

2. Forest Practices Board

2.1 Introduction

The Forest Practices Board (Board) activities during the 2010-2011 reporting period are explained in this section. The Board adopted rules related to administrative appeals, forest biomass, the Riparian Open Space Program, and watershed analysis. The Board also approved revisions to Board Manual Section 11 *Standard Methodology for Conducting Watershed Analysis*, and a new Board Manual Section 18 *Rivers and Habitat Open Space Program*. In addition the Board considered changes to rules related to the notice of forest practices to affected Indian tribes, road maintenance and abandonment plans, and Board Manual Section 3 *Guidelines for Forest Roads*.

2.2 Forest Practices Board Overview

The Board sets the standards that are the basis for the Forest Practices program. The state's Forest Practices Act established the Board in 1974 as an independent state agency. It directs the Board to adopt Forest Practices Rules for non-federal and non-tribal forestlands that protect public resources while maintaining a viable forest products industry. "Public resources" is defined as water, fish and wildlife, and capital improvements of the state or its political subdivisions.

The Board consists of 13 members including the Commissioner of Public Lands, or the Commissioner's designee, four additional state agency directors or their designees, and eight members appointed by the governor. The represented agencies are the state Departments of Natural Resources (DNR), Commerce, Ecology, Agriculture, and Fish and Wildlife (WDFW). The governor-appointed members include a member representing a timber products union, a forest landowner who actively manages his or her land, an independent logging contractor, an elected county commissioner or council member, and four general public members whose affiliations are not specified in the Forest Practices Act. The membership of the Board as of June 30, 2011 is:

- Bridget Moran, Commissioner of Public Lands Designee
- Mark Calhoon, Department of Commerce
- Tom Laurie, Department of Ecology
- Tom Davis, Department of Agriculture
- Anna Jackson, Department of Fish and Wildlife
- Dave Somers, Snohomish County Commissioner
- Bill Little, timber products union representative
- Doug Stinson, general public member and small forest landowner
- Sherry Fox, general public member and independent logging contractor
- Paula Swedeen, general public member
- Norm Schaaf, general public member
- David Herrera, general public member
- (vacant), general public member

In addition to adopting rules, the Board approves changes to the Forest Practices Board Manual, an advisory technical supplement to the rules. The manual guides field practitioners and DNR regulatory staff when implementing certain rule provisions. The Forest Practices Rules, together with the board manual largely represent the state's protection measures for public resources related to forest lands.

The Board also directs the Adaptive Management Program. This program provides science-based recommendations and technical information to assist the Board in determining if and when it is necessary or advisable to adjust rules and guidance in order to achieve established goals and objectives. The Board empowers four entities to participate in the Adaptive Management Program:

1. Cooperative Monitoring, Evaluation and Research (CMER) Committee
2. Forests and Fish Policy Committee
3. Adaptive Management Program Administrator
4. Scientific Review Committee (SRC)

The CMER Committee represents the science component of the program and oversees research and monitoring. The Forests and Fish Policy Committee considers CMER Committee research and monitoring findings and makes recommendations to the Board related to forest practices rule amendments and/or guidance changes. Participation in both the CMER Committee and the Forests and Fish Policy Committee is open to representatives of environmental and forest landowner interests, tribal governments, county governments, and state and federal agencies. The Adaptive Management Program Administrator is a full-time employee of DNR and is responsible for overseeing the program, supporting the CMER Committee and reporting to the Forests and Fish Policy Committee and the Board. The Scientific Review Committee performs independent peer review of some CMER work to ensure it is scientifically sound and technically reliable. The Scientific Review Committee may also review non-CMER work, though it does not do so frequently.

2.3 Forest Practices Board Rule Making Activity (July 1, 2010 – June 30, 2011)

Administrative Appeals

On November 9, 2010, the Board adopted rules incorporating portions of 2010 legislation that streamlined environmental and land use administrative appeals. For the Forest Practices Program the significant aspects of the legislation eliminated the Forest Practices Appeals Board, made DNR's decisions appealable to the Pollution Control Hearings Board, standardized appeal deadlines to 30 days, and defined the term "date of receipt" as the standard trigger for appeal timelines. Chapters 222-12, 222-16, 222-20, 222-30, and 222-46 WAC were amended in this rule making.

