

N A T U R A L

R E S O U R C E S



POLICY FOR SUSTAINABLE FORESTS

DECEMBER 2006



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Doug Sutherland - Commissioner of Public Lands

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Policy for Sustainable Forests

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Dear Reader,

As we enter a new millennium, the many benefits that forested trust lands offer to Washington State continue to have enduring importance. In recognition of this, the Board of Natural Resources has launched sustainable forest management in a new direction. Replacing the 1992 *Forest Resource Plan* with the *Policy for Sustainable Forests* represents a critical step on this path, encompassing the Board's direction that will guide the Washington State Department of Natural Resources' management activities on 2.1 million acres of forested state trust lands.

In this suite of policies the Board has created more than just direction for the agency. It has created a vision for forested state trust lands that will lead to healthier, more biologically diverse and structurally complex habitat—all this while enhancing the revenue-producing capabilities of these forests in support of public schools, universities, local hospital and library districts and other trust beneficiaries. The policy direction will assist the agency in meeting many interests—the constant stream of revenue for the beneficiaries, forest health, local economic vitality, research, and public access and recreation use. The Board's adopted policies reflect the delicate balance needed to sustain these multiple benefits.

The Board understands the *Policy for Sustainable Forests* to be a living document, and may, with full public involvement, continue to refine these policies in response to new scientific, technological and other changes or opportunities that occur.

I commend both the leadership provided by members of the Board, and the effort that was devoted to this important project by the agency's team members, divisions and regions, the beneficiaries, the public, Tribes and other interested stakeholders. The two-year process and public involvement have yielded valuable guidance to assist the agency for years to come. The *Policy for Sustainable Forests* will allow us to make great strides in ever more effective management of this state's forested trust lands on behalf of the trust beneficiaries and the people of Washington.

Sincerely,

A handwritten signature in black ink, reading "Doug Sutherland".

Doug Sutherland
Commissioner of Public Lands

POLICY FOR SUSTAINABLE FORESTS

Policies in this document were adopted by the State Board of Natural Resources in September 2004 and July 2006.

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Introduction

On July 11, 2006, the state Board of Natural Resources approved the *Policy for Sustainable Forests*, after more than two years of development with the Washington State Department of Natural Resources (DNR).

This document guides management and stewardship of 2.1 million acres of forested state trust lands, and replaces the 1992 *Forest Resource Plan*.

Over the last two decades the forests in Washington have seen rapid change. Urbanization of Western and parts of Eastern Washington has converted thousands of acres of private working forests to other uses. At the same time, the state's growing population is seeking more open space and outdoor recreation opportunities from an increasingly limited forestland base. Habitat for a variety of plant and animal species has decreased; and forests on both sides of the state are experiencing significant forest health issues.

In the midst of all these changes, the financial needs of the trust beneficiaries continue to grow, increasing the demand for income from the state trust lands.

Locally, nationally and internationally there is increased demand for wood products and other forest products associated with Washington's forest lands. DNR-managed forested trust lands are at the center of these changes.

The challenge is to manage the lands to meet multiple objectives in a sustainable manner. The *Policy for Sustainable Forests* provides the broad direction needed to effectively manage the forested state trust lands for the beneficiaries and the people of Washington, today and into the future.



Development Process

Developing the *Policy for Sustainable Forests* was an extensive process that brought together people from within DNR and also outside the agency to create recommendations to the Board of Natural Resources for the policies to be included in this document. In addition to multiple individual meetings, DNR held 14 public workshops and hearings across the state to obtain input from a variety of constituencies — including the trust beneficiaries, Tribes, local and state governments, stakeholders, and the public. Following these public meetings, DNR discussed options for each of the policies with the Board of Natural Resources in order to determine the Board’s preferred policy direction. This preferred direction is reflected in the Policies chapter.

The policies are intended to provide direction that is clear and unambiguous, without being overly procedural in nature.

Purpose and Policy Objectives

The purpose and objectives establish a broad theme of sustainability to guide DNR’s management of forested state trust lands:

PURPOSE

Consistent with the fiduciary standards governing trust management, the purpose of the *Policy for Sustainable Forests* is to conserve and enhance the natural systems and resources of forested state trust lands managed by DNR to produce long-term, sustainable trust income, and environmental and other benefits for the people of Washington.

POLICY OBJECTIVES

Ten policy objectives were developed by the Board of Natural Resources and guided the development of the *Policy for Sustainable Forests*:

1. Meet all federal and state laws, including the trust obligations and the contractual commitments of DNR’s trust lands *Habitat Conservation Plan* (HCP);
2. Balance trust income, environmental protection and other social benefits from four perspectives: the prudent person doctrine; undivided loyalty to and impartiality among the trust beneficiaries; intergenerational equity; and not foreclosing future options;
3. Ensure policies are succinct, relevant and easily understood by the public and department employees;
4. Seek productive partnerships that help the department achieve policy objectives;
5. Use professional judgment, best available science and sound field forestry to achieve excellence in public stewardship;
6. Pursue outcome-based management within a flexible framework;
7. Promote active, innovative and sustainable stewardship on as much of the forested land base as possible;

-
8. Identify trust lands that provide special ecological, social or cultural benefits that are incompatible with active management and look for opportunities to protect such areas through creative partnerships and funding mechanisms with appropriate compensation to the trusts;
 9. Capture existing and future economic opportunities for the beneficiaries from the forestland base by being prudent, innovative and creative; and
 10. Monitor and periodically report to the Board of Natural Resources on the implementation and outcomes of Board of Natural Resources approved policies.



