Public Member
Paula Swedeen, General Public Member
Sherry Fox, General Public Member/Independent Logging Contractor
Tom Davis, Department of Agriculture
Tom Laurie, Designee for Director, Department of Ecology

Members Absent:
Dave Somers, Snohomish County Commissioner
Doug Stinson, General Public Member/Small Forest Landowner

Staff
Darin Cramer, Forest Practices Division Manager
Marc Engel, Forest Practices Assistant Division Manager
Patricia Anderson, Rules Coordinator
Phil Ferester, Assistant Attorney General

WELCOME AND INTRODUCTIONS

Bridget Moran called the Forest Practices Board (FPB or Board) meeting to order at 9 a.m. Patricia Anderson, Department of Natural Resources (DNR or Department), provided an emergency safety briefing.

APPROVAL OF MINUTES

MOTION: Tom Laurie moved to approve the August 9, 2011 meeting minutes.

SECONDED: Anna Jackson

ACTION: Motion passed unanimously.

REPORT FROM CHAIR

Bridget Moran announced Board member and staff changes. Commissioner Peter Goldmark has designated her to chair the Board indefinitely, starting June 29, 2011. Dave Somers is reappointed, and the Governor's office is currently working on filling the vacant general public member position. Staffing changes include Julie Sackett leaving the program to manage the Forest Resources and Conservation Division, and Tami Miketa joining the Forest Practices Division to manage the Small Forest Landowner Office.

PUBLIC COMMENT

Ken Miller, Washington Farm Forestry Association, said he and other developers of the low impact template are disappointed with the state agencies' conclusions that patch cuts and directional falling are not acceptable elements. He commented that he and others thought their draft template would go a long way toward resolving the disproportionate impact of the Forests and Fish rules on small forest landowners. He said the system is unrealistically risk averse and is not taking economic viability seriously. He said he hoped the Board will take an active leadership role in the final template and make an effort to resolve these long standing issues. Bill Little asked for clarification on the role of the Board, to which Bridget Moran answered the Board is a rule making body and must balance environmental and economic considerations in its decisions.

Chris Mendoza, Conservation Caucus, thanked DNR staff for working so hard on the RMAP and watershed analysis rule language and board manuals. He also commented that small forest landowners do suffer from economies of scale with all of the set asides required in the rules. He added that templates are tricky because they have to be effective for a broad array of variable landscapes.

Shawn Cantrell, Seattle Audubon, said the Northern Spotted Owl Implementation Team is moving forward and thanked the Board for its ongoing attention. He cited parts of the federal 2010 Draft Revised Recovery Plan pertinent to the Board. He said the Board should now reevaluate its rules in addition to the implementation team's work on incentives.

Kara Whitaker, Washington Forest Law Center, said a year and a half has passed since the formation of the implementation team and owl habitat continues to be harvested at a faster rate than it is being created. She urged the Board to task the team with developing a timeline with more frequent meetings, defining more specific actions within their work plan, and identifying and applying for funding sources. She said if there is not tangible progress soon, the Conservation Caucus may file a petition for rule making to halt further loss of habitat.

Jim Peters, Northwest Indian Fisheries Commission, commented on two issues: the timing of agenda items in past meetings and salmon habitat loss.

- When agenda items occur hours before their scheduled time it causes difficulty and wasted time for people travelling to a meeting to provide public comments for a particular topic.
- The tribes are working on the state of the watersheds to target the efforts needed for habitat protection and restoration. They are finding habitat is continually being lost in spite of the millions being spent on habitat restoration. This information will be shared with the state agencies as it is completed.

STAFF REPORTS

Bridget Moran asked for any questions related to the staff reports received prior to the meeting. Board members had questions about the Upland Wildlife Update and the Small Forest Landowner and Advisory Committee report.

<u>Upland Wildlife Update</u>

Paula Swedeen said eight years ago the Wildlife Workplan included assessing the effectiveness of the rules for marbled murrelets. She asked David Whipple if it was time to get marbled murrelets on the Board's docket, given new U.S. Fish and Wildlife Service (USFWS) data on the murrelet's population decline. Whipple said the Washington Department of Fish and Wildlife (WDFW) could

provide a marbled murrelet update at a future meeting. Norm Schaaf said it would be helpful to understand all of the reasons for the continuing declines.

Sherry Fox said that years ago there was useful habitat information that came out of the Wildlife Working Group's efforts. Whipple said wildlife models were developed for several guilds and individual species when funding ended. They are still in need of a formal peer review but it could be discussed whether that level of review is necessary in today's budget climate.

Anna Jackson said she would support the Board revisiting the landscape level wildlife assessment because it could yield useful results for issues such as climate change planning and the contribution of working forests to general habitat connectivity. Bridget Moran said the Board would take that under advisement.

Whipple added, regarding the Taylor's Checkerspot Butterfly, that the Weyerhaeuser Company has submitted a management plan for that species and WDFW is reviewing it.

<u>Small Forest Landowner Office and Advisory Committee</u>
Sherry Fox said she noticed that since April there are 12 additional approved small forest landowner long-term applications. She gave credit to the Washington Farm Forestry Association for presentations made at its last annual meeting promoting the long-term application.

LEGISLATIVE SUMMARY AND FY 2011-2013 BUDGET UPDATE
Darin Cramer, DNR, briefly summarized legislation signed by the Governor in April that would affect the forest practices program:

- EHB 1509, forestry riparian easement program will require rule making.
- HB 1582, forest practices applications leading to conversion for development purposes will require rule making but will be implemented in the meantime.
- 2ESHB 1087/ESSB 5860, fiscal matters reduced the forest practices program by $6 million for the biennium and three percent salary reduction and leave for most employees.
- SB 5500, rule making process for state economic policy requires agencies to provide notice of rule making to small businesses through publications likely to be obtained by small businesses of the types affected by the rule.