Riparian Open Space Program

The Board adopted changes to chapter 222-23 WAC, *Riparian Open Space Program*, on May 10, 2011. The rules incorporated 2009 legislative changes to add acquisitions of conservation easements for critical habitat for threatened and endangered species listed in WAC 222-16-080 *Critical habitats (state) of threatened and endangered species*. This is in addition to habitat

within unconfined channel migration zones, which was the single focus of the original program enacted by the state legislature in 1999. The rule changes also carry forward the additional legislative mandate to only allow the acquisition of permanent conservation easements, not fee title interests as was allowed before 2009.

Watershed Analysis

The Board adopted changes to the watershed analysis rules on May 10, 2011. As reported in previous annual reports, the December 2-3, 2007 storm event in southwestern Washington resulted in extensive land sliding and damage to public resources and private property. The concern relating to forest practices that emerged from that event was whether the existing mass wasting prescriptions developed under watershed analysis (chapter 222-22 WAC) were sufficient for minimizing or eliminating the failure of unstable slopes after management. The rules as amended will help to ensure public safety and public resource protection.

The rule language was a product of the Adaptive Management Program. In August 2009, prior to the development of rule language, the Board convened a committee consisting of four Board members to focus on concerns with the existing rules and return with recommendations. At the Board's February 10, 2010 meeting the Board committee presented nine recommendations to the Board that included strategies for supporting the continued use of unstable slope prescriptions deemed adequate for resource protection and public safety. After convening special meetings in March and April, the Board approved a proposal initiation document pursuant to Board Manual Section 22 *Guidelines for Adaptive Management Program* (Washington Forest Practices Board, 2011). This was forwarded to the Adaptive Management Administrator who recommended the "policy track" for adaptive management review and recommendation. (For a description of this process, please see part 3.1 in the manual.)

Most of the effects of this rule are contained in the amendments to WAC 222-22-090 *Use and review of a watershed analysis* and WAC 222-16-050 *Classes of forest practices*, and include the following:

- Reinforces that watershed analyses must be kept up-to-date.
- States that entities interested in maintaining prescriptions (that DNR has identified for reanalysis) are responsible for committing sufficient resources to complete the reanalysis.
- Specifies that DNR will review approved prescriptions every five years, or sooner when certain conditions apply.
- States that DNR:
 - May rescind prescriptions if no affected landowners wish to participate and commit resources;
 - Shall classify a forest practices as Class IV-special if a watershed analysis is not current or is not being conducted in accordance with conditions required by DNR during reanalysis; and
 - May rescind prescriptions if the established timeline is not met for completing a reanalysis.

Forest Biomass

On May 10, 2011, the Board adopted an amendment to the definition of “forest practice” in WAC 222-16-010. The words, “or forest biomass” were added to the lead-in sentence of that definition. That definition now reads:

‘Forest practice’ means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber or forest biomass, including but not limited to:

Road and trail construction;

Harvesting, final and intermediate;

Pre-commercial thinning;

Reforestation;

Fertilization;

Prevention and suppression of diseases and insects;

Salvage of trees; and

Brush control...

The Board’s purpose was to make it clear to the public that forest biomass harvest is subject to the same resource protection measures as timber harvest in the Forest Practices Rules, including: equipment limitation zones; riparian and wetland management zones; leave tree requirements; shade requirements; residual down wood and wildlife tree requirements; and protection measures for unstable slopes.

Please see “Forest Biomass” in section 2.4 for an explanation of future activity related for forest biomass.

Road Maintenance and Abandonment Plans

The Board is considering amending WACs 222-24-050 and 222-24-051 to allow forest landowners to extend the deadline for completing their road work scheduled in Road Maintenance and Abandonment Plans (RMAPs). The rules currently require all road work to be completed by 2016. The rule changes would allow for an extension of the deadline for up to five years, or until 2021. On May 10, 2011, the Board approved a draft rule proposal for public review and will consider adopting the rules on August 9, 2011.

The RMAP program is an integral part of the rule package commonly referred to as the “Forests and Fish rules.” It requires forest landowners to plan and schedule all of the work needed on their lands necessary to improve and maintain their forest roads to meet certain standards specified in chapter 222-24 WAC and prevent damage to public resources. The original completion date (July 1, 2016, 15 years from the effective date of the 2001 Forests and Fish Rules) was based on an estimate of the time landowners would reasonably need to fund and accomplish their road improvements. The Board is considering this rule amendment because of the financial hardship forest landowners have experienced since the 2008 economic downturn and its effect on home construction and timber prices. Landowners depend on the revenue from harvests to accomplish their road improvements, and with reduced revenues, some landowners are having difficulty completing their road improvements as scheduled in their RMAPs.

