FOREST PRACTICES BOARD

REGULAR BOARD MEETING
November 12, 2013
Natural Resources Building
Olympia, Washington

Members Present

Aaron Everett, Chair, Department of Natural Resources
Bill Little, Timber Products Union Representative
Bob Guenther, General Public Member/Small Forest Landowner
Carmen Smith, General Public Member/Independent Logging Contractor
Court Stanley, General Public Member
Dave Somers, Snohomish County Commissioner (arrived at 9:40 a.m.)
David Herrera, General Public Member
Joe Stohr, Designee for Director, Department of Fish and Wildlife
Heather Ballash, Designee for Director, Department of Commerce
Julie Morgan, Designee for Director, Department of Agriculture
Paula Swedeen, General Public Member
Phil Davis, General Public Member (participated by phone)
Tom Laurie, Designee for Director, Department of Ecology

Staff

Chris Hanlon-Meyer, Forest Practices Division Manager
Marc Engel, Forest Practices Assistant Division Manager
Patricia Anderson, Rules Coordinator
Phil Ferester, Assistant Attorney General

WELCOME AND INTRODUCTIONS

Aaron Everett called the Forest Practices Board (FPB or Board) meeting to order at 9:00 a.m.

APPROVAL OF MINUTES

MOTION: Bill Little moved the Forest Practices Board approve the August 13, 2013 meeting minutes.

SECONDED: Heather Ballash

ACTION: Motion passed unanimously.

REPORT FROM CHAIR

Everett acknowledged Phil Davis' service to the Board and that this is his last meeting.

PUBLIC COMMENT

Vic Musselman, Washington Farm Forestry Association (WFFA) and Small Forest Landowner Advisory Committee (SFLAC), shared that the SFLAC recently received the findings on the twelve 20-acre exempt forest practices applications that were sampled in 2012 and found to be non-compliant. He said WFFA is willing to help the Board and DNR through the SFLAC to identify ways to solve the common problems that were found. He said in some cases problems are driven by underlying issues associated with ambiguity in the rule and/or instructions.

Rob Kavanaugh said that he strongly disagrees with Governor Inslee's correspondence that indicates Department of Fish and Wildlife (WDFW) has the responsibility to protect the viability of the WGS. He states that it remains to be seen as to whether WDFW will develop a WGS management concept for the protection of the WGS. It is a complex issue and involves more than just the nest tree of the WGS. The Board has the background and the authority under Title 222 WAC to protect the WGS just like the efforts made with the Northern spotted owl. He said he does not believe the voluntary approach will ever work and more needs to be done.

Ken Miller, WFFA, provided a written condensed regulatory history from a small forest landowner perspective. He mentioned the Forests and Fish commitments made to small forest landowners for alternate prescriptions for smaller harvests and hopes that the Board will work with the WFFA leadership on a pathway to honor those commitments.

Chris Mendoza expressed his appreciation to the tribes for taking on the roles as co-chair as he steps down after five years. He also shared some of his experiences within the adaptive management program.

Peter Goldman, Washington Forest Law Center, commented on TFW Policy Committee's (Policy) Type F process. He said that it is extremely important process in order to realize the complete protection of fish and aquatic species associated with forest land. He shared that the process has been going very well and asked the Board to encourage Policy to report either a consensus or non-consensus recommendation.

Karen Terwilleger, Washington Forest Protection Association, stated that she agreed with Goldman that the Type F mediation is going well and participants are working hard to bring forward a consensus recommendation. She stated that industry is committed to the mediation and Policy's process to make sure the system works and continues to improve in the future.

STAFF REPORTS

TFW Policy Committee Work Priorities

Adrian Miller, co-chair, reported on the recommendations for the Mass Wasting Study that will be presented to the Board at the February 2014 meeting. He said Policy received the final study and is making good progress on developing a consensus recommendation.

Stephen Bernath, co-chair, reported that Policy did not reach consensus on conducting a review of the proposed changes to the Hydraulic Code rules per Appendix M of the Forests and Fish Report.

