

1 **FOREST PRACTICES BOARD**
2 **MEETING MINUTES**

3 July 25, 2007
4 Natural Resources Building
5 Olympia, Washington
6

7 **Members Present:**

8 Vicki Christiansen, Chair of the Board
9 Bob Kelly, General Public Member
10 Brent Bahrenburg, Designee for Director, Community, Trade and Economic Development
11 Bridget Moran, Designee for Director, Department of Fish and Wildlife
12 Carolyn Dobbs, General Public Member
13 Dave Somers, Snohomish County Commissioner (attended by phone)
14 David Hagiwara, General Public Member
15 Doug Stinson, General Public Member/Small Forest Landowner
16 Norm Schaaf, General Public Member
17 Sherry Fox, General Public Member/Independent Logging Contractor
18 Tom Laurie, Designee for Director, Department of Ecology

19 **Absent:**

20 Ann Wick, Designee for Director, Department of Agriculture

21 **Staff:**

22 Chuck Turley, Forest Practices Assistant Division Manager
23 Erin Daley, Board Support
24 Lenny Young, Forest Practices Division Manager
25 Neil Wise, Assistant Attorney General
26 Patricia Anderson, Rules Coordinator
27

28 **WELCOME**

29 Vicki Christiansen called the meeting to order at 9:00 a.m. She announced that the Forest
30 Practices Board (FPB or Board) would convene an Executive Session to discuss on-going and
31 pending litigation.

32
33 The public meeting reconvened at 9:35 a.m.

34
35 **INTRODUCTIONS**

36 Introductions were made by Board, staff, and attendees.

37
38 Erin Daley, Department of Natural Resources (DNR or Department), provided an emergency
39 safety briefing.

40
41 **PUBLIC COMMENT**

42 Joseph Pavel, Northwest Indian Fisheries Commission, stated that he has been engaged
43 extensively in the desired future condition (DFC) rule making. He said there were still two
44 outstanding issues that needed to be addressed and he deferred to the Board to take the next
45 steps.
46

1 Peter Heide, Washington Forest Protection Association (WFPA), stated that their primary
2 concern for the DFC rule proposal was a requirement to leave more trees on the ground than
3 necessary for the protection of the resources. If science supports the basal area target as 325,
4 WFPA will support revising the rules to achieve that specific goal.
5

6 John Pierce, Department of Fish and Wildlife (DFW), stated there is no requirement for
7 landowners to submit Northern spotted owl (NSO) survey data to DFW or to DNR as part of a
8 forest practices application. The data collected is a result of a voluntary participation,
9 collaboration and cooperation between landowners, surveyors and DFW staff.
10

11 Barbara Martin, Seattle Audubon, stated that she is concerned with the decline in population of
12 the NSO and urged the Board to consider the impact of their decision for future protection of the
13 owls.
14

15 Adrian Miller, WFPA, provided an update on the progress made on the DFC Rule Proposal #2.
16 He said there were still two outstanding issues that could be resolved in a timely manner if the
17 Board allowed the stakeholder negotiations to continue to resolve them.
18

19 Joseph Murray, Merrill & Ring, stated that he is supportive of allowing the stakeholder
20 negotiations to continue to resolve the outstanding issues with DFC Rule Proposal #2.
21

22 Robert Meier, Rayonier, asked the Board to not extend the moratorium on decertifying NSOs.
23

24 Court Stanley, Port Blakely, encouraged the Board to allow the rule making negotiations to
25 continue to resolve the outstanding issues in the DFC Rule Proposal #2.
26

27 Ken Miller, Washington Farm Forestry Association, shared two blue bird houses with the Board
28 and asked if they could see any differences. The major difference in the bird houses is that one
29 costs \$1.89 and is from China and the other cost \$2.69. To support the economic viability of
30 forest landowners, he urged the Board to support the thinning option in the DFC Rule Proposal
31 #2.
32