Tom Laurie asked about the community trust legislation. Bridget Moran explained it established a new classification of trust at DNR for lands under threat of conversion. The intent is to create public/private partnerships within communities that want to retain working forests adjacent to developed areas. She said the Board could have a presentation on this subject in the future.

NW ENVIRONMENTAL FORUM AND ESHB 2541
Bridget Moran said she participated in the June 2011 Northwest Environmental Forum meeting and explained that Craig Partridge is DNR's lead for this project. ESHB 2541, 2010 legislation, directed DNR to evaluate incentives for the forest industry. DNR wants to test the feasibility of conducting transactions with forest landowners in the upper watersheds for the ecosystem services they provide downstream.

The first day of the forum included lessons learned from past forums, valuing ecosystem services, possible regulations needed, financing, and forming groups that had an interest in establishing a work group in particular areas. Two watershed groups were formed by members of the Nisqually

and Snohomish watersheds. There is also interest in the formation of a Yakima watershed group. She said she and Partridge can continue to update the Board as those efforts mature.

Norm Schaaf asked about landowner participation. Moran said she participated in the Nisqually group where the large timberland owners were present and eager, and said Craig Partridge is participating with the Snohomish group and representing the state as a timberland owner.

Paula Swedeen commented that the legislation emphasized water services but there was robust discussion at the forum about Northern Spotted Owl incentives and opportunities to bundle a variety of services. Also there is interest from small forest landowners; the Northwest Natural Resource Group is part of the organizing committee, and the Washington Farm Forestry Association is welcome to form a group as well.

NSO FEDERAL RECOVERY PLAN

Jodi Bush, U.S. Fish and Wildlife Service (USFWS), presented an overview of the Final Revised Recovery Plan for the Northern Spotted Owl, including the species' status and threats, and next steps for recovery. She explained the population has continued to decline at about three percent per year since 1990, and its range has contracted. Its main threats are habitat loss and barred owl expansion. Next steps include protecting high value habitat, consider contributions from state and private lands, promote active management to promote ecosystem health and resilience, manage barred owls, and use habitat modeling in future critical habitat revisions. She mentioned that a third of the plan's recovery actions are focused on the barred owl and a draft environmental impact statement will be out this fall on proposed scientific experiments to test barred owl management options.

She said the recommendations primarily affect federal lands, but there is more emphasis on the role of state and private lands than in the past. The USFWS will work with its stakeholders to evaluate potential recovery contributions, identify non-regulatory incentives, and expand voluntary safe harbor agreements and habitat conservation plans (HCPs). She mentioned that Washington State has made substantive progress and the plan suggests that the Forest Practices Board can use the final recovery plan and modeling tool to inform processes currently underway to identify non-federal lands that can make strategic contributions to owl conservation over time (Recovery Action 18).

Anna Jackson said WDFW is looking for more clarification regarding the goals of protecting owl sites and pursuing active management strategies that might impact active owl sites. Bush answered it will have to involve a balance of identifying occupied sites believed essential for long-term recovery, and managing those and adjacent sites. She said folks at the USFWS hope the Board will work them on that.

Norm Schaaf asked about the USFWS's level of confidence with the modeling it has developed. Bush said there is general comfort with it; it has the benefit of a lot of factual information and has undergone separate peer review.

Paula Swedeen said the Board will have a technical team that will generate a variety of questions that modeling may be able to answer and asked if the USFWS has the resources with the model runs. Bush answered they plan to provide that service, but they are looking into how they will find the extraordinary amount of time, computer power, and financial assistance it will take.

Anna Jackson asked when the critical habitat modeling may be completed. Bush said the USFWS is already using it and is currently writing a draft critical habitat rule which is due in September.

Sherry Fox asked if there is a plan to simplify the process to accomplish safe harbor agreements and HCPs. Bush answered they hope to establish a programmatic approach to helping landowners who want to do this.

Tom Davis asked if it is unusual to manage one species over the other when both came through natural migration. Bush said the USFWS faces that situation a lot with listed species, but the spotted owl and barred owl situation is unusual because they are the same genus. Moran commented that when a species is listed under the Endangered Species Act all of the threats to those species are considered, and in this case the barred owl is a threat.

NSO IMPLEMENTATION TEAM UPDATE

Bridget Moran explained that the Board will receive a written update of the implementation team's work. The team is making progress on many of its eight deliverables:

- Voluntary incentives program: Opportunities are being explored for connections with ESHB 2541 as mentioned earlier in the meeting, and additional conversations are taking place but are not ready to report.
- Outreach to landowners: on hold until incentives programs are developed; however there is good coordination with the Washington Forest Protection Association (WFPA) on the approach.
- Promoting barred owl control research: The team will be watching for the USFWS's barred owl research and results.
- Decertification process: The current process continues.
- Initiating two pilot projects: moving slowly. One approach was to seek Section 6 (Endangered Species Act grant) funding, but the team wants to recalibrate to figure out the best approach for particular projects. Perhaps now it can be in alignment with the recovery plan.
- Developing a flagship project: on hold until a pilot can inform what will and won't work.
- Recommendations to approve measures of success: still to be determined; could be something like pilot projects underway and a flagship identified.
- Convening a technical team to assess the spatial and temporal allocation of conservation efforts on non-federal lands. The question is, where would we concentrate our conservation dollars if we did receive funding to get the best impact for spotted owls in Washington? The team's intent is to partner with the USFWS to use the models put in the landscapes specific to Washington, i.e., SOSEAs, state, federal, and private forest lands, and figure out where we should put our effort.