Policy Organization and Outcomes

The *Policy for Sustainable Forests* includes policies grouped into four major categories—each category addressing a key aspect of sustainable forest management: Economic Performance; Forest Ecosystem Health and Productivity; Social and Cultural Benefits; and Implementation (see Policies chapter).

Although the policies are separated into categories, together they represent DNR’s overarching policy to support healthy forest ecosystems to provide a sustainable, perpetual flow of economic, ecological and social benefits from the forested trust lands that DNR manages. The policies are consistent with, but do not restate governing laws (see Background and Context chapter), and achieve the Board of Natural Resources’ purpose and policy objectives. They are intended to provide direction that is clear and unambiguous, without being overly procedural in nature. Board of Natural Resources policies and intended outcomes are outlined below by major policy category.



ECONOMIC PERFORMANCE

The Economic Performance category contains policies that, consistent with the other policies in this document, provide the broad context for DNR's economic management of forested state trust lands and the production of perpetual revenue for each trust beneficiary. These policies relate to revenue production and financial performance, including activities and commodities to be considered in producing revenue from forested state trust lands; sustainable harvest; and lands that are available for timber management activities:

- Financial Diversification
- Financial Assumptions
- Definition of Sustainability for the Sustainable Harvest Calculation
- Recalculation of the Sustainable Harvest Level
- Harvest Deferral Designations

Intended Outcome

The Economic Performance policies are intended to ensure perpetual revenue for the trusts by:

- Using aggressive marketing and market timing of forest products and services in an international context;
- Optimizing the economic value of forest stands;
- Pursuing both existing and future economic opportunities related to non-timber commodities and ecological and social benefits;
- Evaluating and researching land use patterns and economic trends to identify additional financial diversification opportunities;
- Reviewing financial assumptions at least once per year;
- Recalculating the statewide sustainable harvest level at least every 10 years, or more frequently when changing circumstances warrant;
- Calculating a multi-decade sustainable harvest level for 20 sustainable harvest units in Western Washington; and
- Fluctuating the harvest level for any given year within a decade to take advantage of short-term operational or market opportunities.

FOREST ECOSYSTEM HEALTH AND PRODUCTIVITY

The Forest Ecosystem Health and Productivity category contains policies that provide the broad context for DNR's management and maintenance of the ecological health of forested state trust lands. These policies address subjects related to elements of the forest ecosystem that are important to ecological objectives and long-term health and productivity of trust assets:

- Forest Health
- Catastrophic Loss Prevention
- Old-Growth Stands in Western Washington
- Wildlife Habitat

-
- Watershed Systems
 - Riparian Conservation
 - Special Ecological Features
 - Genetic Resource

Intended Outcome

The Forest Ecosystem Health and Productivity policies are intended to ensure forest ecosystem health and productivity by:

- Maintaining and improving forest health by actively managing species composition and stocking levels across forested landscapes;
- Developing fire and insect resistant forest stands to prevent significant forest resource losses;
- Protecting wildlife species and habitats through focusing on conservation of biodiversity within forested landscapes, compliance with DNR's trust lands *Habitat Conservation Plan* (HCP), state and federal law, and voluntary agreements;
- Protecting water quality, watershed systems, and aquatic habitat by generally limiting even-aged harvest units to 100 acres, establishing riparian and wetland management zones along most streams and wetlands, and assessing the potential for cumulative impacts of DNR's activities on watershed systems;
- Identifying and protecting special ecological features through a variety of methods, consistent with trust obligations; and
- Conserving old growth and targeting other suitable structurally complex forests to meet a 10 percent to 15 percent older-forest target for each Western Washington HCP planning unit, over 70 years.

SOCIAL AND CULTURAL BENEFITS

The Social and Cultural Benefits category contains policies that provide broad direction concerning the role that the forested trust lands play in the lives of Washington's residents. These policies address subjects related to social and cultural benefits from the lands and DNR's activities beyond those benefits resulting from production of trust revenue and forest ecological health:

- Public Access and Recreation
- Visual Impacts
- Cultural Resources
- Local Economic Vitality



Promoting public access and recreation that is compatible with trust objectives and the physical elements of the lands involved...

Intended Outcome

The Social and Cultural Benefits policies are intended to ensure a flow of social and cultural benefits from forested state trust lands by:

- Promoting public access and recreation that is compatible with trust objectives and the physical elements of the lands involved, supported by the recreating public, and the available financial and staff resources of DNR;
- Identifying and protecting significant historic and archaeological sites and working closely with the Tribes and interested stakeholders to address culturally significant areas;
- Mitigating visual impacts of DNR's activities;
- Supporting local economic vitality through DNR's actions, when compatible with or directly supporting trust objectives; and
- Identifying and protecting old growth and transferring it out of trust status, when in the best interest of the trusts.