Concurrent with rule making, the Board is considering amendments to Board Manual Section 3 *Guidelines for Forest Roads*, which will explain requirements and processes in the RMAPs program.

This rule making and board manual activity is the outcome of an Adaptive Management Program recommendation presented to the Board on August 10, 2010. The recommendation included three elements: a rule change, revised field guidance, and an operational plan. The operational plan was envisioned to include activities to enhance efforts to achieve Forests and Fish goals: collaborating to develop the rule amendments and guidance in the board manual, and securing funding to accelerate fish passage improvements on small forest landowners' and county roads – which are not subject to the RMAPs rules.

Notice of Forest Practices to Affected Indian Tribes

On May 10, 2011, Timber/Fish/Wildlife (TFW) Cultural Resources Roundtable (formerly 'committee') requested the Forest Practices Board to initiate rulemaking based on a consensus rule proposal to amend for clarification WAC 222-20-120 *Notice of forest practices to affected Indian tribes*. The existing rule requires landowners to meet with affected Indian tribes when Forest Practices Application activities intersect with cultural resources on a forest landscape. The meeting is required even when a tribe has no concerns about the particular cultural resource. In effect, it also directs tribes to participate in these meetings with landowners. This rule is causing problems for landowners and tribes, and also for DNR in its role of approving or disapproving these Forest Practices Applications. The Board may consider adopting changes to the rule at its February 2012 meeting.

2.4 Anticipated Forest Practices Board Direction

As indicated in section 2.3, the Board will continue rulemaking on the rules regarding "Road Maintenance and Abandonment Plans" and "Notice of Forest Practices to Affected Indian Tribes". The following are additional rule and board manual subjects the Board is expected to consider in the next reporting period.

Forestry Riparian Easement Program

2011 legislation (ESHB 1509) made several changes to the Forestry Riparian Easement Program (FREP), including but not limited to:

- Requiring landowners receiving funding to be non-governmental, for-profit legal entities;
- Expanding the qualifying timber to include forest trees on areas of potentially unstable slopes or landforms with potential to deliver sediment/debris to a public resource or threaten public safety;
- Allowing for reimbursement of preparation costs such as the cost of obtaining geotechnical reports.
- Requiring repayment to the state if the land is sold within 10 years to a non-qualifying landowner.
- Addressing long-term program funding by requiring the chair of the Forest Practices Board to develop with relevant stakeholders recommendations for the state legislature.

It will be necessary to incorporate the changes into the FREP rules (chapter 222-21 WAC) as appropriate. A new board manual may be developed concurrent with rule making.

Critical Habitats of Threatened and Endangered Species

The Washington Fish and Wildlife Commission amended the bald eagle protection rules (WAC 232-12-292) in the spring of 2011 because the species was removed from the federal threatened and endangered species list in 2007, and from the state threatened and endangered species list shortly thereafter. The species is still protected under two federal laws, the Bald and Golden Eagle Protection Act and the Migratory Bird Act.

The change in status makes it necessary to amend a section of the Forest Practices Rules, WAC 222-16-080 *Critical Habitats (state) of threatened and endangered species*, which lists forest-dependent state threatened and endangered species habitats and specific forest practices that are designated as Class IV-special. The Board also will consider: deleting the peregrine falcon from their critical habitats list because it was removed from the federal and state threatened and endangered species lists in 2002; correcting the common and scientific name of the western pond turtle, now known as the Pacific pond turtle; and clarifying that certain landowner plans listed in Subsection (6) of WAC 222-16-080 are subject to the State Environmental Policy Act (SEPA).

Lands Platted and Conversions

The 2011 state legislature also passed a bill (HB 1582) that eliminated all references to “lands platted after January 1, 1960” from RCW 76.09.050, which is the statute that defines classes of forest practices. The effect is that proposed forest practices on these lands will not automatically be assumed conversions to a non-forestry use, and therefore will not automatically be designated Class IV-General. Instead these forest practices will be classed I through IV as all other forest practices according to their impact on public resources. The Board will amend WAC 222-16-050(2), and WACs 222-20-010, -020, and -040 accordingly.

