

1 **FOREST PRACTICES BOARD**

2 December 2, 2003

3 Ramada Inn Governor House, 621 S. Capitol Way
4 Olympia, Washington

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6
7 **Members Present:**

8 Pat McElroy, Designee for Commissioner Sutherland, Chair of the Board
9 Alan Soicher, General Public Member
10 Bob Kelly, General Public Member
11 David Hagiwara, General Public Member
12 Eric Johnson, Lewis County Commissioner
13 John Mankowski, Designee for Director, Department of Fish and Wildlife
14 Sherry Fox, General Public Member/Independent Logging Contractor
15 Tom Laurie, Designee for Director, Department of Ecology
16 Wendy Holden, Designee for Director, Office of Trade and Economic Development
17

18 **Absent:**

19 Keith Johnson, General Public Member/Small Forest Landowner
20 Lee Faulconer, Designee for Director, Department of Agriculture
21 Toby Murray, General Public Member
22

23 **Staff:**

24 Ashley DeMoss, Forest Practices Assistant Division Manager
25 Karrie Brandt, Board Coordinator
26 Lenny Young, Forest Practices Division Manager
27 Neil Wise, Assistant Attorney General
28 Paddy O'Brien, Assistant Attorney General
29 Patricia Anderson, Rules Coordinator
30

31 **CALL TO ORDER**

32 Pat McElroy called the meeting to order at 9:00 a.m. Introductions were made of the Board, staff,
33 and attendees. Karrie Brandt gave a safety briefing.
34

35 **EXECUTIVE SESSION**

36 Executive session, authorized under RCW 42.30.110, convened at 9:06 a.m. and ended at
37 9:50 a.m.
38

39 **APPROVAL OF MEETING MINUTES**

40 **MOTION:** Sherry Fox moved to approve the November 12, 2003, meeting minutes.

41 **SECONDED:** Eric Johnson
42

43 **Board Discussion**

44 Alan Soicher requested the minutes reflect his inquiry on the perennial initiation point study

1 during the Adaptive Management update with Geoff McNaughton.

2

3 McElroy suggested deferring action on the motion until the minutes accurately reflect that
4 discussion.

5

6 **ACTION:** Motion postponed to the next meeting.

7

8 **PUBLIC COMMENT**

9 Bob Brink, small forest landowner, commented that current regulations for small landowners are
10 increasingly complicated and encouraged the Board to press for rules that are simple and more
11 understandable. He praised the Board on road maintenance and abandonment planning changes
12 and said he hoped to see similar solutions in the future.

13

14 Peter Goldman, Washington Forest Law Center (WFLC), applauded the Board for undertaking the
15 wildlife project and thanked the Washington Department of Fish and Wildlife (WDFW) for taking
16 the lead and providing advice on what the forest practices rules need in respect to upland wildlife.
17 He encouraged the Board to adopt interim emergency rules to protect the rapidly declining
18 populations of the Northern Spotted Owl, in particular for those circles outside the spotted owl
19 special emphasis areas. The conservation community is interested in seeing a program developed
20 that relies on best available science and landscape planning. They are confident that a viable
21 timber industry can exist with sound wildlife planning rules. Goldman also explained that WFLC,
22 on behalf of several conservation groups, has prepared a petition for rulemaking on wildlife, but
23 has not decided whether to file it now or at a later time.

24

25

26 **STAFF REPORTS**

27 Dennis McDonald, Department of Natural Resources (DNR), gave an update on the water typing
28 project. He reported that agency Geographic Information System (GIS) staff were on schedule to
29 provide the Board with the new fish habitat water type map and proposed implementation in
30 February. If approved, he said, the map for Western Washington could be deployed March 1,
31 2004. Through the process of developing the map, McDonald noted that there are aspects of the
32 map that need further discussion and development.

