

DETERMINATION OF NONSIGNIFICANCE

Description of proposal: This is a nonproject rule proposal by the Forest Practices Board (Board) to amend WAC 222-16-080 Critical habitats (state) of threatened and endangered species. WAC 222-16-080 can be found at: <http://apps.leg.wa.gov/WAC/default.aspx?cite=222-16-080>.

The intent of this rule making is to make the Board's Critical habitats (state) rule in WAC 222-16-080 consistent with the following actions:

- The removal by the United States Fish and Wildlife Service (USFWS) of the bald eagle (*Haliaeetus leucocephalus*) and the peregrine falcon (*Falco peregrinus*) from the Federal List of Endangered and Threatened Wildlife.
- Adoption of a rule by the Washington Fish and Wildlife Commission (Commission) removing the bald eagle and peregrine falcon from the state threatened and endangered species lists.
- Adoption of a rule by the Washington Fish and Wildlife Commission removing the state requirement for a bald eagle site management plan unless the bald eagle is listed under state law as threatened or endangered.

The change of the common and scientific names of the Western pond turtle (*Clemmys marmorata*) to Pacific pond turtle (*Actinemys marmorata*) is recommended by three North American scientific societies that deal with fish, amphibian, and reptile issues.

Proponent: Washington State Forest Practices Board

Location of proposal, including street address, if any: As a non-project rule proposal, the affected geographic area is privately owned and state managed forest land subject to the Washington Forest Practices Act and rules.

Lead agency: Washington State Forest Practices Board

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21c.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

This DNS is issued under 197-11-340(2); the lead agency will not act on this proposal before February 14, 2012. Comments must be submitted by January 6, 2012.

Responsible official: Peter Goldmark

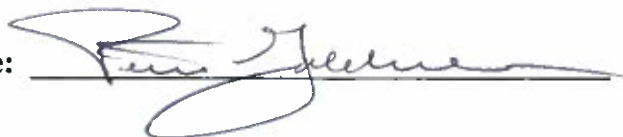
Position/Title: Washington State Commissioner of Public Lands **Phone:** 360-902-1004

Address: Forest Practices Board
c/o Patricia Anderson, Rules Coordinator – 360-902-1400
Department of Natural Resources
PO Box 47012
Olympia, WA 98504-7000

Date:

Dec 5, 2011

Signature:



There is no DNR administrative SEPA appeal.

ENVIRONMENTAL CHECKLIST

Purpose of Checklist:

The State Environmental Policy Act (SEPA), Chapter 43.21 RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

A. BACKGROUND

1. Name of proposed project, if applicable:

This is a nonproject rule making proposed by the Forest Practices Board to amend WAC 222-16-080 Critical habitats (state) of threatened and endangered species.

The proposal makes the forest practices rules consistent with the removal of the bald eagle (*Haliaeetus leucocephalus*) and the peregrine falcon (*Falco peregrinus*) from the federal and state threatened and endangered species lists by the United States Fish and Wildlife Service (USFWS) and the Washington Fish and Wildlife Commission (Commission), respectively. The proposal also reflects adoption of a rule by the Commission to remove the requirement for bald eagle site management plans and the recommended change by three North American scientific societies in the common and scientific names of the Western pond turtle (*Clemmys marmorata*) to the Pacific pond turtle (*Actinemys marmorata*).

2. Name of applicant:
Forest Practices Board
3. Address and phone number of applicant and contact person:
**Forest Practices Board
c/o Patricia Anderson, Rules Coordinator
Department of Natural Resources
PO Box 47012
Olympia, WA 98504-7012 (360) 902-1413**
4. Date checklist prepared:
October 2011
5. Agency requesting checklist:
Forest Practices Board

6. Proposed timing or schedule (including phasing, if applicable):
The Forest Practices Board may consider rule adoption at its February 2012 quarterly meeting. Rules adopted in February would become effective in late March or early April 2012.
7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.
No.
8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

The USFWS removed the bald eagle and the peregrine falcon from the Federal List of Endangered and Threatened Wildlife in 2007 and 1999, respectively. The *Federal Register* documents for these two reclassifications can be found at <http://www.fws.gov/policy/library/2007/07-4302.pdf> and http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999_register&docid=99-21959-filed.pdf.