33 Stephen Bernath, Department of Ecology (DOE), asked the Board for additional time to review
34 the proposal and to resolve the outstanding issues. DOE is committed to working with the other
35 stakeholders to perfect this rule proposal.
36

37 Eric Harlow, Washington Forest Law Center (WFLC), urged the Board to consider the long
38 range implications of its decisions and take steps to maintain viable owl populations in
39 Washington.
40

41 Peter Goldman, WFLC, encouraged the Board to protect owls both in and out of SOSEAs. He
42 also encouraged the Board to approve for public review the DFC rule language that supports a
43 325 basal area target, and not support the continuation of stakeholder negotiations for DFC Rule
44 Proposal #2.
45

1 Josh Weiss, WFPA, commented on the Board's decision authority regarding the DFC rule
2 making. He said he believed that the Board was within its scope of authority to develop and
3 approve additional rule language such as the DFC Rule Proposal #2. He encouraged the Board to
4 allow the additional time necessary to resolve the outstanding issues with DFC Rule Proposal #2.
5

6 Aaron Perry, Rayonier, said he supported the DFC Rule Proposal #2 and asked the Board to
7 allow additional time for the issues to be resolved.
8

9 Miguel Perez-Gibson, Conservation Caucus, stated his caucus proposed a DFC alternative but
10 DNR and Forest and Fish Policy did not support it.
11

12 Mark Doumit, WFPA, stated that significant work has been completed on the DFC rule
13 proposals and he believed in the collaboration and compromise that had been achieved in the
14 previous several months. He said the caucuses were close and could reach a consensus and
15 compromise by September. He said WFPA did not support Rule Proposal #1 nor the staff
16 proposal that he was aware would be presented later in the meeting.
17

18 Karl Forsgaard, WFLC, said he did not support waiting until September for DFC Rule Proposal
19 #2 because it would need to go through peer review. Adaptive management requires rule
20 changes to go through a peer review.
21

22 Kevin Godbout, Weyerhaeuser, stated that he supported the continued stakeholder negotiations
23 on the DFC rule making. He said he didn't support the rule proposal being presented because it
24 had not been made available until the day of the meeting.
25

26 **CMER FY 2008 WORK PLAN**

27 Darin Cramer, DNR, presented the 2008 CMER Work Plan for approval. He explained the work
28 plan contained 13 proposed Tier One projects and 12 proposed Tier Two projects for a total
29 budget of \$3.3 million.
30

31 Board members asked that future work plans include a brief summary of each project. Cramer
32 responded that he would make the change.
33

34 **MOTION:** Sherry Fox moved that the Board approve the 2008 CMER Budget.
35

36 **SECONDED:** Carolyn Dobbs
37

38 **ACTION:** Motion passed unanimously.
39

40 **DRAFT NORTHERN SPOTTED OWL RECOVERY PLAN**

41 David Wesley, U.S. Fish and Wildlife Service, provided an overview on the recently released
42 draft Northern Spotted Owl Recovery Plan. Highlights included what a recovery plan is, a
43 timeline, the team and the process, and the objectives of the recovery plan.
44

1 He explained the draft was published in the Federal Register on April 26, 2007 and public
2 meetings were scheduled in Washington, Oregon and California. He said a final plan was
3 expected by April 2008.

4
5 Sherry Fox asked whether the Services ever provided a “safe harbor” to any state regulatory
6 agency. Wesley responded that he did not know of one and would find out whether there are any.
7

8 **DECERTIFICATION OF NORTHERN SPOTTED OWL SITE CENTERS, AND OTHER**
9 **POLICY DECISIONS RELATED TO THE DRAFT NORTHERN SPOTTED OWL**
10 **RECOVERY PLAN**

