

1 **FOREST PRACTICES BOARD**
2 **Regular Board Meeting – February 10, 2021**
3 via Zoom

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

7 **Members Present**

8 Stephen Bernath, Chair, Department of Natural Resources
9 Ben Serr, Designee for Director, Department of Commerce
10 Bob Guenther, General Public Member/Small Forest Landowner
11 Brent Davies, General Public Member
12 Carmen Smith, General Public Member/Independent Logging Contractor
13 Dave Herrera, General Public Member
14 Jeff Davis, Designee for Director, Department of Fish and Wildlife
15 Kelly McLain, Designee for Director, Department of Agriculture
16 Rich Doenges, Department of Ecology
17 Tom Nelson, General Public Member
18 Vicki Raines, Elected County Commissioner
19

20 **Vacant:**

21 General Public Member
22 Timber Product Union Member
23

24 **Staff**

25 Joe Shramek, Forest Practices Division Manager
26 Mary McDonald, Forest Practices Assistant Division Manager
27 Marc Engel, Senior Policy Advisor
28 Patricia Anderson, Rules Coordinator
29 Phil Ferester, Senior Counsel
30

31 **WELCOME AND INTRODUCTIONS**

32 Chair Bernath called the Forest Practices Board (Board) meeting to order at 9:05 a.m. Roll call of
33 Board members and introduction of staff was made.
34

35 **ZOOM MEETING INSTRUCTIONS**

36 Marc Ratcliff, DNR, provided instructions on how the Zoom meeting would be conducted and how to
37 provide public comment.
38

39 **REPORT FROM CHAIR**

40 Chair Bernath announced Paula Swedeen had resigned from the Board. She was recognized for ten and
41 a half years of service to the Board.
42

43 Chair Bernath reported on the following:

- 44 • The Center for Conservation Peacebuilding (CPeace) has been contracted to implement a three-part
45 process to resolve natural resources issues in conflict by: (1) engaging with caucus principals to
46 work through processes, time commitments and substantive priorities; (2) work within caucuses on
47 same-side alignment to address desires and needs; and (3) hold conflict transformation workshops

1 with stakeholders. CPeace plans to conduct the workshops in April and May. He encouraged the
2 caucus representatives wishing to have same-side discussions to let CPeace know.

- 3 • Budget update – the Governor’s budget includes funding to:
 - 4 ○ Make the Forest Practices operating program whole at carry forward levels;
 - 5 ○ Fund the Adaptive Management Program (AMP) budget within \$100,000-200,000 of the
6 funding level requested by DNR on the Board’s behalf;
 - 7 ○ Develop the new electronic application, payment and signature and tracking program,
8 FPonline, through the Department of Enterprise Services’ technology budget;
 - 9 ○ Fund the herbicide application work: update Board Manual Section 13; add the review of
10 herbicide Forest Practices Applications (FPA) to the Compliance Monitoring Program; and
11 perform research for non-chemical alternatives for the management of vegetation;
 - 12 ○ Provided for another full time employee for the small forest landowner technical assistance,
13 and
 - 14 ○ Increase the Forest Practices Program-administered capital budget programs: Forest Riparian
15 Easement Program, Family Forest Fish Passage Program, Rivers and Habitat Open Space
16 Program.
- 17 • DNR requested legislation, SB 5411, would provide authority for DNR to enter into an agreement
18 with the federal government for a programmatic Safe Harbor Agreement for the northern spotted
19 owl.
- 20 • The status of the North Blewett Spotted Owl Special Emphasis Area evaluation has been postponed
21 due to unexpected personal matters that affected key staff.
- 22 • DNR has asked the Legislature for an extension to the due date for the Small Forest Landowner
23 Demographic Report, which is required every four years. The reason is to incorporate the
24 information provided in the University of Washington’s SB 5330 Report.
- 25 • The [2020 Family Forest Fish Passage Program implementation report](#) has been completed.

26
27 **APPROVAL OF MINUTES**

28 **MOTION:** Tom Nelson moved the Forest Practices Board approve the November 10, 2020 Board
29 meeting minutes.

30 **SECONDED:** Vicki Raines

31
32 Board Discussion:

33 None

34
35 **ACTION:** Motion passed (10 Support / 1 Abstention (Guenther)).

36
37 **SMALL FOREST LANDOWNER TREND AND POLICY ANALYSIS REPORT (ESSB 5330)**

38 Luke Rogers, University of Washington (UW), provided an overview of the goals and sources of
39 information used to complete the [Small Forest Landowner Trend and Policy Analysis Report](#). They
40 evaluated trends from the 2007 demographic data as compared to data collected in 2019 to understand
41 land use changes. Of approximately 202,000 landowners, 77% own less than 20 acres and these
42 landowners collectively own about 22% of the forest land base in Washington. He explained that
43 although the results can be complicated, they found an increase in individual forest land ownership by
44 more than 17,000 owners, a decrease of 130,000 forested acres and a net change of 209,500 parcel
45 acres.