IMPLEMENTATION

The Implementation category contains policies related to carrying out the *Policy for Sustainable Forests*. These policies address subjects that support putting the other policies into practice and keeping them current and meaningful:

- Forest Land Planning
- General Silvicultural Strategy
- Forest Roads
- Research
- External Relationships
- Implementation, Reporting and Modification of the Policy for Sustainable Forests



Intended Outcome

The Implementation policies are intended to ensure effective implementation of Board of Natural Resources policy by:

- Describing outcomes to be achieved for specific geographical areas, developing and documenting strategies to achieve outcomes, and adapting outcomes and strategies utilizing monitoring, communication and feedback;
- Actively managing the greatest possible portion of forested state trust lands utilizing intensive and innovative silviculture and professional expertise to achieve desired outcomes and meet trust needs;
- Using applied and cost-effective research and best available science to support accomplishment of trust objectives and meet the commitments of the trust lands HCP;
- Actively communicating and promoting collaboration with the trust beneficiaries, Tribes, agencies, stakeholders and the public in carrying out DNR's activities; and
- Monitoring implementation of Board of Natural Resources policy and annually reporting to the Board of Natural Resources on the effectiveness of implementation and any needed changes in policy.



Background and Context

To better understand the *Policy for Sustainable Forests*, it is helpful to first understand the role of the Washington State Department of Natural Resources (DNR) and the framework within which DNR manages the forested state trust lands in its care. This chapter provides information on five key elements that set the context for the *Policy for Sustainable Forests*:

- DNR, including the Board of Natural Resources – the agency responsible for managing forested state trust lands;
- State trust lands – the origin of the lands covered by the policies in this document;
- Legal framework – state, federal and common law affecting DNR management of forested state trust lands; and
- Related plans and policies – other DNR guidance affecting the forested state trust lands.



The Department of Natural Resources

DNR was established in 1957 with the consolidation of several state agencies, boards and commissions to serve, in part, as the manager of state trust lands. In addition to managing forested state trust lands, DNR manages trust lands in agriculture and grazing production, and commercial real estate. DNR also is steward of the state's aquatic lands and natural areas. All together, DNR cares for more than 5 million acres of state-owned lands. DNR also administers several regulatory programs and acts as the state's principle wildfire control agency. The agency is led by the Commissioner of Public Lands, a statewide-elected official.

More than half the acres that DNR manages are state trust lands, which provide substantial revenue to specific trust beneficiaries (the trusts) to benefit the people of Washington. State trust lands provide needed revenue to construct and maintain Washington's public schools, universities, prisons and state office buildings. Other state trust lands help fund fire departments, hospitals and other public services in many counties, and contribute to the state general fund, earmarked for education (see State Trust Lands section).

State trust lands also provide jobs, commodities, clean water, wildlife habitat and recreational opportunities. DNR manages state trust lands to provide these additional benefits while maintaining the primary goal of trust revenue production.

As steward of these lands and natural resources, DNR relies on a diverse staff of foresters, engineers, geologists, biologists, cartographers, hydrologists, soil scientists, economists, and others.

THE BOARD OF NATURAL RESOURCES

When creating the agency in 1957, the Legislature created the Board of Natural Resources. The Board of Natural Resources is charged with guiding DNR's management of the lands and resources in its care. The Board of Natural Resources establishes policies to ensure that acquisition, management and disposition of these lands and resources are based on sound principles and are consistent with applicable laws. The *Policy for Sustainable Forests* is one way the Board of Natural Resources fulfills that charge for forested state trust lands. The Board also approves timber sales and trust land transactions, and sets the sustainable timber harvest level.

By law, the Board of Natural Resources is composed of six members: the Commissioner of Public Lands; the Governor (or a designated representative); the State Superintendent of Public Instruction; the Dean of the College of Agricultural, Human and Natural Resource Sciences at Washington State University; the Dean of the College of Forest Resources at the University of Washington; and an elected representative from a county that contains State Forest Lands.

State Trust Lands

The forested state trust lands that DNR manages benefit specific beneficiaries. The beneficiaries, and some aspects of how the lands are managed, vary according to the origin of the trusts. Most of the forested state trust lands that DNR manages are Federal Grant Lands or State Forest Lands.

FEDERAL GRANT LANDS

Just prior to Washington becoming a state in 1889, Congress passed the Omnibus Enabling Act of 1889 and granted more than 3 million acres of land to Washington to support various public institutions important for the new state. For example, this act set aside 2 square miles of every 36-square mile “township” across the state (public survey sections 16 and 36) to produce financial support for the ‘common schools’— kindergarten through twelfth-grade public schools. Also, the act granted



additional lands to support other public institutions. This Congressional action for the new state of Washington was consistent with a pattern of Congressional land grants to the other western states entering the Union. However, Washington, more than most other western states, has retained ownership of these trust lands over the years to serve as an ongoing source of land-based financial support to the various beneficiaries. The lands that Congress granted are known as Federal Grant Lands and support seven specific trusts:

- **Common School trust** – supports the construction of public kindergarten through twelfth-grade public schools statewide;
- **Agricultural School trust** – supports construction at Washington State University;
- **Charitable, Educational, Penal and Reformatory Institutions (CEP&RI) trust** – supports establishment and maintenance of institutions managed by the Washington State Department of Corrections and Department of Social and Health Services;
- **University trust** – supports construction at the University of Washington (includes University-original trust lands, which were originally granted by Congress, and University-transfer trust lands, which were transferred by the

Legislature from the Charitable, Educational, Penal and Reformatory Institutions trust to provide additional support for the university);

- **Normal School trust** – supports construction at four universities (Western Washington University, Central Washington University, Eastern Washington University, and The Evergreen State College);
- **Scientific School trust** – supports construction at Washington State University; and
- **Capitol Building trust** – supports the construction of state office buildings at the Capitol Campus in Olympia.

