

1 **Forest Practices Board**
2 **Regular Board Meeting – February 8, 2023**
3 ZoomWebinar and Room 172, Natural Resources Building
4

5 **Members Present:**

6 Alex Smith, Chair, Department of Natural Resources
7 Ben Serr, Designee for Director, Department of Commerce
8 Cody Desautel, General Public Member
9 Jeff Davis, Designee for Director, Department of Fish and Wildlife
10 Dave Herrera, General Public Member
11 Frank Chandler, General Public Member/Independent Logging Contractor
12 Kelly McLain, Designee for Director, Department of Agriculture
13 Meghan Tuttle, General Public Member
14 Pene Speaks, General Public Member
15 Rich Doenges, Designee for Director, Department of Ecology
16 Steve Barnowe-Meyer, General Public Member/Small Forest Landowner
17 Wayne Thompson, Timber Product Union Member
18 Vickie Raines, Elected County Commissioner
19

20 **Staff**

21 Saboor Jawad, Forest Regulation Division Manager
22 Marc Engel, Senior Policy Advisor
23 Patricia Anderson, Rules Coordinator
24 Terry Pruitt, Senior Counsel
25

26 **WELCOME AND INTRODUCTIONS**

27 Chair Alex Smith called the Forest Practices Board (Board) meeting to order at 9:00 a.m.
28 Introductions of Board members and staff was made.
29

30 **REPORT FROM THE CHAIR**

31 Chair Smith provided a summary of legislative bills that may affect the program if passed. Bills
32 included:

- 33 • Senate Bill (SB) 5636/House Bill (HB) 1689 which would allow cities and counties to assume
34 jurisdiction over all forest practices within their boundaries provided their ordinances are
35 substantially equivalent to the Forest Practices rules;
- 36 • SB 5667/HB 1740 relating to amendments of the forestry riparian easement program;
- 37 • SB 5673 proposes to change the cabinet agency representatives on the Board to non-voting
38 members; and
- 39 • SB 5370 relating to allowing the State to enter into an agreement with the U.S. Fish and Wildlife
40 Service to administer a programmatic northern spotted owl safe harbor agreement.
41

42 An update on these bills will be provided at the May meeting.
43

44 She also shared the following information:

- 45 • The CMER science conference is scheduled for May 11, 2023.
- 46 • The Commissioner plans to schedule a Principals meeting in the near future.
- 47 • Personnel changes which included the retirement of Charlene Rodgers, Forest Practices Habitat
48 Conservation Plan Administrator and Dawn Hitchens, Business and Operations Manager.

- Rulemaking process for both Type N and Water Typing System have begun. Stakeholder groups are being formed to amend board manuals with a particular focus on Board Manual Section 21 Guidelines for Alternate Plans.

APPROVAL OF MINUTES

MOTION: Steve Barnowe-Meyer moved the Forest Practices Board approve the October 31 and November 1, 2022 meeting minutes.

SECONDED: Wayne Thompson

Discussion:
None.

ACTION: Motion passed. 11 Support / 1 Abstention (Ben Serr) (Raines not available for vote.)

MOTION: Steve Barnowe-Meyer moved the Forest Practices Board approve the November 9 & 10, 2022 meeting minutes.

SECONDED: Rich Doenges

Discussion:
None.

ACTION: Motion passed. 11 Support / 1 Abstention (Jeff Davis) (Raines not available for vote.)

MOTION: Steve Barnowe-Meyer moved the Forest Practices Board approve the November 28, 2022 meeting minutes.

SECONDED: David Herrera

Discussion:
None.

ACTION: Motion passed unanimously. (Raines not available for vote.)

NORTHERN SPOTTED OWL SAFE HARBOR AGREEMENT

Chair Smith said a bill was reintroduced this session to give the state the authority to enter into a programmatic safe harbor agreement (SHA) with the U.S. Fish and Wildlife Service (USFWS) to enhance spotted owl conservation across its range in Washington State.

Board member Jeff Davis provided a brief background including how the bill was so close to passing last legislative session. He is hopeful it will pass this session and, if necessary, to reconvene the Board's Northern Spotted Owl Implementation Team (NSOIT) to resurrect the incentives conversation that would be important to private landowners to participate in the program.