46
47 Brian Danley, UW, shared demographic information of small forest landowners. Survey responses
48 indicate that approximately 14% of landowners anticipate selling some portion of forest land in the

1 next five years and about one in five will submit a FPA over a 20-year period. There is a strong
2 correlation of those owning larger forested parcels with active forest management. He said that
3 landowner objectives are comparable with general public land values – personal attachment to the land
4 and environmental benefits rank higher than forest management or income reasons. The expressed
5 concerns are property taxes, wildfire threat and proximately to nearby development, whereas
6 regulations ranked the lowest concern. He suggested this is because most landowners encounter
7 regulations for the first time when they plan to harvest.
8

9 Danley said although the Small Forest Landowner Office received favorable reviews, it lacks adequate
10 resources to implement its legislative mandates. The Family Forest Fish Passage Program (FFFPP) is
11 viewed as a good expenditure of public funds, but some indicated that the projects could have been
12 installed for less money. The biggest concerns regarding the Forest Riparian Easement Program
13 (FREP) is the lengthy payment timeline and the low compensation for eligible timber. The most
14 common reason for not applying for either of these programs is a lack of program awareness.
15 Landowners with larger forested acres generally utilize alternate plans and only one in five indicated a
16 negative overall experience with alternate plans. For those landowners that indicated a concern, they
17 thought process was difficult to navigate and the outcomes do not allow for more available value or
18 trees than using standard rules.
19

20 Sergey Rabotyagov, UW, shared factors leading to forest land sales/conversions and policy
21 recommendations. He said riparian buffer requirements are not the driving factor for land sale
22 decisions or a conversion to residential use. Family circumstances or financial needs were cited as the
23 primary determination for selling land or subsequent conversion. He said landowners with larger land
24 holdings are less likely to convert out of forestry.
25

26 The report's policy recommendation include:

- 27 • Secure funding for the Small Forest Landowner Office and landowner assistance (increase
28 education, outreach and technical assistance);
- 29 • Promote a broadening of a designated Forest Land Program;
- 30 • Provide more funding for the FFFPP;
- 31 • Support information infrastructure for better policy (maintain parcel databases and periodic
32 landowner surveys);
- 33 • Based on conditional regulatory approach, continued to fund the FREP;
- 34 • Consider and offer competitive conservation easements;
- 35 • Consider simplification to the forest practices rules, including the addition of small forest
36 landowner-specific rules and provide additional alternate plan templates;
- 37 • Support peer-to-peer small landowner networks for learning opportunities and coordination
38 regarding land sales within landowner categories;
- 39 • Provide a menu of carbon policy options and incentives; and
- 40 • Support and perhaps simplify transfer of development right programs.
41

42 Board member Davies asked for clarification regarding how often small forest landowners typically
43 harvest.
44

45 Danley said that over the span of 20 years, one out of five engaged in active forest management and
46 will have submitted at least one FPA. The 20-year span is typical of landowners with larger forested
47 acres.

1
2 Board member Nelson encouraged the team to reach out to landowners in rural counties for
3 understanding tax-zoning structures and how that might affect land use decisions.
4

5 Rogers clarified that a land use change is tricky to assess because although the net change in forest
6 land has decreased, they found that the change from the number of nonresidential parcels with forest
7 land to a residential land use with forest land has increased by 50,000 acres over the past 12 years.
8

9 Chair Bernath asked how the current acre threshold for not requiring an FPA was addressed in their
10 evaluation and asked for clarification regarding the changes in landowner acres/ownership.
11

12 Rogers said the team used the less than two-acres of forest land classification as the cutoff. He
13 confirmed that there is an influx in the small forest landowner group based on a decrease in large
14 ownership and land divisions.
15

16 Board member Davies asked for clarification regarding the quantity of forest landowners owning
17 larger parcels and how much timber is harvested on an average basis.
18

19 Rogers said they did not evaluate harvested amounts since they do not have access to Department of
20 Revenue tax records. He said the shift is towards more forest landowners owning smaller forested
21 parcels than in the past.
22

23 Board member Doenges asked if they were able to find a correlation for decision-making motivations
24 (financial or regulations) in Washington as compared to landowners in Idaho or Oregon.
25

26 Rabotyagov said it is not an either/or question. The evaluation showed that traditional land objectives
27 of large forest landowners is not generally the same for the small forest landowner spectrum. He said it
28 is often difficult to assess similar objectives due to heterogeneous values.
29

30 STATE AUDITOR PERFORMANCE AUDIT REPORT

31 Chair Bernath conveyed that in May 2018, the Board requested the Washington State Auditor's Office
32 (SAO) conduct a [performance audit on the AMP](#). The report was received on January 22, 2021. He
33 said the Board has until February 19 to respond to the audit. The report, along with the response if
34 agreed to today, will be discussed at the Joint Legislative Audit and Review Committee meeting in
35 March 2021. He added that once the presentation and discussion has concluded today, staff will
36 present a draft response letter for the Board's consideration.
37

