
Minutes

Board of Natural Resources Meeting

February 4, 2014
Natural Resources Building, Olympia, Washington

BOARD MEMBERS PRESENT

The Honorable Peter Goldmark, Washington State Commissioner of Public Lands

The Honorable F. Lee Grose, Commissioner, Lewis County

JT Austin, Designee for the Honorable Jay Inslee, Washington State Governor

Thomas H. DeLuca, Director, School of Environmental and Forest Sciences, University of Washington

Ron C. Mittelhammer, Interim Dean, College of Agricultural, Human, and Natural Resource Sciences,
Washington State University

The Honorable Randy Dorn, Superintendent of Public Instruction

1 **CALL TO ORDER**

2 Chair Goldmark called the meeting to order at 9:00 AM. All board members introduced
3 themselves. Chair Goldmark noted there is a quorum for this meeting, with all board members
4 present.

5 **SAFETY REVIEW**

6 Ms. Vansot gave a safety overview and instruction on evacuating the building in case of an
7 emergency.
8

9 **APPROVAL OF MINUTES**

10 Chair Goldmark called for approval of the minutes for the January 7, 2014 Regular Board of
11 Natural Resources Meeting.
12

13 **MOTION:** Director DeLuca moved to approve the minutes.

14 **SECOND:** Commissioner Grose seconded the motion.
15

16 **ACTION:** The motion was approved unanimously.
17
18

19 **PUBLIC COMMENTS FOR TIMBER SALE ACTION ITEMS**

20 Glen Morgan, representing the Rochester School District and the Timberland Trust Task Force,
21 stated that it is important to know that the proceeds of the timber sales go to support schools and
22 education. He thanked the board stating that the Rochester School District appreciates it along
23 with many other school districts across the state.
24

1
2 **TIMBER SALES (Action Item)**

3 **Proposed Timber Sales for March 2014 | 3 Handouts**

4 Paul Bialkowsky, Assistant Division Manager, Product Sales & Leasing Division

5
6 The results of the January auctions were presented to the board by Mr. Bialkowsky. The
7 Department offered 10 sales totaling 51.4 mmbf in January. Each of the 10 sales were sold,
8 totaling \$20.2 million for an average of \$393/mbf.

9
10 Mr. Bialkowsky noted that lumber and log prices remain strong with good demand in the
11 domestic lumber market and continued strong demand for sawlogs in Asia.

12
13 The proposed March sales were then presented to the board.

14
15 The department proposes to offer 12 sales in March totaling 46.6 mmbf. The appraised value of
16 these sales is \$14.8 million for an average of \$318/mbf.

17
18 Commissioner Grose noted that the appraised value per mbf for March is higher than January,
19 and asked whether improving markets or log quality for March offerings is driving that higher
20 price per mbf. Mr. Bialkowsky replied that log and sale quality is the driver in the increased
21 value.

22
23 Mr. Bialkowsky asked for approval of the proposed March 2014 sales.

24
25 MOTION: Commissioner Grose moved to approve the proposed March 2014 sales.

26
27 SECOND: Ms. Austin seconded the motion.

28
29 ACTION: The motion was approved unanimously.

30
31 **PUBLIC COMMENTS FOR HARBOR AREAS ACTION ITEMS**

32 Maria Warren, owner of a houseboat residing in West Bay Marina, requested assistance in
33 changing the law to define the difference between a houseboat and floating home, referencing
34 that the US Supreme Court distinguishes between houseboats and floating homes. Ms. Warren
35 stated that her houseboat is registered as a vessel and does not impede navigational traffic within
36 the marina.