The Commission reclassified the bald eagle and the peregrine falcon from state threatened or endangered to state sensitive in 2008 and 2002, respectively. Environmental documents prepared for these Commission actions are as follows:

- **The final 2007 SEPA documents on the bald eagle (Determination of Nonsignificance, checklist with Supplemental Sheet for Nonproject Action, and Status Report for the Bald Eagle) can be found under *SEPA Log Number 07089* at http://wdfw.wa.gov/licensing/sepa/sepa_final_docs_2007.html.**
- **The final 2002 SEPA documents on the peregrine falcon (Determination of Nonsignificance, checklist with Supplemental Sheet for Nonproject Action, and status report for the Peregrine falcon) can be found under *SEPA Log Number 02004* at http://wdfw.wa.gov/licensing/sepa/sepa_final_docs_2002.html.**

The Commission also amended WAC 232-12-292 Bald eagle protection rules in 2011 to apply only when the bald eagle is listed under state law as threatened or endangered. Environmental documents prepared for the Commission's 2011 action (SEPA Determination of Nonsignificance, environmental checklist, and nonproject review form) can be found under *SEPA Log Number 11007* at: http://wdfw.wa.gov/licensing/sepa/sepa_final_docs_2011.html.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.
This is a nonproject rule proposal. Forest practices applications continue to

be processed and approved or disapproved during this rule making.

10. List any government approvals or permits that will be needed for your proposal, if known.
The Forest Practices Board adopts rules in Title 222 WAC which includes WAC 222-16-080 Critical habitats (state) of threatened and endangered species.
11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page.
(Lead agency may modify this form to include additional specific information on project description.)
Please see section D. Supplemental Sheet for Nonproject Actions, Description of Proposal.
12. Location of proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographical map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any applications related to this checklist.
This is not a site-specific proposal. It is a nonproject rule proposal to amend Title 222 WAC, specifically WAC 222-16-080. Title 222 WAC applies to privately owned and state managed forest land subject to the Washington Forest Practices Act and rules.

B. ENVIRONMENTAL ELEMENTS

1. Earth
 - a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountains, other.
This is not a site-specific proposal.
 - b. What is the steepest slope on the site (approximate percent slope)?
This is not a site-specific proposal.
 - c. What general types of soils (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland.
This is not a site-specific proposal.
 - d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.
This is not a site-specific proposal; not applicable.

- e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.
This is not a site-specific proposal; not applicable.
- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.
This is not a site-specific proposal; not applicable.
- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?
This is not a site-specific proposal; not applicable.
- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:
This is not a site-specific proposal; not applicable.
2. Air
- a. What types of emissions to the air would result from this proposal (i.e. dust, automobile, odors, industrial wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if known.
This is not a site-specific proposal.
- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.
This is not a site-specific proposal; not applicable.
- c. Proposed measures to reduce or control emissions or other impacts to air, if any:
This is not a site-specific proposal; not applicable.
3. Water
- a. Surface:
- 1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.
This is not a site-specific proposal.
- 2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.
This is not a site-specific proposal; not applicable.
- 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that

would be affected.

Indicate the source of the fill material.

This is not a site-specific proposal; not applicable.

- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.
This is not a site-specific proposal; not applicable.
 - 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.
This is not a site-specific proposal.
 - 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.
This is not a site-specific proposal; not applicable.
- b. Ground:
- 1) Will groundwater be withdrawn, or will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.
This is not a site-specific proposal; not applicable.
 - 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals . . . ; agricultural; etc.). Describe the general size of the system, the number such systems, the number of houses to be served (if applicable), or the number animals or humans the system(s) are expected to serve.
This is not a site-specific proposal; not applicable.
- c. Water Runoff(including storm water):
- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities if known). Where will this water flow? Will this water flow into other waters? If so, describe.
This is not a site-specific proposal; not applicable.
 - 2) Could waste material enter ground or surface waters? If so, generally describe.
This is not a site-specific proposal; not applicable.
 - 3) Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:
This is not a site-specific proposal; not applicable.
4. Plants
- a. Check or circle types of vegetation found on the site:
__deciduous tree: alder, maple, aspen, other

- ___ evergreen tree: fir, cedar, pine, other
- ___ shrubs
- ___ grass
- ___ pasture
- ___ crop or grain
- ___ wet soil plants: cattail, buttercup, bulrush, skunk cabbage, other
- ___ water plants: water lily, eelgrass, milfoil, other
- ___ other types of vegetation

This is not a site-specific proposal.

