

Forest Practices Board
Regular Board Meeting – May 10, 2023
ZoomWebinar and Room 172, Natural Resources Building

Members Present:

Alex Smith, Chair, Department of Natural Resources
Ben Serr, Designee for Director, Department of Commerce
Chris Conklin, Designee for Director, Department of Fish and Wildlife
Cody Desautel, General Public Member
Dave Herrera, General Public Member
Frank Chandler, General Public Member/Independent Logging Contractor
Kelly McLain, Designee for Director, Department of Agriculture
Meghan Tuttle, General Public Member
Pene Speaks, General Public Member
Rich Doenges, Designee for Director, Department of Ecology
Steve Barnowe-Meyer, General Public Member/Small Forest Landowner
Wayne Thompson, Timber Product Union Member
Vickie Raines, Elected County Commissioner

Staff

Saboor Jawad, Forest Regulation Division Manager
Marc Engel, Senior Policy Advisor
Patricia Anderson, Rules Coordinator
Terry Pruit, Senior Counsel

WELCOME AND INTRODUCTIONS

Chair Alex Smith called the Forest Practices Board (Board) meeting to order at 9:00 a.m. Introductions of Board members and staff was made.

REPORT FROM THE CHAIR

Chair Smith provided an update on Legislative activity which included:

- The programmatic Safe Harbor Agreement (SHA) bill passed both houses and the Legislature also provided DNR funds for the implementation of the agreement; and
- The final budget bill includes funds for the Adaptive Management Program.

Chair Smith also announced staffing changes including Mary McDonald to retire at the end of June.

APPROVAL OF MINUTES

MOTION: Meghan Tuttle moved the Forest Practices Board approve the February 8, 2023, meeting minutes.

SECONDED: Pene Speaks

AMENDED

MOTION: Barnowe-Meyer moved to amend line 48 on page 3 to line 6 on page 4 to read as follows:

Dr. Tim Link ~~stated that there are no fish found in this area but is complicated by a road grade that potentially gives fish access.~~ said there have not been any fish actually found in that reach. The reason for the request of a Type Np is that currently it is typed as an F stream based on the characteristics. The reason is a little complicated in that there's a legacy impact,

an old road grade, where the main creek comes down, hits the road, and then it splits. If the entire discharge went into the main fish creek, where there are basically brook trout that fish could potentially access that reach. Currently we don't believe there are any in there.

Discussion:
None.

ACTION: Motion passed unanimously.

MOTION: Steve Barnowe-Meyer moved the Forest Practices Board approve the April 24, 2023, meeting minutes.

SECONDED: Meghan Tuttle

Discussion:
None.

ACTION: Motion passed unanimously.

MARBLED MURRELET RULE MAKING

Darric Lowery, Washington Department of Fish and Wildlife (WDFW) provided background on the stakeholder process for the rules assessment and recommendations for the Marbled Murrelet and included the following timeline of when it was listed as threatened or endangered.

- 1992: Federally listed as threatened
- 1993: State listed as threatened
- 1996: Federal critical habitat designated by USFWS
- 1997: Forest Practices Board enacted state Forest Practices Rules
- 2017: State up listed to endangered

Lowery said the Marbled Murrelet lives mostly at sea and uses the forested environment for nesting. The scientific data shows an annual population decline of 4.9 percent since 2001 and a 30.5 percent loss of high probability nesting habitat in Washington for years 1993-2017. He said that in response to declining populations and loss of habitat, the Washington Fish and Wildlife Commission up listed the species' status from state threatened to state endangered in 2017.

In response to the up-listed status, DNR in consultation with WDFW recommended the Board support WDFW to initiate a marbled murrelet rule assessment. The Murrelet Wildlife Working Group (WWG) stakeholder process began meetings in 2018 with the following objectives:

- Assess the status of marbled murrelet in the state.
- Evaluate how current Forest Practices Rule effects the status.
- Make recommendations to change rule to improve protections.