37
38 Conner Edwards stated that he filed a petition to repeal rule 332-30-109, subsection 11, which
39 bans houseboats from harbor areas. Mr. Edwards claimed that last October DNR threatened to
40 shut down two Olympia area marinas, Martin and West Bay, if they did not evict the houseboat
41 residents that lived there by November 28th. He stated the houseboat owners had done nothing
42 wrong, and that local marina managers say that they are good tenants. Mr. Edwards asked the
43 board to repeal rule 332-30-109, subsection 11, and went on to say that he hopes to bring an
44 existing problem to light and assist DNR in finding a solution. He listed three reasons why the
45 board should consider repealing this rule: 1) it serves no legitimate purpose as the houseboats in
46 harbor areas have not resulted in any problems; 2) DNR does not have the authority to impose

1 the rule; and 3) the rule is forcing the Olympia houseboat owners to abandon their long term
2 homes.

3
4 Glen Morgan, Property Rights Director for Freedom Foundation, stated that when Conner
5 Edwards filed to repeal the rule; he was working at Freedom Foundation. The goal is to have the
6 opportunity to clean up the WAC as the rule is not required under the RCW or State
7 Constitution. He mentioned that the rule has inspired the Legislature to propose bills in both the
8 House and the Senate, and asked that the board consider eliminating the WAC.

9
10 Matt Leupold, houseboat owner in West Bay Marina, specified that the rule DNR is imposing is
11 not a law. He stated that the law around navigation was written back in the day when houseboat
12 owners use to moor out into the harbor, and that none of the houseboat owners today do that.
13 Their houseboats are registered and the owners pay DOL for vessel tabs. He would like DNR to
14 take them off the water-oriented list and put them on the water-dependent list; which will allow
15 DNR to recognize houseboats as vessels. Mr. Leupold went on to say that other agencies and the
16 Feds identify houseboats as vessels, and asked the board to repeal the rule.

17
18 Allen Miller, Attorney in Olympia representing the Martin Marina, affirmed that the Martin
19 Marina is in support of the rule. He agreed with the testimonies and added that they are great
20 tenants, environmental stewards, and the best environmentalists in the marina. The liveboards
21 should be subject to the same regulations and rights as they do not interfere with navigation or
22 commerce. Mr. Miller asked the board to repeal the rule.

23
24 John Chaney, Vice President of the Lake Union Liveboard Association in Seattle, stated that he
25 supports the request to repeal the rule. In Seattle, houseboats mean floating homes. The DOL
26 has 1 of 6 specific types that are registered as vessels in our State; one of which is houseboat.
27 Mr. Chaney added that the term houseboat is not defined in the RCW. The undefined word is the
28 problem, which has led folks to go to the legislature. There are now two bills in front of the
29 legislature that involve DNR. He believes that identifying houseboats as a water-oriented use is
30 unfortunate. He hopes that the board will repeal this regulation, therefore, taking the impact off
31 the small community.

32
33 Chair Goldmark adjourned the Board of Natural Resources Meeting and he convened an
34 Executive Session.

35
36 Chair Goldmark reconvened the Board of Natural Resources Meeting at 9:38 AM.

37
38 **FLOATING HOMES (Action Item)**

39 **Proposed Request by Freedom Foundation to Repeal a WAC Related to Floating Homes in**
40 **Harbor Areas**

41 Megan Duffy, Deputy Supervisor

42 Kristin Swenddal, Aquatic Resources Division Manager

43 Christa Thompson, Assistant Attorney General

44
45 Ms. Duffy reviewed a request for the Board of Natural Resources to repeal a WAC related to
46 floating homes in harbor areas, and provided a brief overview of residential use on state-owned
47 aquatic lands.

1
2 The Aquatic Resources Division of the Department of Natural Resources is responsible for the
3 management of 2.6 million acres of state-owned aquatic lands. In 1983, the Legislature passed a
4 set of laws, the Aquatic Lands Act, that provide explicit direction to the Commissioner of Public
5 Lands for aquatic land management. Codified in RCW 79.105.030, the statute directs that the
6 lands be managed to provide for a balance of public benefits.

7
8 Ms. Swenddal shared that Harbor Areas are administered by the Washington Department of
9 Natural Resources, and established and amended by the State Harbor Line Commission. Article
10 XV of the Washington State Constitution requires that Harbor Areas shall be forever reserved for
11 landings, wharves, streets, and other conveniences of navigation and commerce. The Harbor
12 Line Commission is the body authorized by the Washington State Constitution and under
13 legislative mandate to locate and establish harbor lines. The responsibilities of the Harbor Line
14 Commission rest with the Board of Natural Resources.

