

Concise Explanatory Statement
Forest Practices Board

Northern Spotted Owl Conservation
May 2010

Washington state agencies are required to provide a concise explanatory statement to any person upon request or from whom the agency receives comments during a rule making (RCW 34.05.325(6)). Before an agency adopts a rule, the agency:

...shall prepare a concise explanatory statement of the rule:

- (i) Identifying the agency's reasons for adopting the rule;*
- (ii) Describing differences between the text of the proposed rule, as published in the register and the text of the rule as adopted, other than editing changes, stating the reason for the differences; and*
- (iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.*

REASON FOR ADOPTING THE RULE

Since 2005, the Board has considered whether and how to amend the forest practices rules to conserve habitat for the Northern Spotted Owl. In November 2005, the Board adopted rules that placed a moratorium on the practice of decertifying spotted owl site centers to allow time to develop a long-term conservation strategy. This was because of reported declines in suitable habitat in the decade since the 1996 adoption of state rules to conserve spotted owl habitat¹, and in Washington's spotted owl population since the species was listed as threatened in 1990 under the Endangered Species Act.²

The moratorium ended on December 31, 2008, and the Board adopted an emergency rule that created a "Spotted Owl Conservation Advisory Group." The group's purpose was to evaluate whether a spotted owl site center that is subject to possible decertification should be maintained while the Board completes its evaluation of rules affecting spotted owl conservation. The emergency rule specified an end date of December 31, 2009 for the advisory group to exist, and the Board initiated permanent rule making to that effect in August 2009.

On November 10, 2009, the Board's Policy Working Group on Northern Spotted Owl Conservation recommended continuing the current decertification process (that is, the process that includes the Spotted Owl Advisory Group's evaluation and decision making role) under an

¹ See *An Assessment of Spotted Owl Habitat on Non-federal Lands in Washington Between 1996 and 2004*, John D. Pierce et al., August 2005 at http://wdfw.wa.gov/wlm/research/papers/spotted_owl/index.htm.

² See *Final Briefing Report to the Washington State Forest Practices Board Regarding Spotted Owl Status and Forest Practices Rules*, Joseph B. Buchanan and Paula Swedeen, August 2005 at http://wdfw.wa.gov/wlm/research/papers/spotted_owl/forest_practices.htm.

“...open ended rule with an annual review until the revised federal spotted owl survey protocols are released and the Board resolves outstanding questions regarding this issue.”³ The Board responded by directing staff to revise the proposed rule language accordingly.

On February 10, 2010, the Board approved re-initiating rule making with language that continued the existence of Spotted Owl Advisory Group indefinitely, with annual reviews to occur starting with the November 2010 regular meeting.

PROPOSED RULE AND PUBLIC COMMENT

The proposed rule:

- Deletes 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 ended on December 31, 2008.
- Adds a definition in WAC 222-16-010 of “spotted owl conservation advisory group.”
- Adds 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.”

The rule establishes an interim measure of 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.” It is expected that this will add assurance that no potentially important habitat is lost through timber harvest while the Board develops a long-term conservation strategy.

The original rule making notice was filed with the Office of the Code Reviser on August 18, 2009, and published in Washington State Register (WSR) #09-17-113. The hearing took place in Olympia on September 29, 2009 and no one attended. The Board did not receive any comments on the original rule proposal.

The supplemental rule making notice was filed on February 22, 2010, and published in WSR #10-06-027. The hearing took place in Olympia on April 7, 2010 and no one attended. The Board did not receive any comments on the revised rule proposal.

ADOPTION DATE OF THE RULE

May 11, 2010

Prepared by Gretchen Robinson.

³ Owl Group, Report to Forest Practices Board, November 10, 2009, p. 10. Available at http://www.dnr.wa.gov/Publications/bc_fp_materials_20091110_05_nsofinalreport.pdf