She added that the team is refining the list of prospective technical team members.

Swedeen asked if the Board should create a subcommittee that could look at the output from the technical team and examine the effectiveness of the rules. Anna Jackson said she supported having more discussion on that idea.

Moran said she would like the Board to contemplate for the November meeting how to move ahead in response to the recovery plan. By then the implementation team will have had some interaction with the modeling team and a sense of the timing and utility of the information it can offer. She said she would like to keep the implementation team focused on incentives, and a Board subcommittee could be the way to accomplish the other needs.

Schaaf asked if the draft critical habitat mapping will be available from the USFWS by the November meeting. Moran answered the USFWS is under a court-mandated deadline to have it out by November. Certainly it will be part of the conversation at the November meeting if it is out by November 8. Schaaf said it will be a very important conversation to the degree that state and private lands are suggested to be part of the critical habitat.

Fox asked if the implementation team has talked about Landowner Option Plans (LOPs) and Critical Habitat Enhancement Agreements (CHEAs). Moran answered the team has focused on other approaches such as Section 6 funding, thinning opportunities, and other habitat enhancement work due to the infrequent use of LOPs and CHEAs.

CLEAN WATER ACT ASSURANCES ANNUAL REPORT

Mark Hicks, Department of Ecology, summarized the status of the Clean Water Act milestones. He said in the last six months no non-research milestones were completed and only one CMER research milestone was completed. He said a significant number remain overdue, and said three are particularly problematic: obtaining an independent review of the Adaptive Management Program; developing a training and certification program for cooperators; and assessing the condition of small forest landowner roads. There are past-due CMER research milestones for which the design process hasn't even begun – rule effectiveness on non-fish waters in Eastern Washington, and mass wasting studies. The biggest threats to meeting the CMER research milestones are the lack of funding and volunteer research capacity to design and carry out the needed research.

He explained Ecology has made changes to specific milestones. They include: replacing the wetland road mitigation study with a literature synthesis followed by the design of a research program; simplifying and moving the mass wasting accuracy and bias study to the DNR science program because it is more of a compliance monitoring type of project; and delaying the amphibian and intermittent stream study at least until the Type N basalt study is completed.

He said even applying for grant funding is a challenge. CMER does not have study designs on the shelf ready to be funded.

Bridget Moran commented on the non-research milestones:

- DNR was very disappointed that the Auditor's Office decided not to audit the Adaptive Management Program; somehow an audit should take place to resolve inherent issues with the program.
- DNR is taking the training issue seriously, and is sacrificing other forest practices program funding to rebuild a training program this biennium.
- It will be challenging to get funding to assess small forest landowner roads because the legislature believes it has funded a road inventory already, which is not the case.

She stressed that the Clean Water Act assurances are of very high value to Washington State, and that DNR and Ecology will be continuing their dialogue to be sure that DNR's responsibilities are understood and clearly meeting the needs of Ecology. She said this Clean Water Act assurances milestone update will be useful when the Board has its planning session in November.

Sherry Fox commented that the next small forest landowner demographic report is due to the legislature in 2013. She also said the training element is very important for her because the small

forest landowners have lost a lot since the training program was cut.

David Herrera commented that hearing about the past due milestones is another example of how the state is not meeting is responsibility to protect salmon habitat. He cited two other recent reports by the National Oceanic and Atmospheric Administration (NOAA) and the Northwest Indian Fisheries Commission concluding that habitat continues to be lost in spite of the hundreds of millions of dollars spent on salmon recovery. State and federal agencies are failing to do the appropriate land use planning to protect habitat. This is becoming an increasingly alarming issue for the tribes. He stressed the importance of appropriate prioritization as the Board looks forward to planning for the coming year.

Moran suggested DNR could put a link on its web site to the NOAA report which documents a dramatic loss of habitat for Puget Sound Chinook in the years from 2001 to 2006. Many would argue that the timber component of that is probably farthest ahead, and there have been conversations about responsibilities at all government levels, including the federal government's responsibility to meet its treaty obligations. She emphasized the Board's responsibility is to focus on the Clean Water Act component.

Norm Schaaf asked if there is money in the CMER budget for a grant writer. Darin Cramer answered it is in the budget for any research project ready to go.

Schaaf asked Hicks to inform the Board whenever there is a significant accomplishment or problem regardless of the timing of the semi-annual reports. Hicks agreed. Schaaf echoed others' comments about the importance of training to understand and ensure better compliance with the rules, and said landowners are willing to cooperate in that effort.

Paula Swedeen said it would be helpful in preparation for the November meeting if there was an explanation of how different priorities would affect the accomplishment of milestones. Moran said perhaps a staff dialog should take place to get clarity about how each milestone connects to water quality. Hicks said all of the milestones need to be met to achieve water quality, but Ecology could probably give an indication of which are relatively more important than others and how they relate to the Board's potential work list.

