FOREST PRACTICES BOARD

REGULAR BOARD MEETING
August 14, 2012
Natural Resources Building
Olympia, Washington

Members Present

Lenny Young, Chair of the Board, 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
Dave Somers, Snohomish County Commissioner
David Herrera, General Public Member
David Whipple, Designee for Director, Department of Fish and Wildlife
Mark Calhoon, Designee for Director, Department of Commerce
Norm Schaaf, General Public Member
Paula Swedeen, General Public Member
Phil Davis, General Public Member
Jaclyn Ford, Designee for Director, Department of Agriculture
Tom Laurie, Designee for Director, Department of Ecology

Staff

Darin Cramer, Forest Practices Division Manager
Marc Engel, Forest Practices Assistant Division Manager
Patricia Anderson, Rules Coordinator
Phil Ferester, Assistant Attorney General

WELCOME AND INTRODUCTIONS

Lenny Young called the Forest Practices Board (FPB or Board) meeting to order at 9:00 a.m. Patricia Anderson, Department of Natural Resources (DNR or Department), provided an emergency safety briefing.

APPROVAL OF MINUTES

MOTION: Bob Guenther moved the Forest Practices Board approve the May 8, 2012 meeting minutes.

SECONDED: Phil Davis

ACTION: Motion passed. 11 Support / 2 Abstentions (Young, Herrera)

REPORT FROM CHAIR

Chair Young introduced Aaron Everett who was recently appointed as DNR's Deputy Supervisor for Forest Practices and Federal Relations.

Young then reported:

- In May there was a successful resolution in the form of a settlement agreement on the threatened litigation related to the Forest Practices Habitat Conservation Plan (FPHCP). This settlement

agreement was among the Conservation Caucus, the Washington Forest Protection Association, and the state.

- DNR will be submitting a report to the Legislature by September 1 on the Adaptive Management Program reforms on behalf the Commissioner of Public Lands and the director of the Department of Ecology. This is a routine report required by a budget proviso in the 2012 session.

PUBLIC COMMENT

Shawn Cantrell, Seattle Audubon, encouraged the Board to consider interim protection measures for at-risk spotted owl habitat until there is a long-term strategy in place, and to include landowner incentives as a key element along with revised regulations.

Chris Mendoza, Conservation Caucus, in reference to the "Post-Mortem" study dispute, asked the Board to make sure the Cooperative Monitoring, Evaluation, and Research committee (CMER) co-chairs follow the CMER protocols and standards manual.

Peter Goldman, Conservation Caucus, commented on the importance of accomplishing the work of the FPHCP, following the agreed-upon process for completing CMER studies, and forming a Board subcommittee to address spotted owl protection in Washington's forest practices rules.

Jim Peters, Northwest Indian Fisheries Commission and Squaxin Island Tribe, expressed concerns about the "Post-Mortem" dispute and said the established adaptive management process should have been followed.

Kevin Godbout, Weyerhaeuser Company, also commented on the "Post-Mortem" study. He said legitimate technical and scientific issues were brought up early during independent scientific peer review (ISPR) – not in the "eleventh hour" as was contended by the Conservation Caucus.

Cindy Mitchell, Washington Forest Protection Association, summarized how Washington's working forests are contributing to spotted owl conservation, pointed out that the federal recovery plan endorses the Board's Northern Spotted Owl Implementation Team (NSOIT), and described how landowners are currently working through the NSOIT in a spirit of partnership and participation.

Bob Meier, Rayonier, urged the Board to wait for the federal habitat designations before making decisions on a long-term spotted owl strategy, and to support funding for the Riparian and Habitat Open Space Program.

Obie O'Brien, Kittitas County Commissioner, commented on the value of active forest management in preventing forest health problems. He asked Board members to think about the connection between neglected forests and devastating fires when they contemplate restricting active forest management.

STAFF REPORTS

Lenny Young asked if Board members had questions about the staff reports.

Norm Schaaf asked for a report on the current status of the dispute resolution process for the December 2007 storm mass wasting landslide study ("Post-Mortem" study). Jim Hotvedt, DNR, explained that the dispute is currently three months into Stage 1 of the dispute resolution process

where the Forests and Fish Policy committee (Policy) is attempting to resolve the dispute. If not resolved in Stage 1, then a participant can request that the dispute go to Stage 2, which involves a mediator or arbitrator. If not resolved in Stage 2, then the issue goes to the Board for resolution (Stage 3).

Several Board members asked questions and made comments. There was much concern about a process that allowed for such a large expenditure of time and effort without a timely resolution and recommendations for the Board to consider.