Marc Engel, DNR, provided an overview of the context for the Northern Spotted Owl SHA. He shared:

- 1 • SB 5390 requests the Legislature to authorize DNR to enter into a programmatic SHA with the
2 USFWS to enhance the conservation of northern spotted owl (NSO) habitat. Currently, the bill
3 has passed out of Senate Agriculture, Water, Natural Resources and Parks Committee and
4 referred to Senate Ways and Means Committee.
- 5 • The Board’s NSO Implementation Team recommended, based on their finding, that strategic
6 additions of spotted owl habitat can make meaningful contributions to the conservation of the
7 species.
- 8 • DNR would administer the SHA, with WDFW providing technical expertise in evaluating spotted
9 owl habitat, and the agreement would be applicable to all non-federal forestlands within the
10 spotted owl territory in the state.
- 11 • Legislature provided proviso funding in FY 2022 for DNR to contract the preparation of draft
12 NSO SHA, environmental analysis and enrollment rule language.

13
14 Board member Doenges asked if there is an acreage goal for the Safe Harbor Agreements. Engel
15 responded that there are not planned acreage goals. DNR feels this is a worthwhile endeavor and did
16 add a funding request for DNR to administer a safe harbor agreement program as well as DFW
17 biologists to provide support for the program to be a self-sustaining program and not additional work
18 on existing DNR staff.

19
20 Board member Speaks asked what the status is of the proviso funded work. Engel said the proviso
21 funded work is complete with the drafting of the draft NSO SHA, the supporting environmental
22 assessment and draft enrollment rule language. He said the bill needs to pass the legislature in order
23 to get the authority to negotiate with USFWS for permission to enter into the SHA part of that
24 process.

25
26 Engel provided a summary of next steps which will include a staff request for rule making at a future
27 Board meeting.

28
29 **EASTERN WASHINGTON TYPE N RIPARIAN EFFECTIVENESS PROJECT PILOT**
30 **RULE MAKING AND RIPARIAN CHARACTERISTICS AND SHADE RESPONSE STUDY**
31 **PILOT RULE MAKING FOR WESTERN WASHINGTON**

32 Lori Clark, Acting AMPA, presented two studies for pilot rule making for Board approval. Clark said
33 both studies were approved by CMER and are consistent with the original intent of Forests and Fish
34 to test the effectiveness of current Forest Practice rules in order to effectively assess the riparian rules
35 for both projects.

36
37 Clark said to test prescriptions that would not be allowed under the current Forest Practice rules, pilot
38 rules have to be used in cooperation with landowners to selectively deviate from specific elements of
39 the rules for the purpose of testing the alternatives or to ensure that there's consistency across test
40 sites.

41
42 The Eastern Washington Type N Riparian Effectiveness Project pilot rule making is necessary to
43 authorize a single cooperating forest landowner to conduct a harvest within the inner zone of the
44 riparian area buffer of the upper reach of a single fish-bearing stream (Type F) in excess of what is
45 permitted currently in the forest practices rules (WAC 222-30- 022(1)).

46
47 Board member Rich Doenges asked what fish species are found in this section that is being treated as
48 a Type Np stream? Dr. Tim Link stated that there are no fish found in this area but is complicated by

1 a road grade that potentially gives fish access. In addition, a protocol survey was completed and did
2 not find any fish and there was no fish detected in the environmental DNA sampling.

3
4 Clark said the purpose of the Riparian Characteristics and Shade Response (RCS) Experimental
5 Research Study is to evaluate how stream shade responds to a range of riparian harvest treatments of
6 varying intensity within multiple environments common to commercial forestlands covered under the
7 Forest Practices Habitat Conservation Plan.

8
9 The RCS study requires 20 sites in total (including east side and west side) to be implemented over
10 six years; this pilot rule making pertains to the five study sites in western Washington. These sites
11 will be selected with stakeholder and landowner feedback from the list of western Washington sites,
12 with target implementation dates to occur in summer 2023 and summer 2024. Estimated total length
13 of impacted stream is 1.5 km (0.93 miles) for the eventual 5 sites that would be selected for the
14 application of this pilot rule.