33

34 McDonald shared that the new water typing system is based on converted hydrography. To date,

1 22 water resource inventory areas have been completed. The statistical model, which looks at the
2 geomorphic factors of elevation, gradient, basin size, and precipitation based on the best ‘factor
3 correlations’, has been submitted to the Scientific Review Committee (SRC) and will be reviewed
4 this month. The DNR is in the process of developing the board manual section that will provide
5 guidance on field protocols. In addition, the validation to evaluate the predictive performance of
6 the statistical model will occur after the new water typing map has been deployed in the field. The
7 In-stream Scientific Advisory Group is currently reviewing the validation study design to be sent
8 to the Cooperative Monitoring, Evaluation, and Research committee and SRC for further review.
9 The DNR is planning for training immediately after the new water typing system is accepted for
10 implementation.

11

12 Eric Johnson asked how fish blockage and man-made barriers relate to the “end of fish habitat”
13 (EOFH). Eric Schroff, DNR, answered that man-made blockages or unnatural blockages are not
14 considered in the classification of fish habitat because the fish cannot extend beyond an unnatural
15 barrier. However, some barriers, such as dams, have provisions for fish passage that allow fish use
16 to occur above the dam. The larger structures will need a case-by-case evaluation.

17

18 John Mankowski asked McDonald if he had a sense of the model’s accuracy compared to the data
19 that has been collected and what kind of error testing was done. McDonald said some preliminary
20 information is available, but the validation studies will provide the accuracy information that is
21 needed.

22

23 Tom Laurie asked if there are any other states taking on this kind of modeling effort. McDonald
24 said Wyoming had done some research and predictions on EOFH with 81-89% accuracy in
25 finding points on the ground. However, Washington is taking that research further by integrating it
26 into GIS and using it for regulatory purposes.

27

28 McElroy noted that the matter of unmapped and unmodeled streams would need resolution. He
29 said one of the urgencies driving the decision date is the desire to not go through another season of
30 fish shocking. Lenny Young concurred and added that a year has passed since the original
31 deployment date.

32

33 Alan Soicher commented that the target in the rule is for 95% accuracy, and that currently it is
34 unknown whether this model is meeting that target. He said he was not ready to approve the map

1 before knowing how accurate it is or to deploy it when it has not been tested. Young said that the
2 level of observed accuracy could be quantified with the limited dry lab testing of the model and
3 the dataset in hand, and the results given to the Board at the next meeting.

4

5 **MARBLED MURRELET RULE MAKING**

6 David Whipple, WDFW, requested the Board accept the draft rule proposal to incorporate the new
7 2003 Pacific Seabird Group's Marbled Murrelet survey protocols for public review and direct staff
8 to file the CR102.

9

10 Phil Aust, DNR, described the preliminary economic analyses for the rule making. He concluded
11 that small businesses would not be disproportionately impacted by the proposal. The accuracy of
12 the protocol to detect murrelet occupancy is expected to increase from 85% to 95%, and the
13 benefits will outweigh the costs.

14

15 Ashley DeMoss gave a status report on the progress of the Marbled Murrelet rule making,
16 including scheduling a public hearing on January 13, 2004, in Olympia at the Natural Resources
17 Building to receive comments on the rule proposal.

18

19 **MOTION:** Alan Soicher moved that the Forest Practices Board accept for public
20 review the permanent rule proposal as presented today for chapter 222-12
21 WAC and chapter 222-16 WAC, pertaining to Marbled Murrelets, and that
22 staff file the CR102 with the Code Reviser to begin the permanent rule-
23 making process.

24 **SECONDED:** John Mankowski

25 **ACTION:** Motion passed unanimously.

26

27 **RIPARIAN RESEARCH PILOT**

28 Geoff McNaughton, DNR, and DeMoss requested that the Board approve the riparian research
29 pilot to test current rules and direct staff to notify the public through the filing of a CR101. These
30 two studies include operational riparian management prescriptions that are different from the
31 forest practices rules for riparian protection. The Administrative Procedure Act, Revised Code of
32 Washington 34.05.313 authorizes the use of pilot projects to test rules.

