As required by the Administrative Procedure Act Chapter 34.05 RCW

CONCISE EXPLANATORY STATEMENT AND RESPONSIVENESS SUMMARY

ADOPTION OF AMENDMENT TO THE FOREST PRACTICES RULE
WAC 222-16-080 Critical habitats (state) of threatened and endangered species

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February 14, 2012

TABLE OF CONTENTS

1. Introduction pg. 1
2. Content of the Rule Amendment and Reasons to Adopt pg. 2
3. Comments Summary pg. 2
4. Differences between Proposed and Final Rule pg. 3
5. Adoption Date pg. 3
6. Rule Making Timeline and Opportunities to Participate pg. 3

Introduction

Washington state agencies are required to provide a concise explanatory statement to any person upon request or from whom the agency receives comments during a rule making (RCW 34.05.325(6)). Before an agency adopts a rule, the agency:

...shall prepare a concise explanatory statement of the rule:

(i) Identifying the agency’s reasons for adopting the rule;
(ii) Describing differences between the text of the proposed rule, as published in the register and the text of the rule as adopted, other than editing changes, stating the reason for the differences; and
(iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.
Content of Rule Amendment and Reasons to Adopt

The Forest Practices Board’s Critical Habitat rule making amends WAC 222-16-080 Critical habitats (state) of threatened and endangered species in subsections (1), (5) and (6) by removing the bald eagle (Haliaeetus leucocephalus) and peregrine falcon (Falco peregrinus) from the Board’s critical habitats list, removing the option to use a bald eagle site management plan, and updating the common and scientific names of the Western pond turtle (Clemmys marmorata).

This rule making brings the Board’s critical habitats (state) rule in WAC 222-16-080 into alignment with the following federal, state, and scientific society actions:

- The removal by the United States Fish and Wildlife Service (USFWS) of the bald eagle (Haliaeetus leucocephalus) and the peregrine falcon (Falco peregrinus) from the Federal List of Endangered and Threatened Wildlife.
- The removal by the Washington Fish and Wildlife Commission of the bald eagle and peregrine falcon from the state’s threatened and endangered species lists, WAC 232-12-011 and -014.
- The removal by the Washington Fish and Wildlife Commission of the requirement in Department of Fish and Wildlife rules, WAC 232-12-292, for a bald eagle site management plan unless the bald eagle is listed under state law as threatened or endangered.
- The change to the common and scientific names of the Western pond turtle (Clemmys marmorata) to the Pacific pond turtle (Actinemys marmorata) as recommended by three North American scientific societies that deal with fish, amphibian, and reptile issues: The American Society of Ichthyologists and Herpetologists, the Herpetologist’s League, and the Society for the Study of Amphibians and Reptiles.

The bald eagle and the peregrine falcon continue to be protected by the USFWS under the federal Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act, and by the Washington Fish and Wildlife Commission under state laws.

Updating the common and scientific names for this pond turtle does not modify the protection afforded to this turtle under the forest practices rules.

Comments Summary

The Board conducted two rule making hearings. All comments received on the Critical Habitat rule during the public review were in support of the rule as proposed.

At the January 3, 2012 Olympia hearing, comments on the Critical Habitat rule proposal were received from Longview Timber Corp. (oral and written comments #12-01), Washington Forest Protection Association (oral and written comments #12-03), and Hancock Timber Resource Group (oral comment #12-04).

At the January 5, 2012 Ellensburg hearing, there were no oral or written comments on this rule proposal. Additionally, the Board received e-mailed comments on the Critical Habitat rule proposal from Rayonier (comment # 12-09).
Differences between Proposed and Final Rule

There is no difference between the proposed and the final rule.

Adoption Date

The Board adopted the rule proposal at its February 14, 2012 meeting. The rule becomes effective March 18, 2012.

Rule Making Timeline and Opportunities to Participate

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>08/09/2011</td>
<td>Forest Practices Board meeting: Critical Habitat (A.K.A. Bald Eagle) rule making with opportunity to comment</td>
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<tr>
<td>08-11/2011</td>
<td>Staff works with Department of Fish &amp; Wildlife’s Wildlife Work Group on rule proposal</td>
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<td>09/08/2011</td>
<td>Forest Practices Rule Making Activity update sent to interested parties on Board’s mailing list</td>
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<td>09/14-10/14/2011</td>
<td>30-day review of draft rule language by Washington Department of Fish and Wildlife and counties (RCW 76.09.040(2)) and affected Indian tribes</td>
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<td>11/08/2011</td>
<td>Forest Practices Board meeting: Critical Habitat rule proposal with opportunity to comment</td>
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<td>12/07/2011</td>
<td>Proposed Rule Making (CR-102) with hearings information, proposed rule language, and preliminary economic analysis published in Washington State Register (WSR 11-23-105 filed 11/18/2011); public review and comment</td>
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<td>12/07/2011</td>
<td>Forest Practices Rule Making Activity update including hearings information sent to interested parties on Board’s mailing list</td>
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<td>12/07/2011</td>
<td>SEPA checklist and Determination of Nonsignificance distributed for comment</td>
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<td>12/16/2011</td>
<td>DNR Media Advisory on Critical Habitat rule making hearings</td>
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<td>01/03/2012</td>
<td>Rule making hearing in Olympia</td>
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<tr>
<td>01/05/2012</td>
<td>Rule making hearing in Ellensburg</td>
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<tr>
<td>01/06/2012</td>
<td>Due date for comments on Critical Habitat rule proposal and SEPA analysis</td>
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