15
16 Board member Kelly McLain asked what the requirements are for industrial landowners. Clark
17 responded that a new forest practices application (FPA) will need to be developed in order for
18 industrial landowners to put in a request to participate in the study.

19
20 Board member Cody Desautel asked about risk of loss due to fire on the eastside. Dr. Lila Westreich,
21 DNR, responded that this is not part of the RCS study. Chair Smith asked if additional sites on the
22 Eastside will be identified and whether it's part of this request. Clark said the eastside sites will be
23 submitted as a request for Board approval of a CR-101 in in about a year or two.

24
25 Board member Pene Speaks questioned the rulemaking process and staff capacity? Engel explained
26 that when the Board approves a pilot rule making, staff file the CR-101 Preproposal of Inquiry with
27 the Office of the Code Reviser to be published in the Washington State Register. Pilot rule making is
28 to identify those rules that will not be followed to implement the study.

29
30 Board members Meghan Tuttle and Rich Doenges asked if there is an alternative to pilot rule making
31 or if there would be a benefit of having a specific type of forest practice application for research.
32 Engel responded that this process is part of the Administrative Procedure Act and staff would need to
33 discuss any alternatives to the filing of a CR-101 with the attorney general staff.

34
35 Board member McLain said a special Forest practices application for research purposes to streamline
36 the research based work could result in more people interested in doing research in forestry.

37
38 Board member Barnowe-Meyer said he is in agreement that if we can get more sites identified that
39 have more diversity that would improve the fact we can't find enough sites which is often a detriment
40 to the power of the studies.

41
42 **MOTION:** Meghan Tuttle moved the Forest Practices Board request the Chair to direct staff to
43 research alternatives to pilot rule making for research studies including but not limited
44 to research FPA's.

45
46 **SECONDED:** Steve Barnowe-Meyer

1 Board Discussion:
2 None.

3
4 **ACTION:** Motion passed unanimously. (Raines not available for vote.)

5
6 **PUBLIC COMMENT ON PROPOSED PILOT RULE MAKINGS**

7 Darin Cramer, Washington Forest Protection Association (WFPA), said they support both pilot rule
8 proposals. He said there are several concerns landowners have with the ENREP study which are
9 comparable to the conflict over the hard rock and soft rock studies. However, there is time to address
10 the concerns in the Adaptive Management program. He said the use of the pilot rule making is not
11 being used as intended for the RCS study. It is intended to evaluate economically efficient
12 alternatives necessary to meet the goal of a proposed rule or to evaluate the feasibility of
13 implementation of a proposed rule. He supports the use of a different tool and offered to provide
14 assistance in evaluating available options.

15
16 Elaine Oneil, Washington Farm Forestry Association (WFFA), shared the concept of incorporating
17 wildfire into the eastside studies. She explained a couple of important points that came out of their
18 study done by Cramer Fish Science and how they looked at the CMER data sets that are already out
19 there including the bull trout overlay data set and the Eastern Washington Type F riparian assessment
20 project data set. First, it was data that was deemed representative for eastside so it wasn't a random
21 survey but representative of the mortality of those stands. Second, a fire caused 80 percent of those
22 stands to be burned, so moving towards a fire safe trajectory will require aggressive thinning. She
23 said if studies are to incorporate fire we need to be serious about the effects of fire in any of our
24 decision making as the concerns are justified.

25
26 **RIPARIAN CHARACTERISTICS AND SHADE RESPONSE STUDY PILOT RULE**
27 **MAKING FOR WESTERN WASHINGTON AND EASTERN WASHINGTON TYPE N**
28 **RIPARIAN EFFECTIVENESS PROJECT PILOT RULE MAKING**

29 **MOTION:** Cody Desautel moved the Forest Practices Board approve the pilot rulemaking for the
30 Riparian Characteristics and Shade Response Study in Western Washington which
31 will evaluate stream shade response from a range of riparian harvest treatment buffers
32 in lieu of the forest practices buffer rules in WAC 222-30-021, -040(2) and -050. He
33 further moved to request staff to file the CR-101 Preproposal Statement of Inquiry
34 with the Office of the Code Reviser.

35
36 **SECONDED:** Steve Barnowe-Meyer

37
38 Discussion:

39 Board member Meghan Tuttle said she is meeting with DNR staff next week as some of the sites
40 could potentially be on Weyerhaeuser property.