33

1 Laurie asked how many research sites had been identified and if any of them were considered
2 Class IV Special areas. McNaughton replied that the bull trout study requires 40 sites and the
3 hardwood project involves less. DeMoss assured the Board that each site will be evaluated and a
4 risk assessment completed to ensure that Class IV Special forest practices are not included in any
5 of the research site forest practices applications.

6
7 **MOTION:** Tom Laurie moved that the Forest Practices Board approve a pilot under
8 Administrative Procedure Act, RCW 34.05.313, to test the effectiveness of
9 riparian rules in four sections of Washington Administrative Code. These
10 sections are WAC 222-30-040(1), WAC 222-30-040(2), WAC 222-30-022,
11 WAC 222-30-021(1)(b)(i).

12 Forest practices conducted under this pilot could require waiver of existing
13 forest practice rules for these certain study sites and the Board determines
14 that a rule waiver is in the public interest and necessary to conduct the
15 riparian research prescriptions. Forest practices will be processed and
16 conducted in accordance with the study plans and the CR101.

17 I further move that the Board direct staff to file the pre-notice of inquiry
18 (CR101) with the Code Reviser's Office to inform the public of the pilot.

19 **SECONDED:** Wendy Holden

20
21 **Board Discussion:**

22 Laurie stated that the Department of Ecology (DOE) agrees that testing of Best Management
23 Practices (BMP) are a critical component to showing effectiveness of the rules in providing cool,
24 clean water for aquatic resources. The DOE's support of these tests constitutes recognition that
25 these BMPs need to be tested to see if they meet water quality standards. This is neither a test to
26 see if other standards would be appropriate nor is it a waiver of the existing water quality
27 standards on any of the proposed study sites. The DOE understands that there is a finite set of
28 study sites and that mitigation will be conducted if damage to public resources occurs. Each of
29 these sites will be reviewed as a Class III - 30 day forest practice application, and streams that
30 have segments on the 303(d) list or sites with Class IV Special triggers will not be selected for
31 these tests. Finally, DOE would recommend that a core interdisciplinary team be set up to review
32 the study sites.

1 McElroy thanked DOE, DNR, and Board attorneys for being creative in finding a pathway that
2 allows for this kind of important fact-finding information and research to occur.

3
4 **ACTION:** Motion passed unanimously.

5
6 **WILDLIFE PLANNING WORKSHOP**

7 Mankowski provided the Board with the goals for the day's workshop stating that WDFW's
8 objectives were to establish a firm understanding amongst Board members of how the forest
9 practices rules affect wildlife. The wildlife work plan approved by the Board on March 19, 2003,
10 would be used as the outline for this discussion.

11
12 David Whipple, WDFW, presented the first element of the wildlife work plan: Assessment of
13 Current Rules Intended to Protect Wildlife. He gave a brief history of the forest practices rules,
14 reviewed the Washington Administrative Codes that authorize rule review, and summarized the
15 current rules. He also gave brief status reports on several wildlife species. He explained that the
16 federal recovery goals for the Bald Eagle in Washington were almost complete, and the United
17 States Fish and Wildlife Service may consider de-listing the bird. There is evidence of
18 reproduction in one Lynx Management Zone (LMZ). However, there is no apparent population
19 increase in the remaining five LMZs since the 1980s. A 2000 study on western gray squirrel
20 revealed mixed results in landowner implementation of voluntary guidelines. A recent survey
21 indicated that the species is becoming more rare. Whipple then reported on wildlife habitats,
22 alerting the Board that there are important habitats like oak woodlands and quaking aspen stands
23 that currently do not have formal protections. In addition, he stated that the regulatory minimum
24 sizes and numbers of snags (Wildlife Reserve Trees [WRT] and Green Recruitment Trees [GRT])
25 and down logs are not adequate in providing basic habitat requirements of cavity and log
26 dependent wildlife species. The state's wetland rules may also need to be assessed in light of
27 advances in science over the past decade. The presentation concluded with recommendations for a
28 wildlife assessment process. The WDFW would develop white papers on the high priority species
29 and habitats, and conduct stakeholder meetings for each white paper before delivering
30 recommendations to the Board.