38 Jolene Stanislawski, SAO, began the presentation by thanking DNR management, Board members,
39 caucus members and AMP staff for their help and cooperation during the audit. The audit focused on
40 the AMP processes, whether it was meeting its' requirements and if efficiency could be improved. She
41 said the audit's key findings are:

- 42 • The program is not operating as intended;
- 43 • The program will languish without change, putting Washington at risk for litigation; and
- 44 • Using practices from similar adaptive management programs could help the Board's AMP improve
45 decision-making, accountability and transparency.
46

47 Renee Lewis, SAO, said while formal rule making is not the only measure of success, the program has
48 produced only two science-based rule changes since 2006. The reasons for this are because the
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1 consensus-based voting model has created barriers to change and program processes, rules and
2 guidance are not set up to ensure participants follow all requirements. She said they heard from several
3 participants that some members have elected to re-hash already agreed decisions and even when
4 hurdles are completed, they are not necessarily finalized. They found that that dispute resolution has
5 been treated as an option instead of a requirement and some do not want to invoke dispute resolution
6 because it may upset relationships. Some caucus members indicated that without change, the state risks
7 litigation and not meeting federal requirements.

8
9 Stanislawski said they identified a series of recommendations for the Board to consider.

10 Recommendations to alleviate delays include:

- 11 • Adopt an alternative to the consensus decision-making model;
- 12 • Require participation from high-level principals;
- 13 • Update Board Manual Section 22 to reflect the rule that states the dispute resolution process is
14 required if consensus cannot be reached;
- 15 • The Board should set a trigger for dispute resolution;
- 16 • Implement a net-gains approach; and
- 17 • Adopt decision criteria, so actions are determined at the front of a project.

18 Recommendations to improve accountability:

- 19 • Conduct a science peer review of the program every five years;
- 20 • Create a ‘onboarding’ training process for new Timber, Fish and Wildlife (TFW) Policy
21 Committee (Policy) and Cooperative Monitoring, Evaluation, and Research Committee (CMER)
22 members to have an understanding of their roles;
- 23 • Develop procedures to ensure required biennial performance audits are conducted; and
- 24 • Implement a tracking system that follows each stage of a project and shows how that work aligns
25 with program goals.

26 Recommendations to increase transparency:

- 27 • Create a public-facing dashboard that provides real-time information on the rules being tested;
28 project schedules and budget updates; and future timelines including those set by other agencies.

29 Recommendations to the Legislature:

- 30 • The Board should give the appropriate natural resource committees periodic updates on program
31 progress; and
- 32 • If the Board is not able to reach a decision after consulting with caucus principals regarding
33 consideration of alternative decision models, the legislature may need to intervene.

34
35 Chair Bernath asked about the net gains approach and if they would consider the Board’s decision-
36 making process for prioritizing projects and providing a budget for the work plan an example of a net
37 gain approach.

38
39 Stanislawski said that auditors only focused on the decision-making process at the end of each project
40 and how that leads to making recommendations to the Board.

41
42 Board member Doenges asked how the auditors gathered information and if they would change
43 anything about that process. He said he understood the origins of the consensus approach was to ensure
44 that every caucus had a say and that consensus would provide a remedy for the problem of ongoing
45 litigation.

1 Stanislawski said they routinely use the expertise within agencies and programs to communicate on
2 highly technical information. She acknowledged some changes they have made given participant's
3 feedback. In assessing how to mitigate possible litigation when consensus is not reached, they found
4 that similar programs that do not use a full consensus approach have rarely faced litigation issues.
5

6 Lewis said participants indicated that the program needs to do something now to make the decision-
7 making process more nimble. Even though using litigation was how some groups operated prior to
8 consensus, there are some caucus members currently considering litigation within the consensus
9 process. She said the audit team believes the best way to reduce potential litigation is to make decision-
10 making easier to move the process forward.
11

12 Board member Nelson said he agreed with the recommendation to have clear decision criteria. He felt
13 the report missed an important point – that the large landowners supported the original agreement to
14 ensure fifty years of rule making stability. At that time, twenty to thirty percent of their property
15 shifted from timber production to other ecosystem values. He said he would like those 'gives' and
16 other resource improvements completed by landowners recognized in the response to the legislature.
17

18 Stanislawski said they print formal responses in the report and it will be up to SAO management to
19 make other changes if needed.
20

21 Board member Herrera said he thought the audit was refreshing and that he appreciates having people
22 not connected to the program help the Board look at what they are doing. He agreed that on the policy
23 side of things, it should not be complex and he felt the audit alludes to that. He said he looks forward
24 to moving some of the recommendations forward.
25

26 Board member Davis said he appreciated the third-party neutral review and encouraged the auditors to
27 include in the report those instances when a consensus outcome suggested no changes were needed to
28 the rules.
29

30 Chair Bernath said he would appreciate it if in two years, the SAO would be willing to do the follow-
31 up audit to see what progress has been made.
32

