State of Washington
Department of Fish and Wildlife

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MEMORANDUM

To: **Forest Practices Board**

From: **David Whipple, Forest Policy Coordinator**

SUBJECT: **FOREST PRACTICES RULE MODIFICATIONS FOR WESTERN POND TURTLE, PEREGRINE FALCON AND BALD EAGLE**

This memo contains information and recommendations for modification of the Forest Practices Rules relative to three wildlife species. The Washington Department of Fish and Wildlife (WDFW) convened the Forest Practices Board's Wildlife Work Group to discuss possible changes to the rules for each species; background information on each species and a summary of those discussions follows below.

Western Pond Turtle

Throughout history, the Western Pond Turtle has been referred to using many different common names: Pacific Pond Turtle, Pacific Terrapin, Pacific Mud Turtle, California Terrapin, Snapper, Pond Turtle, Pond Tortoise, Terrapin and many combinations of these. Similarly, there has been debate over the Genus name. Both the Genus and common name for the Western Pond Turtle have been changed. It is now referred to as the Pacific Pond Turtle (*Actinemys marmorata)*.

Peregrine Falcon

The Peregrine Falcon population declined dramatically over much of its nearly global range following the widespread use of the insecticide DDT shortly after World War II. DDT caused eggshell thinning and other toxic effects, and the species was extirpated from eastern North America and its population was greatly reduced in western North America. The peregrine falcon was listed as an endangered species by the U.S. Fish and Wildlife Service in 1970 and by the Washington State Fish and Wildlife Commission in 1980.

DDT use in North America ceased in the early 1970s. At about that same time efforts to breed peregrines in captivity were proving successful. WDFW began monitoring the population in the late 1970s, and found only 5 pairs in the state by 1980. The population has increased substantially since that time and in 2001 there were 72 pairs and 89 known territories. Although Washington's peregrine falcon population is relatively small, it continues to increase, occupancy remains high at known sites and productivity appears consistent with healthy populations. The species is now well distributed in Washington.

The Peregrine Falcon was down-listed from Threatened to a Species of Concern by the U.S. Fish & Wildlife Service in 1999. The Washington Fish and Wildlife Commission down-listed the species to State Sensitive in 2002. The species is protected at the federal level under the Migratory Bird Treaty Act, which prohibits take, possession, import, export, transport, selling, purchase, barter, or offering for sale, purchase or barter, any migratory bird, their eggs, parts, nests, except as authorized under a valid permit.

The existing forest practices rule (WAC 222-16-080, Critical habitats (state) of threatened and endangered species) was adopted in 1992. The rule designates Forest Practices Applications as Class IV-Special that propose certain activities within specific distances of a known nest during both the breeding and non-breeding periods. Due to its dependence on cliffs for nesting in the forested environment, the falcon has had very little conflict with forest management activities.

Bald Eagle

It is estimated that the Washington pre-settlement Bald Eagle population was nearly 9000. Persecution, the cutting of forests, loss of wetlands, commercial exploitation of salmon runs, and the use of DDT reduced the state's population to only 104 known breeding pairs by 1980. The Bald Eagle in Washington was federally listed as Threatened under the federal Endangered Species Act in 1978, and also as Threatened by the Washington Fish and Wildlife Commission in the 1983.

Washington's population has recovered dramatically with the 1972 DDT ban and increased protection for eagles and eagle habitat. In the past 25 years, the population of nesting bald eagles grew about 9% per year as eagles reoccupied habitat. In 2005, there were 840 occupied nests, and there are some indications that the population may have reached carrying capacity in parts of western Washington. The population may still be increasing in northeastern Washington and along some western Washington rivers. If there is no decline in the number of nest sites, productivity, or survival, the population may stabilize around 6,000 eagles. Washington has a large wintering population of eagles. The number of resident breeding eagles and trends in localized winter counts suggest that Washington hosts perhaps 3,500 – 4,000 bald eagles each winter. Up to 80% of the eagles seen in mid-winter in Washington consist of migrants, largely from the Canadian provinces and Alaska.

The bald eagle was removed from the Endangered Species Act in 2007, and the Fish and Wildlife Commission down-listed the species to State Sensitive in 2008. The species is still protected by the federal Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act.