In addition, the Board may amend rules corresponding to other recent legislative changes to chapter 76.09 RCW. These changes are related to the elimination of the six-year moratorium on development when landowners have not stated their intention to convert their forest land to other uses, and to other aspects of forest land conversion.

Trees and Houses

As indicated in the 2008, 2009, and 2010 reports, the Board considered rule making that would exclude trees immediately adjacent to residential structures from the definition of “forest land.” Jurisdiction over tree removal in these areas would be transferred from DNR to local governmental entities, but the Department of Labor and Industries would maintain its jurisdiction for public safety purposes. In 2008 the Board put this rule making on hold indefinitely; however, the Board may choose to include it with rule-making activity associated with conversions.

Forest Biomass

In response to public sentiment during the Forest Biomass rule-making process in the 2010-2011 reporting period, DNR is convening a Forest Practices Biomass Harvest Work Group. This group consists of representatives of the timber and biomass industries, DNR, state and federal natural resource agencies, and the environmental community. It will meet about once a month in the remainder of 2011 and part of 2012. The goal is to develop a well-informed recommendation to the Forest Practices Board on whether additional rule making or guidance is needed to protect resources beyond the protections already provided in the rules.

Board Manual Updates

The Board may also consider updating board manual sections, including but not necessarily limited to:

- Section 1 *Method for Determination of Adequate Shade Requirements on Streams*
- Section 7 *Guidelines for Riparian Management Zones*
- Section 12 *Guidance for Application of Forest Chemicals*

2.5 Forest Practices Board Manual

The Forest Practices Board Manual is an advisory technical supplement to the forest practices rules that provides technical background and guidance for DNR staff, forest landowners and cooperating agencies and organizations when implementing certain rules.

The Forest Practices Rules direct DNR to develop board manual sections, each of which provides guidance for implementing a specific rule or set of rules. DNR develops and makes modifications to the board manual sections with assistance from the Washington State Departments of Fish and Wildlife, Agriculture, Ecology and other affected agencies, affected tribes, and interested parties. The development or modification process typically begins with a working group identifying key elements to be addressed and progresses to drafting language with DNR in the lead. During this development phase any interested party may comment on a draft. For board manual sections providing guidance for rules protecting aquatic resources, a final draft is presented to the Forests and Fish Policy committee for review and approval, after which the Board considers and approves it for inclusion in the manual. At times it may be necessary to present the Board with a final product that represents agreement by a majority of the Forests and Fish Policy Committee, rather than by consensus. In these cases, DNR staff informs the Board of the lack of consensus and provides a briefing on the outstanding issues prior to the Board taking action.

Forest Practices Board Manual Activity (July 1, 2010 – June 30, 2011)

Board Manual Section 11 *Standard Methodology for Conducting Watershed Analysis*

The Board approved two new parts to Board Manual Section 11. Part 8 *Review and Reanalysis of Watershed Analysis*, provides a general overview of the review and reanalysis process adopted in the watershed analysis rules described above in section 2.3. Part 9, Appendix K *Mass Wasting Reanalysis*, provides guidance for the reanalysis process for mass wasting (unstable slope) prescriptions.

Board Manual Section 18 *Rivers and Habitat Open Space Program*

On May 10, 2011, the Board approved this new manual which provides guidance for applicants for the Rivers and Habitat Open Space Program. As explained previously in section 2.3, the program compensates forest landowners for conservation easements of lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040. Additionally, the name of the program is changed to “Rivers and Habitat Open Space Program.”

Board Manual Section 3 *Guidelines for Forest Roads*

An amendment to Part 2 of this section was developed concurrently with the Road Maintenance and Abandonment Plan (RMAP) rule making. The Board will consider approving the amended board manual on August 9, 2011, the same date the Board will consider adopting the RMAP rules. Requirements for landowners to request extensions for RMAP completion deadlines will be included, as well as guidance for landowners on progress reports and a description of DNR's and stakeholders' review of landowners' progress reports.

Board Manual Section 21 *Guidelines for Alternate Plans*

The Board may consider a new small forest landowner "low impact" alternate plan template in Section 21. The template would provide a thinning strategy for riparian management zones.