11 Lenny Young, DNR, reviewed the rule making history for the previous few years on the
12 decertification of NSO site centers. He reminded the Board that a notice of possible rule making
13 had been filed, and asked the Board to consider distributing a 30-day notice to counties,
14 Department of Fish and Wildlife and tribes. He said the current emergency rule was effective
15 until October 28, 2007, and in order for it to continue without a gap, the Board needed to initiate
16 rule making by filing a notice of proposed rule making prior to approving a second emergency
17 rule. By approving the distribution of the 30-day notice, the Board would be in a position at its
18 September meeting to consider adoption of a second emergency rule and approval of rule
19 language for public review of a permanent rule.
20

21 He reviewed five items relating to the NSO moratorium rule that the Board was contemplating in
22 November 2005 but had decided to wait until the federal recovery plan was completed. Issues
23 included determining whether any SOSEA boundaries needed to be adjusted, eliminated or
24 added; whether the role of suitable habitat in SOSEAs outside of median range home circles
25 needed to be re-evaluated; whether measureable habitat objectives for each SOSEA needed to be
26 developed; and whether spotted owl habitat conservation outside the SOSEAs needed to be re-
27 evaluated. He pointed out that the recovery plan addressed some of these issues but not all of
28 them.
29

30 Additional items awaiting the recovery plan included possibly developing an adaptive
31 management program for NSO, reviewing of the survey protocol, and changing the NSO habit
32 rule definitions.
33

34 Young outlined options for the Board’s consideration regarding decertification of owl habitat.

- 35 • Follow the conservation strategy as defined by rule (concept of SOSEAS). The Board could
36 continue a moratorium for sites in a geographically select manner.
- 37 • Emphasize SOSEAs in the areas that the Board has for the last ten years deemed to be the
38 important areas to provide regulatory protection of owl habitat and is substantiated by the
39 recovery plan.
- 40 • Reexamine the overall strategy and extend the moratorium without a geographic limitation.
- 41 • Or, based on the recovery plan, discontinue the moratorium.
42

43 David Hagiwara asked Young whether it would be possible to make any rule changes in the
44 event some information came to light prior to May 2009. Young responded that the Board could
45 remove the moratorium on decertification at any time.
46

1 Christiansen asked Young how he thought Recovery Action Item 17, regarding a collaborative
2 approach to standardize the spotted owl habit definitions, could play out. Young responded that
3 this was unique to Washington State and he thought the Board could take the lead in directing
4 staff to engage in a truly collaborative process to review the definitions. Young also added that
5 this would be an upland wildlife process not subject to the adaptive management process.
6

7 Sherry Fox said she thought the U.S. Fish and Wildlife Service should be involved to make this a
8 truly collaborative process and to gain federal assurances. Young agreed and thought it would
9 be a valuable approach.
10

11 **PERSPECTIVES ON NORTHERN SPOTTED OWLS AND THE FOREST PRACTICES** 12 **RULES**

13 Heath Packard, Audubon Washington; Josh Weiss, WFPA; and Bridget Moran, Department of
14 Fish and Wildlife provided their respective viewpoints on the issues facing NSO.
15

16 Packard stated that not much has changed in the last couple of years since he last spoke to the
17 Board. Following the science is key and habitat is essential to owl recovery. With the
18 introduction of new threats such as fire, disease and Barred Owls, habitat is even more critical in
19 maintaining a viable spotted owl population. He said there is still an emergency. It is a policy
20 question whether the Board wants to continue with policies that allow a net loss of habitat when
21 it is very critical for recovery and maintaining a viable population or revisit the rules and
22 outdated assumptions.
23

24 Packard concluded by stating that with a seven percent decline of owls, clearly the 1996 rules are
25 not working. He said he was very concerned with the direction of the recovery plan and whether
26 it would stand up to the peer review. He said he was also concerned with the recommendation in
27 the recovery plan to reduce the habitat for spotted owls. This could shift the burden onto more
28 state and private lands for recovery. He urged the Board to move forward in a deliberate,
29 cautious and conservative fashion to protect as much owl habitat as possible and balance the
30 economic cost for the landowners.
31