Today, the Federal Grant Lands include forests, agricultural lands and commercial properties. Approximately 1.5 million acres are forestlands statewide, and are subject to the *Policy for Sustainable Forests*. Direction for management of these lands is specified in the Omnibus Enabling Act, and the Washington State Constitution further limits and directs the sale, lease and management of Federal Grant Lands (see Legal Framework section).



STATE FOREST LANDS

DNR manages two categories of State Forest Lands: State Forest Transfer Lands and State Forest Purchase Lands (previously known as State Forest Board Transfer Lands and State Forest Board Purchase Lands, respectively).

State Forest Transfer Lands

Most of the State Forest Lands are State Forest Transfer Lands. They total approximately 546,000 acres.

State Forest Transfer Lands were acquired by 21 counties in the 1920s and 1930s through tax foreclosures. Later, pursuant to state law, most of these lands were transferred to the state of Washington. Most of these lands had been harvested. The lands ultimately were deeded to the state and placed in trust status. In exchange for the deed transfer, the county and junior taxing districts in which the land is located are given a majority of the revenue from timber sales and other revenue-producing activities on these lands.



Because the state is both the grantor and trustee, the state has more flexibility to change the terms of this trust through statutory direction when compared to the Federal Grant Lands. However, the Legislature has directed that the State Forest Transfer Lands be managed in the same manner as the Federal Grant Lands (RCW 79.22.040).

State Forest Purchase Lands

Nearly 80,000 acres of State Forest Lands are State Forest Purchase Lands. These lands were either purchased by the state, or acquired by the state as a gift. The State Forest Purchase Lands were acquired under the 1923 Reforestation Act, which gave the State Forest Board the power to acquire any lands that were chiefly valuable for developing and growing timber and to designate these lands as State Forest Lands. All State Forest Purchase Lands were to be used primarily for forestry, forever reserved from sale. However, the timber could be sold and lands leased in the same manner as the State Federal Grant Lands (RCW 79.22.050).

OTHER TRUST LANDS

Community College Forest Reserve

In addition to Federal Grant Lands and State Forest Lands, DNR also manages more than 3,200 acres of forestlands for community colleges. The Community College Forest Reserve was established by the Legislature in 1990. Monies for DNR to purchase the properties were first appropriated that year.

These lands, located near urban areas, form a buffer between other working forests and suburban uses. The properties are managed for sustained timber production, but special consideration is given to aesthetics, watershed protection and wildlife habitat. Revenues go to a special fund for building and capital improvements on community college campuses.

King County Water Pollution Control Division

DNR manages more than 4,300 acres for the benefit of King County and its Wastewater Treatment Division. These lands were transferred to DNR for management through an agreement with the county in June 1995.

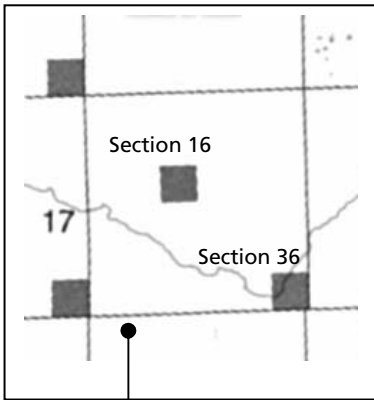
The agreement is part of a unique program to protect and enhance forests and wildlife habitat along the scenic I-90 corridor east of Seattle. The program was initiated by the nonprofit Mountains to Sound Greenway Trust and public and private partners. It currently includes the state Department of Natural Resources, King County, Hancock Timber Resources and the University of Washington.

These lands are managed for long-term forestry as are all of the other State Forest trust lands. They will have some of the county's biosolids applied where soils and locations are appropriate.

See Appendix D for a map of Washington and DNR-managed trust lands statewide.

Legal Framework

DNR is required to comply with state, federal and common law. This section highlights key portions of the legal framework that governs DNR management of forested state trust lands.



Example of
36-square mile
Township with
Federally
Granted State
Trust parcels

Each section is one
mile square or 640
acres.

(See map in
Appendix D)

FEDERAL ENABLING ACT AND STATE CONSTITUTION

The federal Enabling Act of 1889 spelled out the terms for statehood for Washington (also Montana and the Dakotas). The act granted federal lands to the state for specific purposes, to support the institutions the new state would need. These federally granted lands were the beginning of Washington's trust lands. Following adoption of the Enabling Act, the people of the Washington Territory held a convention to draft a state constitution and form a state government. The constitution, as ratified, accepted the Enabling Act grant lands.