Due to the recovery and down-listing of the Bald Eagle in the state, the Washington Fish and Wildlife Commission amended the Department of Fish and Wildlife's Bald Eagle protection rules, and the changes became effective in mid-May this year. Bald Eagle Management Plans will no

longer be required, unless the species becomes listed as threatened or endangered in Washington State.

Because the species is protected under the federal Bald and Golden Eagle Protection Act ("eagle act"), landowners with existing bald eagle plans who wish to carry out any new clearing or construction will need to consult with the U.S. Fish and Wildlife Service (USFWS). Although there is no longer a state bald eagle management plan requirement, landowners are required to comply with the federal law. The "eagle act" requires landowners to consult with the USFWS to determine if a take permit is required when proposing land use activities within 660 feet of an eagle nest.

Wildlife Work Group Process

The Board's multi-caucus Wildlife Work Group was convened to discuss possible modifications to the Forest Practices Rules for all three wildlife species, and to make recommendations to the Forest Practices Board. Two meetings were held in June with representatives attending from the Upper Columbia United Tribes, Washington Forest Protection Association, and the Departments of Natural Resources (DNR) and Fish and Wildlife (WDFW). In addition, a conference call meeting was held July 11 with representatives from the Washington Forest Law Center, DNR and WDFW.

Immediately prior to and during these meetings, WDFW had proposed removing the Peregrine Falcon and Bald Eagle from the state critical habitat rules in WAC 222-16-080, as well as changing the common name and Genus for the Western Pond Turtle.

During the Wildlife Work Group meetings, there were no concerns voiced relative to the proposed changes to the Western Pond Turtle or Peregrine Falcon rules. However, two types of concerns were expressed relative to the proposed modification of the Bald Eagle rule:

1. The first type of concern is administrative in nature, and includes a few issues:
    a. All landowners, particularly small forest landowners, need to be able to access eagle location information in order to know if a nest or roost is nearby or they need to be notified. It is believed this concern can be addressed through the existing Forest Practices Application Review System (FPARS), the WDFW Interactive Mapping PHS web site, as well as educational efforts.

    b. Stakeholders need be able to review Forest Practices Applications (FPAs) that are close to eagle nest or roost sites, so they may work with landowners to achieve protection. It is believed this concern can be addressed through FPARS.

    c. A concern was expressed relative to the need to complete the rule change as quickly as possible. Attempts will be made to address this through the rule making process.

2. The second concern is substantive in nature, and represents a disagreement with WDFW's proposal to remove the eagle from the rules. One stakeholder's position is that the rules should include protection for the Bald Eagle consistent with the requirements under the Bald and Golden Eagle Protection Act, or the rules should provide for a SEPA review of FPAs that propose activities within the distances contained in the federal guidelines implementing the "eagle act". There appear to be three possible ways this concern may be addressed:
    a. Removing the eagle from WAC 222-16-080 Critical habitat (state), and creating rules under WAC 222-30 Timber harvesting, to protect eagle nest and roost sites.

b. Retaining the eagle rule in WAC 222-16-080 Critical habitat (state), but reducing the 'trigger distances" to be consistent with federal guidelines implementing the "eagle act". An exemption from Class IV-Special classification could be in the form of evidence the FPA is consistent with the "eagle act" via approval by, or a take permit from, USFWS.

c. Moving the eagle from WAC 222-16-080 Critical habitat (state) to WAC 222-16-050(1) Classes of forest practices, "Class IV – special", and modifying the distances as in (b) above. An exemption from Class IV-Special classification could be the same as in (b) above.

In summary, stakeholders have not voiced any concerns relative to changing the name of the Western Pond Turtle, or to removing the Peregrine Falcon from the list of critical habitats (state) under WAC 222-16-080(1). A substantive stakeholder position relative to the Bald Eagle rule is that protection of eagle nests and roosts should be ensured via state rules that are consistent with the federal Bald and Golden Eagle Protection Act.

Based on consensus of the Wildlife Work Group, it is recommended that WAC 222-16-080(1)(g) be changed to reflect the new name for the Western Pond Turtle, and that and the Peregrine Falcon rule, WAC 222-16-080(1)(f), be removed.

Because consensus was not reached within the Wildlife Work Group relative to the Bald Eagle rule, no recommendation is made. There are pros and cons to the possible approaches characterized in (a) through (c) above, which I will attempt to explain during the Forest Practices Board meeting.