

2. Forest Practices Board

2.1 Introduction

The Forest Practices Board's (Board) activities during the 2009-2010 reporting period are explained in this section. The Board adopted rules related to riparian management zones (the riparian "Desired Future Condition" rule) and the Northern Spotted Owl, and approved changes to two Board Manuals: Section 7 Guidelines for Riparian Management Zones, and Section 21 Guidelines for Alternate Plans. The Board also considered changes to rules related to the Riparian Open Space Program, the notice of forest practices to affected Indian tribes, administrative appeals, and watershed analysis unstable slopes (mass wasting) prescriptions.

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 rules for forest practices that protect public resources on non-federal and non-tribal forestlands 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 Department of Natural Resources, Department of Commerce (formerly known as Community, Trade and Economic Development), Department of Ecology, Department of Agriculture, and the Washington Department of Fish and Wildlife. 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, 2010 is:

- Peter Goldmark, Commissioner of Public Lands, Department of Natural Resources
- Paul Asaki, 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
- Carolyn Dobbs, general public member
- Norm Schaaf, general public member
- David Herrera, general public member

In addition to adopting rules, the Board approves 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.

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. Independent Scientific Review Panel (ISRP)

The Cooperative Monitoring, Evaluation and Research committee represents the science component of the program and oversees research and monitoring. The Forests and Fish Policy Committee considers research and monitoring findings of the CMER committee and makes recommendations to the Board related to forest practices rule amendments and 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 Independent Science Review Panel performs independent peer review of CMER committee work to ensure it is scientifically sound and technically reliable. The review panel also may review non-CMER work, though it does not do so frequently.

2.3 Forest Practices Board Rule Making Activity (July 1, 2009 – June 30, 2010) **Desired Future Condition**

On August 12, 2009, the Board adopted rule amendments to WAC 222-30-021(1) related to riparian management zones (RMZs) in western Washington. The rule making process spanned almost four years. Ultimately the Board considered three alternative rule proposals, and adopted one of them (see below).

This rule is the result of the adaptive management process. On August 31, 2005 the Forests and Fish Policy Committee petitioned the Board for rule making upon the completion of a study entitled *Validation of the Western Washington Riparian Desired Future Condition (DFC) Performance Targets in the Washington State Forest Practices Rules with Data From Mature, Unmanaged, Conifer-Dominated Riparian Stands* (Schuett-Hames et. al., 2005). The study's findings showed that basal area¹ per acre of mature, unmanaged conifer-dominated riparian stands is significantly greater than the basal area targets required in the rule. The results included basal area of mature unmanaged stands by site class. The study also analyzed the difference between the basal area calculations of riparian areas found in the five site classes² listed in the rules and concluded there is no statistical difference for basal areas between site classes. The study did not offer an alternative single basal area target that was the same for all site classes.

The three alternative rule proposals the Board considered were as follows:

- Proposal 1 would have increased the basal area target to 325 square feet per acre for all site classes. This is the median value of the data in the validation study.

¹ Basal area is the area in square feet of a cross section of a tree bole (main trunk). Basal area per acre is the total square feet of all tree bole cross sections in the acre.

² Site class is an indicator of how productive a site is for growing timber.

- Proposal 2 would have increased the target basal area per acre the same as Proposal 1, and also would have allowed landowners who harvest under Option 2 to credit the required 20 leave trees per acre (in the harvested portion of the inner zone) towards meeting the stand requirement. It also would have expanded the table, “Option 2. Leaving trees closest to water” to add minimum floor widths (i.e., possible inner zone harvest opportunities) for site classes III and IV on streams greater than 10 feet in width.
- Proposal 3 – which the Board adopted – increases the target basal area per acre the same as Proposal 1, and allows landowners who harvest under Option 2 to credit the required 20 leave trees per acre (in the harvested portion of the inner zone) towards meeting the stand requirement.

