

1 **FOREST PRACTICES BOARD**  
2 **Regular Board Meeting – November 13, 2019**  
3 Natural Resources Building, Room 172, Olympia, WA  
4

5 *Meeting materials and subject presentations are available on Forest Practices Board's website.*  
6 <https://www.dnr.wa.gov/about/boards-and-councils/forest-practices-board>  
7

8 **Members Present**

9 Stephen Bernath, Chair, Department of Natural Resources  
10 Ben Serr, Designee for Director, Department of Commerce  
11 Bob Guenther, General Public Member/Small Forest Landowner  
12 Brent Davies, General Public Member  
13 Carmen Smith, General Public Member/Independent Logging Contractor  
14 Dave Herrera, General Public Member  
15 Jeff Davis, Designee for Director, Department of Fish and Wildlife  
16 Maia Bellon, Department of Ecology  
17 Noel Willet, Timber Products Union Representative  
18 Kelly McLain, Designee for Director, Department of Agriculture  
19 Paula Swedeen, General Public Member  
20 Tom Nelson, General Public Member  
21

22 **Staff**

23 Joe Shramek, Forest Practices Division Manager  
24 Marc Engel, Forest Practices Assistant Division Manager  
25 Patricia Anderson, Rules Coordinator  
26 Phil Ferester, Senior Counsel  
27

28 **WELCOME AND INTRODUCTIONS**

29 Chair Bernath called the Forest Practices Board (Board) meeting to order at 9 a.m. Introductions of  
30 Board members and staff were made.  
31

32 **APPROVAL OF MINUTES**

33 **MOTION:** Bob Guenther moved the Forest Practices Board approve the August 14, 2019  
34 meeting minutes.  
35

36 **SECONDED:** Maia Bellon  
37

38 Board Discussion:  
39 None.  
40

41 **ACTION:** Motion passed unanimously.  
42

43 **REPORT FROM CHAIR**

44 The report from the Board Chair included:

- 45 • The State Auditor's Office is currently scoping the Adaptive Management Program's (AMP)  
46 performance audit project.  
47 • Forest Practice Program's budget proposals for the 2020 legislative session include a correction  
48 of a fund source shift that created a budget shortfall; facilitation work by the Center for

- 1 Conservation Peacebuilding; additional staff in the Small Forest Landowner Office; and the  
2 development of a voluntary programmatic northern spotted owl safe harbor agreement.
- 3 • The SSB 5597 workgroup addressing the aerial application of pesticides on forestlands has met  
4 several times in locations around the state. A report will be provided to the legislature by the end  
5 of 2019.
  - 6 • An Environmental Protection Agency Exchange Network grant was awarded to DNR last April  
7 for \$200,000. This will fund a pilot project to assess efforts to convert DNR’s hydrography layer  
8 into the National Hydrography Dataset.

9  
10 **PUBLIC COMMENT**

11 Ken Miller, Washington Farm Forestry Association (WFFA), recapped the efforts put into WFFA’s  
12 western Washington small forest landowner riparian alternate plan template proposal. He said TFW  
13 Policy Committee (Policy) took four and a half years to determine that the proposal isn’t eligible for  
14 an alternate plan template in whole, or in part. He said many folks in Policy are not comfortable  
15 accepting WFFA’s science review, which they believe is a process foul over the approach to  
16 evaluate their science. He said the odds are 50/50 on whether the Board will receive  
17 recommendations by the August 2020 Board meeting. He ended by saying they were not giving up  
18 and will continue no matter how long it takes.

19  
20 Elaine Oneil, WFFA, said it was a shock to hear that Policy would not be evaluating any of the  
21 science included in their proposal initiation since the science track did not include a review by the  
22 Cooperative Monitoring, Evaluation, and Research Committee (CMER). She said by not evaluating  
23 the science utilized in their proposal makes the whole effort a complete waste of time. It took  
24 WFFA a year to develop and an investment of a lot of money – both WFFA funds for the  
25 supporting science and AMP funds which paid for an external science review. She said they believe  
26 a fix may be forthcoming in Policy but if not, the Board could expect a petition for Board  
27 intervention at the February 2020 Board meeting.

28  
29 **WATER TYPING SYSTEM BOARD COMMITTEE RECOMMENDATIONS**

30 Committee Chair Guenther thanked the Water Typing Rule Committee (committee) members and  
31 those attending the meetings for their hard work to develop recommendations. The  
32 recommendations are outlined in the [committee’s memo dated November 5, 2019](#).

33  
34 Recommendation #1 – Clarify the goals and targets for the water typing system rule. Board member  
35 Swedeen said because of the complexity of the issues, stakeholders agreed that defining the goals of  
36 the rule and the intent of the Forest Practices Habitat Conservation Plan (FPHCP) as it relates to fish  
37 habitat is needed. She also suggested that third-party facilitation will help define the goals and help  
38 get folks on the same page.