15
16 The Aquatic Resource Program currently manages 27 Harbor Areas with approximately 10,000
17 total acres, and is responsible for managing the uses within a Harbor Area by negotiating leases
18 with interested parties. Leases may be granted up to 30 years in Harbor Areas. Uses within
19 Harbor Areas are ranked in order of their need for waterfront locations (WAC 332-30-115). WAC
20 332-30-109 prohibits floating homes in Harbor Areas.

21
22 The Board of Natural Resources has addressed residential use on state owned aquatic lands
23 several times. In 1974, the Board adopted board resolution #181 (included in handout) stating
24 that houseboats are low priority uses which do not lend themselves to conversion to other use,
25 which produces little or no public benefit in proportion to the area covered.

26
27 In 1980, the Board adopted the rule prohibiting floating homes in harbors areas.

28
29 Later in 2002, the Board adopted a comprehensive set of rules on residential use for all state-
30 owned aquatic lands, and modified the restriction in harbor areas to allow residential use on
31 vessels, but retained the prohibition for floating homes.

32
33 In 2012, DNR discovered four harbor areas with floating homes. The program worked with two
34 lessees who had the two floating homes in their leasehold to move out of the harbor area. DNR
35 is now working with the other lessees to resolve the situation without a rule or statutory change.

36
37 The Freedom Foundation filed a petition on December 9, 2013, asking the Department to repeal
38 the rule which prohibits floating homes in harbor areas. Ms. Swenddal said that Assistant
39 Attorney General Christa Thompson was going to talk about the requirements associated with
40 responding to the petition.

41
42 Christa Thompson, Assistant Attorney General, gave an overview of the requirements of the
43 Washington State Administrative Procedure Act (WAPA) as it pertains to petitions for
44 rulemaking. Administrative Procedure Act is the act that governs the conduct of state agencies
45 and allows members of the public to petition state agencies or rule making bodies to enact new
46 rules, amend an existing rule, or repeal rules. In response to a petition, the Board must take
47 action within 60 days from when the petition was filed. The WAPA provides two options: 1)

1 grant the petition and direct the Department of Natural Resources to commence the rule making
2 process (collecting public comments, publishing a proposed draft rule) or 2) deny the petition. A
3 denial must state the reasons for the denial, specifically addressing the petitioner's concerns, and,
4 if appropriate, identify alternate means of addressing the petitioner's concern(s).

5
6 The Department's harbor area rule related to floating homes was adopted in a public process and
7 has been in place since 1980. Past board resolutions related to residential use have placed a
8 lower priority on residential use of aquatic lands, especially in harbor areas. Current state laws
9 and Department WACs do allow residential use on the majority of state-owned aquatic land, with
10 the exception of floating homes in harbor areas.

11
12 All of the state's legal directives related to residential use (both state laws and rules) are
13 consistent with and support Article XV of the Constitution which requires the Department to
14 ensure harbor areas are reserved for commerce and navigation.

15
16 Ms. Swenddal commented that because the Constitution clearly identified harbor areas for
17 commerce and navigation, staff cannot find a reasonable argument to support the repeal of this
18 rule. Therefore, she recommended that the Board of Natural Resources reject the request from
19 the Freedom Foundation.

20
21 The board requested to amend the Resolution to direct the DNR to continue to negotiate with
22 affected floating home owners for the purposes of achieving a settlement.

23
24 MOTION: Dean Mittelhammer moved to approve Resolution 1420.

25
26 SECOND: Ms. Austin seconded the motion.

27
28 ACTION: The motion was approved unanimously.