ADAPTIVE MANAGEMENT REVIEW (LEAN PROCESS) UPDATE

Jim Hotvedt, DNR, referred to the May 8, 2012 meeting when the Board instructed the Adaptive Management Program to pilot the processes proposed by the Strategica consultant for CMER processes related to the scoping paper and study design. He explained that CMER has approved a pilot process to develop a study design for an Eastside Type N buffer effectiveness study and will be approving a two-person initial Technical Writing and Information Group (TWIG) to start preparing a draft scoping document.

Marks Hicks, CMER co-chair, explained the current process for determining additional projects to pilot, and listed five upcoming projects CMER is considering. He said for each project a TWIG will begin with a charter that identifies the expertise needed, and then add consultant expertise as necessary for the project. The project will then move through the full CMER review process that includes all of the stakeholders. The intent is to move quickly through the independent scientific peer review (ISPR) process on the study design, and there will be more weight on the ISPR reviewers to communicate to CMER whether their comments have been addressed.

NORTHERN SPOTTED OWL RECOVERY

Joseph Buchanan, Washington Department of Fish and Wildlife (WDFW), gave a presentation on the Northern Spotted Owl (NSO) status, distribution, ecology, and limiting factors. He explained statistics related to ongoing NSO population declines in Washington, reasons that the Barred Owl is having a negative effect, information about the U.S. Fish and Wildlife Service's (USFWS) plan for Barred Owl removal experiments, and anticipated NSO population growth in the Barred Owl removal study areas.

Darin Cramer, DNR, provided an overview of key federal and state actions, including rules adopted by the Board in the early and mid-1990s after the owl was listed as threatened under the Endangered Species Act in 1990. He also summarized the content of the Board's existing spotted owl rules, and explained that the USFWS critical habitat rule is expected to be released on November 15, 2012. He pointed out that according to WAC 222-16-080(4) when federal critical habitat designations change, DNR must consult with WDFW and make a recommendation to the Board whether changes to its critical habitat rules are necessary. This must occur within 30 days of the publishing of the final critical habitat rule in the Federal Register. Therefore, if the federal rule is released within the November 15 deadline, the Board will receive DNR's recommendation by December 15.

Andrew Hayes, DNR, summarized the goals and accomplishments of the Northern Spotted Owl Implementation Team (NSOIT) established by the Board in 2010. He explained the team is charged with making recommendations to the Board related to the consensus recommendations of the Northern Spotted Owl Policy Working Group (Final Report, December 31, 2009). He said the NSOIT is working on the following tasks:

- Endorsing a voluntary incentives program for landowners;
- Promoting Barred Owl control experiments and research;
- Continuing the current decertification process;
- Initiating two pilot projects for thinning and habitat; and
- Convening a technical team to assess a spatial and temporal allocation of the conservation efforts on non-federal lands using best available science.

Hayes told the Board he would continue reporting at each Board meeting on the NSOIT's progress.

There was discussion among Board members about the formation of a subcommittee of the Board to efficiently contemplate how to respond to the federal critical habitat rules when final, adequacy of the current Spotted Owl Special Emphasis Area (SOSEA) boundaries, and landowner incentives. This was followed by general agreement that staff will develop a purpose statement for the Board to consider at its November meeting if it chooses to form a subcommittee at that time.

REVIEW OF SETTLEMENT AGREEMENT REGARDING THE FOREST PRACTICES HABITAT CONSERVATION PLAN

Darin Cramer, DNR, summarized the terms of the final settlement agreement regarding the FPHCP, and the fulfillment of the terms accomplished so far. He said the federal services have approved a minor amendment to the FPHCP Implementing Agreement: if the biennial funding for the program is below $22.7 million a specific process will take place beginning with the state notifying the services. He added that a process is underway to retain a neutral facilitator to help the Adaptive Management Program (AMP) with decision-making and dispute resolution, and the remaining agreed-to program revisions have been forwarded to Policy. He added that the Board will receive an update at each quarterly meeting.

RULE MAKING TIMELINE FOR HYDRAULIC PERMIT APPROVAL/FOREST PRACTICES APPLICATION (2ESSB 6406)

Marc Engel, DNR, summarized due dates specified in statute for the Board's, DNR's, and WDFW's required actions related to incorporating hydraulic project approvals into the forest practices application (HPA/FPA) process. He also recommended a timeline for the Board to accomplish its required actions, ending with the adoption of rules and approval of technical guidance in May 2013.