33 Melissa Smith, SAO, said the Chair's request would be considered within their current SAO process.
34

35 Mark Hicks, Adaptive Management Program Administer (AMPA), presented a draft response letter for
36 the Board to consider in response to the State Auditor's report. The letter outlines the Board's next
37 steps in addressing the report's recommendations. The draft letter contains responses in three bins for
38 who is on point to make those changes – by caucus principals through the CPeace effort, by Policy and
39 CMER members and finally by those who oversee administrative and/or rule changes (AMP staff or
40 Board staff). He said staff could provide suggestions for actions on the recommendations at the
41 Board's May 2021 meeting.
42

43 Board member Nelson said he appreciated the approach for a generalizing the responses into three
44 "buckets". He also suggested that some items in the second bucket be added to first bucket.
45

46 Board member Davies asked what the decision factor was in having caucus principals rather than
47 having the Board address the recommendations.
48

1 Chair Bernath did not believe the Board could successfully do this on its own and noted that the audit
2 reported that the lack of principal involvement was a concern. The consensus decision-making process
3 was a key component in the original negotiation by the principals and altering that could change the
4 entire process.

5
6 Several Board members voiced support for receiving a timeline to address recommendations at the
7 May 2021 Board meeting, revising topics into specific bins, and the recognition that the report is an
8 opportunity to make program improvements.

9
10 **PUBLIC COMMENT ON STATE AUDITOR'S PERFORMANCE AUDIT REPORT AND**
11 **DRAFT RESPONSE**

12 Peter Goldman, Washington Forest Law Center, said the auditor's report clearly reflects the program is
13 not operating as intended and that the lack of completion for a water-typing rule is clear evidence of
14 dysfunction. He used the two Type Np lithology studies as another example of ineffective AMP
15 decision-making after receiving clear scientific results. He said his caucus has concerns with three
16 points in [WFPA's letter addressing the auditor's report, dated February 8, 2021](#): (1) they disagree that
17 a consensus approach is to protect the minority from the "tyranny" of the majority; (2) WPFA's
18 defense of a consensus approach ignores the settlement agreement reached in 2012 that provided for
19 majority/minority report when consensus is not reached; and (3) WFPA's belief that the rules should
20 not be modified and sets an impossibly high bar for doing so. He encouraged the Board to pay serious
21 attention to the auditor's report and said the Conservation Caucus is ready to assist in this effort.

22
23 Mark Doumit, Washington Forest Protection Association, said he believes the audit points out some
24 things that can make the process work better. He understands there is angst over some of the
25 performance audit recommendations. He acknowledged there is a lot more to do, but it is important to
26 remind folks about all the environmental protections completed over the years by timber landowners.
27 He noted that the report recognized that the number of rule changes is not the only measure of success.
28 If studies find a rule to be effective and if Policy recommendations no change to the Board, then that is
29 a measure of success. He said WFPA stands ready to work with the principals in supporting the state
30 in responding to the audit.

31
32 Steve Barnowe-Meyer, Washington Farm Forestry Association (WFFA), said the TFW Agreement
33 was supported based on the assumption that everyone wins through commitment to a consensus
34 decision-making approach. He said he believes the consensus process has been effective and has
35 proven that sound science-based recommendations go to CMER and policy-based decisions reach the
36 Board. Given some misunderstandings in the auditor's report, he felt the auditors may have been
37 confused by the technical nature of the rules and the distinction between rule and guidance. He said he
38 strongly recommends that the Board does not move from a consensus-based approach for the AMP. He
39 said many of the suggested program refinements do have merit/consideration before the Board, but
40 those that have connection to rule or statute demand immediate attention by the Board.

41
42 Ray Entz, Kalispell Tribe, said he is frustrated because the eastern Washington tribes have voiced
43 concerns to the Board over the last several years that point to the same issues the auditors identified.
44 He said he does not think the decision-making process needs to change, but individuals need to change
45 if they are not committed to the underlying principles of the AMP. He said the CPeace piece is very
46 important, but will be ineffective without the necessary accountability of those engaging in the AMP.

1 Court Stanley, Washington State Association of Counties, said the counties are committed to making
2 positive changes to the program. He suggested that the measure of success needs to be broadened to
3 achieve the four goals of Forests and Fish Report and that improvements are needed for the on
4 boarding of Policy and CMER representatives. Although important, CPeace alone cannot fix
5 accountability within the AMP - individuals must also step up. He said the program's ground rules and
6 the firewall between Policy and CMER needs to be enforced. He said the recommended net-gains
7 approach could be extremely valuable. He said dispute resolution is a good thing and suggested that if
8 the items he mentioned are functioning, then the consensus-based approach will work.