PUBLIC COMMENT ON ROADS SUB-BASIN REPORT AND TYPE N EXPERIMENTAL BUFFER TREATMENT (AMPHIBIAN GENETICS) REPORT

None

ADAPTIVE MANAGEMENT PROGRAM – ROADS SUB-BASIN REPORT AND TYPE N EXPERIMENTAL BUFFER TREATMENT (AMPHIBIAN GENETICS) REPORT

Jim Hotvedt, DNR, informed the Board that Mark Hicks will fill the position of CMER co-chair recently vacated by Terry Jackson. He then briefly summarized two recently completed CMER reports: *Washington Road Sub-Basin Scale Effectiveness Monitoring First Sampling Event (2006-2008) Rep*ort; and *Type N Experimental Buffer Treatment Study: Baseline Measure of Genetic Diversity and Gene Flow of Three Stream-Associated Amphibians*. He explained both are the first in a series of two or more sampling efforts to inform underlying key questions, and said the Forests and Fish Policy Committee recommends that the Board take no action at this time based on the results of the two studies.

Tom Laurie asked how the reporting on roads standards was done in the sub-basin effectiveness analysis; Hotvedt answered reporting was by the landowners of the 60 sample blocks. He added that the study results indicate that there is still an issue with reducing connectivity, but on the other hand the sediment delivery from those roads that are connecting is being reduced significantly. The implication is that landowners are going after the worst roads first. He said there will be at least one or two re-samples to see if connectivity is reduced over time.

Norm Schaaf asked if small forest landowner roads were included in the study. Hotvedt answered the majority of the lands in the sample blocks were large landowner forest lands, but about half of the cooperating landowners were small forest landowners. In general, however, there have been challenges getting the small landowner component to the studies, particularly getting cooperation from small forest landowners on the eastside. The question is do you put in additional effort to make sure you have a sample of small landowners, or do you set up a separate parallel study targeting small landowners?

MOTION: Norm Schaaf moved that the Forest Practices Board accept the Forests and Fish Policy Committee's recommendation to take no action at this time on the Washington Road Sub-Basin Scale Effectiveness Monitoring First Sample Event Report and the Type N Experimental Buffer Treatment Study for Baseline Measures of Genetic Diversity and Gene Flow of Three Stream-Associated Amphibians.

SECONDED: Sherry Fox

ACTION: Motion passed unanimously.

FORESTS AND FISH POLICY ANNUAL REPORT

Stephen Bernath, Forests and Fish Policy Co-Chair, summarized the documents the co-chairs sent to the Board prior to the meeting. He said Policy will provide a new prioritized work list before the Board's November meeting. In regard to Adaptive Management Program funding, he mentioned that DOE Director Ted Sturdevant is willing to put effort into obtaining the funding needed for the Adaptive Management Program, and there has been a positive response from some of the other principals also. In addition the Governor made a commitment to the tribes to deal with the participation grant issue this year.

Jim Peters, Co-Chair, said he will be stepping down as Policy co-chair due to the reduction in funding for tribal participation, and explained the effect on tribal staff in general. He said the tribes believe their role in the Forests and Fish Agreement is critical to secure the Forest Practices HCP which everyone has agreed is important for the state.

Moran thanked Peters for his service, and said conversations among the principals will begin soon to look at how to address the long-term funding issue. She said the more Policy can do on prioritization the better it will help the Board to plan its priorities at the November meeting.

CULTURAL RESOURCES ANNUAL REPORT

Jeffrey Thomas, TFW Cultural Resources Roundtable Co-Chair, provided an overview of the Roundtable's activities in the past year including its charter, drafting rule language to amend WAC 222-20-120, considering comments from the 30-day review of the draft language, and continuing to

produce guidelines for implementing the Cultural Resources Protection and Management Plan, forest practices rules, and forestry-related statutes regarding cultural resources. He said the guidelines are for the purpose of being included in either a board manual or as a website posting.

Pete Heide, Co-Chair, explained the Roundtable's work for the next year will include completing the guidelines, working to improve early identification of potential cultural sites during forest practices activity planning, and educating people who are involved in state-regulated forest practices. The latter is a matter of getting all of the resource professionals on the same page to recognize cultural resources where they are present. He said the Roundtable could use DNR's help in getting the guidelines into a format that people can use.

Tom Laurie asked whether the Roundtable planned to conduct some sort of effectiveness review. Heide said the Roundtable is dealing with things that are not easily measured, however the cooperators are asked how it is working for them individually and most of the feedback has been positive. Thomas said he would like cultural resources added as part of the suite of projects in the compliance monitoring program.

LOW IMPACT TEMPLATE

Marc Engel, DNR, said a low impact template is almost ready to be presented to Small Forest Landowner Advisory Committee and hopefully to the Board prior to the November meeting. He explained the draft template has already been shown to representatives of the federal services, tribes, Conservation Caucus, and the Washington Farm Forestry Association. It incorporates the no-harvest buffer widths from the board manual template, "Fixed Width Riparian Buffers for Small Forest Landowners in Western Washington", but also allows thinning within the inner zone. He said the goals for this template are to ensure the template can be used in eastern and western Washington and would be simple to apply. Landowners need only measure the width and the length of the riparian management zone (RMZ), measure the diameter of the trees within the template area, and use a simple table to determine if thinning will be allowed within the RMZ.

Tom Laurie, referring to an earlier comment by Ken Miller, asked what is directional falling. Engel said the concept was large woody debris placement or removing timber closer to the water without taking equipment into the core zone. However, the State Caucus proposes a relative density of 50, and does not see the need for landowners to manufacture down woody debris or standing snags because the stand will naturally do that.

Sherry Fox asked Engel to explain any discussions related to the patch cut concept and associated stream length restrictions for patch cuts. Engel explained the original proposal by the small forest landowners was to allow small clear cuts along prescribed stream lengths within the RMZ. He said the State Caucus determined this was impractical because the narrow 50-foot width of the core zone would reduce riparian function to an unacceptable level. He said the caucus determined that pursuing the potential for patch cuts would require going through the adaptive management process.