- b. What kind and amount of vegetation will be removed or altered?
This is not a site-specific proposal; not applicable.
 - c. List threatened or endangered species known to be on or near the site.
This is not a site-specific proposal. Please see Part D. Supplemental Sheet for Nonproject Actions, question 4.
 - d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:
This is not a site-specific proposal; not applicable.
5. Animals
- a. Circle any birds and animals which have been observed on or near the site or are known to be on or near the site:
birds: hawk, heron, eagle, songbirds, other:
mammals: deer, bear, elk, beaver, other:
fish: bass, salmon, trout, herring, shellfish, other:
This is not a site-specific proposal. Please see Part D. Supplemental Sheet for Nonproject Actions, question 4.
 - b. List any threatened or endangered species known to be on or near the site.
This is not a site-specific proposal. Please see Part D. Supplemental Sheet for Nonproject Actions, question 4.
 - c. Is the site part of a migration route? If so, explain.
This is not a site-specific proposal; not applicable.
 - d. Proposed measures to preserve or enhance wildlife, if any:
This is not a site-specific proposal. Please see Part D. Supplemental Sheet for Nonproject Actions, question 4.
6. Energy and Natural Resources
- a. What kinds of energy (electrical, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.
Not applicable to this nonproject proposal.

b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.
Not applicable to this nonproject proposal.

c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:
Not applicable to this nonproject proposal.

7. Environmental Health

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of this proposal? If so, describe.

Not applicable to this nonproject proposal.

1) Describe any emergency services that might be required.

Not applicable to this nonproject proposal.

2) Propose measures to reduce or control environmental health hazards, if any:

Not applicable to this nonproject proposal.

b. Noise

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

Not applicable to this nonproject proposal.

2) What types and levels of noise would be created by or associated with the project on a short-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

Not applicable to this nonproject proposal.

3) Proposed measures to reduce or control noise impacts, if any:

Not applicable to this nonproject proposal.

8. Land and Shoreline Use

a. What is the current use of the site and adjacent properties?

This is not a site-specific proposal.

b. Has the site been used for agriculture? If so, describe.

Not applicable to this nonproject proposal.

c. Describe any structures on the site.

Not applicable to this nonproject proposal.

d. Will any structures be demolished? if so, what?

Not applicable to this nonproject proposal.

e. What is the current zoning classification of the site?

Not applicable to this nonproject proposal.

f. What is the current comprehensive plan designation of the site?

Not applicable to this nonproject proposal.

g. If applicable, what is the current shoreline master program designation of the site?

Not applicable to this nonproject proposal.

h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.

Not applicable to this nonproject proposal.

i. Approximately how many people would reside or work in the completed project?

Not applicable to this nonproject proposal.

j. Approximately how many people would the completed project displace?

Not applicable to this nonproject proposal.

k. Proposed measures to avoid or reduce displacement impacts, if any:

Not applicable to this nonproject proposal.

l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

Not applicable to this nonproject proposal.

9. Housing

a. Approximately how many units would be provided, if any? Indicate whether high, middle or low-income housing.

Not applicable to this nonproject proposal.

2. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

Not applicable to this nonproject proposal.

3. Proposed measures to reduce or control housing impacts, if any:

Not applicable to this nonproject proposal.

10. Aesthetics

a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

Not applicable to this nonproject proposal.

b. What views in the immediate vicinity would be altered or obstructed?


Not applicable to this nonproject proposal.

