

2. Forest Practices Board

2.1 Introduction

The Forest Practices Board (Board) activities during the July 2012 - June 2013 reporting period are explained in this section. The Board adopted rules related to land use conversions and forest practices applications during this period. However, rule and Board Manual activity was in various stages of development throughout the year on hydraulic project integration, adaptive management program reform, forest biomass, and critical habitats.

2.2 Forest Practices Board Overview

The Board sets the public resource protection 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 rules for forest practices on non-federal and non-tribal forestlands that will protect public resources while maintaining a viable forest products industry. "Public resources" are defined as water, fish and wildlife, and capital improvements of the state or its political subdivisions.

The Board consists of 13 members that include 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, 2013 was:

- Aaron Everett, Commissioner of Public Lands Designee, Chair
- Heather Ballash, Department of Commerce
- Tom Laurie, Department of Ecology
- Kirk Cook, Department of Agriculture
- David Whipple, Department of Fish and Wildlife
- Dave Somers, Snohomish County Commissioner
- Bill Little, timber products union representative
- Bob Guenther, general public member and small forest landowner
- Carmen Smith, general public member and independent logging contractor
- Paula Swedeen, general public member
- Court Stanley, general public member
- David Herrera, general public member
- Phil Davis, general public member

In addition to adopting rules, the Board approves changes to the Forest Practices Board Manual (Board Manual), an advisory technical supplement to the rules. The Board Manual guides field

practitioners and DNR regulatory staff when implementing certain rule provisions. The Forest Practices Rules, together with the Forest Practices 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. Timber/Fish/Wildlife Policy Committee (TFW 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 by DNR and other public and private stakeholders. The Board approves CMER voting members.

The TFW Policy Committee considers scientific findings from the CMER Committee and makes recommendations to the Board related to Forest Practices Rule amendments and guidance changes. The TFW Policy Committee consists of representatives from environmental interests, forest landowner interests, tribal governments, county governments, and selected state and federal agencies. The CMER Committee is open to the same representative group.

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 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, 2012 – June 30, 2013)

Land Use Conversions and Forest Practices Applications

On November 13, 2012, the Board adopted rules to integrate several legislative changes to chapter 76.09 RCW. The changes affected chapters 222-08, 222-12, 222-16, and 222-20 WAC as follows:

- Eliminated all references to “lands platted after January 1, 1960.” Proposed forest practices on these lands are no longer automatically assumed to be conversions to non-forestry uses, and therefore are not automatically classified Class IV-general. (House Bill 1582, [Chapter 207, Laws of 2011](#))

- Eliminated the six-year moratorium on development when landowners have not stated their intention to convert their forest land to other uses. A new process involving a “Notice of Conversion to Non-forestry Use” replaced the six-year moratorium. (Second Substitute House Bill 5883, [Chapter 106, Laws of 2007](#))
- Increased the duration of a Forest Practices Application (FPA) or notification from two to three years. (Second Engrossed Substitute Senate Bill 6406, [Chapter 1, Laws of 2012](#))

In addition, this rulemaking included clarifications for general purposes in WAC 222-16-050 *Classes of forest practices*, and parts of chapter 222-20 WAC *Application and notification procedures*.

Forest Practices Hydraulic Projects

Second Engrossed Substitute Senate Bill 6406, [Chapter 1, Laws of 2012](#), directed the Board to “...incorporate into the forest practices rules the fish protection standards in the rules adopted under chapter 77.55 RCW, as the rules existed on the effective date of (the legislation-summer 2012).” The referenced rules, commonly known as the Hydraulic Code Rules, are in chapter 220-110 WAC and have been administered by WDFW.

The legislation specified that rule adoption must take place by December 31, 2013. To that end, rule development took place throughout the 2012-2013 reporting period. It involved close coordination with WDFW, with additional input from representatives of the timber industry, conservation interests, tribal organizations, and other state agencies. Draft rule language was published in the Washington State Register on June 5, 2013 for public review and comment. The Board will consider rule adoption on August 13, 2013.