FOREST BIOMASS UPDATE

Bridget Moran, DNR, provided an update on the activities of the Forest Biomass Harvest Work Group. The intent of this effort is to determine if the current rules would be sufficient if the market for biomass expands in Washington State. Since the May Board meeting, the group discussed all of the forest practices rules that apply to biomass harvest activity and went to the field to view biomass removal on the ground, the equipment used, and retention after harvest has occurred. Next the group

will evaluate best management practices (BMPs) used in other states and countries, and the group plans to report its findings to the Board and any recommendations for rules by May 2012. She said participation is open to the public and the meeting agendas and updated work plan are posted on DNR's website.

Norm Schaaf said he could understand the need to look at BMPs only if there is a risk to resources, and suggested the group seek information on resource risk. Anna Jackson said that was always the purpose. Schaaf said he hoped the information coming back to the Board will explicitly include risk to resources with existing rules. Moran said it will be a risk-driven conversation; after the analysis of the BMPs the group will look at each rule and determine how each rule prevents risk or not.

PUBLIC COMMENT ON ROAD MAINTENANCE AND ABANDONMENT PLANNING (RMAP) RULE MAKING AND BOARD MANUAL SECTION 3 GUIDELINES FOR FOREST ROADS

Chris Mendoza, Conservation Caucus, commented that the success of the RMAPs and watershed analysis rules and manuals, shows what the work groups, staff, and Policy can accomplish if everyone puts their minds to it.

Stephen Bernath, Department of Ecology, said Ecology is committed to making the RMAPs extension process a success and will make extension reviews a high priority as they come in. He pointed out that several Clean Water Act assurances milestones will be fulfilled with the implementation: ensure better tracking of the RMAPs program and individual landowners' roads and improved stakeholder involvement. There was also a recommitment by the principals for seeking funding for adaptive management, to accelerate the Family Forest Fish Passage Program (FFFPP); and to assess small forest landowner roads.

Sherry Fox asked if State Forester Aaron Everett has requested federal funding for the cost-share program. Bernath answered yes, the caucuses created a publication and the Governor and Commissioner sent letters to the secretaries of transportation, commerce, interior and agriculture regarding the FFFPP for that purpose. Moran said Everett was in Washington, D.C. last week and continues to work on possible funding opportunities. She added that Everett is going to come to the Board in November to talk about his role as state forester and as federal liaison.

ROAD MAINTENANCE AND ABANDONMENT PLANNING (RMAP) PROCESS

Darin Cramer, DNR, provided an overview of the forms DNR has produced for RMAP annual reports and extension requests. He explained DNR's goals were to provide consistent information and interpretation of the elements for reports, provide a better way for region staff to track RMAP implementation, and diminish the need for staff to do field checks. He said DNR is working on a statewide database that DNR RMAPs specialists use to track implementation, make updates, and have available when they are planning. He pointed out that all landowners with RMAPs will use the new annual reporting forms, and three reporting items have been added to the reporting requirements so the worst first and even flow goals can be assessed more effectively: total number of barriers identified in each RMAP, total miles of forest road needing improvement, and percentage of road improvement by road management block.

Norm Schaaf referred to the form in which landowners will provide a road management block priority ranking, and asked if DNR will require fulfillment of that ranking. Cramer said it is intended to be a general guide, recognizing that sometimes there will be deviations based on

circumstances. But the accomplishment reports will generally be expected to reflect the order given.

ROAD MAINTENANCE AND ABANDONMENT PLANNING (RMAP) RULE MAKING

Marc Engel, DNR, summarized the proposed RMAPs rule. He said it will allow for an extension of RMAPs performance periods up to five years, provide a 45-day review period of the amended RMAP, and require landowners to use standardized forms. He said in addition to the proposed language before the Board, DNR recommends changing the work completion date to October 31 instead of July 1 so landowners can take advantage of a full construction season before their deadline.

He explained the Board held three public hearings in Sedro Woolley, Port Angeles, and Centralia where the comments were largely in support of the proposal except for concerns about the increased workload for landowners to fill out the new annual reporting forms. He said DNR did not receive comments on SEPA analysis except one from the Department of Ecology's Southwest Region Office regarding the requirements related to contaminated soil or groundwater; this comment was not specifically targeted to the rule proposal.

He mentioned staff will make a correction to the economic analysis. It indicates that the Board made the SEPA threshold determination, when it actually was DNR. The Board's designee for SEPA responsible official is the Commissioner of Public lands, not the Board. Finally, he said staff recommends delaying the effective date of the rule to October 3 to allow DNR sufficient time to inform stakeholders about the rule and forms.

Sherry Fox asked for an additional change to the economic analysis – anywhere large landowners are discussed, change to "forest landowner" because the rule also applies to the small forest landowners who completed full RMAPs. Engel agreed and said staff will make sure that is done.

MOTION: Tom Laurie moved that the Forest Practices Board adopt the rule proposal amending WAC 222-24-050 and 222-24-051 as presented by staff. This rule making provides landowners the opportunity to request an extension of the performance period for their road maintenance and abandonment plans. He further moved to direct staff to file a CR-103 Rule Making Order with the Office of the Code Reviser that specifies an effective date for the rule of October 3, 2011.

SECONDED: Paula Swedeen

Board Discussion:

Tom Laurie and Anna Jackson both said they appreciated DNR's handling of the concerns brought forward at the May 2011 Board meeting. Laurie said Ecology concurs with the rule making, and he believed the final product was very responsive to industry while also making improvements so stakeholders can count on better information when tracking RMAP progress.