10 Ken Miller, WFFA, said few small forest landowners understand or appreciate the AMP. Despite it
11 being exasperatingly slow, WFFA supports the current decision-making model – it is the best option
12 available to resolve tough issues. He said the bond amongst members should overshadow the science
13 gaps and produce simpler common sense solutions. He said appreciation for the role that small forest
14 landowners play in the community and providing incentives could help landowners achieve greater
15 conservation benefits. He said rule changes should only occur when significant science supports a
16 change and balances the four Forests and Fish goals. He said efforts such as the CPeace process and
17 outside process audits could help the AMP.

19 STATE AUDITOR'S PERFORMANCE AUDIT REPORT

20 **MOTION:** Vicki Raines moved the Forest Practices Board authorize the Board Chair to provide the
21 formal response letter to the State Auditor's Office, on behalf of the Board, based upon
22 the Board's discussion and guidelines for items to be included in the draft response
23 letter.

25 **SECONDED:** Bob Guenther

27 Discussion:

28 Chair Bernath recapped two suggestions made earlier in the meeting: (1) an opportunity for
29 improvement; and (2) add the "decision criteria" to bucket one.

31 Board member Guenther said he supports the two additional suggestions.

33 Board member Nelson supports the draft letter with the additions suggested. He suggested an
34 amendment to the motion to change the verbiage "formal response" to "proposed response letter" or
35 "attached".

37 Board members Raines and Guenther agreed to the friendly amendment.

39 **ACTION:** Motion withdrawn

41 Draft response letter was revised to include the two additions.

43 **MOTION:** Vicki Raines moved the Forest Practices Board authorize the Board Chair to provide the
44 formal response letter to the State Auditor's Office on behalf of the Board, based on the
45 amended draft letter presented with this motion. ~~The Board Chair can work with Board~~
46 ~~members for minor corrections.~~

48 **SECONDED:** Bob Guenther

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Discussion:

Joe Shramek, DNR, summarized the changes to the Board’s letter and clarified that the second sentence is to provide the Chair flexibility to make minor changes if it comes up after the meeting.

Board member Nelson agreed with the changes in the letter and suggested a friendly amendment to remove the second sentence in the motion.

Board member Doenges said he supports retaining the second sentence in order to make corrections to the “matters of fact” within the performance audit report.

Board member Nelson agreed that there are corrections needed to the report, but said he does not support changing a letter after the Board has approved a presented document.

Chair Bernath proposed Board member Doenges contact the SAO directly with his factual concerns.

Board members Raines and Guenther agreed to the friendly amendment to remove the second sentence.

ACTION: Motion passed unanimously.

GENERAL PUBLIC COMMENT

Darin Cramer, Washington Forest Protection Association, referring to their [comment dated February 8, 2021](#), said the need to discuss and develop clear and measurable goals for the water typing rule has not occurred. Additionally, he said there is a need to speed up the efforts to improve relationships. He said they continue to disagree with the approach to screen the 2001 CMER eastern Washington fish data. He said they would like to be aware of and involved with the remaining work and that the workgroup should be meeting as the work is progressing.

Ellie Belew, member of the Sustainable Forestry Roundtable, asked the Board to [take action](#) to alleviate several problems in the small forest landowner long-term application process. She used the City of Roslyn’s long-term application approved in 2018 as an example. She said the city is making substantive changes to their approved FPA without public notice or review. She asked that DNR: (1) provide public notice of all changes via the Forest Practices Application Review System; (2) allow a minimum 2-day comment period on the required five-day notice; and (3) explain what constitutes a significant application change. She asked that coordination occur to discuss these points.

Ken Miller, WFFA, provided a brief overview of the six-year progress with the low impact template proposal. He said a lot of work has gone into this proposal to gain an understanding of the template’s function and application. Currently, he said Policy is in stage 2 of dispute resolution. While he is hopeful a consensus compromise will occur, he said he is unclear whether a science-based proposal can come back to the Board without having the six questions answered by CMER. He concluded by stating that he did not see how seven years of effort on a science-based proposal can be concluded without ever having meaningful collaboration on all of the science that was brought forward.

Kendra Smith, county caucus member, said the Board has heard from WFFA representatives and now recommendations from the AMP audit that performance targets are needed to understand the desired

1 water typing rule outcomes and that decision criteria development is needed for determining action.
2 She said in the meantime, folks are stuck and without performance targets, folks cannot move forward.

3 4 **EXPEDITED RULE MAKING FOR CLARIFICATIONS TO TITLE 222 WAC**

5 Marc Ratcliff, DNR, requested the Board adopt the rule clarifications that make minor editorial
6 corrections to statute references, typographical errors and clarify DNR's process for riparian easement
7 assessments. He said this was an expedited rule making process, which allowed the Board to skip the
8 required public hearing and other normal analyses for substantive rule makings.

9
10 The CR-105 was filed with the Code Reviser's Office and published in the Washington state register
11 on December 16, 2020. A required 45-day comment period closed on February 2, 2021. No objections
12 to the rule making were received. He said if the Board adopts the amendments, the rule will be
13 effective approximately 30 days – late March or early April – after filing the CR-103 with the Office of
14 the Code Reviser.