29
30 **RULEMAKING: DERELICT VESSEL REMOVAL PROGRAM/VESSEL**
31 **INSPECTIONS (Information for Future Action)**

32 Kristin Swenddal, Aquatic Resources Division Manager
33 Melissa Ferris, Derelict Vessel Removal Program Manager
34 Lisa Randlette, Environmental Planner

35
36 Ms. Swenddal introduced Lisa Randlette to provide an overview of a current rulemaking effort
37 for the Program, and Melissa Ferris to respond to any Program-specific questions.

38
39 The Derelict Vessel Removal Program was created by the legislature in 2002 with the passage of
40 the Derelict Vessel Act (RCW 79.100). To date, the DNR has facilitated removal and disposal of
41 over 500 vessels. DNR has removed over 50 vessels so far this biennium (since July 2013).
42 The vast majority of the removals were small recreational vessels. However, removal of larger
43 vessels cost substantially more and get more press coverage.

44
45 The Program has spent \$5.4 million from the Derelict Vessel Removal Account (DVRA) which
46 is funded through a recreational boater registration surcharge. In addition, the Program spent

1 another \$5 million in other one-time appropriations from other accounts, including the State
2 Capital Fund.

3
4 The Derelict Vessel Removal Program provides DNR statewide authority to remove and dispose
5 of vessels that meet criteria. DNR works closely with other state agencies, the U.S. Coast Guard,
6 cities, counties and public ports to address problems presented by abandoned and derelict vessels
7 in Washington State waters. The Program is held up as a national model, with accolades from
8 many levels of government, the public and private industry.

9
10 Ms. Randlette explained that the 2013 legislature passed ESHB 1245 which directed the DNR to
11 conduct rulemaking to establish a vessel inspection requirement for vessel boats 65 feet and
12 longer, and forty years and older. Although this range of vessels makes up a very small
13 percentage of the total number of vessels in Washington State waters, these vessels are the most
14 expensive and problematic to remove and dispose of.

15
16 Ms. Ferris commented that the legislature targeted 65-foot and larger vessels based on vessels
17 that required haul out at the heavier-duty shipyard facilities.

18
19 The rule will establish an administrative process for DNR to seek financial recovery of costs for
20 removal and disposal of derelict and abandoned vessels, when current owners can't be identified
21 or held financially liable. Prior owners who didn't provide the required inspection
22 documentation, effective July 1, 2014, will have secondary liability for costs.

23
24 DNR staff has been working with appropriate government agencies in developing proposed
25 vessel inspection requirements and a streamlined reporting process. DNR staff met with
26 stakeholders on an informal basis to learn more about any issues and concerns for the proposed
27 rule.

28
29 DNR staff has prepared draft rule language for public review, and will hold public hearings on
30 the proposed rule in March, 2014. Any recommended revisions will be considered for
31 incorporation into a final draft rule. The DNR will present the results of the public hearings and
32 the recommended rule language to the Board of Natural Resources for their consideration and
33 action at the April, 2014 regular meeting.

34
35 **CHAIR REPORTS | 1 Handout**

36 **Western Washington Sustainable Harvest Calculation**

37 Kyle Blum, Deputy Supervisor for State Uplands

38 Angus Brodie, Forest Resources Division Manager

39
40 Mr. Blum provided the process for the Western Washington Sustainable Harvest Calculation,
41 which includes context with other plans, Sustainable harvest RCW's and Policy for Sustainable
42 Forests, Review of 2004 and 2007 calculations, and a timeline. He noted that for the east-side,
43 DNR is in the process of gathering new inventory data for major blocks of land and will keep
44 things moving on the west-side prior to adopting an east-side sustainable harvest calculation. Mr.
45 Blum spoke about the longer term timeline and major state lands planning projects: the current
46 sustainable harvest calculation (SHC), the Marbled Murrelet long term conservation strategy,
47 and adjusting the decadal SHC and OESF Forest land plan for the MMLTCS. First, the

1 background presentation, then an in-depth look at the modeling assumptions, the harvest volume,
2 environmental analysis, and arrearage. He added that we will need to review how we preformed
3 over time against those modeling assumptions. By June, the board will need to take action on
4 the sustainable harvest recommendation resolution.