39  
40 Recommendations #2/3 – Request DNR to re-do the potential habitat break (PHB) spatial analysis  
41 and engage with Policy leads during the PHB and the anadromous fish floor (AFF) spatial analyses.  
42 Board member Nelson said these two recommendations show support for effective collaboration  
43 during the analyses and to ensure the communication lines remain open for feedback.

44  
45 Recommendation #4 – Delay the adoption of the rule for eastern Washington and consider phasing  
46 the PHB validation study to start in eastern Washington. Board member Herrera said a workgroup  
47 will be formed to assess the feasibility of using additional eastern Washington data to supplement  
48 the current PHB data set. Acknowledging that this task may take some time, the eastern Washington

1 tribes recommended considering administrative steps to protect fish habitat in eastern Washington  
2 in the interim. Committee consensus occurred on the first part of the recommendation (obtaining  
3 additional data), but not for implementing the proposed administrative steps.

4  
5 Recommendation #5 – Request CMER develop revised study designs for the PHB validation,  
6 physical characteristics and lidar-based model studies. Board member Davis said this  
7 recommendation acknowledges that as the Board moves forward, the AMP can advise and help  
8 refine the process. This recommendation tasks CMER to consider revising the study designs, but  
9 not necessarily start from scratch.

10  
11 Recommendation #6 – Acknowledge that a lidar-based model is one of the goals of a permanent  
12 water typing system. Board member Guenther said best available science can help inform a new  
13 lidar-based model. He also said this aligns with the small forest landowner caucus’ request for  
14 continued support for a lidar-based model.

15  
16 Recommendation #7 – Continued support for AFF workgroup and their charter. Board member  
17 Guenther said this recommendation grew out of the western Washington tribal initiative to develop  
18 a methodology and coordinate a plan to collect data and analyze options for an AFF. He said other  
19 caucuses have agreed to work together to help develop the AFF criteria. He acknowledged that  
20 funding may be needed for expanding the GIS related work.

21  
22 Recommendation #8 – Retain the committee to continue working on water typing issues. Board  
23 member Guenther said this recommendation is to retain the committee’s involvement for oversight  
24 to the AFF workgroup and to help work through additional water typing concepts.

25  
26 Recommendation #9 – Support the effort of the Center for Conservation Peacebuilding to help  
27 improve relationships throughout the AMP. Board member Guenther said the committee anticipates  
28 that the contract for facilitation may be used to work through one or more of the unresolved issues  
29 in the rule making effort.

30  
31 Marc Engel, DNR, said that not every recommendation requires action by the Board. The following  
32 are tasks DNR staff will implement:

- 33
- 34 • Re-do the PHB spatial analysis including the AFF alternatives. DNR’s methodology will be  
35 revised given the clarification gained through the committee’s work for applying the width-  
36 based stream concept. DNR will coordinate with each caucus during the spatial analysis and  
37 make information available to stakeholders during the process.
  - 38 • Request the Washington State Geologic Survey provide a presentation at the February 2020  
39 Board meeting on the current availability of high quality lidar on forested lands, the projected  
40 schedule for acquiring additional lidar not currently available and potential funding options to  
41 acquire the remaining data.

42 Chair Bernath clarified that DNR has committed to re-doing the PHB spatial analysis because they  
43 have found a way to conduct the analysis in a manner that was not known to DNR during the initial  
44 analysis needed for the draft cost-benefit analysis.

45  
46 Engel presented the necessary Board actions based on the committee’s recommendations.  
47

1 Action #1 – Request CMER develop study designs for the PHB validation, physical characteristics,  
2 and lidar-based model studies. It is intended that the studies will be designed for cost savings,  
3 including the phasing of the studies with eastern Washington to be initiated first and the advisability  
4 of combining the three studies with a report on the study designs at the May 2020 Board meeting.  
5

6 Board member Herrera said he believes this recommendation was to have CMER determine *if* the  
7 PHB and stream physical criteria studies should be combined, not necessarily automatically assume  
8 the studies will be combined.  
9

10 Action #2 – Have the committee explore whether there is other data available to inform rule criteria  
11 in eastern Washington, ensure collaboration is maintained during this effort and have the committee  
12 provide recommendations to the Board by the May 2020 meeting. The first step is to evaluate if  
13 additional data in eastern Washington can be collected to augment the 18 points used in the initial  
14 analysis. He added that if a delay for a rule is inevitable, the committee may evaluate other actions  
15 to protect fish habitat in eastern Washington until a rule is effective.  
16