Everett said he was not comfortable with Policy's conclusion because the Board is obligated to do a substantive review. He suggested a process for Policy to collect the comments from the caucuses to be forwarded to WDFW through the Adaptive Management Program Administrator (AMPA) would better meet the Board and Policy's obligation.

Bernath also shared:

- two or three CMER studies will be coming forth that will take priority.
- Policy and CMER have restarted some of the accountability measures and will have a budget update every six months and quarterly progress update on the projects from the AMPA.

Everett asked for the quarterly CMER reports to be attached to Policy or AMPA's quarterly report to the Board. Bernath responded that this would not be a problem and that he would forward the most recent copy to the Board.

Small Forest Landowner Advisory Committee and Small Forest Landowner Office

Tami Miketa, Department of Natural Resources (DNR or Department), provided an overview on the Forestry Riparian Easement Program which included:

- 2011-2013 Biennium Accomplishments
- Status of Current Applications
- 2013-2015 Biennium Overview

Board concerns include:

- DNR not having the authority to disapprove applications based on eligibility criteria, whether landowner truly meets the definition of a small forest landowner; and
- Not enough money to fulfill the obligation.

Paula Swedeen asked what the average per acre value is. Miketa responded that she did not have the information but would forward it to the Board.

There was no further discussion on the following staff reports:

- Adaptive Management
- Board Manual Development
- Compliance Monitoring
- Review Need of the Northern Spotted Owl Conservation Advisory Group
- Rule Making Activity & 2013 Work Plan
- TFW Cultural Resources Roundtable
- Upland Wildlife Working Group

PUBLIC COMMENT ON NORTHERN SPOTTED OWL IMPLEMENTATION TEAM'S RECOMMENDATIONS

Kara Whitaker, Washington Forest Law Center, shared some preliminary results of the NSO Technical Team modeling of spotted owl population response to simulated non-federal conservation networks.

NORTHERN SPOTTED OWL IMPLEMENTATION TEAM'S (NSOIT) RECOMMENDATIONS

Andy Hayes, DNR, updated the Board on the purpose of the NSOIT which is to analyze and recommend non-federal lands capable of providing a strategic contribution to spotted owl populations through voluntary conservation measures. He also provided an overview on the analytical approach, baseline analysis and conservation scenarios the NSOIT reviewed.

Lauren Burnes, DNR, reviewed the next steps for the NSOIT and the Board. She said significant progress has been made, however additional work is needed in order for the NSOIT to provide recommendations to the Board.

Burnes indicated that at this time the NSOIT has a consensus recommendation on the following:

- Habitat incentive priorities

- Funding sources
- Federal assurances
- Continuing work
- Additional refinement of model results
- Completion of the economic analysis framework
- Further scope and structure development around the safe harbor agreement concept
- Development of a consolidated report
- Possible legislative proposal around the Rivers, Habitat & Open Space Program (RHOSP)

She stated that the team anticipates completing the process by early 2014.

Kevin Godbout, Weyerhaeuser, encouraged the Board to support the recommendations. He said the Team focused on existing SOSEA boundaries and the need to develop a voluntary opt-in safe harbor agreement;

Shawn Cantrell, Seattle Audubon, said it's a good package and wants to see it move forward. Adding additional spotted owl habitat can make a significant contribution to the State. He said for this to work an incentives package is needed and that landowners need to step up.

Vic Musselman, Washington Farm Forestry Association, said the Team worked hard to develop an incentive package for protecting and enhancing spotted owl habitat. He said the majority of small forest landowners that were recently polled and own lands where spotted owls exist are interested in protecting wildlife and endangered species. They are also interested in monetary incentives. He encouraged the Board to consider small forest landowners when deciding on how to implement the recommendations

Everett summarized the next steps for the Board and said DNR is committed and interested in spotted owl conservation. He also stated that it will take legislative action supported by everyone to make it work.