31
32 Soicher stated that the Northern Spotted Owl rules were meant to compliment conservation efforts
33 on federal lands and asked if the same could be said for the Marbled Murrelet rules, or are the
34 Marbled Murrelet rules for protecting murrelets on lands they currently occupy. Whipple

1 responded that the murrelet rules are focused on protecting known occupied sites and are not
2 designed specifically to compliment federal protection efforts.

3

4 Soicher then asked if a Marbled Murrelet was found in the center square of the detection model,
5 would additional murrelets occupy an adjacent area. Whipple stated that since murrelets are
6 colonial or semi-colonial nesters they tend to nest in groups, therefore, occupation within close
7 proximity is probable if you have suitable habitat.

8

9 McElroy wanted to know if WDFW had thought about the implications of catastrophic fire in lynx
10 habitat. Paula Swedeen replied that fire is one of the natural disturbances that produces lynx
11 foraging habitat, and WDFW is studying the effects to see if there are positive long-term benefits.

12

13 McElroy asked if Marbled Murrelets were limited to coastal-forested environments. Whipple
14 stated that the species has been known to nest on other habitat structures in Alaska, but murrelet
15 habitat is limited to coastal-forested areas in Washington, Oregon, and California.

16

17 Johnson, referring to the mixed protection results in the 2000 Western gray squirrel study, asked if
18 the outcome was affected by landowners who did or did not implement voluntary measures.

19 Whipple responded that the mixed results came from some sites at which the voluntary guidelines
20 were fully implemented and some from where they were not. When landowners either fully or
21 partially implemented the voluntary protection measures, the squirrels were much more prevalent
22 post-harvest than when the landowners did not implement the measures.

23

24 Timothy Quinn, WDFW, described landscape management as assessing the landscape and
25 examining wildlife protection issues at multiple spatial scales. It is a consideration of issues at
26 various scales ranging from small to very large: a forest stand, to a home range of a specific
27 animal, to the geographic range of the species. The impacts of land use actions on a species or
28 ecological processes you are trying to conserve can be understood by examining all the spatial
29 scales simultaneously. Considering that a single forest stand may not support the needs of a
30 species without considering a larger scale area, you will not be able to predict what effects your
31 actions will have on that species.

32

33 One approach to landscape management is based upon forestland patterns. Townships would be
34 randomly selected that characterize what the real landscape looks like. The WDFW would work

1 with landowners to obtain their stand maps and then study how the landscape functions for fish
2 and wildlife. With this method a landscape can be assessed for meeting requirements on each one
3 of the spatial scales. These scales can then be run through GIS on current landscapes and on
4 landscapes as they grow. The output of this model would show the areas where the requirements
5 of all spatial scales for that species' environment have been met.

6
7 To implement landscape management planning, WDFW proposes using habitat-based models to
8 understand the effects on wildlife. No new data would be collected. Instead, they would use
9 existing data on species habitat relationships and real landscapes. The habitat-based model would
10 be replicated enough times in order to receive good information on how regional landscapes truly
11 function and to identify uncertainties. This model can be run several ways to make different
12 assumptions about the requirements for habitat.

13
14 McElroy stated that there appears to be an underlying assumption that forest stand condition
15 information would need to exist and asked where WDFW would obtain that data. Quinn explained
16 that they would rely on landowner cooperation. McElroy said that the data requires detailed forest
17 conditions that may not be typically carried in a forest landowner's inventory. Quinn responded
18 that more and more landowners are carrying habitat-related variables associated with their forest
19 inventory, but he acknowledged that this would be another uncertainty.

20
21 Wendy Holden asked how the data would stay current. There are fires, insect infestations, tree
22 growth, floods, etc. that would continue to affect the databases after it has been populated. Quinn
23 replied that some data is fixed on the landscape such as forest buffers, which are standard. Once
24 the tool exists it can be reused with new data as it becomes available.

25
26 Holden then conveyed her concerns about the ability to assure landowners that collecting their
27 proprietary information could be protected given the state's public records act.