The Board adopted Proposal 3 after receiving a report from the Cooperative Monitoring, Evaluation and Research committee at its August 12, 2009 meeting. The committee analyzed a sampling of 250 forest practices applications to compare the difference in inner zone buffer widths for Option 2 harvests under Proposal 1 and Proposal 3. For the 110 forest practices applications that would have qualified for Option 2 harvest under the 325-square-foot-per-acre target basal area requirement, the estimated average difference in buffer widths across all site classes and stream sizes was less than three feet. The Board adopted Proposal 3 as the least-cost alternative to achieve the goal of increasing the basal area target for the inner zone management in western Washington RMZs.

Northern Spotted Owl

On May 10, 2010, the Board adopted rule amendments to WAC 222-16-010 and WAC 222-16-080 related to conservation of the Northern Spotted Owl. The WAC changes direct that there will be interim analysis by experts of any survey submitted to and approved by the Washington Department of Fish and Wildlife in which a landowner demonstrated the absence of spotted owls at a “Northern Spotted Owl site center.” Specifically, the rule making:

- Deleted language in WAC 222-16-010 in the definition of “Northern Spotted Owl site center” concerning a moratorium on Northern Spotted Owl decertification. This moratorium had ended on December 31, 2008.
- Added a definition in WAC 222-16-010 of “spotted owl conservation advisory group.”
- Added language to WAC 222-16-080 “critical habitats”, which specifies the spotted owl conservation advisory group’s function, and states, “On an annual basis, beginning November 2010, the Board will determine whether this group’s function continues to be needed for spotted owl conservation.”

It is expected that this rule change will add assurance that no potentially important habitat is lost through timber harvest during the time that the Board develops a long-term conservation strategy.

Regarding the long-term strategy, in 2009 the Board established a multi-stakeholder Northern Spotted Owl Policy Working Group to recommend a strategy to contribute habitat on non-federal lands to support maintaining a viable population of the Northern Spotted Owl in Washington. At the Board’s November 2009 and February 2010 meetings, the group delivered its recommendations, both consensus and non-consensus. The Northern Spotted Owl Policy Working Group’s recommendations are found in the [Final Report to the Forest Practices Board](#), (Berg et al. 2009).

At its February 10, 2010 meeting the Board directed DNR to form an Implementation Working Group to follow up on the work of the Northern Spotted Owl Policy Working Group. The Implementation Group is to answer specific questions about how Washington can identify areas that can make strategic contributions to spotted owl recovery over time. The group has been formed and consists of five members representing DNR (which chairs the group), the Washington Department

of Fish and Wildlife, the state's timber industry, the conservation caucus, and a land trust group. The group currently is drafting a charter.

Riparian Open Space Program³

As reported, the 2009 State Legislature directed that the scope of this program be broadened to include acquiring conservation easements for critical habitat for species listed as threatened and endangered in WAC 222-16-080, *Critical habitats (state) of threatened and endangered species*. This, in addition to acquiring habitat within unconfined channel migration zones (CMZs), will be the basis for the Rivers and Habitat Open Space Program.

On August 12, 2009 the Board directed staff to begin the rule making process for the expansion of this program. Since then staff, with the contributions of interested stakeholders, has drafted rules that amend chapter 222-23 WAC and a definition in WAC 222-16-010. A draft is expected to be presented to the Board at its August 2010 meeting. Upon the Board's approval, DNR will distribute the draft rule language for early review and comment to the Washington Department of Fish and Wildlife and counties (pursuant to RCW 76.09.040(2)). The rules could be adopted in May of 2011.

Notice of Forest Practices to Affected Indian Tribes

On May 11, 2010 the Board directed staff to begin the rule making process by publishing a notice in the Washington State Register. The notice stated that the Board is considering rule making regarding WAC 222-20-120, *Notice of forest practices to affected Indian tribes*. Currently this rule requires landowners to meet with affected tribes in cases in which a forest practices application involves cultural resources. In effect, it also directs tribes to participate in these meetings with landowners. This causes problems for both landowners and tribes, and also for DNR in its role of evaluating and approving forest practices applications.