17 Chair Bernath clarified that if the workgroup is successful in determining possible criteria for an  
18 eastern Washington rule, then the Board may not have to implement interim guidance while a rule is  
19 being developed.  
20

21 Board member Davies said that if the Board is being asked to decide on these recommendations, she  
22 asked that adequate timelines be provided.  
23

24 Board member Nelson said he would like the committee to discuss DNR’s recommended actions  
25 before the Board decides on them today. He suggested the workgroup provide the adequate timeline  
26 to complete these actions rather than have the Board determine an arbitrary date such as May 2020.  
27

28 Board member Bellon recommended DNR staff engage with the committee to determine logical  
29 timelines to complete the recommended tasks and report at the February 2020 Board meeting the  
30 status of their findings.  
31

32 Action #3 – Approve the AFF workgroup charter, assign the committee to oversee the AFF  
33 workgroup and direct the committee to bring recommendations to the Board by the May 2020  
34 meeting. He said the AFF charter specifies that the workgroup will provide recommendations to the  
35 committee and the committee will provide recommendations to the full Board.  
36

37 Action #4 – Extend the committee’s involvement to May 2020 to oversee the AFF workgroup,  
38 evaluate options for an eastern Washington water tying rule and to address additional rule elements.  
39

#### 40 **PUBLIC COMMENT ON WATER TYPING SYSTEM RULE RECOMMENDATIONS**

41 Darin Cramer, Washington Forest Protection Association (WFPA), said confusion and uncertainty  
42 exists because discussions have been focused on the timeline rather than resolving the items of  
43 substance. He said WFPA is generally supportive of the committee’s recommendations, but the  
44 priority for rule development should be defining the performance targets since the work hinges on  
45 the overall objectives. He said he hopes DNR analyzes the WFPA, WFFA and county caucus PHB  
46 option as intended and to work with all PHB proponents during the analysis. He said there is  
47 abundant data in eastern Washington to help determine the eastside criteria. WFPA supports

1 maintaining a lidar-based model option and believes it can be developed sooner than some seem to  
2 think.

3  
4 Steve Barnowe-Meyer, WFFA said his caucus supports clarifying the performance goals and targets  
5 for the rule. They support DNR working with WFPA, WFFA and counties caucuses to properly  
6 complete the PHB spatial analysis. He said collaboration with the various experts may help this  
7 effort. He said the validation studies must include the three components – physical stream criteria,  
8 PHBs and the lidar-based model. They recommended the Board retain a lidar-based model rule  
9 component. He said they support the recommendations in the [WFPA letter dated November 10,](#)  
10 [2019](#).

11  
12 Alec Brown, Washington Environmental Council, said their caucus is concerned that the effort to  
13 complete the water typing rule has taken so long, especially since it was estimated to be completed  
14 two years ago. They believe the initial system adopted was based on fish habitat, not fish presence.  
15 He questioned whether DNR should do a second PHB spatial analysis given that it had already been  
16 done. He questioned how DNR could perform a spatial analysis before the AFF workgroup has  
17 provided the necessary criteria. He said their caucus is concerned that determining the goals will  
18 take time, especially since they believe the goals were conceptualized 20 years ago.

19  
20 Scott Swanson, Washington State Association of Counties, said they support defining the rule  
21 targets, having DNR perform a re-analysis of the PHBs and the commitment for collaboration when  
22 working with stakeholders and the AFF workgroup. He said they believe a lidar-based model is still  
23 one of the goals of the permanent rule and asked the Board to retain the development of a model.  
24 He requested the Board consider all the committee recommendations.

25  
26 Chris Mendoza, Conservation Caucus, quoted [RCW 77.85.180](#) relating to the use of best available  
27 science and [RCW 76.09.370](#) relating to the use of a peer review process. He reminded the Board  
28 that the peer review element is a standard practice of CMER. Conducting a peer review retains the  
29 integrity for those wanting to refute study results. Addressing the three studies being considered  
30 (physical stream criteria, PHBs and lidar-based model) for CMER development, he cautioned that  
31 the path forward may unwind the peer review already completed. He asked the Board to clarify  
32 what CMER is to do and asked the Board to not undo study development that CMER has already  
33 peer reviewed.

34  
35 Ash Roorbach, Northwest Indian Fisheries Commission, said the AFF workgroup is finalizing their  
36 work plan and will work to finalize their timelines needed to complete the AFF analysis. He said  
37 they are working with different experts that have performed analyses to compare methodologies. He  
38 said a meeting of technical experts is planned for December – after that meeting, the workgroup will  
39 provide more accurate timelines for completion of work. The goal is for the technical group to  
40 provide the data and information for the committee to make a recommendation to the Board.