Forest Land Transactions and Full Market Value

The Enabling Act (updated several times since 1889) places restrictions on the disposal and leasing of the granted lands, the most prominent being disposition at public sale for not less than full market value. It authorizes the lease of these lands under regulations prescribed by the Legislature, and the exchange of these lands for other lands of equal value. The Enabling Act contemplated the sale of timber and other crops from the lands, as well as oil, gas, and other mineral leasing.

The Washington State Constitution also imposes certain management restrictions and limitations on the sale of grant lands. It requires full compensation for the trust when trust lands are sold, transferred or otherwise disposed. It describes compensation as "...full market value of the estate or interest disposed of..." (Section 1), that the value of lands granted to the state shall be appraised by a board of appraisers and "...no sale shall be valid unless the sum bid be equal to the appraised value of said land" (Section 2), and "...that no sale of timber lands shall be valid unless the full value of such lands is paid or secured to the state." (Section 3). Additional requirements related to compensation to the trust can be found in RCW 79.17.200 and RCW 79.11.010.

TRUST DUTIES

The state of Washington, acting through DNR, has specific obligations in managing the forestlands that are covered by the *Policy for Sustainable Forests* because they are trust lands.

A trust is a relationship in which the trustee holds title to property that must be kept or used for the benefit of another. The relationship between the trustee and the beneficiary for these lands is a fiduciary relationship. A trust includes a grantor (the entity establishing the trust), a trustee (the entity holding the title), one or more beneficiaries (entities receiving the benefits from the assets), and trust assets (the property kept or used for the benefit of the beneficiaries).

In the case of Washington's trust responsibility, the trust assets consist of the trust lands, funds in certain dedicated accounts and the permanent funds associated with

certain trusts. With the state as trustee, the Legislature has designated DNR as manager of the Federal Grant Lands and State Forest Lands. The fiduciary aspect of trust management requires DNR to manage these lands to produce perpetual income for the beneficiaries (the trusts).

Much of what is known as the ‘trust mandate’ concerns the common law obligations of a trustee to operate as a prudent person on behalf of the trusts. The legal construction of Washington’s trust lands also creates considerable differences in how these lands are managed when compared to other public lands and private fiduciary trusts. For example, because the trusts are public institutions, the trust obligation continues in perpetuity—that is, forever.

TRUST MANDATE

In addition to complying with laws of general applicability, as a trust manager DNR follows the common law duties of a trustee. These include, but are not limited to: administering the trust in accordance with the provisions that created it; maintaining undivided loyalty to each of the trusts and its beneficiaries; managing trust assets prudently; making the trust property productive, while recognizing the perpetual nature of the trusts; dealing impartially with beneficiaries; and reducing the risk of loss to the trusts.

In 1984, the Washington State Supreme Court addressed the state trust relationship in County of Skamania v. State of Washington, 102 Wn.2d 127, 685 P.2d 576. The Skamania decision explicitly addressed two of the trustee’s duties. The Court found that a trustee must act with undivided loyalty to the trust beneficiaries to the exclusion of all other interests and to manage trust assets prudently. The court also cited a series of cases in which private trust principles were applied to land grant trusts. While all but one of these cases are from other states with differently worded enabling acts, they generally indicate that a state’s duty is to strive to obtain the most substantial financial support possible from the trust property over time, while exercising ordinary prudence and taking necessary precautions for the preservation of the trust estate.

The Skamania case, as well as other trust duties, are thoroughly discussed in a more recent formal opinion of the Attorney General, AGO 1996, No. 11.

Prudent Person Doctrine

In DNR’s view, prudent management means, among other things, avoiding undue risk. DNR believes it is in the best interest of the trusts over the long term to manage forested state trust lands to:

- Prevent losses of ecological function, which may cause the listing of additional species as threatened or endangered;
- Avoid circumstances likely to lead to public demand for ever-increasing, restrictive regulations of forest practices; and
- Avoid the resulting contract disputes, uncertainty and loss of the ability to manage trust lands for their primary purpose.

As a result, in certain policies DNR has exceeded existing state forest practices rules (Title 222 WAC) when necessary to best protect resources on forested state trust lands.

Because the trusts must be served in perpetuity, it is important to retain the long-term productive capacity of the forest, recognizing that near-term actions can create long-term economic, ecological and social benefits.



ENDANGERED SPECIES ACT

Passed in 1973, the federal Endangered Species Act (ESA) provides for the designation and protection of invertebrates, wildlife, fish and plant species that are in danger of becoming extinct, and provides a means to conserve the ecosystems on which such species depend.

The ESA defines an endangered species as any species that is in danger of becoming extinct throughout all or a significant portion of its range (16 U.S.C. § 1532(6)). A threatened species is one that is likely to become endangered in the foreseeable future (16 U.S.C. § 1532(20)). Section 9 of the ESA makes it unlawful to “take” a species that is listed as endangered without a permit from the secretary of the United States Department of the Interior or the Department of Commerce. The term “take” under the ESA is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” (16 U.S.C. § 1532 (19)) any species listed as endangered under the ESA. The take prohibitions can be extended to species listed as threatened by federal regulation (16 U.S.C. § 1538(a)).