15
16 **MOTION:** Ben Serr moved the Forest Practices Board adopt the expedited rule proposal and
17 request staff to file a CR-103 Permanent Rule Making with the Office of the Code
18 Reviser. This rule making made minor corrections and clarified existing language
19 without changing the effect of the rules.

20
21 **SECONDED:** Jeff Davis

22
23 Discussion:

24 Chair Bernath asked whether any training would be needed.

25
26 Ratcliff responded that training is not needed; however, it may be possible to share the amendments
27 with the TFW community at region meetings.

28
29 **ACTION:** Motion passed unanimously.

30 31 **PRESENTATION OF THE EASTSIDE TYPE NP RIPARIAN EFFECTIVENESS PROJECT** 32 **(ENREP) AND PILOT RULE MAKING**

33 Mark Hicks, AMPA, provided an overview of the goal of the ENREP and the request for a Pilot rule.
34 The project's goal is to determine the extent the eastside Type Np stream riparian harvest prescriptions
35 in achieving performance targets. The project observes water temperature change, the magnitude of
36 change in stream flow and relationship between observed changes in resource conditions and forest
37 management activity after two years. He said it uses a before-after/control-impact study design.

38
39 He said consensus was reached in both CMER and in Policy for requesting the Board's approval for a
40 Pilot rule to support scientific testing within the ENREP study. He mentioned that the Board has
41 approved pilot rules in the past, most recently the Type Np Soft Rock Study.

42
43 The study includes measuring the effects of buffering and not buffering sections of Np streams that go
44 seasonally dry. The Pilot rule is needed for the study to harvest approximately 200-feet of the required
45 500-foot buffer applied to an individual Np stream upstream from a Type F stream. He said the Pilot
46 rule would allow authorization for the landowner to clear-cut the study reach identified by the project
47 team.

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PUBLIC COMMENT ON PILOT RULE MAKING

Ray Entz, Kalispel Tribe, said the eastern Washington tribes are supportive of the Pilot rule request.

ENREP PILOT RULE MAKING

MOTION: Bob Guenther moved the Forest Practices Board approve the pilot rule making for the Eastside Type Np Riparian Effectiveness Project and request staff to file a CR-101 Preproposal Statement of Inquiry with the Office of the Code Reviser.

SECONDED: Rich Doenges

Discussion:

None.

ACTION: Motion passed unanimously.

TYPE NP WORKGROUP UPDATE

Mark Hicks, AMPA, said the Type Np Workgroup was formed by Policy after the response to the results of the CMER Type Np Hard Rock Study. The study showed an increase in stream temperatures associated with the current Type Np riparian management zone rules. He said the purpose of the workgroup is to develop Type Np RMZ prescriptions for meeting water quality standards.

He said Policy is expected to receive a final workgroup report with Type Np buffer recommendations by April 2021. Policy’s goal is to have consensus recommendations ready for the Board by the end of 2021. He said his memo provided an alternative timeline, which would occur if Policy choose to defer submitting the final recommendations to the Board until after Policy received the CMER-approved findings report for the Hard Rock Study (phase 2) and Soft Rock Study. However, after the Policy meeting in February, this alternative is not Policy’s intention.

Board member Davies questioned if the Board will meet the Department of Ecology’s timeline for completing a Type Np rule by end of the 2021.

Hicks said it would take about eight to twelve months to complete formal rule making, which would not be enough time to have the CR-102 – a final rule package – by the end of 2021.

Board member Doenges asked if the smart buffer study results would be included in the Type Np rule considerations.

Hicks said he did not think the smart buffer results would be ready in time to be included with the workgroup’s recommendations. He said the Riparian Characteristics Study was intended to help in the determinations, but the timing of that study may not be concluded by the end of 2021.

Chair Bernath reminded the Board that even once the Board decides on a proposed rule, DNR staff will need to begin putting together the rule package including the SEPA checklist and the cost/benefit analysis in order to prepare the CR-102.

2021 WATER TYPING PROTOCOL SURVEY GUIDANCE UPDATE

Donelle Mahan, DNR, presented an overview of the results of a Board-directed convening of a small group of agency, tribal and stakeholder representatives to discuss concerns with the completeness of water typing surveys from the [Conservation Caucus memo dated November 6, 2020](#). Mahan was assigned to lead the effort, and she emphasized that any changes they considered had to be based on current rule and Board Manual Section 13 guidance.

The review team recommendations were:

- No new or revised guidance is necessary for the 2021 protocol fish survey season;
- There is a need to emphasize specific key points from existing DNR administrative guidance in the 2021 protocol survey season training, and
- There will be a revision to question 12 on the Water Type Modification Form (WTMF).

Mahan said DNR plans to provide a 2021 protocol season refresher trainings to DNR region staff and TFW water type reviewers. The emphasis points that the review team felt beneficial to provide during the trainings were provided in her presentation. She emphasized DNR's current direction to its staff to reject incomplete WTMFs and that complete WTMFs are not automatically approved. She added that additional field review is conducted as necessary to verify accuracy and address questions that arise from TFW reviewers.