Tom Davis asked if the forms would eventually become electronic documents. Cramer said initially they will be available electronically although they will need to be printed, but the intent is to move everything to a dynamic online environment.

Schaaf extended his thanks on behalf of landowners and also thanked the staff in the regions for

their work during this process.

Moran commented that the RMAPs program serves the state well; she added thanks to Washington's timber landowners for their tremendous investment in roads because it has made a huge difference.

ACTION: Motion passed unanimously.

BOARD MANUAL SECTION 3 GUIDELINES FOR FOREST ROADS

Donelle Mahan, DNR, said the changes to the forest roads board manual include the Forest and Fish Policy Committee's extension recommendations, instructions for the clarifications per Ron Mally's petition regarding the placement of slash and debris generated within riparian management zones during road construction, and clarifications regarding disconnection of road surface run-off water when implementing drainage structures adjacent to streams. She explained the latter component was a recommendation from Policy after receiving input from a science advisory group. She said most of the extension process is contained in part 2.1; it includes information about the forms and the rule, and is meant to help landowners with the extension process if they choose to request an extension.

MOTION: Tom Davis moved that the Forest Practices Board approve Board Manual Section 3 Guidelines for Forest Roads. He further moved to allow staff to make minor editorial changes if necessary prior to distribution.

SECONDED: Norm Schaaf

ACTION: Motion passed unanimously.

Marc Engel added that one of the components of Policy's recommendation for this revised RMAPs program was for cooperators to engage in an effort to get funding to accelerate fish passage improvements on small forest lands and county access roads. Although federal funding has not come through, the state legislature did appropriate $2 million toward the Family Forest Fish Passage Program for the new biennium and DNR is also looking into grant funding through the Natural Resources Conservation Service and Bonneville Power Administration.

Moran emphasized that the rule and board manual are only two of several components of the RMAPs package, and work on the other pieces are still necessary. Darin Cramer said there is still a lot of work to do to implement the rule.

PUBLIC COMMENT ON NOTICE OF FOREST PRACTICE TO AFFECTED INDIAN TRIBES RULE MAKING

Pete Heide, WFPA, said he believed the rule proposal is acceptable for public review and the Board can consider any future comments as it is finalized. He explained the rule proposal is the TFW Cultural Resources Roundtable's approach to a balanced rule that ensures landowners fulfill the meeting requirement and also prevents unreasonable costs and restriction on landowners.

NOTICE OF FOREST PRACTICES TO AFFECTED INDIAN TRIBES RULE MAKING

Marc Engel requested that the Board initiate rule making amending WAC 222-20-120 and 222-30-021 as proposed by the TFW Cultural Resources Roundtable. He said the amendments will

streamline the permitting process and allow open and constructive dialog between the landowners and tribes.

He said several comments were received via the 30-day review of the rule proposal by WDFW, counties, and tribes: The Confederated Tribes and Bands of the Yakama Nation and the City of Seattle commented in support of the proposal; the Puyallup Tribe of Indians provided alternate language for consideration. He said the Roundtable considered all comments and agreed the language is sufficient to carry forward, with the understanding that the Board may receive and consider additional comments during the public review and hearing process.

Norm Schaaf asked how DNR determines a tribe's area of concern related to cultural resources. Engel said DNR has asked each tribe to complete a reviewer profile in the Forest Practices Application Review System (FPARS) for any individual that wants to review FPAs for cultural resources, and to identify the tribe's geographic area of interest for cultural resources. Some tribes have not made the distinction between areas that biologists want to review and areas that their cultural resource expert will want to review. DNR is going to again ask the tribes to identify their geographic areas of interest specific to cultural resources to receive notification from DNR when applications are within those areas.

Schaaf said several tribes can identify the same area of interest, and asked how a landowner can know in advance which tribes have requested a particular area. Moran said landowners can contact a DNR office for that information.

MOTION: Anna Jackson moved that the Forest Practices Board approve for public review the draft rule proposal that amends WAC 222-20-120, notice of forest practices to affected Indian tribes, and corrects WAC 222-30-021(1)(c)(ii), Western Washington riparian management zone clumping strategy. She further moved that the Board direct staff to file a CR-102 with the Office of the Code Reviser to initiate permanent rule making.

SECONDED: Dave Herrera

Board Discussion:
Schaaf said he would like to propose a modification that would be simpler and less expensive for landowners in the communications process. He said he had no disagreement with the necessity to contact the tribes and give them an opportunity to consult. But the modification would allow a landowner to utilize an email trail or a log of telephone calls made to the tribe instead of having to send a certified letter. He said every certified letter costs five dollars; multiply that times several tribes, times hundreds of applications or thousands in this state, it becomes a significant cost burden both in time and money.

AMENDMENT: Norm Schaaf moved to amend the rule proposal by changing the word "and" to "or" at the end of the line on page 1, line 28.

SECONDED: Sherry Fox

Board Discussion:

David Herrera suggested that maybe this issue could be addressed at a local level and timber companies could focus on engaging with the local tribes. He said he read in the language that the certified letter option addresses the worst case scenario and assumes the landowner probably doesn't talk to the local tribe. He said a lot can be gained for timber companies and local tribes if they develop relationships to support each others' common interests.

Sherry Fox said she supported Schaaf's proposal because the certified letter is an extra burden, especially when there are multiple tribes to contact.

Tom Davis suggested a rule that allows landowners to work out a process with each individual tribe.

Paula Swedeen asked for the TFW Cultural Resources Roundtable co-chairs to explain the discussions that led to the certified letter language.