Lowery reviewed the recommended changes to the rules and board manual sections which include changes to:

- Definition for "Suitable Marbled Murrelet Habitat" including changing the acres of qualifying platform-bearing trees from seven to five acres in size.
- Definition for "Marbled Murrelet Nesting Platform" and most notably to include western hemlock trees 24 inches diameter at breast height and greater.

- Definition for “Occupied Marbled Murrelet Site” to include most recent Pacific Seabird Group (PSG) protocols for terrestrial survey.
- Clarify WAC 222-16-080(h)(v) for Critical Habitats designated as Class IV-Special, by requiring the no-cut inner zone and managed outer zone; and that landowners shall consult with WDFW on managed buffer prescriptions.
- Add a provision for a small forest landowner exemption in WAC 222-16-080(h)(vi).
- Board Manual Section 14 to include the most current Pacific Seabird Group terrestrial survey protocol.
- Board Manual Section 15 to change estimated number of nesting platforms and to provide guidance for certain management actions under Class IV-Special Forest practices added to WAC 222-16-080(h)(v).

Board member Pene Speaks asked if the 30.5 percent reduction in habitat was for Washington only; and if there is a known reason for the loss of habitat given that rules have been in place. Lowery said that the reduction of habitat is for Washington and there is no short answer for the loss of habitat.

Marc Engel, DNR, summarized the recommended rule changes for WACs 222-10-042, 222-12-090, 222-16-010, 222-16-080. He said the rule proposal meets the criteria for an Expedited Rule Making based on the Wildlife Working Group participants representing stakeholders that are affected by the rule making, and the assessment was completed in a negotiated manner resulting in consensus recommendations.

Engel recommended the Board accept the rule proposal and initiate an expedited adoption process as well as accept the board manual guidance recommendations.

Board member Speaks asked if the GIS mapping for critical habitat has been initiated. Lowery said the mapping has not been initiated.

Board member Speaks asked if there is capacity to make these changes. Engel responded yes if an expedited process is approved.

Board member Rich Doenges asked if federal partners are supportive and if the no net loss component correlates to additional nesting pairs. Lowery said that the new provisions for marbled murrelet habitat are intended to achieve net loss of current populations as of time of rule implementation and are not intended to address specifically the 30.5 percent loss.

Board member Doenges asked if there are any projections on what the additional protection of habitat would yield in terms of greater populations of nesting pairs? Lowery said there are not specific numbers projected that the changes are intended to enhance habitat, which will benefit the species.

Engel confirmed that the federal partners are supportive of all the work and that they were active participants with the WWG.

PUBLIC COMMENT ON MARBLED MURRELET RULE MAKING

Court Stanley, Washington State Association of Counties, said that the WWG was a great example of a collaborative process, and a consensus-based system does work. He said the counties fully support the rule changes, which make implementation in the woods easier and provides clarity. He expressed appreciation for the work of Gary Bell and Darric Lowery for providing leadership to the workgroup.

MARBLED MURRELET RULE MAKING

Board member Chris Conklin recognized the five-years of work that went into the recommendations and said that consensus is important. He said he sees how the proposed rule identifies habitat differently and considers

it a step in the right direction. He said if the rule proposal brought forward is a consensus product, work should be rewarded, and he supports the expedited process.

Chair Smith asked Engel to clarify the more recent changes and corrections made. Engel said the work to develop the rule proposal was lengthy and complicated and a provision for using the most recent Pacific Seabird Group protocols for terrestrial survey was missed in the initial mailing of materials. He said staff has made sure everything presented is correct and reflects a consensus product.

MOTION: Steve Barnowe-Meyer moved the Forest Practices Board approve the proposed rule changes to WACs 222-10-042, 222-12-090, 222-16-010, 222-16-080 relating to marbled murrelet for an Expedited Rule Making and request staff file a CR-105 with the Office of the Code Reviser. He further moved to request board staff prepare amendments to Board Manual Section 14 and 15 to bring to the Board for approval.

SECONDED: Chris Conklin

Discussion:

Chair Smith said she understands the concerns raised about the risk of expedited rule making. She said that this is an awesome example of a collaborative effort that will provide a clearer and more implementable rule. It may not be everything WDFW initially requested, however, it is a great start, and the work should be supported.