- c. Proposed measures to reduce or control aesthetic impacts, if any:
Not applicable to this nonproject proposal.
11. Light and Glare
- a. What kind of light or glare will the proposal produce? What time of day would it mainly occur?
Not applicable to this nonproject proposal.
- b. Could light or glare from the finished project be a safety hazard or interfere with views?
Not applicable to this nonproject proposal.
- c. What existing off-site sources of light or glare may affect your proposal?
Not applicable to this nonproject proposal.
- d. Proposed measures to reduce or control light and glare impacts, if any:
Not applicable to this nonproject proposal.
12. Recreation
- a. What designated and informal recreation opportunities are in the immediate vicinity?
Not applicable to this nonproject proposal.
- b. Would the proposed project displace any existing recreational uses? If so, describe.
Not applicable to this nonproject proposal.
- c. Proposed measures to reduce or control impacts on recreation, including recreational opportunities to be provided by the project or applicant, if any:
Not applicable to this nonproject proposal.
13. Historic and Cultural Preservation
- a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.
This is not a site-specific proposal. Please see Part D. Supplemental Sheet for Nonproject Actions, question 4.
- b. Generally describe any landmarks or evidence of historic, archeological, scientific, or cultural importance known to be on or next to the site? If so, generally describe.
This is not a site-specific proposal; not applicable.
- c. Proposed measures to reduce or control impacts, if any:
This is not a site-specific proposal.
14. Transportation

- a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans if any.
Not applicable to this nonproject proposal.
- b. Is the site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?
Not applicable to this nonproject proposal.
- c. How many parking spaces would the completed project have? How many would the project eliminate?
Not applicable to this nonproject proposal.
- d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).
Not applicable to this nonproject proposal.
- e. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.
Not applicable to this nonproject proposal.
- f. How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur.
Not applicable to this nonproject proposal.
- g. Proposed measures to reduce or control transportation impacts, if any:
Not applicable to this nonproject proposal.
15. Public Services
- a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe.
Not applicable to this nonproject proposal.
- b. Proposed measures to reduce or control direct impacts on public services, if any.
Not applicable to this nonproject proposal.
16. Utilities
- a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.
Not applicable to this nonproject proposal.
- b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.
Not applicable to this nonproject proposal.

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: 

Title: Policy Analyst

Date: 12/01/2011

Signature: 

Title: Front Practice Assistant Director Manager

Date: 12/01/2011

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS
(Do not use this sheet for project action)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

Description of Proposal

This is a nonproject rule proposal by the Forest Practices Board (Board) to amend WAC 222-16-080 Critical habitats (state) of threatened and endangered species. WAC 222-16-080 can be found at: <http://apps.leg.wa.gov/WAC/default.aspx?cite=222-16-080>.

The intent of this rule making is to make the Board's Critical habitats (state) rule in WAC 222-16-080 consistent with the following actions:

- The removal by the United States Fish and Wildlife Service (USFWS) of the bald eagle (*Haliaeetus leucocephalus*) and the peregrine falcon (*Falco peregrinus*) from the Federal List of Endangered and Threatened Wildlife.
- Adoption of a rule by the Washington Fish and Wildlife Commission (Commission) to remove the bald eagle and peregrine falcon from the state threatened and endangered species lists.
- Adoption of a rule by the Washington Fish and Wildlife Commission removing the requirement for a bald eagle site management plan unless the bald eagle is listed under state law as threatened or endangered.
- The change of the common and scientific names of the Western pond turtle (*Clemmys marmorata*) to the Pacific pond turtle (*Actinemys marmorata*) as recommended by three North American scientific societies that deal with fish, amphibian, and reptile issues.

The USFWS removed the bald eagle and the peregrine falcon from the Federal List of Endangered and Threatened Wildlife in 2007 and 1999, respectively. The Federal List of Endangered and Threatened Wildlife can be found at http://ecos.fws.gov/tess_public/pub/listedAnimals.jsp.

Following these federal reclassifications, the Commission reclassified the bald eagle and peregrine falcon from state endangered or threatened species to state sensitive species in 2008 and 2002, respectively. The Commission's action was based on recommendations from the Washington Department of Fish and Wildlife (WDFW). The state's endangered species list, WAC 232-12-014, can be found at <http://apps.leg.wa.gov/wac/default.aspx?cite=232-12-014>. The state's threatened and sensitive species lists, WAC 232-12-011, can be found at <http://apps.leg.wa.gov/wac/default.aspx?cite=232-12-011>.