The U.S. Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration-Fisheries Service (NOAA Fisheries) share responsibility in administering the ESA. Generally, USFWS is responsible for terrestrial and freshwater aquatic species while NOAA Fisheries is responsible for marine mammals, anadromous fish and other marine species.

Habitat Conservation Plan Option

Section 10 of the Endangered Species Act (16 U.S.C. 1539) authorizes a landowner to negotiate a habitat conservation plan with the United States Secretaries of the Interior or Commerce to minimize and mitigate any incidental impact to threatened and endangered species while conducting lawful activities, such as forest practices. A habitat conservation plan may allow the landowner to develop habitat for endangered species at a landscape level, rather than protecting the individual sites at which the species is found on the landowner’s property. As long as the landowner manages under the terms and conditions of the habitat conservation plan, the landowner will not be prosecuted for “take” of an individual animal. The permit issued to the landowner by the federal government is referred to as an “Incidental Take Permit,” and identifies the range of activities allowed under each habitat conservation plan.

DNR’s Trust Lands Habitat Conservation Plan

In 1997, DNR and the USFWS and NOAA Fisheries (collectively referred to as “the Federal Services”) signed a multi-species habitat conservation plan to address

DNR's compliance with the federal Endangered Species Act in its management of forested state trust lands.

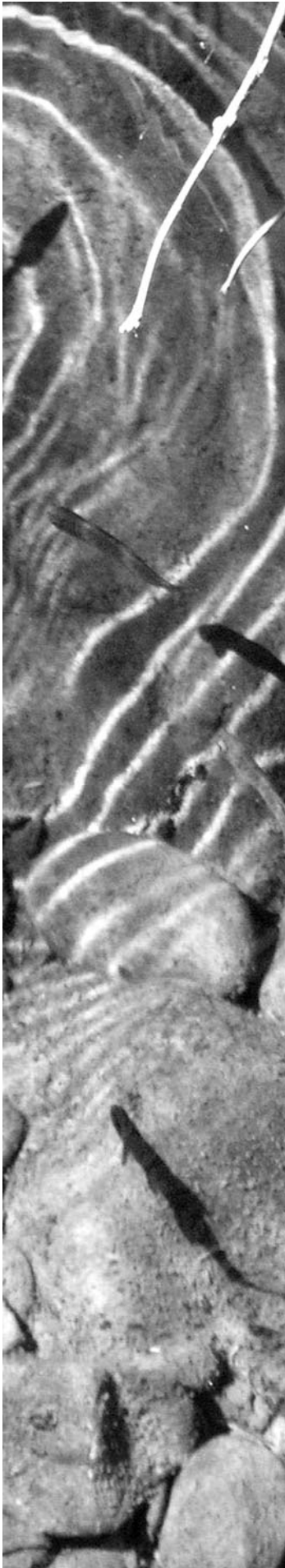
DNR's *Habitat Conservation Plan* (HCP) covers approximately 1.6 million acres of forested state trust lands within the range of the northern spotted owl and for the most part, is a multi-species land management plan that takes a landscape approach to managing for conservation of threatened and endangered species. Because many of DNR's forested state trust lands are adjacent to federal lands, the HCP also is designed to supplement federal land management protection measures at a landscape level, as described in the federal *Northwest Forest Plan*.



Lynx Habitat Management Plan

In 1996, DNR developed a *Lynx Habitat Management Plan* in response to the Washington State Department of Fish and Wildlife (WDFW) 1993 determination that the lynx was threatened, as defined in state law. The plan was approved by WDFW in 1996. In 2000, the USFWS listed the lynx as threatened under the Endangered Species Act. In response, DNR worked with U.S. Fish and Wildlife Service (USFWS) to modify the 1996 lynx plan to avoid being at risk for violating the Endangered Species Act. This plan was needed because the Canada Lynx inhabits lands outside of DNR's *Habitat Conservation Plan* (HCP). In 2002, DNR received a letter of agreement from USFWS that a modified plan that incorporates a number of restrictions (listed in the letter), will not likely result in an incidental take of lynx. DNR has finalized an update of the *Lynx Habitat Management Plan* that incorporates components of the *Washington State Recovery Plan for the Canada Lynx*, results from recent research and monitoring conducted on DNR-managed lands, and new scientific findings on lynx ecology and conservation.

Note: On behalf of the state, DNR's Forest Practices Program developed a Habitat Conservation Plan for the regulatory state Forest Practices Board, to protect aquatic species on non-federal and non-tribal forestland in Washington (i.e. primarily private and state-owned lands). The HCP was approved by the Federal Services in May of 2006. The Forest Practices HCP applies to all forested state trust lands, including those not covered by DNR's trust lands Habitat Conservation Plan.



PUBLIC LANDS ACT (RCW Chapter 79.01)

Many of DNR's obligations and authorities as a land manager are established in the state Public Lands Act. This statute defines both "multiple use" and "sustainable harvest," which are key concepts that help shape the *Policy for Sustainable Forests*.

Multiple Use Concept (RCW 79.10.120)

The Legislature has directed DNR to utilize a Multiple Use Concept in the administration of public state lands, when such use is in the best interests of the state and the general welfare of the citizens, and is consistent with the provisions of the lands involved.