41  
42 Jaime Glasgow, Conservation Caucus, said their caucus wants to get the water typing system right,  
43 but not take longer than necessary. He suggested one interim step is to revise Board Manual Section  
44 13 to include guidance for identifying habitat above the last detected fish. To provide context for  
45 how the current water type maps are inaccurate, he said Wild Fish Conservancy conducted two  
46 surveys and found 5.5 miles of unmapped fish habitat in one system and 24.6 miles of unmapped  
47 habitat in another system. Additionally, he said an eDNA research project found evidence of fish

1 presence in 9 out of 29 stream segments upstream from where an electrofishing survey had  
2 previously established the Type F and N water break.

### 4 **WATER TYPING SYSTEM RULE RECOMMENDATIONS**

5 Board members discussed various options for acting on the committee's recommendations,  
6 discussed adding potential dates pertinent to the steps included within the recommendations and  
7 discussed their interpretation of the recommendations. They also discussed options for drafting  
8 motions the Board could vote on.

10 Board member Davies suggested the Board implement the current physical stream criteria in rule as  
11 the determination for fish habitat while considerations for an eastern Washington rule are being  
12 evaluated.

14 Chair Bernath said using the physical stream criteria as proposed by Board member Davies would  
15 require a rule change. He added that DNR staff could provide estimated timelines for completion of  
16 the rulemaking at the February 2020 Board meeting.

18 Board member Davis asked if the Board could request the federal services to provide their  
19 interpretation of the intent of the FPHCP as it relates to the definition and protection of fish habitat.

21 Board member Herrera agreed and suggested the federal services provide their understanding at the  
22 February 2020 Board meeting.

24 Board member Swedeen suggested the federal services provide a factual understanding, not policy  
25 statements regarding the agreement in place between the federal services and the state.

27 Phil Ferester, Board counsel, reminded the Board that the FPHCP is composed of the Board's rules  
28 and clarifying uncertainty in what the rules say is a matter of state interpretation, not federal  
29 interpretation.

31 Chair Bernath said he will commit to making a request to the federal services.

33 **MOTION:** Tom Nelson moved the Forest Practices Board take the following action:  
34 Action 1: Accept the Board's Water Typing Rule Committee recommendations as  
35 presented in the memo dated November 5, 2019.

37 Action 2: (addressing committee recommendation #5)  
38 Recommend the Cooperative Monitoring, Evaluation and Research Committee  
39 (CMER) to develop study designs for the PHB validation, physical characteristics,  
40 and map based Lidar model studies. Design the studies for cost savings, including  
41 the phasing of the studies with eastern Washington to be initiated first, and the  
42 possibility and advisability of combining the PHB validation, physical characteristics  
43 and map based Lidar model studies, and then to report on the study designs to the  
44 Board by their May, 2020 meeting.

46 Action 3: (addressing committee recommendation #4)  
47 Recommend the Board direct the Board Committee on water typing to explore  
48 whether there is other data available to inform the water typing system rule in eastern

1 Washington, that the work be performed by a collaborative workgroup formed by the  
2 Committee, and that the committee bring recommendations to the Board by their  
3 May, 2020 meeting.  
4

5 Action 4: (addressing committee recommendation #7)

6 Recommend the Board approve the anadromous fish floor workgroup charter, assign  
7 the Board Committee on water typing to oversee the anadromous fish floor  
8 workgroup, and direct the Board Committee to bring recommendations to the Board  
9 by their May 2020 meeting.  
10

11 Action 5: (addressing committee recommendation #8)

12 Recommend the Board extend the Board Committee on water typing to the May  
13 2020 Forest Practices Board meeting to provide oversight to the anadromous floor  
14 and eastern Washington data workgroups, and to address other outstanding water  
15 typing rule issues as assigned by the Board.  
16

17 **SECONDED:** Carmen Smith  
18

19 Board Discussion:  
20 None  
21

22 **ACTION:** Motion passed unanimously.  
23

24 **WATER TYPING SYSTEM RULE MAKING UPDATE**

25 Marc Engel, DNR, said staff is continuing to work on other water typing system elements outside  
26 the work being considered by the committee – Board Manual Section 23 and the economic analysis.  
27 The Board Manual workgroup is focused on guidance for conducting electrofishing surveys  
28 upstream from man-made barriers and refining the flow chart for the fish habitat assessment  
29 method.  
30

31 He said the cost-benefit analysis advisory group still needs to determine the process for the  
32 qualitative analysis component. The group is preparing to have a biological discussion to address  
33 and determine the methodology for the fish population analysis in upstream reaches. DNR has  
34 asked stakeholders to bring forward comments for the contractor to address and to evaluate a  
35 change in fish populations from the current rule.  
36