Court Stanley asked if Safe Harbor agreements in Oregon were looked at and Godbout responded that a more generic template will be needed to appeal to a broader class of landowners.

Paula Swedeen expressed the importance of incentives, but the Board should look at the rules to see what is protected and what is not to ensure a successful implementation of the incentives.

Dave Somers agreed with Swedeen but additional work on the incentives package is needed first for a successful implementation.

Musselman said he would like to see the completion of a viable incentives program rather than changing the rules.

Cantrell expressed support of the incentives approach and said it would yield huge benefits that would not come through a regulatory approach.

Everett said he would like the Board to approve the recommendations.

MOTION: Aaron Everett moved the Forest Practices Board accept the November 8, 2013 NSOIT recommendations and authorize the chair to liaise on the Board's behalf in support of these recommendations.

SECONDED: Paula Swedeen

Board Discussion:
Everett noted that part of his role will be talking with legislators regarding funding options.

Bob Guenther said he supported the motion and appreciated all the collaboration efforts of the team.

ACTION: Motion passed unanimously.

PUBLIC COMMENT
None.

WESTERN GRAY SQUIRREL PROTECTION
Don Nauer, WDFW, provided an overview on the status of Western grey squirrel (WGS) populations. He said the 2007 population estimate is 937 in the areas of Klickitat, North Cascades and Puget Trough, plus an additional 93 translocated to the Puget Trough area during 2007-2012. He stated that any new population estimates would require new survey data and funding. He indicated that staff resources are very limited, but WDFW continues to investigate ways to increase staff capacity in southwest Washington.

Nauer described the voluntary management process used to protect the WGS and their habitat which includes working with DNR and communicating decisions to DNR and stakeholders. He indicated that the WDFW is confident that voluntary management approach is working. He said WDFW would like to expand this to more of a landscape approach. He said negotiating with the landowners would be challenging, but overall more effective.

Donelle Mahan, DNR, presented an overview of the Forest Practices Applications (FPAs) in areas containing WGS. She indicated that approximately 263 FPAs involving WGS habitat were approved from January 1, 2007 through October 16, 2013. She said that the estimate was likely an overestimate because DNR was only able to use old WGS data layers and was unable to determine what proportion were determined by WDFW that have an impact on habitat. She said a more accurate determination can be made by field visits or examining more recent orthophotos.

Mahan also reviewed the operational and administrative mechanisms that increase the effectiveness of the current voluntary protection approach. She said DNR has incorporated a checkbox for WGS presence or habitat on the office checklist which becomes part of the FPA. It also includes a note on the FPA Notice of Decision page acknowledging the presence of WGS or habitat in the harvest vicinity, and offers the assistance of WDFW staff.

Tom Laurie asked for confirmation on whether WDFW knows how many approved FPAs have voluntary habitat plans. Nauer responded that at this time they do not know.

Everett asked if it was feasible in FPARS to check the application, conduct a field review, and then confirm or deny habitat in the system for future queries. Mahan responded that at this time it is done in paper form only.

Everett asked Stohr and Nauer to review WDFW's next steps in protecting WGS habitat which may include legal guidance to staff, updated field guidance, and rule changes to reduce the ambiguity in the law.

Swedeen asked whether WDFW will move towards an active landscape planning approach or if it be at the landowner's discretion. Nauer responded that he could not speak directly about this but said there are definite possibilities for a landscape planning approach.

PUBLIC COMMENT ON PETITION FOR RULE MAKING

Kara Whitaker, Washington Forest Law Center, stated that she is concerned the population of the WGS makes them highly susceptible to extirpation. She said that current statues prohibit the harvest of nest trees and that WDFW's guidelines show why this is insufficient for recovery. She said she is concerned that voluntary landscape management may not be enough to reverse the decline in Washington State.