41
42 **ACTION:** Motion passed unanimously. (Raines not available for vote.)

43
44 **MOTION:** Cody Desautel moved the Forest Practices Board approve the pilot rulemaking for the
45 Eastside Type N Riparian Effectiveness Project to allow the application of Type N
46 buffers to the upper reach of a single Type F stream in lieu of WAC 222-30-022(1), -
47 040 and -050. He further moved to request of staff to file the CR-101 Preproposal
48 Statement of Inquiry with the Office of the Code Reviser.

1
2 **SECONDED: Rich Doenges**

3
4 Discussion:
5 None.

6
7 **ACTION: Motion passed unanimously.**

8
9 **NORTHERN SPOTTED OWL (NSO) CONSERVATION ADVISORY GROUP**

10 Chair Smith said the NSO conservation advisory group evaluates the need to maintain NSO site
11 centers when WDFW approves a NSO protocol survey showing the absence of owls. The rules hold
12 that the Board must determine on an annual basis whether the group's function continues to be needed
13 for spotted owl conservation.

14
15 Marc Engel, DNR, provided the following background:

- 16 • 2006: Board adopted rules to include a moratorium on decertifying NSO site centers to allow
17 time to develop a long-term conservation strategy
- 18 • 2007-2010: Board extended emergency rules on moratorium and added “Spotted Owl
19 Conservation Advisory Group (SOCAG)
- 20 • 6-2010: Board amended the rules to include “Spotted Owl Conservation Advisory Group” (WAC
21 222-16-010 and WAC 222-16-080 (6)).

22
23 Engel shared the details of the Spotted Owl Conservation Advisory Group:

- 24 • 3-member group designated by Board.
- 25 • Each member must have “detailed working knowledge of NSO habitat relationships and factors
26 affecting NSO conservation”
- 27 • Representation includes a representative from:
 - 28 ○ forest product industry
 - 29 ○ conservation organization
 - 30 ○ DNR forest practices program
- 31 • Purpose: Evaluate whether a site center that is subject to possible decertification should be
32 maintained while the Board completes its evaluation of rules affecting NSO conservation.

33
34 Engel said this is an open-ended rule with an annual review to prevent potential important habitat is
35 not lost through timber harvest while the Board develops a long-term NSO conservation strategy.

36
37 Engel recommended the Board approve continuation of advisory group while the Board is pursuing
38 voluntary NSO recovery measures.

39
40 **PUBLIC COMMENT ON THE CONTINUATION OF THE NSO CONSERVATION**
41 **ADVISORY GROUP**

42 None.

43
44 **NSO CONSERVATION ADVISORY GROUP**

45 **MOTION: Jeff Davis moved the Forest Practices Board maintain the Northern Spotted Owl**
46 **Conservation Advisory Group for another year.**

47
48 **Seconded: Meghan Tuttle**

1
2 Discussion:
3 None

4
5 **ACTION:** Motion passed unanimously.

6
7 **UPDATE ON WATER TYPING SYSTEM RULEMAKING**

8 Marc Engel, DNR, said that beginning in May 2023, DNR staff will bring quarterly updates to the
9 Board that will show a timeline for each rule making and associated Board Manual section. Engel
10 said that the quarterly updates will give an opportunity for staff to communicate any needs to the
11 Board as the workgroups make progress.

12
13 As background, Engel said that for purposes of analysis, the Board asked staff to include:

- 14 • Three Potential Habitat Break (PHB) options; and
15 • Two Anadromous Fish Floor (AFF) alternatives.

16
17 Ultimately the rule will use one PHB option and one AFF alternative.

18
19 Engel reviewed the Board’s previous request for the water typing system rule to include:

- 20 • Methods to locate the Type F/N break on the ground; and ensure the methods can be applied by
21 small forest landowners.
22 • Consistent with fish habitat as defined in rule.
23 • Incorporate AFF definition “measurable physical stream characteristics downstream from which
24 anadromous fish habitat is presumed and an agreement that the AFF would establish the location
25 upstream of which fish protocol surveys may begin under the fish habitat assessment
26 methodology (FHAM).
27

28 He said the statistical analysis for each PHB and AFF will inform the Cost Benefit Analysis (CBA),
29 the Small Business Economic Impact Statement (SBEIS), and the environmental analysis under
30 SEPA; all of which are necessary to file the CR-102.