The Board's Timber/Fish/Wildlife (TFW) Cultural Resources Committee currently is working on changes to the rule language to resolve issues with the landowner-tribe meeting requirement and tribal sovereignty. The committee is committed to delivering a consensus recommendation to the Board, and likely will do so during the 2010-2011 reporting period.

Administrative Appeals

On May 11, 2010, the Board commenced expedited rule making (RCW 34.05.353(1)(d)) to incorporate provisions of 2010 legislation that streamlined environmental and land-use administrative appeals. For the Forest Practices Program the most significant change is the elimination of the Forest Practices Appeals Board, the workload for which now will be addressed by the Pollution Control Hearings Board. The rule making will consist of any changes to Title 222 WAC that refer to the Forest Practices Appeals Board. The Board may adopt permanent rules at the Board's November 2010 meeting.

Watershed Analysis Unstable Slope (Mass Wasting) Prescriptions

The Board is considering whether rule making is necessary to ensure that watershed analysis unstable slope (mass wasting) prescriptions protect public resources and ensure public safety. As reported in the 2009 annual report, the December 2-3, 2007 storm event in southwestern Washington resulted in extensive land-slides resulting in damage to public resources and private property. The forest practices issue emerging from that event was whether the prescriptions for unstable slopes developed under watershed analysis (chapter 222-22 WAC) are sufficient for minimizing failure of unstable slopes from forest management activities.

³ The name may be changed to "Rivers and Open Space Program" to reflect the broader scope of the program.

We previously reported that on May 20, 2009 the Board directed staff to prepare “proposal initiation” information as outlined in Board Manual Section 22, Guidelines for Adaptive Management Program, Part 3. However, in August 2009 the Board decided to convene a committee consisting of four Board members to focus on the issues and return with recommendations. At the Board’s February 10, 2010 meeting the committee presented nine recommendations, which included short- and long-term strategies for supporting continued use of unstable slope (mass wasting) prescriptions deemed adequate for resource protection and public safety. The Board directed staff to analyze the recommendations and present a path forward. After convening special meetings in March and April, the Board approved a proposal initiation document to be forwarded to the Adaptive Management Program.

The Forests and Fish Policy Committee has made a commitment to address the issues highlighted in the proposal initiation document, and present recommendations to the Board at the earliest opportunity, no later than May 2011. The issues are as follows:

Issue #1: WAC 222-22-090 directs DNR to perform watershed analysis reviews. Entities with interest in maintaining watershed analysis prescriptions for unstable slope (mass wasting) should be responsible for committing sufficient resources to the review process and keeping watershed analysis prescriptions current. Adaptive Management recommendations should address the following concerns:

- Reinforce the concept that watershed analyses need to be kept up-to-date.
- Specify that entities with interest in maintaining watershed analysis prescriptions for unstable slope are responsible for committing sufficient resources to the review process, in addition to the available resources provided by DNR to administer the review process.
- Determine how to address watershed analysis reviews where resources are insufficient to conduct the review.

Issue#2: WAC 222-22-090 does not explicitly provide DNR with the authority to withdraw prescriptions for unstable slopes if reviews are not completed, or supplement prescriptions if necessary, prior to and during a review. Adaptive Management recommendations should address the following concerns:

- Give DNR the authority to supplement mass wasting prescriptions, if necessary, prior to and during the review process, with the rules process that is utilized in watersheds not subject to watershed analysis.
- Give DNR the authority to withdraw unstable slope prescriptions within WAUs in which, after initiation, the required reviews have not been completed within a specific timeline.

If, after receiving recommendations from the Forests and Fish Policy Committee, the Board determines changes to the watershed analysis rules (chapter 222-22 WAC) are necessary, the rule making process could begin in the spring or summer of 2011.