37 He said DNR is preparing to procure services of a contractor to assist in applying the revised width-  
38 based PHB methodology for the PHB spatial reanalysis. He said the anticipated time to finalize the  
39 contract is most likely late February or early March 2020.  
40

41 **PUBLIC COMMENT (PM)**

42 Alec Brown, Conservation Caucus, thanked DNR staff for their hard work on the water typing rule.  
43 He also thanked Director Bellon for her consideration to extend the Clean Water Act (CWA)  
44 assurances.  
45

46 **CLEAN WATER ACT ASSURANCES**

47 Maia Bellon, Ecology Director/Board member, acknowledged the historic interface between forest  
48 practices regulations and implementing provisions for clean water in the forested environment. She



1 said Ecology, with the support of the federal Environmental Protection Agency, has maintained the  
2 commitment to provide CWA assurances for forest practices in Washington. The assurances  
3 provided a predictable and a consistent regulatory framework for the forestry industry.  
4

5 She said Ecology's original assurances were issued pursuant to Schedule M-2 of the [1999 Forests  
6 and Fish Report](#). Those assurances established a conditional ten-year agreement to treat the  
7 development of our traditional clean water program. She said the assurances were implemented as a  
8 commitment to work with forest practices program mainly because of the concept of adaptive  
9 management. Ecology extended the ten-year extension in 2009 with a deadline of December 2019.  
10

11 The decision for determining if an extension is warranted beyond 2019 acknowledged the progress  
12 the AMP has made to complete milestones including the completion of the Type F Buffer  
13 Effectiveness Monitoring Study in eastern Washington as well as the west side Type N Hard Rock  
14 Study. She also recognized the importance of the commitments in the Forests and Fish agreement.  
15

16 As a result of the on-going work, she said she has decided to extend the CWA assurances for an  
17 additional two years, to December 31, 2021. She stated that it is her understanding that Policy will  
18 have recommendations for a Type Np rule by the summer of 2021 with the expectation that the rule  
19 is implemented by the end of 2021. If the Type Np rules are effectively improved at the end of that  
20 timeframe, Ecology will consider another extension. She added that the Board will receive a formal  
21 letter that will address her comments provided today.  
22

### 23 **ADAPTIVE MANAGEMENT PROGRAM BUFFER/SHADE EFFECTIVENESS STUDY** 24 **(AMPHIBIAN RESPONSE)**

25 Mark Hicks, Adaptive Management Program Administrator, provided a summary of the results of  
26 the *Stream Associated Amphibian Response to Manipulation of Forest Canopy Shading* study. The  
27 three part purpose of the study was to:

- 28 • Assess the effects of shade reduction on stream breeding amphibians,
- 29 • Determine if there is an optimum level of shade retention, and
- 30 • If possible, identify potential causal mechanisms for any changes observed.  
31

32 Hicks clarified that this is not a study on the effectiveness of Type Np rules. The study did not test  
33 the Type Np prescriptions and it did not apply treatments at a spatial scale that is common for  
34 commercial harvests. Therefore, the study results can only indirectly inform with regard to the  
35 effectiveness of the rule. He said six species of amphibians were tested for three different biological  
36 responses; abundance, growth, and body condition and four functional feeding groups of the  
37 macroinvertebrates were also tested.  
38

39 Hicks summarized the study and its key findings as follows: The study examined 25, 50-meter  
40 (164-foot) stream reaches across western Washington where overhead stream cover was removed in  
41 three different treatment levels (from  $\leq 97\%$  pretreatment cover to 77%, 61%, and 40% post  
42 treatment). The step-wise reductions in shade increased photosynthetically active radiation and  
43 stream temperatures. Stream temperature increased on average 0.5°C, 2.2°C, and 2.5°C for the three  
44 treatments, being statistically significant only in the two most intensive treatments.  
45

46 He said the changes in macroinvertebrate production seemed to track shade reduction gradient  
47 induced changes. Similarly, some of the stream associated amphibian responses are consistent with  
48 expectations linked to the shade reduction gradient. Some of the changes or lack of changes in both



1 the macroinvertebrate and stream associated amphibians lacked a clear explanation. He said taken  
2 together considering the macroinvertebrates and amphibians collectively, the study found more  
3 positive and fewer negative responses in the intermediate than either the no- or the low-shade  
4 treatments. This means that a little bit of increased light can have a benefit to stream productivity,  
5 and the benefit declines as the amount of light increases.

6  
7 Hicks concluded by stating that Policy determined that they would not recommend the Board take  
8 action in response to this study.

#### 9 10 **PUBLIC COMMENT ON BUFFER/SHADE STUDY**

11 Darin Cramer, WFPA, said the study is an example of good work by the AMP. He recommended  
12 Board members read the full report, and while the study did not test the rule, it provided information  
13 that should be considered. He suggested that a continuous riparian buffer containing high density  
14 and high shade levels is not what folks typically want and the program should be conducting  
15 additional studies that inform learning opportunities.