When these rules are in effect, hydraulic project proposals associated with forest practices will be included in forest practices applications, be administered by WDNR, and not require separate hydraulic project approvals. WDFW will provide concurrence review for certain forest practices applications that involve specific types of culvert, bridge, and fill projects. WDFW will also continue to review and comment on forest practices applications associated with Type S and F waters, as well as other FPAs of interest to its concerns.

The legislation also required the Board to develop technical guidance in the Board Manual by December 31, 2013, to include best management practices and standard techniques to ensure fish protection associated with forest practices hydraulic projects. See section 2.5 for the status of this technical guidance.

Forest Biomass

In response to public sentiment during the Forest Biomass rule making process during the 2010-2011 reporting period, DNR convened a Forest Practices Biomass Work Group. This group consisted of representatives of the timber and biomass industries, DNR, state and federal natural resource agencies, and the environmental community. The group’s goal was to provide

recommendations to the Board to help ensure public resource protection during forest biomass removal activities.

In August 2012, the group provided recommendations to the Board that included minor rule clarifications:

- Add a definition of “forest biomass” in WAC 222-16-010;
- Insert a clarification within the existing definition of “forest practice” in WAC 222-16-010; and
- Insert “...including forest biomass removal operations...” into the logging system portion of WAC 222-30-020 Harvest unit planning and design.

These draft rule amendments were published in the Washington State Register on June 5, 2013 for public review and comment. The Board will consider rule adoption on August 13, 2013.

Adaptive Management Program Reform

In May 2013, the Board initiated rulemaking pursuant to the Forest Practices Habitat Conservation Plan Settlement Agreement (May 2012) between the Forests and Fish Conservation Caucus, the State of Washington, and the Washington Forest Protection Association.

The settlement agreement established a renewed commitment by all parties to collaboration, efficient decision making, a more rigorous schedule for scientific research that will inform needed rule changes over time, and a stronger plan for ensuring that the program is adequately funded. The draft rules are in WAC 222-12-045 and will consist of:

- Reorganizing and clarifying Policy Committee membership;
- Recommitting the Policy Committee to consensus decision making;
- Streamlining and expanding the Policy and CMER Committees’ disputes resolution process; and
- Creating stronger accountability for the Adaptive Management Program.

Draft rules were published in the Washington State Register on June 5, 2013 for public review and comment. The Board will consider rule adoption on August 13, 2013.

Critical Habitats of Threatened and Endangered Species

The Board published a Pre-proposal Statement of Inquiry (CR-101) in the Washington State Register on September 19, 2012 indicating it was considering rulemaking to amend WAC 222-16-080 as follows:

- Amend the definition of gray wolf according to an impending recommendation from WDFW based on their Wolf Conservation and Management Plan; and
- Clarify that wildlife plans involving critical habitats (state) of threatened and endangered species are reviewed under the State Environmental Policy Act (SEPA).

WDFW continues to examine options for possible modifications of the gray wolf rule, taking into consideration the species' federal and state status, proposed federal delisting, current Washington population trends, and the potential for various forest practices to disturb wolves. In the coming year, the Board will likely continue rulemaking in these two portions of WAC 222-16-080.

2.4 Forest Practices Board Manual

The 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 they implement 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 manual sections in consultation with 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 that identifies key elements to be addressed, and drafts language—with DNR in the lead. During this development phase any interested party may comment on a draft. For sections that provide guidance for rules protecting aquatic resources, a final draft is presented to the Policy Committee for review and approval, after which the Board considers and makes a decision as to whether it is to be included in the manual, or needs revision. At times it may be necessary to present the Board with a final product that represents agreement by a majority of the 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, 2012 – June 30, 2013)

The Board did not consider any Board Manual revisions during the 2012 – 2013 reporting period. However a new Board Manual section (Section 5) and revisions to five additional Board Manual sections were developed during this year. All are listed below. The Board will consider approving them on August 13, 2013.

Board Manual Section 5 *Forest Practices Hydraulic Projects* (new section)

As explained in section 2.3, the legislation that directed the Board to incorporate fish protection standards from the Hydraulic Code Rules into the Forest Practices Rules, also directed the Board to develop technical guidance (in the Board Manual) to include best management practices and standard techniques to ensure fish protection in the Board Manual. It required the technical guidance to be completed by December 31, 2013.