ACTION: Motion passed unanimously.

ALTERNATIVES TO PILOT RULE MAKING

Saboor Jawad, DNR, said that after the Board at their February 2023 meeting approved two pilot rules for the Adaptive Management Program, there was a discussion about whether there is an alternative way to approve scientific research to the current pilot rule process. He noted that the Board had expressed a desire to encourage more research conducted on the forested landscape of Washington State.

Jawad said staff recommends the Board consider including scientific research as an activity under Class III forest practices. He said that RCW 76.09.050 establishes four classes of forest practices and authorizes the Board to assign additional activities to each of the classes. It is possible to have certain scientific research activities included under the requirements for Class III applications, and to minimize risks and the potential for misuse, all Class IV triggers would still apply.

Jawad said if the process described meets the Board's intent, then staff will continue to develop the recommendation and report back to the Board. He said more work is needed including developing criteria defining what research is. The intent of scientific research is generally to deviate from the rules and that there could be impacts. If a research activity is structured to establish a research intent through having a clear study design, which has been independently reviewed by an academic institution with statements of impacts and accompanied ethics reviews, are possible under certain Classes of Forest Practices Applications (FPA). He said that to address cumulative impacts, there would need to be certain measures in place to understand how widely the research FPA is used across the forested landscape.

Board member Chris Conklin said that he is not concerned with the concept but that there is potential for varying results of FPA reviews, approvals, and conditioning. He said that moving forward the Board should consider the visibility of approval standards and manage cumulative effects. Jawad said staff would need extra support if certain study designs were to be considered under FPA review.

Board member Steve Barnowe-Meyer said staff has done what the Board requested and asked if there was any input from stakeholders or if there are other ideas to consider. Jawad responded that staff have not had a chance to consult with any stakeholder groups. If the Board's decision is to pursue this route, DNR will request a stakeholder group be formed and more than one option would be considered.

Board member Barnowe-Meyer asked if TFW Policy or CMER would be consulted. Jawad responded that AMP may not be the most appropriate fit given ongoing discussions within the program on how to handle outside research. He said if in moving forward it becomes clear formal AMP consideration is needed a TFW Policy proposal would be necessary.

Board member Rich Doenges asked if DNR considered using Class IV-Special from the start to provide adequate time for the type of review they need and for a more straight forward process.

Jawad said staff did consider it, however adding more activities under Class IV may require legislative action. He said there are automatic triggers in place under Class III that would automatically provide for extra review under Class IV.

Board member Tuttle asked if DNR sees CMER studies going through this process or would there still be pilot rule making proposals come to the Board for CMER projects?

Jawad said that the AMP would benefit greatly from a more streamlined process. CMER could submit FPAs for research projects through landowners and operators.

Chair Smith asked if there were any objections to staff moving forward as outlined. The Board agreed.

CMER BIENNIAL WORK PLAN AND MASTER PROJECT SCHEDULE

Lori Clark, AMPA, shared highlights of the work plan and minor updates. She said staff is still working on the final numbers as the Legislature just approved the budget on April 23rd. There will be a final Master Project Schedule (MPS) presented to the Board in August 2023. TFW Policy approved the work plan in February 2023. Clark described the following projects planned for the 23-25 biennium.

- Prioritization
- Rule Groups (*Stream Typing, Type N, Type F, Unstable Slopes, Roads, Wetlands*)
- Critical Questions
- Resource Objectives
- Completed Projects
- Active Projects
- Master Project Schedule

Clark reported there are a total of 117 projects included in the work plan--56 completed--16 of those are ongoing and 41 projects are either on hold or under consideration. She said five line items were added to address the State Auditor's (SAO) recommendations, including onboarding and training for new members, technical editor and CMER statistical science review of the program every five years, review decision making model, principal participation, and the dashboard for the Adaptive Management program.

Clark provided a status on the following SAO recommendations.