When managing state trust lands, utilizing the Multiple Use Concept means DNR is to provide for other public uses when those uses are compatible with the obligations of trust management. Public uses that may be compatible with trust management activities include: recreational areas; recreational trails for both vehicular and non-vehicular uses; special educational or scientific studies; experimental programs managed by various public agencies; special events; hunting, fishing and other sports activities; maintenance of scenic areas; maintenance of historical sites; municipal or other public watershed protection; greenbelt areas; and public rights of way. If such uses are not compatible with the fiduciary obligations in the management of trust land, they may be permitted only if there is compensation to satisfy the trust's financial obligations.

Sustainable Harvest (RCW 79.10.300)

This statute requires DNR to manage the forested state trust lands on a sustained yield basis. DNR must periodically adjust the acreages designated for inclusion in the sustained yield management program and calculate a new sustainable harvest level.

The sustainable harvest level is defined in the law as the volume of timber scheduled for sale from state-owned lands during a planning decade, as calculated by DNR and approved by the Board of Natural Resources.

FOREST PRACTICES ACT (RCW Chapter 76.09)

The purpose of Washington's Forest Practices Act is to protect the state's public resources while maintaining a viable timber industry. The act regulates activities related to growing and harvesting timber on all non-federal and non-Tribal forestlands in Washington, including the forested state trust lands that DNR manages.

Under the act, the state Forest Practices Board adopts the state forest practices rules (Title 222 WAC) that govern how the Forest Practices Act must be implemented. Both the act and the rules have been amended over time to address evolving protection of public resources.

In 1999, the Legislature authorized the Forest Practices Board to adopt new rules consistent with the Forests and Fish Report, a multi-party collaborative agreement that addressed protection of aquatic resources (RCW 76.09.055). In response, the Forest Practices Board amended the state forest practices rules in July 2001. The objectives of the new rules are to further protect public resources by focusing on water quality, salmon habitat and other aquatic and riparian resources.

DNR's Forest Practices program administers and enforces the state Forest Practices Act and its rules. The Forest Practices program operates independently of DNR's state land management programs, and DNR forest management activities on forested state trust lands are subject to the state forest practices rules and generally require forest practices permits.

GROWTH MANAGEMENT ACT (RCW Chapter 36.70A)

The Growth Management Act requires local governments to establish comprehensive growth management plans that address a range of natural resource issues, including timber and other resources that may be on forested state trust lands.

DNR works with local governments as they develop land use plans and regulations. In some cases, forested state trust lands that lie in zones identified by local government for development will be converted and developed or transferred out of trust status, with compensation to the trust(s), when it best serves the trust(s) interests. In other cases, DNR identifies forested state trust lands that should be protected from development and retained for forest management, when it is in the trust(s) best interests.

HYDRAULIC PROJECT APPROVAL (RCW 77.55.100)

Hydraulic Project Approval (HPA) is required from the Washington State Department of Fish and Wildlife for most work done in or above a body of water. This is often necessary for road construction projects, which may or may not occur in conjunction with timber harvest activities from forested state trust lands. If a forest practices application is filed for the activity, the landowner does not have to file separately for a HPA. However, DNR would be required to apply for an HPA if a management activity on state trust lands does not require a forest practices permit but involves a state body of water.

OPEN PUBLIC MEETINGS ACT (RCW Chapter 42.30)

The Open Public Meetings Act requires that all government agency boards, commissions, committees, etc., including the Board of Natural Resources, conduct their business in a public forum. This act requires that all actions and deliberations be made and conducted openly. In addition, any member of the public shall be permitted to attend these open meetings. At the monthly Board of Natural Resources meetings, there are opportunities for public comment on decisions related to state forested trust lands, including timber sales and land transactions.



PUBLIC RECORDS ACT (RCW 42.56.001)

The Public Disclosure Act, passed by the Legislature in 1972, included a Public Records Act component that directed public agencies to provide for the disclosure of public records, with few exceptions. DNR complies with this component by facilitating any citizen's review of agency documents and providing copies as requested.

SHORELINES MANAGEMENT ACT (RCW 90.58.030)

The Shorelines Management Act requires the Washington State Department of Ecology and local governments to manage shorelines by planning for and fostering all reasonable and appropriate uses. When DNR conducts a management activity on forested state trust lands which falls within the purview of this law, DNR may be required to obtain a permit from the appropriate local government.

STATE ENVIRONMENTAL POLICY ACT (RCW Chapter 43.21C)

The State Environmental Policy Act (SEPA) requires state agencies to review proposed actions for probable significant adverse environmental impacts and, when necessary, to prepare an environmental impact statement for actions that may have a probable, significant adverse impact on the environment. Compliance with SEPA ensures timely analysis, public comment processes and a discussion of possible mitigation of the probable significant environmental impacts during various activities, including on-the-ground project planning and implementation, as well as during programmatic or policy-level planning efforts.

The SEPA rules (Chapter 197-11 WAC) provide more details for implementing this law. They also establish uniform environmental review requirements for all agencies.

Most DNR activities related to forest management (e.g., planning, road development, and timber harvesting) are subject to SEPA.

SURFACE MINING ACT (RCW 78.44.031)

The Surface Mining Act requires anyone who engages in surface mining activities, as defined by the act, to obtain a permit from DNR. The law applies equally to any mining activities that may occur on forested state trust lands.