32 Josh Weiss, Washington Forest Protection Association, stated that he agreed that there is an
33 ongoing decline in the NSO population and this is an issue for everyone. He said it had been
34 frustrating to see the sacrifices that landowners have made over the past 10-15 years with no pay
35 off of the intended effect. He said WFPA's position is that setting aside more habitat will not
36 arrest the declining population.
37

38 He concluded in identifying one change since 2005. The litigation this past year has taken up so
39 much time. He said he'd like to reengage in discussions on innovative approaches to augment
40 the habitat strategy already in place in Washington.
41

42 Bridget Moran said DFW's perspective was one of caution. There are three critical elements the
43 Board must work through in order to decide on decertification. First, determine status of the
44 owl; second, ensure an accurate survey protocol, on which DFW is willing to take the lead in
45 creating a sound scientifically valid mechanism. And third, litigation - DFW is concerned with
46 the current path and continuing without ESA protections.

1 She said DFW would like the Board to make the survey protocol a priority for DFW. If
2 addressed, DFW would be willing to support lifting a moratorium on decertification for areas
3 outside of SOSEAs.

4
5 She said DFW requested an extension of the moratorium statewide and lifting it when the survey
6 protocol is ready as part of the conservation strategy for the owl.

7
8 **DECERTIFICATION OF NORTHERN SPOTTED OWL SITE CENTERS RULE**
9 **MAKING**

10 Lenny Young, DNR, requested the Board's decision on whether the Board wanted to continue
11 the moratorium on decertification of owl site centers uninterrupted, and for some duration and
12 geographic scope. If the Board chose to continue a moratorium it would be necessary to approve
13 language for a 30 day notice to distribute to DFW and counties. He said the current emergency
14 rule would expire on October 28, and if the Board wanted to continue the emergency rule, the
15 Board must show progress on a permanent rule prior to adopting another emergency rule.

16
17 **MOTION #1:** Vicki Christiansen moved that the Forest Practices Board directs staff to
18 distribute proposed rule language for 30-day review to counties, Department
19 of Fish and Wildlife, and affected Indian Tribes that has the effect of
20 maintaining until May 31, 2009 a moratorium on decertification of northern
21 spotted owl site centers within 2.7 miles of the Hoh-Clearwater / Coastal Link
22 SOSEA, within 1.8 miles of any SOSEA east of I-5, and within 1.8 miles of
23 Conservation Support Area WCSA-02 described in the April 2007 U.S. Fish
24 and Wildlife Service Draft Recovery Plan for the Northern Spotted Owl.

25
26 **SECONDED:** Tom Laurie

27
28 Board Discussion:

29 Moran said she did not support the motion because it was premature for the Board to limit the
30 option in the future for inside the SOSEAS. She would prefer a statewide moratorium with a
31 sunset date.

32
33 Carolyn Dobbs and Bob Kelly said they agreed with Moran.

34
35 Fox also said she agreed - that it was premature and that stakeholders need to be involved in
36 getting a survey protocol that works.

37
38 Dave Somers said he did not support the motion and agreed with Moran.

39
40 Laurie stated his concern was the survey protocol and whether or not to move forward without
41 fixing the problem.

42
43 Norm Schaaf said he did not support the motion because it was based on a hypothetical situation
44 dependent on whether the federal recovery plan is approved or not. He said that landowners
45 need a mechanism to decertify if they do not in fact have any owls.