- Synchronize CMER Work Plan and MPS
- Clarity and list program priorities
- MPS Contingency Plan
- FY 2024-25 Budget

She will continue to work with TFW Policy’s budget work group to implement these actions. The first action will be to synchronize the CMER work plan with the MPS. Clark said there is an approved project spending plan before TFW Policy and that the Board will need to approve the work plan to ensure that the AMP priorities set by TFW Policy are clearly reflected in the CMER work plan. These actions will need to be aligned for effective implementation.

PUBLIC COMMENT ON CMER BIENNIAL WORK PLAN AND MASTER PROJECT SCHEDULE

None.

CMER BIENNIAL WORK PLAN

MOTION: Pene Speaks moved the Forest Practices Board approve the CMER Biennial Work Plan and the associated MPS for 23-25 biennium.

SECONDED: Steve Barnowe-Meyer

Board Discussion:

Board Member Tuttle suggested adding language to the motion that suggest further activity on the CMER work plan in August. Board agreed that adding it to the August 2023 agenda will suffice.

Board Member Barnowe-Meyer thanked Lori Clark and staff for clearly documenting everything in the work plan.

ACTION: Motion passed unanimously. (Desautel not available for vote.)

UPDATE ON PROPOSAL INITIATION FOR THE ANADROMOUS FISH FLOOR VALIDATION STUDY

Saboor Jawad, DNR, said at the Board’s August 2022, two anadromous fish floor (AFF) options were approved for analysis. At the same meeting, the Board asked staff to begin a proposal initiation (PI) for evaluating the AFF options. DNR staff now have the capacity to begin that work and will provide regular updates moving forward.

He said the PI for the validation study will follow the process outlined in Board Manual Section 22; first to the AMPA for assessment, and then to TFW Policy. DNR staff intend to deliver the proposal to TFW Policy by their June meeting.

The proposal initiation asks five questions, and DNR is focused on answering those questions.

UPDATE ON IMPLEMENTATION OF STATE AUDITOR’S RECOMMENDATIONS

Lori Clark, AMPA, provided a status on each of the 11 approved recommendations. She said the Gantt chart is for tracking the action plan for TFW Policy and addressing the State Auditor’s recommendations and will be revised and updated as progress is made.

Chair Smith thanked all the members of the Adaptive Management Program to improve the program. She said that the changes will lead to improvement in the effectiveness of the program.

UPDATE ON BOARD MANUAL SECTION 21 GUIDELINES FOR SMALL FOREST LANDOWNER ALTERNATE PLANS

Marc Engel, DNR, described the proposed additions and changes to Board Manual Section 21. He said next steps include development of illustrations, information boxes and an Alternate Plan brochure. Staff anticipate presenting Section 21 to the Board for approval at the August 2023 meeting.

BOARD MANUAL SECTION 22 ADAPTIVE MANAGEMENT PROGRAM

Karen Zirkle, DNR, presented Board Manual Section 22 for the Board's approval. She said the revisions respond to the State Auditor's recommendations #7 and #8 by amending Parts 2.4, 6 and Appendix A to include a peer review every five years, and onboarding and training for new members. The draft section was shared with TFW Policy in March and May 2023.

Board members Steve Barnowe-Meyer and Conklin asked about ongoing training for Board members and whether it currently exists.

Patricia Anderson, DNR, said new Board members are provided with training and annual refresher training is provided as needed.

Board member Doenges asked who would provide the training and how would it occur. Zirkle responded the training materials and the how are still in development and is a State Auditor's recommendation to develop training material.

Board member Speaks, said that it is important to develop training in such a way as to provide multiple opportunities for Board members to follow-up on training materials.

Chair Smith requested staff report back in August with recommendations on recurring training for current Board members.

PUBLIC COMMENT ON BOARD MANUAL SECTION 22

None.

BOARD MANUAL SECTION 22 ADAPTIVE MANAGEMENT PROGRAM

MOTION: Kelly McLain moved the Forest Practices Board approve Board Manual Section 22 Guidelines for the Adaptive Management as recommended by the State Auditor's Office to amend Part 2.4, 6 and Appendix A, for clarity. I further move the Board allow staff to make minor editorial changes, if necessary, prior to distribution.