16  
17 Ken Miller, WFFA, addressing his earlier testimony, clarified that portions of the small forest  
18 landowner alternate plan template includes an alternative prescription applied in 150 foot  
19 increments for intermediate size streams.

#### 20 21 **ADAPTIVE MANAGEMENT PROGRAM BUFFER/SHADE EFFECTIVENESS STUDY** 22 **(AMPHIBIAN RESPONSE)**

23 **MOTION:** Carmen Smith moved the Forest Practices Board accept TFW Policy Committee's  
24 recommendation to take no action on the Buffer/Shade Effectiveness Study.

25  
26 **SECONDED:** Bob Guenther

27  
28 Board Discussion:  
29 None.

30  
31 **ACTION:** Motion passed unanimously.

#### 32 33 **GUIDELINES FOR EXTENDED MONITORING**

34 Terra Rentz, Policy co-chair, conveyed that in August 2018 the Board asked Policy to develop and  
35 present to the Board a process to help decide how to evaluate and prioritize requests for extended  
36 monitoring associated with CMER research projects. She said a joint workgroup was created  
37 comprised of representatives from both Policy and CMER. The workgroup identified that there are  
38 three occasions when the considerations for extended monitoring could arise:

- 39
- 40 • During project initiation;
  - 41 • During the mid-point of study projects; and
  - 42 • Near the end of the field component of a study project.

43 Rentz said the workgroup developed a decision-making framework to be used if extended  
44 monitoring is being considered near the end of a study. The framework includes four main  
45 components and considerations:

- 46
- 47 • If extended monitoring is needed, the associated scientific advisory group will develop a brief  
48 extended monitoring proposal by updating the prospective findings report; and
  - provide the proposal to CMER for formal review and approval; and

- 1 • If approved, CMER will forward the proposal to Policy; and
- 2 • If Policy approves, then CMER will work with the appropriate scientific advisory group to
- 3 implement.

4  
5 Rentz said it will be important to apply the new framework by December of each year to ensure that  
6 Policy includes the extended monitoring proposals within the context of its consideration of CMER  
7 recommendations for the biennial master project schedule.

#### 8 **PETITION FOR RULE MAKING RELATING TO THE NORTHERN SPOTTED OWL**

9 Todd Thorne, member of the North Central Washington Audubon Society, addressed the Board  
10 regarding the [Audubon’s northern spotted owl \(NSO\) rule petition](#). He said their petition requested  
11 a moratorium on timber harvests within eastern Washington spotted owl special emphasis areas  
12 (SOSEA) while the NSO protection measures are re-evaluated.

13  
14  
15 Marc Engel, DNR, provided an overview of the petition and how Forest Practices Applications  
16 (FPA) are classified when a proposed forest practices activity falls within suitable owl habitat  
17 within an owl circle in a SOSEA. He said SOSEAs are established in rule to provide demographic  
18 and dispersal support as necessary to complement the habitat recovery strategies on federal lands.  
19 He also shared the State Environmental Policy Act (SEPA) review process for NSO in [WAC 222-](#)  
20 [10-041](#) as it relates to the FPA classification procedure.

21  
22 Gary Bell, Washington Department of Wildlife (WDFW), shared the process DNR and WDFW  
23 uses to evaluate proposed FPAs within suitable habitat. Each FPA is screened and checked against  
24 agency habitat data. In some cases, in order for DNR and WDFW to make the most accurate  
25 determination, they ask the applicant to provide current stand data or additional information to help  
26 verify correct habitat typing and whether or not the proposed FPA is within suitable habitat.

27  
28 Engel described DNR’s decision process that resulted in approval of the FPAs specific to  
29 Audubon’s concern. During the period between August 2016 and September 2019, ten FPAs were  
30 submitted that contained proposed harvest activities in suitable NSO habitat. The areas were  
31 screened and evaluated by WDFW and Yakima Nation biologists prior to FPA submittal or site  
32 visits were conducted by interdisciplinary teams to evaluate on-ground habitat conditions. None of  
33 the forest stands met the rule definition of suitable habitat and for that reason, the FPAs were  
34 categorically exempt from SEPA analysis.

35  
36 Engel said Audubon’s rule petition is focused on how DNR is implementing the SEPA policies in  
37 WAC 222-10-041. He recommended the Board deny the petitioner’s moratorium request for  
38 harvesting in eastern Washington SOSEA circles based on two reasons: (1) the Board does not have  
39 the authority to enact a moratorium (as determined by [AGO Opinion in 2015](#)) and (2) the SEPA  
40 policies do not establish substantive standards for types of timber harvests or a locations of harvest  
41 if a proposal does not include harvest in NSO habitat.