WATER POLLUTION CONTROL ACT (RCW Chapter 90.48)

The Water Pollution Control Act requires that the state of Washington maintain the highest possible standards to ensure the purity of all waters of the state, consistent with public health and public enjoyment; the propagation and protection of wildlife, birds, game, fish and other aquatic life; and the industrial development of the state. It also requires the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the state's waters.

Tribal Treaties

In treaties signed during the 1850s, Tribes of the Washington Territory ceded millions of acres of land to the federal government. In exchange for the ceded land, the Tribes were to receive certain payments, services, and protections from the government. The Tribes also reserved (i.e. did not cede) rights “to fish at all usual and accustomed places, and gather roots and berries and hunt on open and unclaimed land.” Some of the land the Tribes ceded to the federal government is now forested state trust land. Conversely, some of the reserved rights of the Tribes apply to forested state trust lands.

Related Plans and Policies

The *Policy for Sustainable Forests* is shaped by, and must be compatible with, other DNR policies, plans and decisions.

OLYMPIC EXPERIMENTAL STATE FOREST

About 264,000 acres of forested state trust lands on the Olympic Peninsula are managed as the Olympic Experimental State Forest (OESF).

As its name implies, the OESF is a place where, in addition to providing trust income and other benefits, DNR can experiment with forestry techniques, seeking field-tested, long-term solutions to forest management issues, particularly those related to integrating timber production and conservation. The long-term vision for the OESF is of a commercial forest in which ecological health is maintained through innovative integration of forest production activities and conservation.

This vision evolved in 1989 from recommendations of the Commission on Old Growth Alternatives. The Commission's intent was for DNR to avoid management disruptions from future listings of threatened and endangered species and future

conservation issues by learning to manage for healthy ecosystems that included older-forest features:

Forest scientists and managers are increasingly discussing the ability to sustain key elements of ecological diversity within managed commercial forests as an alternative to past approaches. The Commission sees a clear need for further research in this area and a great opportunity to conduct it on state-owned lands. The intent is to experiment with harvest regeneration methods to enhance habitat characteristics and commodities production. The Commission believes this recommendation may lead to entirely new models of forestry including workable alternatives which balance production with ecology (*Commission on Old Growth Alternatives for Washington's Forest Trust Lands*, 1989, p. 2).

Although it was not yet formally established, the OESF was included in the 1992 *Forest Resource Plan* as a “state forest that will be managed separately from other lands in Western Washington.” In DNR’s trust lands *Habitat Conservation Plan* (HCP), the OESF was identified as a separate planning unit.

The OESF’s planning history has led to a strategy that differs from the other HCP planning units in both concept and detail by combining conservation, production, research and monitoring, innovative silvicultural techniques, and communication and education in a unified effort. The aim is to learn how to manage the forest so that habitat conservation and timber production are melded across the landscape, rather than separated into designated areas.

Through the OESF, DNR actively questions its knowledge about the relationships between forest ecosystem functions and forest management activities. DNR explores these questions through monitoring and research and by sharing knowledge with and seeking insights from other professionals and publics. As the research provides new information, management activities will be adapted accordingly. Ultimately, what is learned in the OESF can be applied, where appropriate, to other DNR-managed forested trust lands.

ASSET STEWARDSHIP PLAN

The *Asset Stewardship Plan*, adopted by the Board of Natural Resources in 1998, provides a summary of DNR’s process for asset planning; a brief history of the state’s acquisition of lands managed by DNR; the legal framework under which they’re managed; information about the lands and resources on those lands, including information about their various economic values; and a recommended strategy for assuring the future value of these land-based assets. This overall strategy is reflected in DNR’s *Asset Allocation Strategy for Washington’s Upland Trust Lands* (October 2003) that addresses the composition of the trust asset base, and how assets should be continually evaluated and rearranged for the long-term benefit of trust beneficiaries. These strategies guide acquisition and disposal of forested state trust lands and are administered by DNR’s Asset Management Council.

POLICIES ON ACQUIRING AND GRANTING RIGHTS-OF-WAY

DNR acquires land and rights-of-way across private and other public lands to facilitate management and to increase the value of the trust assets, whether forested or non-forested. DNR acquires these rights-of-ways by gift, purchase, exchange, condemnation or road use agreements.

DNR recognizes that other entities may need rights-of-way across forested state trust lands. Permanent and temporary rights-of-way include grants or easements for utility, domestic use, timber haul and other purposes.



SUSTAINABLE FORESTRY INITIATIVE® PROGRAM CERTIFICATION

In March 2005, DNR obtained “green” certification by the Sustainable Forestry Initiative® Program, which recognized the agency’s balanced stewardship of forested state trust lands in Western Washington. In September 2006, DNR obtained certification of its Eastern Washington lands, making all of the department’s forestlands statewide certified. This balanced approach is a direct result of policy direction by the Board of Natural Resources as contained in the 1992 *Forest Resource Plan* and now by its successor, the *Policy for Sustainable Forests*.

About 150 million acres of forestland are independently third-party certified under the SFI® standard, making it the dominant certification standard in the United States and North America.



Photo: DNR/Dorian Smith