SECONDED: Ben Serr

Board Discussion:

None.

ACTION: Motion passed unanimously. (Desautel not available for vote.)

GENERAL PUBLIC COMMENT

Court Stanley, Washington State Association of Counties, said the Adaptive Management Program was designed to be one of the most effective tools to manage the program. The flow from CMER to TFW Policy to the Board was well thought out and if managed correctly, provides a balanced approach to adopting forest practices rules based on current science. He said the focus should be on the least cost alternative that is supported by applied science. He said he would like the minority proposal to be included in the rule making

process along with the majority proposal. Stanley acknowledged the difficult decision the Board needs to make but it will be more difficult to make if the Board does not compare the costs and the benefits of both proposals.

Dave Sweitzer, Washington Hardwoods Commission, said a study conducted by the University of Washington in 2013 found that in Washington State there is a total of 19.8 billion board feet of hardwood trees but only 8.3 billion board feet is available for harvest. This is due to regulatory restrictions primarily but also that approximately half of the standing hardwood inventory is in the core and inner zones of the forest practices riparian management zones. He said further restrictions in these zones would hurt the hardwood industry even more. He said to ensure a harmonious outcome of both the environment and the economy, it is vital to renew the rulemaking process with a science-based alternative that meets environmental standards without harming the wood products economy.

Bill Monahan, Rayonier, said Washington is an important timber-producing region, ranked the second largest producer as of September 2022. In the United States, Washington has the highest-level production for habitat and water quality approved by the US Fish and Wildlife Service, National Marine Fisheries and Environmental Protection Agency. He said the contribution from forest land is only sustained by fair and balanced forest practice regulations produced in an open public process. He said last Fall one of the alternatives was removed from the Type Np water buffer rule making process. Decisions were made behind closed doors without input from the public which hampered this Board's ability to learn more by comparing the alternatives. Monahan urged the Board to remedy this decision by allowing both alternatives brought to the Board to move through the rule making process.

Adrian Miller, Weyerhaeuser, said both the majority and minority reports for Type Np water buffer rule, responded to the science, but in different ways. He requested the Board move both proposals forward in the rulemaking process. He said it was unfortunate that politics removed this opportunity for some Board members to support a policy decision that was supported by a majority of Board members. Miller said any solution that lacks a sustainable balance and cooperative approach will not be timely or durable and perhaps more importantly, continue down an adversarial path that will make it harder to move forward in a positive way on the issues in the future.

Jason Spadaro, Washington Forest Protection Association (WFPA), said members of WFPA take the relationships with State and Federal agencies, tribes, environmental stakeholders, public and the Forest Practices Board very seriously. Their intent is to be a positive player, working to solve problems and find collaborative solutions. However, in the spirit of TFW, they are troubled by current events, and the ability to find collaborative science-based solutions. They understand the concern of climate change and the need for downstream protection. However, expecting forest landowners to mitigate for the failings of downstream land uses on water quality is unjust and represents a shift of the goals of the Forest Practices Act.

Robert Bass, WFPA, said Washington State has a unique regulatory system resulting from the TFW agreement, Forests and Fish Report and the original founders and principles in creating a collaborative, balanced, and fair process. He hopes the Board continues that tradition going forward.

Jim Peters, Northwest Indian Fisheries Commission, representing Western Washington Tribes, said from day one the Western Washington tribes have been supportive of a collaborative process, and working together with all the caucuses. He emphasized the respect they have for the process set up in the Adaptive Management Program. He said their leaders say, "we stand by our word". The word is "we accept the final outcome". Peters said they will have to review their interactions with the Board as it may seem their intentions to educate Board members on their positions may be a violation of the Open Public Meeting Act.

Carmen Smith, R L Smith Logging, Inc, said the forest industry has always tried to assure the next generation of forest practices are responsible, workable, and sustainable. Less than two percent of managed forests are harvested yearly. She said scientists, foresters and environmental groups must work together on a science-based forest practices, if not tens of thousands of acres will no longer be sustainably managed. Smith said if the Board chooses to lock up land it will make it an easier decision for landowners to develop it. All alternatives need to be evaluated and she encouraged further collaborative problem solving.