5
6 Mr. Blum referenced the RCW's: sustained yield plans, sustainable harvest program, arrearages,
7 and sustainable harvest sale. He explained that arrearage directs the board to think about what
8 we harvested less than we projected, and what we have harvested more when moving from one
9 calculation to the next. We are directed to handle the arrearage in the most economical
10 advantageous way for the trust beneficiaries and the sustainable harvest sale. RCW directs the
11 board to offer for sale the sustainable harvest calculation. He spoke about the policy for
12 sustainable forests and the definition of sustainability for sustainable harvest calculations, 20
13 sustainable harvest units, a harvest level for each unit, harvest flow controls, and to optimize the
14 economic value of the forest over long term.

15
16 There are approximately 1.4 million acres of forested land in Western Washington, of which
17 about 82,000 is natural areas. This leaves about 1.376 million acres of trust land that is being
18 considered for this harvest calculation. Two of the 20 sustainable harvest units are the Olympic
19 Experimental State Forest (OESF) and the Capitol State Forest. OESF comes out of the
20 Commission for Old Growth Alternatives, and one of the recommendations of the commission
21 was to create an experimental forest with a designated sustainable harvest level. We have
22 specific obligations in the Habitat Conservation Plan, and we measure in the context of the
23 sustainable harvest for the OESF. Back in the 1980's it was approved by the Board to create a
24 sustainable harvest unit for Capitol Forest in order to meter out the flow of volume, as it is a very
25 significant recreational area. For each of the counties, 17 of the 20 sustainable harvest units are
26 state forest transfer units. We treat each Westside county as its own sustainable harvest unit.
27 There are 498,147 acres of State Forest Transfer forest lands in Western Washington across 21
28 counties. The Forest Board was established in 1923 to manage logged and abandoned properties.
29 The lands reverted to the counties as property owners failed to pay taxes. The properties were
30 subsequently transferred to the state, and the Forest Board was established to manage the lands
31 for timber production in perpetuity. Revenues from these lands support the county and junior
32 taxing districts (such as schools, road and cemetery districts) in which they are located. The
33 Department manages these properties as trustee individually, and the reason for this division was
34 to reduce the revenue variation being distributed to the various counties into a more even-flow.

35
36 The big shift in the current calculation from the 1992 and 2004 calculations was to treat the
37 Westside as one overall calculation. Prior to that, it was treated as 5 separate calculations;
38 therefore, the change was to roll it up in to one harvest unit. He mentioned that the other way we
39 measure sustainable harvest calculation is by harvest flow control using the Capitol Forest as an
40 example. The RCW of sustained yield management is using a policy of sustained even-flow of
41 harvest for each sustainable harvest unit.

42
43 Lastly, Mr. Blum spoke about the difference between maximizing economic value of the forest
44 versus maximizing volume over time. The Department used harvest volume to calculate the
45 harvest. The objective was to regulate the harvest and maximize the long-term harvest volume.

1 Mr. Brodie presented a review of the 2004 and 2007 calculation. Chair Goldmark asked Angus
2 to inform the board how he was an integral part of the earlier work, and Mr. Brodie stated that he
3 led the technical process (the actual calculation) and also provided the environmental impact
4 statement. In 2004, the public process for the calculation was started, and in 2002 scoping
5 meetings were held around the state (6 public meetings, plus 10 informal meeting with
6 stakeholders) to understand the scope and purpose of the calculation. We then had to add new
7 information and use new technology to recalculate the sustainable harvest that was calculated
8 and adopted in the Habitat Conservation Plan in 1996. Second, the board was interested in
9 examining policies that control the harvest in terms of harvest units and regulations. In
10 December of 2003 a draft EIS was published. Seven public meetings were held around the state
11 with 330 participants. The Department also received 410 written letters and approximately 2,000
12 individual comments. The final EIS was published in August of 2004, and in September of 2004
13 a final decision was made by the board on the sustainable harvest calculation.
14