After a short discussion, Engel clarified that WDFW's current fish protection standards are required to be incorporated in the HPA/FPA approval process, and David Whipple clarified that WDFW will invoke the adaptive management process in the revisions of the fish protection standards.

FORESTS AND FISH POLICY PRIORITIES ANNUAL REPORT

Stephen Bernath, Forests and Fish Policy Co-chair, summarized Policy's priorities for calendar year 2013:

- Develop a comprehensive Type N strategy. This is expected to result in a process for identifying the uppermost point of perennial flow, which will provide assurance that CMER Type N effectiveness monitoring projects will provide the information needed for policy decisions on Type N rule effectiveness.
- Assess the effectiveness of the Type F/Type N break with the goal of transitioning from the interim water type rule to the permanent water type rule.
- Participate in the incorporation of fish protection standards into the forest practices rules and Board Manual.

- Develop an improved Adaptive Management Program decision-making process per the settlement agreement.
- Develop recommendations concerning the "Post-Mortem" study after dispute resolution is completed.
- Determine recommended Board actions as CMER reports are completed. Three reports are expected during 2013.

He added that timely completion of these priorities will contribute to meeting Clean Water Act milestones, and any new work assigned to Policy could distract from that goal.

PUBLIC COMMENT

Stephen Bernath, Department of Ecology, commented that HPA/FPA rules will be asterisked rules because they pertain to water quality, and Ecology will need to go through its process for such rules.

Chris Mendoza, Conservation Caucus, commented that DNR's and stakeholders' time and effort on the Forest Practices Biomass Work Group was valuable and facilitated agreement on the recommendations going to the Board.

FOREST BIOMASS WORK GROUP REPORT

Rachael Jamison, DNR, presented the recommendations listed in the *Forest Practices Biomass Work Group Final Report to the Forest Practices Board*. Board members asked several questions, which were answered by Jamison and others as follows:

- The intent of the recommendation to include "and removal through" in the definition of "Forest practice" is to be consistent with other rules that the group reviewed.
- The intent of including the term, "by-products of forest management" in the group's proposed definition of "Forest biomass" is to indicate that biomass should not be the sole reason for harvest, and whole tree harvest specifically for biomass production is precluded.
- The tie-in to the Landscape Level Wildlife Assessment is that some of the habitat models could be utilized to assess potential effects of biomass removal on wildlife species, given the resources to complete the models.

She explained that the Board tasked the Biomass Work Group to determine whether the forest practices rules are adequate to regulate forest biomass removal. It is now up to the Board to determine whether to take any of the actions recommended in the final report.

CULTURAL RESOURCES ANNUAL REPORT

Jeffrey Thomas, TFW Cultural Resources Roundtable Co-chair, provided an overview of the August 14, 2012 *FY2012 Annual Report to the Forest Practices Board from the Timber/Fish/Wildlife Cultural Resources Roundtable*.

Board discussion included observations that survey results generally indicated that non-tribal entities seemed to be more satisfied than tribal entities. There was also interest in whether the recently amended WAC 222-20-120 (which became effective in June) has had any influence on landowner/tribe communications. Thomas said that could not be concluded from the 2012 survey because of the timing of the survey, and also the survey was geared toward implementation of the Cultural Resource Protection and Management Plan, not the rule.

PUBLIC COMMENT FOR RULE MAKING ON LEGISLATIVE CHANGES TO CONVERSION ACTIVITIES AND FOREST PRACTICES APPLICATIONS

None.

RULE MAKING ON LEGISLATIVE CHANGES TO CONVERSION ACTIVITIES AND FOREST PRACTICES APPLICATIONS

Gretchen Robinson, DNR, requested the Board's approval to file rule language for public review related to conversions and applications pursuant to several changes in statute. The language includes adding a year to the duration of an approved FPA, updating chapter 222-20 WAC to include the process associated with the Notice of Conversion to Nonforestry Use, eliminating "lands platted after 1960" as an automatic trigger for a Class IV-general classification, and clarifying how certain FPAs within urban growth areas should be classified.

MOTION: Norm Schaaf moved the Forest Practices Board approve for public review the rule proposal amending Title 222 WAC and direct staff to file a CR-102 Proposed Rule Making to initiate rule making. This proposal incorporates provisions of Second Engrossed Substitute Senate Bill 6406 relating to forest practices applications and incorporates other changes made to RCW 76.09.050, 76.09.060, 76.09.240 and 76.09.470 in 2007 and 2011.

SECONDED: Carmen Smith

Board Discussion:

Tom Laurie stated that the Department of Ecology supports the rule proposal moving forward.

ACTION: Motion passed unanimously.