Pete Heide said the Roundtable did not spend a lot of time deciding that particular issue. The group acknowledged some method was needed to show DNR that the landowner made a good faith effort to contact each of the tribes that DNR says they are supposed to contact because there have been circumstances where a landowner is unable to get a response from a tribe, resulting in DNR not approving their work. He added it is possible to receive an email back that says it was opened.

Jeffrey Thomas said he remembered it was discussed that documentation of telephone and email attempts was not compelling enough to demonstrate a good faith effort to make contact. He said in his opinion written communication is insufficient for meeting the intention of consultation, and should be backed up with the extra measure of telephone and email contact – something to try for face-to-face communication if at all possible. But where there are established relationships, where mail communication is mutually agreed to be sufficient, it could suffice.

Moran said at this point she wasn't supportive of the amendment to the motion. She said she wasn't comfortable with changing the consensus recommendation but said there is opportunity to proceed to public review and comment of the rule as written, allow the Roundtable to revisit the conversation, and hear if there is a sufficient alternative before adopting a rule.

Anna Jackson suggested the certified letter concept could be part of subsection (d) as an example of "other acceptable documentation."

Tom Laurie said he was sympathetic with the desire to simplify the process but was not willing at this point to vote to override the consensus process at least through the public hearing process. He said he was very interested in hearing from the tribes about how necessary this is; it seems like a pretty simple change but we need to make sure that we are communicating with tribes in the way that is most meaningful to them.

Schaaf agreed that having a one-on-one relationship is the best thing, but if there continues to be no response to landowners' attempts to make contact, a lot of effort goes into trying to achieve something that will never happen. He said he was simply trying to find a way to accomplish the goal more expediently, and appreciated everyone's thoughts. He asked whether the rule making process will have to start all over again if the Roundtable discussions or public comment results in a change to the language. Moran said no as long as it is not substantially different than what the public had to comment on, like simply an easier way to achieve the same outcome.

Schaaf requested that the Roundtable continue to discuss this issue to determine an acceptable alternative to address his concern; there was general agreement among Board members.

ACTION: Motion withdrawn.

ACTION – MAIN MOTION: Motion passed unanimously.

PUBLIC COMMENT ON BALD EAGLE RULE MAKING

Pete Heide, WFPA, commented that the rule is appropriate. The bald eagle remains protected under the Bald and Golden Eagle Protection and Management Act, and the USFWS website shows the required protection measures for distances to stay away from active eagle nests. He said one of WFPA's members found the federal service to be very responsive and flexible.

Kara Whitaker, Conservation Caucus, said the caucus is concerned about a potential gap in bald eagle protection. She urged the Board to add rule changes in addition to those currently being considered: add eagles to the Class IV-special section, make trigger distances consistent with the federal guidelines, and provide a Class IV-special exemption for activities consistent with federal guidelines.

Tim McBride, Hancock Forest Management, commented that the proposed rule presents an opportunity to show the industry that by working collaboratively we can do good things for wildlife and the conservation of public resources.

BALD EAGLE RECOMMENDATION AND PROCESS

David Whipple, Department of Fish and Wildlife (WDFW), said WDFW recommends removing the peregrine falcon and bald eagle from the critical habitat list in WAC 222-16-080 and changing the common name and genus for the Western pond turtle on the list to "Pacific pond turtle." He explained:

- In 2002, the Washington Fish and Wildlife Commission down-listed the peregrine falcon from "threatened" to "state sensitive" in 2002, and the falcon has had very little conflict with forest management activities.
- In 2008, the Commission changed the bald eagle status from "threatened" to "state sensitive." In April 2011 the Commission amended WDFW's bald eagle protection rules to eliminate the requirement for Bald Eagle Protection and Management Plans unless the species is re-listed as threatened or endangered in Washington. The USFWS now manages the species under the Bald and Golden Eagle Protection Act.

He said WDFW convened the multi-caucus Wildlife Work Group in June to discuss a rule recommendation to the Board. He explained several concerns expressed by some of the stakeholders, including: landowners need eagle location information; stakeholders need to review forest practices applications (FPAs) proposing activities close eagle nests or roost sites; and the rules should require SEPA review of FPAs proposing activities within distances prescribed in the federal guidelines implementing the Bald and Golden Eagle Protection Act.

He summarized the rule options listed in his July 21, 2011 memorandum to the Board, and said

WDFW is not making a firm recommendation to the Board at this time. He said WDFW is continuing to: maintain the bald eagle database; screen FPAs for eagles; notify landowners and the USFWS when proposed forest practices are near an eagle nest or roost site; make bald eagle data available to landowners for their ownership and tribes for the entire state; continue to make Priority Habitats and Species data available; and developing a fact sheet for disseminating information. He added that WDFW is also working with the USFWS who has added to its website a one-page commitment for landowners to implement their federal protection guidelines.

Marc Engel, DNR, said DNR has put an interim process in place to address forest practices proposed near bald eagle nests or communal roosting sites. Sue Casey explained how DNR is classifying applications: FPAs proposing forest practices within a half mile of an active nest site or quarter of a mile of a communal roosting site are classified Class IV-special regardless of whether there is a Bald Eagle Management Plan attached. If the applicant indicates that no operation will take place during the active nest season and the proposal is not within a quarter mile of the active nest site, the application is classified Class III.

Casey added that landowners who have numerous Bald Eagle Management Plans could group them and run them through SEPA, and subsequently use that plan for possible Class III classifications in future proposals. She explained there is a joint WDFW and DNR memorandum informing landowners and stakeholders about the changes and direction to go to the USFWS website.