31
32 Engel reported the status of the rule-making elements which included the following:

- 33 • DNR convened an internal group to prepare draft rule consistent with the additions requested by
34 the Board, for coordination with stakeholders.
35 • TFW Policy representatives have identified the individuals who will participate in draft rule and
36 draft board manual working groups.
37 • DNR will commence meetings with stakeholders in late February or early March 2023, and
38 participants will begin reviewing the elements needed to complete the draft.
39 • Spatial analysis will require a contract.
40 • DNR staff are working on the statement of work for creating a synthetic stream layer and spatial
41 analysis.
42 • DNR staff will reconvene the economic analysis workgroup in April 2023.
43 • Work to develop contract for the economic analysis will be initiated in March 2023.
44

45 Board member Doenges asked when the spatial analysis will be completed and if that analysis will be
46 useful in the Type Np rule. Engel said the target is late May or June 2023, and that it is necessary for

1 the Type Np rule. He added that he would like to include the Tier 2 analysis from Department of
2 Ecology in future updates.

3
4 Board member Tuttle asked about when the water typing system rule would be ready for
5 implementation in the field. Marc Engel said that the goal is spring 2025.

6 7 **UPDATE ON TYPE NP WATER BUFFER RULEMAKING**

8 Marc Engel, DNR, said that the Type Np Water buffer rulemaking is using the majority report buffer
9 recommendations approved by the Board. Status on rule elements include the following:

- 10 • DNR staff have met internal stakeholders, 2 meetings to develop draft rule for review
- 11 • External stakeholders to meet after water typing system draft rule is completed
- 12 • Type Np spatial analysis will be conducted after the Water Typing System analysis is completed.
- 13 • A new contract for the preparation of the economic analysis is needed since the Type Np water
14 buffer rule was not included in the water typing contract. This work will likely begin in summer
15 2023. An economic workgroup will be convened for purposes of the CBA and SBEIS.
- 16 • SEPA analysis will begin after the spatial analysis for the water-typing system rule is complete.

17 18 **BOARD MANUAL ACTION TIMELINES**

19 Marc Engel, DNR, said the Board approved amending Board Manual Section 21 to:

- 20 • Consolidate existing board manual alternate plan guidance into a new part devoted to technical
21 guidance for small forest landowners;
- 22 • Follow the key points of agreement agreed to by the small forest landowner and DNR caucuses;
- 23 • Provide guidance on how to access the DNR Small Forest Landowner Office for online assistance
24 and how to contact DNR region offices for field assistance; and
- 25 • Reinsert previous Board-approved “Imminent Mortality” guidance in Board Manual Section 21.

26
27 He said that DNR is forming an internal group to prepare draft amendments to Board Manual Section
28 21 for stakeholder review; and that the stakeholder group is being assembled.

29
30 For Board Manual Section 22, he said that TFW Policy is developing an action plan for amending
31 Board Manual Section 22 and will be presented to the Board at their May 2023 meeting. The draft
32 amendments will address the State Auditor’s Office (SAO) Recommendation #5 (net gains approach)
33 and SAO Recommendation #6 (decision criteria).

34
35 Board member Barnowe-Meyer asked if the work on Board Manual Section 21 can occur
36 concurrently with the work on rule-making. Marc Engel said the work the Board requested for Board
37 Manual Section 21 is targeted for completion in May 2023.

38 39 **GENERAL PUBLIC COMMENT**

40 Darin Cramer, WFPA, said he was happy to hear that the technical report produced as part of the Safe
41 Harbor Agreement at long last may be published this spring. He said a good product came out of
42 cooperative work.

43
44 Elaine Oneil, WFFA, said everyone is tightly wound up in process and rules that we are missing part
45 of the point of our efforts, which is to create conditions on the ground that improve all components of
46 the resource, fish, water, wildlife and timber. Her observation is that we are opting for process over
47 results. She suggests an overhaul to create a results based regulatory framework.