Robert Mitchell said he looks forward to the public-facing CMER dashboard as he applauds the transparency of the taxpayer-funded science and research. He said he hopes the private research will be similarly transparent. He suggested the training and onboarding material be available on-line to the public as well.

Jerry Bonagofsky, Washington Contract Loggers Association, he said he is proud to say that Washington's, forest landowners and loggers continue to do their part in sustaining healthy forests. The landowner's commitment to support science-based policies and rules has led to improved forest practices over the years to where Washington is recognized as a national leader. He said the rules were developed through collaboration and it currently seems that the collaborative approach has been abandoned. He said it is incumbent that the Board consider both the Type Np Water buffer majority and minority reports so that the result is that regulations are fair and balanced.

Dr. Elaine Oneil, Washington Farm Forestry Association, described her experience along with 11 of her neighbors, of having a protocol survey done on the stream and its feeder ditches that cross our collective properties. She said explaining to her neighbors about the needed buffers was met with disgust with government overreach. She said the purpose of the Adaptive Management Program is to find solutions that are balanced, reasonable, and are sufficient to meet the needs of all parties. Ignoring the needs of landowners - as was done in November – to meet an arbitrary temperature trigger that has been treated as a threshold by a state agency is not a durable solution. She said we can do better.

David Janicki, Janicki Logging, said the best way to increase regulations is to increase the area that is actively managed, maximizing the lumber or money to maximize carbon and diversity, whatever the goal of the landowner is. The best way to help landowners with stream mitigation and help fish is to create incentives. He concluded by stating the solution is a matter of not talking past each other and that the real elephant in the room is that 70% of the acres cannot be touched.

RULE MAKING AND BOARD MANUAL UPDATE

Marc Engel, DNR, provided a status update on the rule making for the Water Typing System and Type Np Buffer rules as well as board manual development. Rule development meetings for the Water Typing System are underway and DNR is in negotiations with the successful contract bidder for the Water Typing and Type Np buffer spatial analysis will wrap up by the end of May. The DNR internal discussions in preparation for reconvening the economic workgroup are expected to start in June.

CMER MEMBERSHIP

Lori Clark, AMPA, presented a request on behalf of Department of Ecology (Ecology) for approval of Welles Bretherton to serve as a voting member of CMER.

PUBLIC COMMENT ON CMER MEMBERSHIP

None.

CMER MEMBERSHIP

MOTION: Rich Doenges I move the Forest Practices Board approve Welles Bretherton as a voting member of CMER.

SECONDED: Vickie Raines

Board Discussion:

None.

ACTION: Motioned passed unanimously. (Desautel not available for vote.)

UPDATE ON JANUARY 27, 2023, PETITION FOR RULE MAKING FOR TIMBER HARVESTING

Mary McDonald, DNR, provided an update on the petition the Board denied on February 8, 2023. As requested by the Chair, staff continued discussions with the petitioners to understand their concerns and provide solutions, if any. McDonald said staff met with the petitioners and Island County staff to hear their concerns and to share information. She said staff reviewed the history of WAC 222-30-110 and RCW 76.09.020 which define “person” and “Limited Liability Company (LLC)” and because “person” is so broadly defined for forest practices they would not be recommending any rule or law changes. Staff encouraged the petitioners to build a working relationship with Island County staff regarding responsibilities of each agency and more dialogue between the county and the Department.

PETITION FOR RULE MAKING – WAC 222-30-110 TIMBER HARVESTING ON ISLANDS -

Mary McDonald, DNR, provided an overview on the Petition for Rule Making that was received on May 3, 2023, for Timber Harvest on Islands. The petition objectives are to address cumulative effects of the timber harvest on islands through changes to WAC 222-30-110. The petitioner requested to:

- limit clear cut harvests to 40 acres on saltwater islands, the 40-acre harvest size limit is to be calculated regardless of ownership including adjacent areas recently harvested or approved for harvest by clear cut or even aged methods; and
- establish an entity screening procedure to identify if adjacent forest lands are under a similar corporate ownership.

