State of Washington
Department of Fish and Wildlife

Mailing Address: 600 Capitol Way N, Olympia WA 98501-1091, (360) 902-2200, TDD (360) 902-2207
Main Office Location: Natural Resources Building, 1111 Washington Street SE, Olympia WA

October 19, 2011

MEMORANDUM

To: **Forest Practices Board**

From: **David Whipple, Forest Policy Coordinator** DW

SUBJECT: **WILDLIFE WORK GROUP RECOMMENDATION ON BALD EAGLES**

The Forest Practices Board initiated a rule making process on August 9, 2011 to modify *WAC 222-16-080 Critical habitats (state) of threatened and endangered species* for three wildlife species. The changes would remove the Bald Eagle and Peregrine Falcon from the rule, and would change the name of the Western Pond Turtle.

In response to a discussion regarding Bald Eagle protection during the August meeting, the Board tasked the Wildlife Work Group with addressing whether additional rule making is necessary to provide protection for the Bald Eagle consistent with the federal Bald and Golden Eagle Protection Act (Eagle Act), and to make a recommendation to the Board in November.

The Wildlife Work Group met twice in September. Attendees of the first meeting included the Upper Columbia United Tribes (UCUT), Washington Forest Law Center (WFLC), Washington Forest Protection Association, U.S. Fish and Wildlife Service (USFWS) and the departments of Natural Resources (DNR) and Fish and Wildlife (WDFW). The second meeting consisted of a conference call between UCUT, WFLC, DNR and WDFW. Following is a summary of the topics discussed and outcomes reached.

Regulatory Options

Discussions on the subject of regulatory approaches focused on two possible avenues. One option was a rule within *WAC 222-16-050 Classes of forest practices*, whereby Forest Practices Applications (FPAs) would be classified as "Class IV – special" if forest management activities were proposed within the Eagle Act guideline distances of 330 or 660 feet from a nest or roost.

> This option presents issues related to the definition of a "Class IV- special" FPA, in that these FPAs are determined to have the potential for significant adverse impact on the environment. In the case of Class IV – special FPAs for eagles, DNR would need to make a threshold decision (likely utilizing SEPA guidance that would need to be developed) based on whether the FPA presents a probable significant adverse impact or whether the impact is to be mitigated.
>
> Because the species is no longer listed as threatened or endangered, there is a question whether this is an appropriate rule avenue for the species. This rule option also would represent a workload for DNR and WDFW at a time when WDFW has deferred bald eagle protection to the USFWS. In addition, there may be times when approved FPAs are not consistent with the Eagle Act guidelines, creating a liability on the part of the landowner and the state.

The second regulatory option discussed was a possible "standard rule" under *WAC 222-30 Timber Harvesting* that would not allow harvest or other activities within the distances (330 feet and 660 feet) and times of the year (within and outside the breeding season) identified in the Eagle Act guidelines.

> This option presents a workload issue for DNR and WDFW at a time when WDFW has deferred bald eagle protection to the USFWS, because as with all "standard rules" an alternate plan could be proposed to meet the same level of protection offered by the rule, but in a different way. In addition, this option means an alternate plan approved by DNR may not necessarily be approved by the USFWS within the context of their system of allowing take, or it may represent take that cannot be permitted by USFWS due to the annual take "cap" having already been reached.

Administrative Options

Discussions of administrative options centered on various ways "close the loop" between forest landowners, WDFW, DNR, USFWS, and FPA reviewers, such that: 1) landowners are made aware of bald eagle nest and roost sites that may be affected by their forest management activities as well as Eagle Act requirements; 2) FPA reviewers have a relatively easy way to know when FPAs are proposed in close proximity to eagle nests and roosts, and; 3) the USFWS is aware of FPAs within the distances identified in the Eagle Act.

Previous to the August Board meeting, DNR and WDFW committed to implementing or continuing to implement administrative actions intended to help ensure eagle nests & roosts continue to be protected. During the September meetings, additional practices were agreed upon to further close the administrative loop. In total, these administrative elements are:

- WDFW will continue to receive automated notification of FPAs within the distances designated in the Eagle Act guidelines (330 & 660 feet), and will notify the landowner and advise them to contact USFWS, who will also be notified.
- Landowners will continue to be able to obtain from WDFW all bald eagle locations & data for their ownership.
- All tribes can obtain all eagle locations & underlying data for any geographic area of the state from WDFW.
- WDFW's "PHS on the Web" (http://wdfw.wa.gov/mapping/phs/) contains all eagle location information, thus enabling landowners and interested parties to determine if a proposed or ongoing FPA is near an eagle nest or roost.
- Any interested party can create or maintain a DNR Forest Practices Application Review System (FPARS) profile which includes designation of their geographic area of interest. This in combination with the WDFW PHS information will allow interested parties to review specific FPAs for possible bald eagle issues.
- WDFW, with assistance from stakeholders, DNR and USFWS, is developing a bald eagle protection fact sheet that will be included with the FPA mailing to landowners and widely distributed to the Washington Farm Forestry Association, Washington Forest Protection Association, individual landowners, DNR and WDFW Regional offices, TFW meetings, etc. The fact sheet will help landowners understand the changes in WDFW's bald eagle protection rules and the Forest Practices Rules, the FPA screening process, "PHS on the Web", the federal Eagle Act protection process, contact information, web addresses, etc.
- DNR will place a checkbox on the FPA Office Checklist that office staff will use to indicate if an FPA is within 660 feet of an eagle nest or roost, and will direct people to the fact sheet. This FPA Office Checklist is scanned into FPARS along with the FPA. Thus, FPA reviewers will be able to determine which FPAs may have eagle issues within their geographic area of interest.
- DNR will mail the bald eagle protection fact sheet to landowners along with the FPA approval sheet.
- DNR will place a link to WDFW's "PHS on the Web" on their FPARS web page. This page is accessed by landowners to download activity maps for use in their FPAs.

Due to the issues and concerns associated with protecting bald eagles under WACs *222-16-050 Classes of forest practices* and *WAC 222-30 Timber Harvesting*, as well as the administrative commitments outlined above, the Wildlife Work Group came to a consensus opinion that Forest Practices Rules for the Bald Eagle are currently not needed. Therefore, the group is making no recommendation to the Forest Practices Board for additional rules.