1 ACTION: Motion failed. Yes - 1 (Christiansen) / No - 10
2
3 MOTION #2: Bridget Moran moved to extend the moratorium as it exists today for two
4 years to July 25, 2009 acknowledging that it would be before the protocol
5 would be done but enough time for the Board to determine what conservation
6 strategy to follow.
7
8 SECONDED: Tom Laurie
9
10 AMENDMENT
11 TO MOTION #2: Sherry Fox moved to amend the motion to add “DFW will work in a
12 collaborative process with stakeholders to develop a protocol survey for
13 decertification by July 25, 2009.”
14
15 SECONDED: Norm Schaaf
16
17 Board Discussion:
18 Moran said she was concerned that the amendment committed DFW to complete the survey
19 protocol by July 25, 2009. She said she could not guarantee a final product; however, she could
20 commit to designing a research strategy and engage in discussions with the stakeholders by that
21 time.
22
23 Fox stated that she wanted to signal the industry that the Board is serious and willing to work
24 together to solve the issue and not continue with emergency rules.
25
26 ACTION ON
27 AMENDMENT: Fox withdrew the amendment to the motion
28
29 ACTION ON
30 MOTION #2: Moran withdrew motion #2.
31
32 MOTION #3: Sherry Fox moved to direct staff to draft rule language for a 30 day notice that
33 extends the statewide moratorium to sunset on December 31, 2008. Fox
34 further moved that Department of Fish and Wildlife work in a collaborative
35 process with stakeholders to develop a research strategy to evaluate the U.S.
36 Fish and Wildlife protocol survey and to evaluate future conservation
37 strategies by December 31, 2008.
38
39 SECONDED: Bridget Moran
40
41 Board Discussion:
42 Dave Hagiwara asked what the collaborative process entailed. Moran responded that the issue
43 with the data management is that it’s voluntary and not up-to-date. DFW would evaluate all
44 circles to see which circles have up-to-date information and report to the Board.
45

1 Christiansen asked that the review include an evaluation on the appropriate use of the data and
2 how the data is used.

3
4 Moran stated that she is committed to working with the stakeholders in a collaborative manner
5 that will hopefully result in a consensus in defining a strategy.

6
7 **ACTION:** Motion passed. Yes - 10 / Abstention - 1 (Christiansen)

8
9 **DESIRED FUTURE CONDITION RULE MAKING**

10 Lenny Young, DNR, presented two rule proposals for the Board’s consideration to initiate rule
11 making. Young reported that a math error was responsible for an original underestimation to the
12 economic analysis for Rule Proposal #1 that changes the five specific site class numbers to 325.
13 This error had resulted in an estimated financial impact associated with the thinning option
14 increasing from \$1 million to \$2 million per year and an estimated increase for the packing
15 option from \$2.5 million to \$5 million per year.

16
17 Young summarized a few remaining issues related to Rule Proposal #2. First - the different
18 views on the adaptive management process and how much decision making space the Board has
19 to take action in response to the petition for rule making from Forests and Fish Policy. Second -
20 the different views on what is commonly referred to as the “floors.” Third, the proposal is
21 constantly changing in a collaborative manner to further refine the proposal. Fourth, because the
22 proposal has been in constant change, a thorough ecological analysis had not been completed.
23 And finally, a process issue related to SEPA – the possibility that we could have a solution that
24 embraces the correct basal area number which is acceptable from a Policy perspective, but which
25 would result in conditions in riparian zones on the ground that may be less favorable for riparian
26 resources than what is experienced today.

27
28 Young presented three options for the Board to consider as next steps.

- 29 1. Continue to hold both rule proposals and do not move forward on a CR102, and allow time
30 for Rule Proposal #2 to be refined and issues resolved.
31 2. Initiate rule making on Rule Proposal #1, recognize Rule Proposal #2 is not ready and allow
32 for continuing its development.
33 3. Initiate rule making Rule Proposal #1 with a sunset date and provide clear direction and set
34 up a process so that all the good collaboration can continue with Rule Proposal #2.

35
36 Christiansen acknowledged the momentum, collaboration and hard work that many stakeholders
37 have been involved in. However, the Board did schedule this special meeting with the intent to
38 take action on this rule making. While the Board heard many comments stating that Rule
39 Proposal #2 “is almost complete, just a little more time”, the Board needed to set the
40 expectations of the remaining issues identified by Young prior to taking any action.

41
42 Schaaf encouraged the Board to allow the process to continue until the next Board meeting and
43 encourage all stakeholders to engage. Otherwise, taking action would undermine the negotiating
44 process thus far.