In the meantime, DNR has intensified its review process for forest practices applications that include approved watershed analysis unstable slope (mass wasting) prescriptions. (More information about classifying forest practices application with watershed analysis mass wasting prescriptions can be found in Chapter 4 – Forest Practices Operations). DNR is also prioritizing all approved watershed analysis areas for review and is developing a comprehensive unstable slope prescription review process. Next steps include contacting landowners to determine their interest in pursuing reviews, or opting out of watershed analysis, and establishing a review schedule based on DNR and landowner capacity. A draft framework for watershed analysis unstable slopes

prescription review has been developed and provided to stakeholders for feedback. A final review process is expected to be completed in August 2010.

In a related action, DNR and the Weyerhaeuser Company entered into a voluntary agreement on May 26, 2010 to increase protections for potentially unstable slopes within the Upper Chehalis and Stillman Creek watershed analysis areas while the watershed analysis reviews are pending. As part of this cooperative action, Weyerhaeuser and DNR are committed to review the effectiveness of the existing watershed analysis prescriptions in those two watersheds and apply emerging technologies like slope stability models, digital elevation terrain mapping and advanced aerial photography imaging to enhance detection of potentially unstable slopes.

The 2009 annual report (Section 2.6 Response to December 2007 Storm) indicated that the Cooperative Monitoring, Evaluation, and Research Committee (CMER) study, *Mass Wasting Prescription-Scale Effectiveness Monitoring Project (Post Mortem)* would be completed in the late fall of 2009. The approved draft was circulated to CMER reviewers in May 2010 and it is expected that the next draft will be available to CMER in October 2010. For more information, see Chapter 3 – Adaptive Management – for the link to the website describing the active projects.

2.4 Anticipated Forest Practices Board Direction

As indicated in the information provided in section 2.3, the Board will continue rule making on the Rivers and Open Space Program, Notice of Forest Practices to Affected tribes, and Administrative Appeals. The Board also may elect to begin rule making on Watershed Analysis Mass Wasting Prescriptions after the Forests and Fish Policy Committee presents its recommendations.

The following are additional rule making subjects the Board is likely to address in the next reporting period.

Forest Biomass

As the harvest of forest biomass becomes an increasingly frequent activity in Washington's forests, the Board may consider rule making to add forest biomass harvest to the definition of "forest practice" in WAC 222-16-010. This would clarify DNR's authority to oversee such practices to ensure compliance with the forest practices rules.

Lands Platted

Some Washington counties have asked for a change in the law that allows for the transfer of forest practices jurisdiction on lands likely to convert to uses other than commercial forestry (RCW 76.09.050). A bill first introduced in the 2010 legislative session by the Washington State Association of Counties (WSAC) offers a solution to a difficult-to-implement and ambiguous criterion, "lands platted after January 1, 1960." It replaces it with forest lands located on lots that are less than or equal to 2.5 acres unless the landowner owns adjacent lots to total five acres or more, and provides a written statement of intent not to convert to non-forest use. The bill did not get through the entire legislative process, but it did have the support of both the House and the Senate. It is expected that Washington State Associations of Counties will re-submit the bill in 2011. If this legislation passes, the Board will amend WAC 222-16-050(2) accordingly.

Conversion Activities

The 2007 Legislature passed Senate Bill 5883, which changed the procedures for DNR and local governmental entities when unauthorized conversion activities are apparent on forest lands. As reported in 2009, the Board added a definition of "conversion activities" to WAC 222-16-010 that included examples of such activities. This was only one of several changes that will eventually need

to be made in the forest practices rules due to changes in the law. If the “Lands Platted” legislation described above passes in 2011, the Board will likely combine the necessary changes from both bills in a 2011 rule making.

Clarify Administrative Processes

DNR staff have identified several parts of chapters 222-20 and 222-46 WAC that could benefit from a re-write for clarity in administrative processes. The Board may direct staff to include such changes in other rule making efforts.

Trees and Houses

As indicated in the 2008 and 2009 reports, the Board considered rule making that would exclude from the definition of “forest land” those trees immediately adjacent to residential structures. Jurisdiction over tree removal in these areas would be transferred from DNR to local governments but the Department of Labor and Industries would maintain its jurisdiction for public safety purposes. The Board put this rule making on hold until at least 2011.