42  
43 Board member Swedeen acknowledged that the petition focuses on SEPA policies, but said the  
44 petition raises a concern that the owl is using forests that does not meet the current rule definition of  
45 NSO habitat and that the forest being used by this particular owl pair is being harvested. She  
46 questioned if the habitat rules are actually protecting these owls and, if not, she questioned what the  
47 Board should do to re-evaluate the habitat rule definition.

1 Board member Davis thanked the Audubon Society for having “eyes on the ground”. He said  
2 WDFW is likewise concerned because the NSO is on the brink of being extirpated in Washington.  
3 He said one major factor is the presence of the barred owl and suggested an interim strategy may be  
4 needed for this particular situation. He also suggested WDFW provide the Board with a presentation  
5 at the February 2020 Board meeting on the current status of the NSO or form a workgroup to  
6 discuss potential solutions.

7  
8 Bell said that evaluation of habitat typing continues to occur within NSO circles. He said past  
9 habitat typing through photo interpretation alone was not always accurate. He added that the US  
10 Fish and Wildlife Service has not been engaged in the habitat typing along with DNR and WDFW,  
11 although they are welcomed to do so as participants on interdisciplinary teams.

12  
13 Chair Bernath summarized the discussion to include a WDFW NSO update at the February 2020  
14 Board meeting, the formation a workgroup to evaluate habitat criteria and the continuation of the  
15 development of a safe harbor agreement.

#### 16 17 **PUBLIC COMMENT ON PETITION FOR RULE MAKING**

18 Todd Thorne, North Central Washington Audubon Society, said they believe this owl pair was the  
19 only documented successful breeding pair in eastern Washington in 2018. He said they are  
20 concerned that continued harvests in non-habitat will contribute to a downward population trend  
21 and increase the challenges for maintaining adequate habitat. He said while he understands the  
22 Board lacks the authority to place a moratorium on harvesting, rule amendments are needed for the  
23 overall protection of the NSO.

24  
25 Martha Wehling, WFPA, said the reproduction trend of these owl shows that the pair are fine and  
26 that this particular area of the state has successfully had breeding pairs for many years. She said the  
27 current regulatory systems allows for the protection of the NSO through the ability to appeal a FPA  
28 to the Pollution Control Hearing Board, the on-going work from the NSO advisory group and  
29 DNR’s conditioning authority. She said WFPA supports the staff recommendation and supports the  
30 development of additional voluntary protection approaches.

#### 31 32 **PETITION FOR RULE MAKING RELATING TO THE NORTHERN SPOTTED OWL**

33 **MOTION:** Paula Swedeen moved the Forest Practices Board deny the petition for rule making  
34 related to the Northern Spotted Owl due to lack of authority for a moratorium to  
35 harvest. She further requested WDFW work with U.S. Forest Service, DNR and the  
36 associated forest landowners to provide additional information and recommendations  
37 on alternative solutions at the February 2020 meeting.

38  
39 **SECONDED:** Tom Nelson

#### 40 41 **Board Discussion:**

42 Board member Willet said he believes this petition is based on an assumption as to why the owl pair  
43 moved. He agreed with the path outlined today, but is uncomfortable with the concept of assuming  
44 the owl pair’s movement was because of timber harvest.

45  
46 Board member Davis said the goal of WDFW is to protect the northern spotted owl in the interim  
47 while the long-term conservation strategy for the NSO is being developed.

1 **ACTION:** Motion passed (11 Support / 1 Abstention (Bellon)).

2  
3 **NORTHERN SPOTTED OWL CONSERVATION ADVISORY GROUP**

4 Marc Engel, DNR, provided background that resulted in the development of the Northern Spotted  
5 Owl Conservation Advisory Group. He said the rule forming the group was adopted in 2010 to  
6 allow time to develop a long-term conservation strategy. The rule established a three-member group  
7 designated by the Board with members having a working knowledge of NSO habitat relationships  
8 and factors affecting owl conservation. Current members are: Marty Vaughn, forest product  
9 industry; Kara Whitaker, conservation organization; and Stephen Bernath, DNR Forest Practices  
10 Program. The group's process is to evaluate WDFW-approved NSO surveys showing the absence  
11 of an owl. The group determines if the habitat in the circle needs to be maintained to contribute to  
12 the recovery of the owl on federal lands.

13  
14 He said the rule is open-ended with an annual review to ensure that potential habitat is maintained  
15 while the Board develops a long-term NSO conservation strategy. He recommended the Board  
16 retain the group while the Board pursues voluntary spotted owl recovery measures.