McDonald recommended the Board deny the request based on the following:

- The Board rejected a similar proposal in 1992 and most recently in February 2023. In the first instance, the Board rejected a similar proposal because of the recognition of private property rights and the importance of an individual’s ability to plan for actions.
- Scale of impact (WAC 222-16-010) –“Islands” means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.
- DNR is not aware of any discussions with the ten counties involved.
 - Creating a “race” to be the first landowner to harvest the 40 acres because of the limited harvest size in a specific timeframe isn’t feasible.
 - Nearly impossible to implement simultaneous applications.
 - An LLC is a legal entity according to Washington Business Corporation Act

Board Member Raines thanked staff for reaching out to Island County and meeting with Commissioner Sinclair. She said she spoke with Commissioner Sinclair earlier in the day and explained her position on the matter.

PUBLIC COMMENT ON PETITION FOR RULE MAKING

Bill Poss said he understands that a solution to the situation discussed in February was found and that the intent of the rule is to limit clear cuts of 40 acres on Islands. He said he is disappointed. He said he also understands that DNR does not support further consideration of whether surrounding acreages have been recently harvested or are under permit for harvesting.

PETITION FOR RULE MAKING – WAC 222-30-110 TIMBER HARVESTING ON ISLANDS –

MOTION: Vickie Raines moved the Forest Practices Board deny the rule making petition regarding Timber Harvesting on Islands. This decision is based on a similar concept that was rejected by the Board in 1992, recognizing the private property rights and the importance of an individual's ability to plan for actions only on one's own property. There are 10 impacted counties and DNR is not aware of any discussions with the concerns of this rule petition.

SECONDED: Steve Barnowe-Meyer

Board Discussion:

Board member Raines suggested that the petitioner have further discussions with the county for possible options.

ACTION: Motion passed unanimously. (Desautel not available for vote.)

BOARD'S 2023 WORK PLAN

Marc Engel, DNR, reviewed the changes to the work plan because of today's meeting which included adding the following to the August meeting: revised Master Project Schedule, Proposal Initiation for the Anadromous Fish Floor Validation Study; Marbled Murrelet Rule Making and Alternatives to Pilot Rule making for Research Projects.

MOTION: Steve Barnowe-Meyer moved the Forest Practices Board approve the 2023 work plan as amended.

SECONDED: Meghan Tuttle

ACTION: Motion passed unanimously. (Desautel not available for vote.)

STAFF REPORTS

There were no questions on the following reports.

- Adaptive Management Program Update
- Small Forest Landowner Office Update
- TFW Policy Committee Update
- Upland Wildlife Update

TYPE NP RULE ALLEGED PROCESS CONCERNS

Chair Smith said concerns were raised and brought to the Board's attention about the Type Np buffer vote that was taken at the November 2022 meeting. Process concerns were raised that called into question the validity of the Board's action on Type Np buffers.

Chair Smith said on behalf of DNR, the concerns that were raised puts a cloud over the vote that was taken. She said there are options for consideration on how to move forward such as the Board could rescind the vote and do a revote. If the Board chooses this path, she suggested the Board conduct a special meeting to provide sufficient public notice for public comment.

Board member Ben Serr said he shares the same concerns about the cloud over the process. His preference would be to resolve it in a clear and open process.

Board member Steve Barnowe-Meyer said the process that Chair Smith described makes sense to him. He said that the November vote was disturbing and was surprised how that process went where it did. He said

his trust level went down and he does not like being in that situation. He suggested the Board conduct a public meeting to reinvigorate the Board and build on the trust once shared.

Board member Vickie Raines said she agrees with all that has been said and would prefer to rescind the vote today so that the public is aware that the Board is being transparent. She also suggested that the Board have regular Ethics training and a refresher training on the Open Public Meeting Act. She said the meeting in November 2022 was very challenging because she attended virtually so she could not see or feel the dynamics in the room.