Upland Wildlife Planning

A joint Board and Washington Department of Fish and Wildlife project was to conduct a comprehensive review of the forest practices rules and science for upland wildlife protection. However, this project has been on hold beginning in July 2009 due to lack of state or federal funding. When funding is again available, this review and planning process could result in rule recommendations for wildlife habitat conservation.

2.5 Forest Practices Board Manual

As an advisory technical supplement to the Forest Practices Rules, the Forest Practices Board Manual 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 in cooperation with the Washington Departments of Fish and Wildlife, Agriculture, Ecology and other affected agencies, affected tribes, and interested parties that have appropriate expertise. During the development or modification process, typically a working group 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 Board Manual sections that provide 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. Sometimes 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 members, 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, 2009 – June 30, 2010)

Board Manual Section 7, Guidelines for Riparian Management Zones

On February 10, 2010 the Board approved a revision of Board Manual Section 7. When the Board adopted the riparian Desired Future Condition rule (see section 2.3), it became necessary to revise this manual to reflect the change in the desired future condition basal area targets – from five basal area targets according to site class, to one target of 325 square feet per acre for all site classes.

Beyond that necessary change, the manual as a whole was revised to become a more streamlined and user-friendly document.

Board Manual Section 21, Guidelines for Alternate Plans

- **Alternate plan template: Fixed Width Riparian Buffers for Small Forest Landowners**

On February 10, 2010 the Board approved this alternate plan template. The template prescribes buffer widths according to site class as follows:

Site Class	Fixed Width, No- Harvest Zone Widths (measured from outer edge of bankfull width or channel migration zone (CMZ))
I	145 feet
II	118 feet
III	101 feet
IV	82 feet
V	75 feet

These buffer widths were agreed to by consensus of the “Fixed Width Sub-group” of the Forests and Fish Policy Committee.

This template came about as a result of an adaptive management process that allows the Board and others to initiate a proposal for Adaptive Management Program consideration. See [Board Manual Section 22, Guidelines for Adaptive Management Program](#), Part 3. (Washington Forest Practices Board 2005). In August 2009 the Board adopted the riparian Desired Future Condition rule (see section 2.3 above). The Board also approved submitting a proposal to the Adaptive Management Administrator to create an alternative approach in the rule for regulating riparian areas (as opposed to the basal area target approach). The Board proposed a “fixed width” approach, wherein all small forest landowners would have the option to harvest in the riparian zone with a presumably narrower buffer width than required under the western Washington riparian rules. This would offer an alternative for landowners who preferred a simpler approach to that in rule, because it would not require the use of a computer growth model or extensive zone delineation and tree measuring in the field.

In January 2010 the Forests and Fish Policy Committee recommended, and the Board accepted, a two-pronged approach to the Board’s proposal: 1) Use the existing alternate plan template process to develop a fixed-width buffer for small forest landowners, and 2) initiate the adaptive management process to evaluate a range of potential rule alternatives applicable to all landowners. The former approach resulted in Board approval of the template in February 2010. The latter approach is now on the Forests and Fish Policy Committee’s work list.

- **Alternate plan template: Small Forest Landowner Conifer Restoration for Western Washington.** The 2009 report indicated that DNR planned to work with members of the Small Forest Landowner Advisory Committee and other interested parties to develop this template. The purpose of the template was to simplify the alternate plan process for small forest landowners who wish to re-establish riparian conifer stands.

This template development took place during the fall and winter of 2009-2010 until in March 2010 the Small Forest Landowner Advisory Committee members agreed to suspend the project. They thought it would not be supported or used by the broader family forest landowner

community. SFLs will still be able to develop site-specific alternate plans to restore conifers in riparian areas.

Board Manual Section 18, Rivers and Habitat Open Space Program

This new manual will be developed to provide guidance and information for conservation easement applicants. The manual development will begin in July 2010 and will continue concurrently with the rule making process for the Rivers and Habitat Open Space Program rules (see section 2.3). As with the rule development, the development of the manual will proceed with extensive stakeholder contributions.