The changes to question 12 on the WTMF seeks to capture more information from water typing proponents when providing information on stream measurements. It will require surveyors to describe in detail if less than 10 evenly spaced bankfull width measurements were not taken during the stream survey.

WATER TYPING COMMITTEE UPDATE

Chair Bernath introduced this topic by providing a brief chronological history on the steps leading to the current work regarding the permanent water typing system rule. He emphasized that the 2001 Forests and Fish rules were designed to adopt a water typing system rule in which the fish/non-fish stream breaks would be established and to provide the appropriate buffers to protect water quality and fish habitat. Those 2001 rules intended that fish habitat would be established through the development of a habitat map-based model. It was recognized that interim rules would be in use until the maps were adopted.

In 2005, the Board acknowledged that the model did not meet accuracy expectations so the Board maintained use of the interim rule, while acknowledging it was not intended to approximate fish habitat. Policy resumed work on the permanent rule in 2014 and the Board provided a set of general expectations to Policy at its August 2016 meeting. The Board accepted Policy's consensus recommendations for the framework on a new permanent rule in 2017. These recommendations included provisions to address the Board's general rule expectations:

- balance error;
- minimize electrofishing;
- address stream segments not shown on the DNR hydro layer;
- improve the water typing map over time;
- include methods to locate the Type F/N break on the ground; and
- ensure the methods provide the ability to be applied by small forest landowners.

1
2 Chair Bernath said the May 2017 recommendations confirmed the Board’s intent for the rule to more
3 accurately identify end of fish habitat by reducing usage of electrofishing and reducing the degree of
4 subjectivity that exists with the current system based on had been learned over the last 20 years. The
5 Board accepted Policy’s recommendation for a fish habitat assessment method (FHAM) and directed
6 further work be done to refine the potential habitat break (PHB) criteria. At the February 2018 Board
7 meeting, the Board accepted three PHB alternatives for comparison/analysis and the concept for an
8 anadromous fish floor (AFF). He said a Water Typing Rule Committee (Committee) was formed at the
9 July 2019 meeting to oversee efforts to finalize the eastern Washington PHB analysis and to oversee
10 the work by the AFF workgroup tasked with developing, if possible, a single AFF proposal.

11
12 With that context, Marc Engel, DNR, provided a staff update on the Committee’s work. Engel said the
13 Committee is continuing to provide oversight of the gathering of additional eastern Washington fish
14 data and the work to develop an AFF. He said completion of both elements is needed to compete the
15 PHB spatial analysis and to prepare an AFF recommendation for the Board’s consideration. Direction
16 from the Board on both elements is required before staff can resume work to complete a draft SEPA
17 and cost/benefit analysis required for the formal rule making to continue.

18
19 Engel reminded the Board that in had previously determined that additional eastern Washington fish
20 data was needed to fully assess statewide PHB options. He said the Board at its August 2020 meeting,
21 approved the use of a subset of CMER data and tribal data, and approved the path forward for
22 analyzing this data. DNR has been working to match the 2001 CMER tabular data with georeferenced
23 data for use in the spatial analysis. The Committee was provided an update at their January 2021
24 meeting that indicated the task to verify the fish data was nearly complete and that DNR will convene
25 the eastern Washington technical fish data group to review the results before presenting them to the
26 Committee.

27
28 Engel said the contractor hired to perform the AFF GIS analysis has completed the creation of
29 synthetic stream networks and is working with the AFF project team to incorporate fish data and
30 barrier points for the analysis. Although this work is behind schedule, the April 2021 completion date
31 is still feasible. However, the AFF project team may not have enough time to develop
32 recommendations to the Committee in time for discussions at the May 2021 Board meeting. He said
33 the Committee is needed to continue to oversee the work regarding a statewide GIS analysis and
34 continuation on the AFF development.

35
36 Committee Chair Gunther said he is committed to finishing the Committee’s objective in overseeing
37 these tasks and is looking forward to the outcome of the eastern Washington fish data effort and. He
38 also acknowledged that the Committee still needs to discuss and potentially arrive at the objectives for
39 the permanent rule. Although he does not know if the Committee will have final recommendations in
40 May 2021, he said they would be providing a status report at the Board’s May meeting and will
41 include an adjusted timeline per Chair Bernath’s request.

42
43 Board member Davies asked who would be developing the spatial analysis once the Board approved
44 the final data set. She also asked if the AFF report would be provided before May.

45
46 Engel said that DNR staff will update the PHB spatial analysis for all of Washington based on the final
47 data set for eastern Washington and any direction provided by the Board regarding the AFF. A

1 completed AFF is also needed to perform a spatial analysis to inform a cost/benefit analysis for the
2 permanent rule package. However, he said does not know if the AFF recommendations will be
3 completed before the May 2021 Board meeting. He committed to provide a revised timeline for rule
4 completion at the May meeting.