Board member Rich Doenges said he agrees with a future meeting to have further discussions. He said Department of Ecology is disappointed by the baseless claims put forward by Washington Forest Protection Association (WFPA). He said WFPA's action have real implications for the Forests and Fish Agreement, for Washington's waters and the regulatory stability for its practices. He said the Board supported a science-based decision that was informed by the Board's own Adaptive Management Program. Board member Doenges said the WFPA resorted to litigation threats and intimidated tactics which is contrary to the spirit and intent of TFW. He also corrected some legal arguments around Department of Ecology's regulatory authority and shared his disappointment of the disregard for their authority related to the forest practices rules related to water quality.

Board member Pene Speaks said she is disappointed on how things have developed considering a process was established with the idea of compromise, cooperation, and good faith. She said the threat of litigation has created distrust and uncertainty of what is okay and what is not. She said she feels the threat as intimidating and not in the spirit of TFW. She said she also feels like she is being forced to agree with something that she doesn't because of the threat of litigation.

Board member Meghan Tuttle said Board members should be looking at the next generation of forest practices, and to build on the original foundation of that collaboration. She said it is disappointing to get to this point where Board members are feeling threatened by each other. Missing for her since joining the Board is having tough, deliberate discussions; being honest and open about interests and positions. She said as difficult as this is and as upset that she is from the industry perspective about the vote in November and the lack of discussion about why people were voting the way they were, she understand how others might be upset over the threat of litigation. Board member Tuttle is open to having more difficult conversations and to make time on the Board agendas to do some of the hard work that is being done within the Adaptive Management Program.

Board member Kelly McLain said she agrees with several comments made by Board members. She said the one thing that resonates for her is an opportunity, as mentioned, to dispel some of the cloud of secrecy that seems to persist over the November meeting. She appreciates and supports the idea of some type of future action by the Board where there is further discussion about the November vote.

Board member Chris Conklin said fact-checking is important in our culture over the last few years. He said he is trying to figure out what is true and what is not, so that the Board can move forward. He believes there is a path forward where the Board learns from it and are stronger from it.

Board member Dave Herrera said the Board followed the process from beginning to end. He said the Board acted and the outcome is what it is. Regarding the OPMA process, he does not believe a violation was committed. He said it is frustrating to know there is this huge mistrust among Board members and believes it started developing seven or eight years ago. It's been building for a long time, and the Board needs to have a conversation about how to fix it. He is frustrated hearing the word "balance". He said the balance shifted long ago from the tribes to everyone else. The tribes do not have anything right now in terms of fishing for Chinook salmon. Timber landowners are all working, making money, most of the tribes are not. It feels like Forest Practices Board May 10, 2023, Meeting Minutes – Approved August 9, 2023

the tribes are expected to come to the table and agree to do something that is going to make their situation worse.

Board member Wayne Thompson said he is disappointed in the alleged process concerns and that trust has certainly been shaken from labor unions standpoint. He said they were willing to cooperate and work together to figure out how to fix these issues and support having the discussions necessary to move forward from this. He also agreed with Board Member Raines' suggestion to have more OPMA training.

Board member Frank Chandler said he is overwhelmed and disappointed with the comments. As a new Board member, he was not expecting this. This is a complicated subject and there are several other things that impact fish, not just forestry.

Chair Smith recapped some of the comments such as regular trainings and refreshers on all the various rules and laws for the Board members. She also appreciated the comments on the Board needing to rebuild trust. She suggested the Board conduct a training/workshop where the Board have those difficult conversations to start that rebuilding process.

Regarding the Type Np buffer vote in November, the Board discussed when and if they want to take any action related to the concerns that were raised. Chair Smith proposed a special meeting for further discussion and possible action. This would allow for the public to be notified of the Board's intent.

The Board decided to hold a special meeting. Staff will poll the Board members for a date where all Board members can attend.

Chair Smith announced the Board will convene an executive session for approximately 20 minutes to discuss potential litigation.

EXECUTIVE SESSION

Convened from 3:45 p.m. – 4:05 p.m.

Meeting adjourned at 4:10 p.m.