28
29 Johnson pointed out that the Board goes through an exhaustive effort with adaptive management
30 to assure that the science it utilizes is sound and was concerned about this approach creating a
31 different level of analysis for wildlife.

32
33 Paula Sweeden, WDFW, addressed the Board on the landscape planning concept, further defining
34 it as forest management planning occurring at temporal scales longer than a few years and over

1 larger spatial scales (rather than individual stands or wildlife occurrence sites). She also stated that
2 it involves planning with specific forest ecosystem and fish and wildlife goals to be met over time
3 and space. Some of the benefits involve management flexibility through dynamic habitat mosaics
4 and regulatory certainty for landowners. Currently, there are measures in the forest practices rules
5 for landscape planning such as spotted owl Landowner Option Plans, Cooperative Habitat
6 Enhancement Agreements, Watershed Analysis, and Landowner Landscape Plans. Unfortunately,
7 landowners do not often utilize these mechanisms. This lack of participation is due to expense,
8 multiple processes for state and federal planning, landowner discomfort with State Environmental
9 Policy Act (SEPA) requirements, and lack of agreement over habitat goals. To establish a process
10 for meeting policy challenges, WDFW will make recommendations through an assessment
11 strategy for landscape-level planning options and incentives that will have a higher chance of
12 being utilized by forest landowners and improving wildlife protection. These recommendations
13 will be formulated together with stakeholders throughout 2004 using a literature review on
14 incentive mechanisms conducted by WDFW, along with multiple workshops to discuss issues,
15 approaches, and economic incentives.

16

17 Holden asked what the benefits were of a Habitat Conservation Plan (HCP) at the state level.

18 Swedeen answered that an HCP gives a landowner an exemption from the SEPA triggers for a
19 covered and listed species. Whipple added that currently under the state forest practices rules a
20 landowner with an HCP is not exempt from the rest of the base line rules, such as numbers and
21 sizes of snags, buffers around wetlands, clear-cut sizes, and green up rules.

22

23 McElroy asked if there are any states that have engaged in large-scale landscape planning.

24 Swedeen mentioned that some of the northeastern states with an abundance of small or medium
25 sized landowners (including Maine, Vermont, and New Hampshire) have made attempts at some
26 form of landscape planning.

27

28 **Board Comments**

29 McElroy communicated the need for the Board to decide if WDFW, along with stakeholder
30 involvement, needs to bring staff material directly to the Board or if recommendations should go
31 through the Timber, Fish, and Wildlife process first.

32

33 Sherry Fox expressed her concerns about beginning new instead of reaching out to existing
34 processes and cited the Lewis County project that is a programmatic approach available to all

1 landowners. She said the landscape program was directed and written for larger industrial
2 landowners and without statute change would not work for small landowners. She feels it would
3 be more profitable to focus on a program that already shows success for small forest landowners
4 instead of attempting to incorporate them into a new one.

5

6 Soicher said he believed WDFW was right on track with the wildlife work plan and felt that the
7 landscape planning process was the direction to head. At the same time, he suggested that WDFW
8 work concurrently on identifying deficiencies in the base line rules and existing protection needs
9 for wildlife species

10

11 McElroy wanted to hear directly from tribes and other interested individuals on their perspectives.
12 In addition, he said he was concerned that if the Board deals with the “list of 20”, species it would
13 be going back into the reactive “list it and fix it” mode that the Board has been in for years.

14

15 Fox said she wanted information on data sampling, for example, WRTs and GRTs data that shows
16 the benefits on the landscape, and if there is more wildlife as a result of that rule package.

17

18 Mankowski said that WDFW wants to hear from Board members whether they agree on the
19 process identified in the elements of the wildlife work plan. He would like WDFW to be clear on
20 its priorities and how those would fit with the structures that already exist.

21

22 The Board decided to continue its discussions at the February meeting and set aside one hour for a
23 comment period to hear from interested individuals on the wildlife planning approach. In addition,
24 they requested to have the WDFW panel (Whipple, Quinn, and Swedeen) present to answer any
25 questions the Board may have after hearing comments.

26

27 The meeting adjourned at 5:15.