17  
18 Board member Davis suggested that WDFW, although not a member of the group, may recommend  
19 that the Board not de-certify a NSO site center simply because a survey found no owls during a  
20 particular year.

21  
22 Engel felt that the group would consider the biological expertise of WDFW during their evaluation  
23 should a survey occur showing no owls.

24  
25 **PUBLIC COMMENT ON NSO CONSERVATION ADVISORY GROUP**

26 None

27  
28 **NORTHERN SPOTTED OWL CONSERVATION ADVISORY GROUP**

29 **MOTION:** Maia Bellon moved the Forest Practices Board maintain the Northern Spotted Owl  
30 Conservation Advisory Group for another year.

31  
32 **SECONDED:** Ben Serr

33  
34 Board Discussion:

35 None.

36  
37 **ACTION:** Motion passed unanimously. (Brent Davies not available for vote.)

38  
39 **ADAPTIVE MANAGEMENT PROGRAM FISCAL AUDIT REPORT**

40 Joe Shramek, DNR, summarized the October 30, 2019 memo included in [the meeting information](#)  
41 [packet](#) (beginning on page 209) regarding the outcome from the AMP fiscal audit performed under  
42 contract with Jennifer Woods, CPA, CIA, CFE, CRMA from the Department of Retirement  
43 Services in partial fulfillment of requirements of [WAC 222-12-045\(2\)\(e\)](#). The audit covered the  
44 2017-2019 biennium and approximately \$14.5 million dollars in contracts. The audit focused in  
45 three areas:

- 46
- 47 • Assurances that the processes used for AMP science contracts followed applicable state rules  
48 and regulations;
  - That only allowable costs were paid under non-governmental participation grants; and

- 1 • That only allowable costs were paid for the one time travel participation grants for cultural  
2 resources projects.  
3

4 The fiscal audit found the program implemented a process that protects state funds and is compliant  
5 with state laws and regulations. He said fiscal audits don't generally address performance actions,  
6 but one example where a performance improvement is needed was related to verbal agreements that  
7 were given for minor contract changes. He said such changes require a written authorization and  
8 that DNR has taken steps to make this adjustment.  
9

#### 10 **RECOMMENDATION ON CRITICAL HABITAT (STATE) FOR THE CARIBOU**

11 Marc Engel, DNR, reported that US Fish & Wildlife Service has amended their Endangered Species  
12 Act listing for woodland caribou which reconfirmed previously designated critical habitat for 17-  
13 subpopulations. The Board's critical habitats rule ([WAC 222-16-080 \(1\)\(c\)](#)) includes the mountain  
14 woodland caribou. The Board's rules require DNR to consult with WDFW and then provide a  
15 recommendation to the Board.  
16

17 He said WDFW considers the remaining Washington caribou as extirpated from the state and that  
18 WDFW has concluded that forest practices are not having any negative affect on caribou habitat.  
19 WDFW endorses the action to retain habitat in the state for the species. He recommended the Board  
20 make no change at this time to the Board's critical habitat rule for the caribou.  
21

22 Board members Davis noted the species is currently no longer in the state and is declining in British  
23 Columbia and Alberta.  
24

#### 25 **PUBLIC COMMENT ON CRITICAL HABITAT FOR THE CARIBOU**

26 None.  
27

#### 28 **RECOMMENDATION ON CRITICAL HABITAT (STATE) FOR THE CARIBOU**

29 **MOTION:** Carmen Smith moved the Forest Practices Board not amend the current protection  
30 measures in WAC 222-16-080 for the mountain (woodland) caribou at this time.  
31

32 **SECONDED:** Noel Willet  
33

34 Board Discussion:

35 None.  
36

37 **ACTION:** Motion passed unanimously. (Brent Davies not available for vote.)  
38

#### 39 **STAFF REPORTS**

40 There were no questions on the following reports:

- 41 • Adaptive Management
  - 42 • Compliance Monitoring
  - 43 • Small Forest Landowner Office
  - 44 • TFW Policy Committee Work Plan
  - 45 • Upland Wildlife
- 46  
47  
48

1 **2020 WORK PLANNING**

2 Marc Engel, DNR, presented a draft Board Work Plan for calendar year 2020. The 2020 Board  
3 meeting dates will be February 12, May 13, August 12 and November 12.

4  
5 **MOTION:** Carmen Smith moved the Forest Practices Board approve the 2020 work plan as  
6 amended.

7  
8 **SECONDED:** Ben Serr

9  
10 Board Discussion:  
11 None.

12  
13 **ACTION:** Motion passed unanimously. (Brent Davies not available for vote.)

14  
15 **EXECUTIVE SESSION**

16 None.

17  
18 Meeting adjourned at 4:25 p.m.