Rob Kavanaugh provided background information on WGS management in Klickitat County since 1959. He also expressed the need to protect the WGS on a landscape basis and the need to compensate landowners for loss of timber. He stated a proactive approach rather than a passive one is needed. He said there are three options for the Board to choose from: 1-strengthen forest practices through the permitting process, better science and laws; 2- ask the Legislature to take over the Board's duties; or 3-go to Superior Court.

PETITION FOR RULE MAKING - WESTERN GRAY SQUIRREL

Marc Engel, DNR, reviewed the action before the Board and reviewed the petitioner's request. The Board discussed the four specific elements as contained in the petition:

- listing the WGS on critical habitat-state within the concept of landscape management on a watershed by watershed within the historic areas occupied by the WGS;
- incorporate WGS management appendices to the FPA's;
- assist WDFW with surveys when needed; and
- develop a landowner compensation measure for private landowners.

Laurie and Everett stated that the Board cannot legally respond to the compensation portion of the petition which can only be achieved through legislation.

Stohr said he was unsure what the petition means for implementation.

Stanley asked if Gary Bell is the only expert on WGS habitat. Stohr responded that WDFW has habitat biologists across the state with knowledge of all wildlife. Bell is the point of contact for WGS.

Everett asked what the basis is for conditioning authority. Mahan responded the Department tries to stay away from it. The Department does not like to attach the threatened and endangered species list to the FPA because it is sensitive information and is not available for everyone to look at. Engel added that if a landowner attaches it to their FPA it becomes conditions.

Dave Herrera said he was having trouble understanding how the Board can say WDFW is not doing enough when they say it is working.

Swedeen acknowledged the heartfelt concern of losing too much WGS nests and habitat asked if there is a way to define WGS habitat. Stohr responded that WDFW is sorting out what, if any, changes to rules need to be made and where.

Everett asked Board members if they thought rule making is needed at this time. All responded and agreed that rule making is not necessary at this time. They agreed additional information is needed to quantify the status and to continue with the voluntary management approach.

MOTION: Court Stanley moved the Forest Practices Board deny the petition for rule making and the Board continue to monitor the outcomes of the voluntary approach, at minimum annually reporting on the status of plans and available population and habitat data.

SECONDED: Bob Guenther

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON EXTENSIVE RIPARIAN STATUS AND TREND MONITORING TYPE F/EASTSIDE TEMPERATURE STUDY

None.

ADAPTIVE MANAGEMENT PROGRAM - EXTENSIVE RIPARIAN STATUS AND TREND MONITORING TYPE F/EASTSIDE TEMPERATURE STUDY

Jim Hotvedt, DNR, requested the Board to not take any action at this time. He said the report has been reviewed and discussed by Policy and do not recommend any rule or guidance changes.

This study looked at changes in water temperature, air temperature, eastside climate, and other variables such as wet wood, bankfull width and shade.

Laurie asked when Phase II will begin and how long it will take. Hotvedt responded it is unknown at this time because it is dependent on certain program funding and upcoming discussions within CMER.

MOTION: Dave Somers moved the Forest Practices Board accept TFW Policy Committee's recommendation to take no action at this time on the Extensive Riparian Status and Trend Monitoring Type F/Eastside Temperature Study.

SECONDED: Bob Guenther

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON BOARD'S 2014 WORK PLAN

None.

2014 WORK PLANNING

Marc Engel, DNR, presented the 2014 draft work plan for approval. He also described the rule makings listed on the work plan.

As a result of earlier discussions, the Board made changes to the work plan.

MOTION: Everett moved the Forest Practices Board approve the 2014 Work Plan as modified with a combined report for Taylor's Checkerspot Butterfly, Northern Spotted Owl Conservation Advisory Group and Western Grey Squirrel due in May and a revised completion date for Board Manual Section 7 from May to November and adding compilation of TFW caucus comments on hydraulic code revision due in February under the Adaptive Management Program heading.

SECONDED: Heather Ballash

ACTION: Motion passed. 12 support /1 abstention (Stanley)

EXECUTIVE SESSION

None.

Meeting adjourned at 3:15 p.m.