15 Mr. Brodie touched on the number of policies and procedures for the 2004 sustainable harvest
16 calculation. He referenced the sustainable harvest units, even flow policies, and harvest
17 regulation. Those three are what make up the sustainable harvest calculation, and can have large
18 consequences both on today's level of harvest and future generations. He spoke about the
19 rotation age, the Northern Spotted Owl management which was adopted under the HCP, old
20 forest components; and the policy that was published to reflect the board's request. Prior to the
21 HCP, DNR was managing owls in owl circles as required by the department's Forest Practices.
22 Mr. Brodie informed the board of the owl circle management and how the HCP took us from
23 managing owl circles to a landscape approach; approximately, 250 thousand acres of
24 encumbrance owl circle management. He went on to speak about the six alternatives
25 demonstrating a range of options from which the Board could pick and choose, with alternative 6
26 being the preferred alternative.
27

28 After the adoption of the calculation, the Washington Environmental Council (WEC) filed
29 litigation seeking a declaration that Resolution 1134 was invalid on the grounds that it was
30 adopted without proper compliance with the State Environmental Policy Act (SEPA). In
31 October 2005, Judge Armstrong rendered an opinion that the Final EIS, which provided the basis
32 for SEPA compliance for Resolution 1134, was inadequate as to impacts on the northern spotted
33 owl, riparian management, and the alternatives analyzed. This ruling vacated Resolution 1134
34 and the department's ability to implement the sustainable harvest volume anticipated to 5.97
35 billion board feet over the 2004-2014 planning decade. As a consequence, DNR estimated it
36 would harvest less than 400 million board feet per year until a legal remedy and/or an
37 administrative remedy could be achieved, which could take from two to four years. To avoid
38 this potential loss in revenue to the beneficiaries and delay in meeting several HCP objectives,
39 the department entered into settlement negotiations with the plaintiffs and interveners in
40 November 2005. In March 2006 all parties signed a settlement agreement that required DNR to
41 manage some habitat differently for the planning decade, but restored Resolution 1134. This
42 settlement avoided a costly and uncertain future for the trust beneficiaries, but will reduce by 4%
43 the sustainable harvest volume estimate of 5.97 billion board feet over the planning decade. Per
44 Policy for Sustainable Forest, the department revised and adjusted the calculation due to changes
45 in circumstances. Mr. Brodie concluded that in 2007 the Department settled the lawsuit,
46 approved the Policy for Sustainable Forests, and implemented riparian forest restoration strategy

1 for five Westside HCP planning units. The outcome was that the harvest volume was reduced
2 from 597 to 550 mmbf.

3
4 **PUBLIC COMMENTS FOR GENERAL ITEMS OF INTEREST**

5 Joel Frenderfal, Public Works for Yakima County, spoke about the issues for state aquatic lands,
6 and how they relate to both the counties and the Yakima flood control zone district. The statute
7 requires the counties and flood control district to manage flood hazard for the residents of the
8 state. DNR's change in stance on aquatic and state owned land is causing friction between DNR
9 and the county's flood control zone. Mr. Frenderfal stated that he wanted the board to
10 understand that by statute the county is the lead agency for flood control, and their liability is
11 limited by statute and they do not need DNR's approval for flood control. He requested that
12 under RCW 79.10.130 D, DNR undertake comparative management of state owned aquatic lands
13 relevant to flood control.

14
15 Chair Goldmark directed Mr. Frenderfal to make his request to the Aquatics Program, to which
16 Mr. Frenderfal responded that he made such a request over a year ago, and had not been
17 successful.

18
19 Meeting adjourned at 11:19 AM

Approved this 4th day of March, 2014



Peter Goldmark, Washington State Commissioner of Public Lands



JT Austin, Designee for Governor Jay Inslee



Randy Dorn, Superintendent of Public Instruction



F. Lee Grose, Commissioner, Lewis County

via conference call

Ron Mittelhammer, Interim Dean, College of Agricultural, Human, and Natural Resource Sciences,
Washington State University

absent

Thomas H. DeLuca, Director, School of Environmental and Forest Sciences,
University of Washington

Attest:



Sarah Vansot, Board Coordinator