BALD EAGLE RULE MAKING

Marc Engel, DNR, requested that the Board direct staff to file a CR-101, *Preproposal Statement of Inquiry,* followed by a 30-day review of rule language amending WAC 222-16-080. The language deletes the peregrine falcon and bald eagle from the critical habitats list and changes the name of the species formerly known as the Western pond turtle to Pacific pond turtle (*Actinemys marmorata*).

MOTION: Norm Schaaf moved that the Forest Practices Board direct staff to file the CR-101 Pre-Proposal Statement of Inquiry with the Office of the Code Reviser. The CR-101 will inform the public that the Board is considering amending WAC 222-16-080 critical habitat (state) of threatened and endangered species, to reflect the down-listing and delisting of the bald eagle and the peregrine falcon by the Washington Fish and Wildlife Commission and name change of the Western Pond Turtle by the Washington Department of Fish and Wildlife. He further moved that the Board accept the draft rule proposal for a 30-day review with the counties, Department of Fish and Wildlife and tribes to follow the publication of the CR-101.

SECONDED: Anna Jackson

Board Discussion:

Discussion consisted of how to inform landowners of their continued obligations under the federal Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. Paula Swedeen and Anna Jackson asked questions about how landowners can be directed to the USFWS, and asked if information could be added to the FPA form.

Norm Schaaf asked Whipple for verification that WDFW receives applications via FPARS, and can comment as appropriate. Whipple said that is correct, but WDFW has only one person reviewing

FPAs so there is a chance an application could get missed.

Darin Cramer said information on the FPA should be confined only to what is needed for compliance with forest practices rules. He said there are other ways to provide information, and he was not inclined to include it on the application itself.

Bridget Moran said DNR is taking its lead from the entity of jurisdiction, the Washington Fish and Wildlife Commission. She said the Commission's delisting of the species and removal of the Bald Eagle Management Plan feels like direction that the highest level of protection is not needed. She said DNR has every intention of including information on the FPA instructions and posting the guidelines on the DNR website, but not incorporating the information on the FPA itself. Doing so would put DNR in the position of enforcing eagle protection rules where the agency of jurisdiction does not have that same level of protection or concern. She said the Board could engage in future dialogue about rule amendments as suggested by certain stakeholders in the Wildlife Work Group, but the current focus should be making the forest practices rules consistent with the Fish and Wildlife Commission's decision.

Tom Laurie commented that the agencies should keep thinking about ways to connect landowners to the federal guidelines, but the current rule proposal is appropriate at this time. Swedeen and Jackson indicated their continued discomfort with not informing applicants about the change in regulatory obligations. Swedeen said she would like to amend the motion to direct landowners to the USFWS when they have an eagle.

Engel said staff could work with the Wildlife Work Group and come back in November with a proposal to amend rules for this purpose. However, there is a sense of urgency to proceed with the current proposal because after the Fish and Wildlife Commission's rule change, landowners' Bald Eagle Management Plans no longer serve to exempt applications from being classified Class IV-special and landowners are required do a SEPA analysis until the rule is amended.

Moran said she would have preferred that the Wildlife Work Group be ready with a recommendation at this meeting. She said a rule recommendation at the November meeting could possibly sync up with the current proposal.

Cramer said he was reluctant to create any delay in the current rule making timeline. DNR's process of reviewing, processing, classifying, and complying forest practices applications is intended to ensure that forest practices activities meet the forest practices rules. He said in the current lean economic climate, he was very reluctant to have staff doing things that are unrelated to forest practices rule implementation.

Jackson said she was willing to commit WDFW to convening the Wildlife Work Group again prior to the November meeting for discussing notification options. Swedeen said, in light of Cramer's comments she wanted to request that WDFW and DNR staff figure out a way to link bald eagle protection under the federal act to the forest practices rules. She said she would have supported accomplishing the same thing without rule making, but if a rule is needed, so be it.

Moran suggested that the Board task the Wildlife Work Group with addressing whether additional rule making is necessary for consistency with the federal eagle act and to make a recommendation to the Board in November.

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON FORESTRY RIPARIAN EASEMENT PROGRAM RULE MAKING

Ken Miller, Washington Farm Forestry Association (WFFA), said WFFA fully supports the improvements to the Forestry Riparian Easement Program (FREP), particularly with directing the chair of the Board to form a group of stakeholders to investigate and recommend potential new long-term funding sources for the program. Not fully funding FREP creates a real and measurable disproportionate impact that highlights the state's failure to fulfill the promises of Forests and Fish.

FORESTRY RIPARIAN EASEMENT PROGRAM RULE MAKING

Dan Pomerenk, DNR, requested the Board's approval to begin the rule making process for the FREP rule. He explained that among other things, the 2011 legislation excluded non-profit organizations from eligibility and placed a monetary cap on compensation for unstable slopes areas. The legislature set aside $1 million for the program for the current biennium. He said currently there are 86 applications waiting for funding, and his goal is to determine a value on as many as possible. He said possibly 10 easements can be acquired in the current biennium.

MOTION: Sherry Fox moved that the Forest Practices Board direct staff to file a CR-101 Pre-Proposal Statement of Inquiry to notify the public that the Board is considering rule making to implement Engrossed Substitute House Bill 1509 that modifies the Forestry Riparian Easement Program.

SECONDED: Paula Swedeen

Board Discussion:

Sherry Fox requested that the rule language stay as close to the legislation as possible.

ACTION: Motion passed unanimously.

EXECUTIVE SESSION

No executive session.

Meeting adjourned at 4:50 p.m.