Therefore removing the bald eagle and peregrine falcon from the Board's list of critical habitats (state) of threatened and endangered species as found in WAC 222-16-080 is consistent with the reclassification of these species under federal and state laws.

The Commission also amended the bald eagle protection rule, WAC 232-12-292, in 2011. This rule now requires bald eagle site management plans only when the bald eagle is listed under state law as threatened or endangered. See WAC 232-12-292 at <http://apps.leg.wa.gov/WAC/default.aspx?cite=232-12-292>. Because the bald eagle is no longer listed under state law as threatened or endangered, bald eagle site management plans approved under WAC 232-12-292 are no longer available. Therefore the Board's proposal also includes removing the option in WAC 222-16-080 to use a bald eagle site management plan approved under WAC 232-12-292.

The Board's proposal also includes updating the common and scientific names for the Western pond turtle (*Clemmys marmorata*) listed in WAC 222-16-080. Three North American scientific societies that deal with fish, amphibian, and reptile issues, the American Society of Ichthyologists and Herpetologists, the Herpetologist's League, and the Society for the Study of Amphibians and Reptiles, have changed the name to Pacific pond turtle (*Actinemys marmorata*). Information about these societies can be found at http://www.ssarherps.org/pages/comm_names/Index.php.

Until a new rule is adopted by the Board, forest practices meeting the Board's current rule definition of bald eagle critical habitat or peregrine falcon critical habitat are classified as Class IV-special applications unless a wildlife management plan listed in the rule is part of the application. However as noted above, a bald eagle site management plan approved under WAC 232-12-292 is no longer available as a wildlife management plan.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise? Proposed measures to avoid or reduce such increases are:

This nonproject rule proposal will not change emission to air, production, storage, or release of toxic or hazardous substances, or production of noise.

The proposal will not increase discharge of sediment or debris to water from forest practices activities because the proposal does not modify the forest practices rules designed to protect riparian areas, fish habitat, and water quality.

2. How would the proposal be likely to affect plants, animals, fish or marine life? Proposed measures to protect or conserve plants, animals, fish, or marine life are:

The proposal will not adversely affect the bald eagle and peregrine falcon. Both species are no longer listed as threatened or endangered under federal and state laws. Both species are still protected under the federal Migratory Bird Treaty Act. The bald eagle is

also protected under the federal Bald and Golden Eagle Protection Act. The United States Fish and Wildlife Service is the federal authority that enforces these laws.
Please see further discussion in number 4 below.

The proposal will not adversely affect the vegetation, other animals, and aquatic species protected under the Forest Practices Act and rules, chapter 76.09 RCW and Title 222 WAC respectively because the proposal does not modify the forest practices rules designed to protect these resources.

3. How would the proposal be likely to deplete energy or natural resources?

This nonproject rule proposal has no effect on energy resources.

This proposal will not adversely affect natural resources (earth, air, water) because the proposal does not modify the forest practices rules that protect these resources.

Please see discussion in number 4 below regarding bald eagle and peregrine falcon.

4. How would the proposal be likely to use or effect environmentally sensitive areas or areas designed (or eligible or under study) for governmental protection: such as parks, wilderness, wild and scenic rivers, threatened and endangered species habitat, historic or cultural sites, wetlands, flood plains, or prime farmlands? Proposed measures to protect such resources or to avoid or reduce impacts are:

This nonproject rule proposal amends the Board's rule on critical habitats (state) of threatened or endangered species (WAC 222-16-080) to make it consistent with the federal and state status of the bald eagle and the peregrine falcon. The bald eagle and the peregrine falcon are no longer federally listed as threatened or endangered because the USFWS determined that the best available scientific and commercial data indicated these species have recovered pursuant to the Endangered Species Act. The Federal Register final rule documents for the federal reclassification of the bald eagle and the peregrine falcon can be found at <http://www.fws.gov/policy/library/2007/07-4302.pdf> and http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999_register&docid=99-21959-filed.pdf respectively.