From October 2012 through July 2013, the Department of Natural Resources staff worked with WDFW and representatives from the landowner, conservation, tribal, state and federal caucuses to develop this technical guidance. The guidance was informed by existing WDFW guidelines for the design of water crossing structures, stream bank protection, and stream habitat restoration, as well as by forest management and scientific expertise gained from the participating representatives.

Four additional Board Manual sections are being revised in conjunction with the creation of Board Manual Section 5. The revisions are largely minor changes to language where Hydraulic Project Approvals (HPAs) from WDFW are referenced:

- Section 3 Guidelines for Forest Roads
- Section 4 Guidelines for Clearing Slash and Debris from Type Np and Ns Waters
- Section 21, Guidelines for Alternate Plans
- Section 26, Guidelines for Large Woody Debris Placement Strategies

The water crossing portion of Section 3 Guidelines for Forest Roads is moved to the new Board Manual Section 5 so that water crossing guidelines for both fish bearing and non-fish bearing waters are under the *Forest Practices Hydraulic Projects* section title.

Board Manual Section 22 Adaptive Management Program

This Board Manual section is being revised to correspond to the Adaptive Management Program rule changes described in section 2.3. The revisions will include redefining the principal TFW Policy Committee caucuses, amending the dispute resolution process, and adding provisions outlining the development and maintenance of the CMER Committee master project schedule.

2.5 Anticipated Forest Practices Board Direction

The Board is likely to consider the following rules, Board Manual sections, and Adaptive Management Program recommendations in the 2013-2014 reporting period.

Rules

As indicated in section 2.3, the Board is expected to continue rulemaking on:

- Forest Practices Hydraulic Projects;
- Forest Biomass;
- Adaptive Management Program Reform; and
- Critical Habitats of Threatened and Endangered Species.

The Board may also consider rulemaking activities concerning the Northern Spotted Owl and the hazard trees immediately adjacent to residential structures.

Northern Spotted Owl

In August of 2013 the Board is expecting to receive recommendations on incentive-based conservation actions from the Northern Spotted Owl Implementation Team (NSOIT). The recommendations will address whether the State should seek:

- Voluntary “opt-in” federal assurances for forest landowners designed to promote the establishment, use and operation of a spotted owl conservation bank or other voluntary conservation incentive planning tools; or
- A programmatic habitat conservation plan, safe harbor agreement, or other federal assurance mechanisms.

The recommendation will also likely inform actions the Board, DNR and individual Team members could take to support habitat enhancement, such as new sources of funding for conservation acquisitions.

Trees and Houses

The “Trees and Houses” rulemaking has been on hold for a number of years due to other pressing priorities. As noted in previous annual reports, in 2008 the Board considered and tabled rulemaking that would exclude from the definition of “forest land” a defined area immediately adjacent to residential structures. The intention was to clarify local governmental jurisdiction for tree removal in these areas and to maintain the Department of Labor and Industries’ jurisdiction for public safety purposes.

Board Manual

The Board will consider approval of the following Board Manual sections on August 13, 2013. See section 2.5 for additional information.

- Section 3, Guidelines for Forest Roads
- Section 4, Guidelines for Clearing Slash and Debris from Type Np and Ns Waters
- Section 5, Forest Practices Hydraulic Projects
- Section 21, Guidelines for Alternate Plans
- Section 22, Adaptive Management Program
- Section 26, Guidelines for Large Woody Debris Placement Strategies

The Board may also consider improvements to other Board manual sections in the next year.

Adaptive Management Program Priorities

The Adaptive Management Program’s work in several subject areas could result in recommendations to the Board during the 2013-2014 reporting period:

- Identifying the uppermost point of perennial flow in Type N Waters for a wet season default distance for Board Manual Section 23;
- Establishing Type F and Type Np breaks (water typing) for Board Manual Section 13;
- Mass wasting effectiveness;
- Revisions to the Hydraulic Code Rules (chapter 220-110 WAC).