1
2 **PETITION FOR RULE MAKING – WAC 222-30-110 TIMBER HARVESTING ON**
3 **ISLANDS**

4 Marc Engel, DNR reported that DNR received a petition for rulemaking on January 26, 2023. The
5 petition objectives are seeking to address concerns regarding the implementation of timber harvesting
6 on islands and specific to WAC 222-30-110(1), which states: “A landowner shall not harvest by
7 clearcut so that more than forty contiguous acres of that landowner’s forest land are in a clearcut
8 condition;”.

9
10 Engel reported that the petition specifically asks if the definitions of “Forest landowner” described in
11 222-16-010 WAC and the related definitions of “Forestland owner” and “Person” in RCW 76.09.020
12 are used by DNR when reviewing FPAs.

13
14 The petition requests:

- 15 • Amend the definition of forest landowner in WAC 222-16-010 and/or directly reference in WAC
16 222-30-110 to bring clarity to forest landowners having shared interests in multiple adjacent
17 properties and with the intention of multiple FPAs of the 40 acre limitation of clearcut size for
18 timber harvests on islands per the rule: and,
- 19 • DNR consider establishing an entity affiliate analysis procedure to identify if adjacent forest lands
20 are under the “actual control” of the same landowner listed on an FPA to ensure compliance with
21 the intent of the timber harvest on islands rule.

22
23 Engel provided the following recommendation for Board consideration:

- 24 1. Deny petitioner’s request for rule amendment because:
 - 25 • Current understanding of the suggested recommendations would not resolve the petitioners’
26 expressed concerns by amending the definition of “forest landowner”.
 - 27 • A procedure to determine if the FPA listed landowner has “actual control” interests of the
28 timber on adjacent lands would expand the DNR FPA review and would rely on county
29 information.
 - 30 • Limited Liability Company (LLC) is a legal entity according to Washington Business
31 Corporation Act.
- 32 2. Request the Board chair to direct DNR staff to continue conversations with petitioners and Island
33 County staff to:
 - 34 • Ensure their concerns are understood;
 - 35 • Discuss the regulatory authority roles and responsibilities with county staff and DNR staff;
36 and
 - 37 • Report to the Board the solution, including potential rulemaking.

38
39 Chair Smith said the Board must within 60 days, either accept the petition and initiate rulemaking, or
40 deny the petition in writing stating its reasons for denial and specifically addressing petitioner’s
41 concerns.

42
43 **PUBLIC COMMENT ON PETITION FOR RULE MAKING**

44 William Poss thanked the Board for considering their petition and appreciated that DNR has reached
45 out to discuss the issue in more detail next week. Poss said he has worked over twenty years at Island
46 County doing development review primarily with clearing and grading and Class IV conversion
47 forestry activities. It is a long time concern with county staff and citizens in Island County about the
48 impacts of clearcuts on islands.

1
2 **PETITION FOR RULE MAKING – WAC 222-30-110 TIMBER HARVESTING ON**
3 **ISLANDS**

4 **MOTION:** Pene Speaks moved the Forest Practices Board deny the Timber Harvest on Islands
5 rulemaking petition. She further moved the Board request the Board Chair to direct
6 staff to continue discussions with the petitioners and Island County staff to understand
7 their issues, ensure the regulatory authority for DNR and the county are understood,
8 and develop and report their solutions, including potential rulemaking, to the Board at
9 the May meeting.

10
11 **SECONDED:** Dave Herrera

12
13 Discussion:
14 None.

15
16 **ACTION:** Motion passed unanimously.

17
18 **BOARD’S 2023 WORK PLAN**

19 Marc Engel, DNR, presented the Board’s workplan that was presented in November along with
20 additional changes as a result of today’s meeting.

21
22 **MOTION:** Alex Smith moved the Forest Practices Board approved the 2023 work plan as
23 amended.

24
25 **SECONDED:** Ben Serr

26
27 Discussion:
28 None.

29
30 **ACTION:** Motion passed unanimously.

31
32 **STAFF REPORTS**

33 There were no questions on the following reports.

- 34 • Adaptive Management Program Update
35 • Small Forest Landowner Office Update
36 • TFW Policy Committee Update
37 • Upland Wildlife Update

38
39 **EXECUTIVE SESSION**

40 None.

41
42 Meeting adjourned at 12:00 p.m.