The bald eagle and the peregrine falcon are no longer listed under state law by the Commission because of the dramatic increase in the number of bald eagles and peregrine falcons in the state. The Washington Department of Fish and Wildlife recommendations to the Commission to reclassify the bald eagle and the peregrine falcon under state law can be found at

<http://wdfw.wa.gov/publications/pub.php?id=00315> and <http://wdfw.wa.gov/publications/pub.php?id=00387> respectively.

The proposal is unlikely to affect the bald eagle or peregrine falcon because both species remain protected under federal and state laws. The bald eagle and the peregrine falcon are federally protected under the Migratory Bird Treaty Act (16 U.S.C. 703-711) which prohibits "take" of any migratory bird or any part, nest, or egg, except

as permitted by regulation. The bald eagle is also federally protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) which prohibits anyone without a permit issued by the Secretary of the Interior to “take” a bald eagle, including agitating an eagle to the extent it causes injury, a decrease in productivity, or nest abandonment. Both laws apply to the forested areas subject to the Forest Practices Act and rules. The USFWS administers and enforces both laws which can be found at <http://www.fws.gov/laws/lawsdigest/migtrea.html> and <http://www.fws.gov/laws/lawsdigest/baldegl.html>.

To help landowners minimize impacts to bald eagles and avoid “take” under the Bald and Golden Eagle Protection Act, the USFWS developed National Bald Eagle Management Guidelines. Forest land, including lands subject to the Forest Practices Act and rules, are included in these guidelines and guidance specific to conducting forestry activities is available to landowners. Landowners who follow these guidelines are unlikely to “disturb” bald eagles. Disturbance is a potential violation of the Bald and Golden Eagle Protection Act which can result in a fine of \$100,000, imprisonment for one year, or both for a first offense. The Bald Eagle Management Guidelines can be found at <http://www.fws.gov/pacific/eagle/NationalBaldEagleManagementGuidelines.pdf>. The guidance specific to Pacific Northwest forestry activities can be found at <http://www.fws.gov/pacific/eagle/guidelines/disturbnestingbaea1.html>.

Under Washington state laws the bald eagle and the peregrine falcon are classified as state sensitive, one of the state’s protected wildlife designations. This classification prohibits hunting of the species and recognizes the need for special management considerations to keep the species from becoming threatened or endangered. Cooperative management planning is one method of special management protection utilized by the state. WDFW management recommendations for the bald eagle are the USFWS’s Bald Eagle Management Guidelines. WDFW management recommendations for the peregrine falcon can be found at <http://wdfw.wa.gov/publications/00026/wdfw00026.pdf> and [http://wdfw.wa.gov/publications/00026/Abbreviated Peregrine Falcon.pdf](http://wdfw.wa.gov/publications/00026/Abbreviated_Peregrine_Falcon.pdf).

The Pacific pond turtle will not be affected by the proposal. Updating the common and scientific names for this turtle does not modify the Board’s designation of critical habitat for the turtle. Because the Board’s critical habitat designation is not being modified, the proposal has no effect on the protection afforded to the turtle under the forest practices rules.

Therefore even though the bald eagle and the peregrine falcon are not on the federal or state threatened and endangered species lists and the proposal removes specific forest practices near these species from regulation under the forest practices rules, both species continue to be protected by the USFWS under federal laws and the Commission under state laws.

- 5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans? Proposed measures to avoid or reduce shoreline and land use impacts are:**

The proposal may affect forest land and shoreline use to the extent that forest landowners implement the federal "take" avoidance measures for the bald eagle and peregrine falcon under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. Landowners will need to work directly with the United States Fish and Wildlife Service to determine whether their forestry activities have the potential to affect the bald eagle or the peregrine falcon.

The proposal will not allow or encourage land or shoreline use that is incompatible with local governmental land use plans. Other forest practices rules still pertain to riparian and shorelines protection including rules designed to protect riparian areas, wetlands, water quality, and fish habitat.

- 6. How would the proposal be likely to increase demands on transportation or public services and utilities? Proposed measures to reduce or respond to such demand(s) are:**

This nonproject rule proposal does not apply to transportation or public services or utilities.

- 7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.**

The proposal brings into alignment the Board's rule with other state and federal laws.