1 Fox agreed with Schaaf and said she believed the negotiating process should continue to get the
2 right prescription/RMZ management and to finish the draft rule.

3
4 Somers wants to see a creative solution but is concerned with the continued delay. He would like
5 to move forward and see the stakeholder process continue and merge the rule proposals along the
6 way.

7
8 Laurie said he agreed with Somers. He said he was encouraged that a simpler approach to the
9 process may be available and that limiting the use of the model that has been problematic is a
10 win-win situation if it was possible. He said DOE was committed to working in the
11 collaborative process with all caucuses to meet DFC goals in a manner that would not unduly
12 burden industry. He said he did not think it was realistic that an agreement with Policy, an
13 agreement on rule language and an evaluation could be completed for the Board by the end of
14 August.

15
16 Bob Kelly said he agreed that the process should continue and said he was committed to making
17 the process work. However, he said, he was concerned with how long this process was taking.

18
19 Hagiwara agreed with Kelly. He said he supported seeing the process work.

20
21 **MOTION:** Tom Laurie moved that the Forest Practices Board directs staff to file a CR-
22 102 Proposed Rule-Making notice with the Office of the Code Reviser to
23 initiate rule-making to replace the five, site-class specific desired future
24 condition basal area targets in the definition of "Stand Requirement" in WAC
25 222-30-021 (1) with a single desired future condition basal area target of 325
26 square feet per acre, until November 30, 2008. The Board directs staff to
27 schedule public hearings on this proposal after the September 11, 2007, Board
28 meeting.

29
30 **SECONDED:** Carolyn Dobbs

31
32 Board Discussion:

33 Fox reminded the Board that the basal area target of 325 was a policy decision. If passed, this
34 motion would have significant impacts on industry. This would be a mistake if the Board did not
35 allow the negotiating process to continue on Rule Proposal #2.

36
37 Kelly said he agreed with Fox. He said he did not support the motion.

38
39 Doug Stinson said he supported allowing the stakeholder process to continue – that the motion
40 would break the current momentum.

41
42 Bridget Moran said she supported the motion. She said she believed that it still supported the
43 collaborative process by scheduling public hearings after the September meeting.

44
45 Norm Schaaf said he did not support the motion and would like to see the stakeholder
46 negotiations continue. Otherwise, he said, it would undermine the current momentum.

1
2 Brent Bahrenburg said he supported the idea of allowing the negotiating process to continue.

3
4 **ACTION:** Motion failed. Yes - 4 / No - 6 / Abstention - 1 (Christiansen)

5
6 **MOTION:** Tom Laurie moved that the Forest Practices Board requests staff to continue
7 to work collaboratively with stakeholders on the desired future condition
8 proposal advanced by the Washington Forest Protection Association--at best
9 possible speed and in a manner consistent with the Board's adaptive
10 management rules and procedures. The Board appreciates the thought, time,
11 and effort that this proposal represents, and thanks WFPA and its member
12 companies for responding to the Board's request for alternatives. The Board
13 remains hopeful that this alternative can be finalized to provide a better, long-
14 term approach to determining timber harvest opportunities in the RMZ inner
15 zone while protecting public resources.

16
17 As part of this continuing effort, the Board requests staff to examine the
18 alternate recently outlined by Department of Ecology to use the thinning table
19 as a screen to determine harvest opportunities under both the thinning and
20 packing options. The Board requests staff to evaluate whether it would be
21 appropriate to allow basal area resulting from the 20 inner zone leave trees
22 required under the packing option to be counted toward the basal area desired
23 future condition target. The Board also requests staff to continue efforts to
24 repair and update the model used to make DFC calculations.

25
26 The Board directs staff to determine whether a supplemental environmental
27 impact statement would be required to support initiation of rule-making to
28 implement this proposal, and to report its conclusion to the Board at the
29 Board's November 14, 2007 meeting.

30
31 **SECONDED:** Bridget Moran

32
33 **ACTION:** Motion passed unanimously.

34
35 Meeting adjourned at 4:45 p.m.