PUBLIC COMMENT FOR RULE MAKING ON WAC 222-16-080, CRITICAL HABITATS

None.

RULE MAKING ON WAC 222-16-080, CRITICAL HABITATS

Sherri Felix, DNR, requested the Board's approval to notify the public that the Board is considering rule making to amend WAC 222-16-080 *Critical habitats (state) of threatened and endangered species.* She explained staff recommends this action because:

- Clarification may be needed to assure that wildlife plans are reviewed under the State Environmental Policy Act (SEPA); and
- WDFW is considering amending the critical habitat definition for the gray wolf based on discussions in the Wildlife Working Group.

MOTION: David Whipple moved that the Forest Practices Board direct staff to file a CR-101 Pre-Proposal Statement of Inquiry to notify the public that the Board is considering rule making to amend WAC 222-16-080. This rule proposal would clarify which wildlife plans are required to be reviewed under SEPA and amend the critical habitat definition for the gray wolf.

SECONDED: Paula Swedeen

Board Discussion:
David Whipple explained that the Fish and Wildlife Commission approved a Wolf Conservation and Management Plan in 2011. He pointed out even though the gray wolf's population is increasing it is still listed as a state and federal endangered species. The management plan recognizes the forest practices critical habitat rule was adopted some time ago in 1992, and that newer information should be used to evaluate whether the forest practices rule should be modified. He said he is leading the Wildlife Working Group in several meetings to help develop a recommendation for the Board by November.

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON SOLAR RADIATION STUDY
Chris Mendoza, Conservation Caucus, said the solar radiation and Westside Type N buffer studies are examples of CMER's ability to, for the most part, get issues settled immediately and getting its job done.

ADAPTIVE MANAGEMENT PROGRAM - SOLAR RADIATION STUDY
Jim Hotvedt, DNR, summarized the results of the completed CMER research and monitoring report: *Evaluation of the Effectiveness of the Current TFW Shade Methodology for Measuring Attenuation of Solar Radiation to the Stream.* It concluded that applying the "all available shade rule" (WAC 222-20-040(1) - within the bull trout overlay) did not cause a detectable increase in average solar radiation reaching the stream surface, or cause a decrease in solar attenuation upon harvest of trees that did not provide shade to the streams.

He said Policy recommends that no action be taken at this time. He added that the results of this research will be combined with the results of another temperature shade study that is now in progress, after which Policy will again recommend action or no action to the Board.

MOTION: Tom Laurie moved the Forest Practices Board accept Forests and Fish Policy committee's recommendation to take no action at this time on the Solar Radiation Study.

SECONDED: Phil Davis

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON WESTSIDE BUFFER CHARACTERISTICS, INTEGRITY AND FUNCTION STUDY
None.

ADAPTIVE MANAGEMENT PROGRAM - WESTSIDE BUFFER CHARACTERISTICS, INTEGRITY AND FUNCTION STUDY
Jim Hotvedt, DNR, highlighted some of the results of the *Westside Type N Buffer Characteristics, Integrity and Function* study, and explained Policy's list of recommendations. He concluded that Policy does not recommend rule action at this time; however it does recommend that CMER focus on wind-related research and monitoring in future studies when appropriate.

MOTION: Carmen Smith moved the Forest Practices Board accept Forests and Fish Policy committee's recommendation to take no action at this time on the Westside Buffer Characteristics, Integrity and Function Study.

SECONDED: Dave Somers

ACTION: Motion passed unanimously.

After passage of the motion, Tom Laurie requested that Hotvedt use his position as Adaptive Management Program Administrator to look for opportunities to tighten up procedures as CMER studies are in progress. Hotvedt mentioned that CMER has been reviewing its protocols and standards manual and recently revised a chapter that deals with decision-making. He added that a thorough orientation of new CMER members should also contribute to improvements.

PUBLIC COMMENT ON CMER MEMBERSHIP

Jim Peters, Northwest Indian Fisheries Commission, encouraged the Board to approve Debbie Kay as a new CMER member.

CMER MEMBERSHIP

Jim Hotvedt, DNR, told the Board that Debbie Kay started attending CMER meetings a couple of years ago and has been a very productive chair of WETSAG. He recommended that the Board approve the addition of Kay to the CMER Membership roster.

MOTION: David Hererra moved the Forest Practices Board approve Table 2 dated August 2012 as the current CMER roster that reflects Debbie Kay as a member of CMER.

SECONDED: Dave Somers

ACTION: Motion passed unanimously.

EXECUTIVE SESSION

None.

Meeting adjourned at 2:35 p.m.