5
6 Board member Nelson suggested it would be useful for Board members to see how the existing rule
7 structure, how the fish habitat assessment method and how the AFF is applied in the field.

8
9 Chair Bernath said DNR would not be considering a field trip until Covide-19 risks are alleviated.

10
11 **WILDLIFE WORKING GROUP UPDATE ON THE MARBLED MURRELET FP RULE**
12 **ASSESSMENT**

13 Chair Bernath reminded the Board that in 2017, the Washington Fish and Wildlife Commission up-
14 listed the marbled murrelet to endangered state status. DNR and WDFW recommended to the Board,
15 and the Board accepted, to authorize WDFW to convene and facilitate a wildlife working group to
16 perform a Forest Practices Rule assessment associated with the marbled murrelet. The intent of the
17 assessment was to evaluate rule effectiveness in protecting and conserving marbled murrelet and their
18 forested habitat.

19
20 Gary Bell, WDFW, said WDFW initiated the Wildlife Working Group (WWG) to provide an
21 assessment of the current rules as they pertain to marbled murrelets. The goal is to identify
22 recommended changes to the existing rules that might improve conservation outcomes for the species
23 as related to forest practices. He said he is facilitating the working group on behalf of WDFW and
24 Steve Desimone is represents the Wildlife Program Diversity Division for the working group. They
25 coordinate to provide technical expertise including habitat needs, rule and survey requirements for the
26 marbled murrelet.

27
28 He said the reasons for doing the rule assessment include:

- 29
- 30 • WDFW documented an annual decline of 3.9 percent for the species in Washington from years
31 2001 through 2018;
 - 32 • Based on WDFW's 2016 periodic status review, in 2017 the state listed status of the species was
33 up-listed from threatened to endangered, and
 - 34 • The recommendation to the Board from WDFW at that time was to allow an opportunity to
35 recommend potential rule improvements.

36 Bell said that the workgroup began meeting in 2018. They identified objectives that would serve as a
37 roadmap for conducting the assessment. This including looking at what defines habitat and if that
38 definition remains appropriate and gathering science about what is affecting the species within and
39 beyond the forested environment. As a result, they developed a flow chart to guide progress in
40 assessing population stressors, contributions to habitat and determining what appropriate criteria
41 should be included.

42
43 He said that in early 2019, the WWG began developing an objectives document and assembling
44 information for the first three objectives: (1) assess marbled murrelet population stressors, (2) assess
45 contributions of non-federal lands to murrelet conservation, and (3) evaluate suitable habitat definition.
46 The WWG is currently working to identify suitable criteria for an appropriate definition of habitat for
47 the species based on new science, particularly given that the definition will drive the recommendations

1 for the rule and Board Manual guidance for assessing potential habitat and protocol surveys to
2 determine occupancy.
3

4 Bell said that the timeline moving forward is difficult to predict, however, the WWG is working
5 toward a habitat definition later this year with next steps recommendations potentially to the Board in
6 fall of 2021.
7

8 Chair Bernath asked about the different definitions for marbled murrelet habitat, and if the original rule
9 mirrored the Pacific Seabird Group guidance at the time, and if that guidance has changed since then.
10

11 Bell said the Pacific Seabird Group protocol has changed as we have gained more knowledge. The
12 protocol was updated in 2003, which is the current rule default. The group is now in the process of
13 developing revisions to the protocol.
14

15 Steve Desimone, WDFW, said he sits on the Pacific Seabird Group Committee and is the marbled
16 murrelet habitat lead for WDFW for the terrestrial side. He said that when the Forest Practices Rules
17 were adopted in 1997, WDFW did not have a full understanding of adequate nest site and platform
18 data that is being used by the species today. The USFS and Pacific Seabird Group recognized a
19 minimum platform branch diameter of four inches and the current rule still used seven inches. He said
20 they have also documented nesting trees that are less than 32 inches at diameter breast height.
21

22 Board member Nelson said that tangential to this report, landowners have been working with USFWS
23 on safe harbor agreements (SHA) and that two landowners have recently entered into the agreements
24 with the federal agencies. Between those two agreements, about 396,000 acres are enrolled.
25

26 Board member Guenther asked the presenters to clarify if nesting sites are found on 32 inches trees.
27

28 Bell said that nesting sites are documented on trees less than 32 inches and nest platforms have been
29 documented on tree limbs of four-inches, which is less than the criteria currently in the rules.
30

31 Board member Guenther asked if there are any artificial nests installed in young stands along the coast.
32

33 Desimone said the species usually nest on moss or duff – artificial nests have not been tried because
34 they are not feasible.
35

36 Board member Davis said that given the 3.9 percent annual decline over a seventeen-year period, it
37 should be concerning to the Board that the species is sitting on the precipice of decline. He said the
38 critical component is having enough habitat for the species and Washington cannot afford to lose
39 habitat for the few breeding pairs. He hopes the Board can lean into this issue more than they have to
40 date.
41

42 Board member Davies asked what the Board should be doing that they are not doing now.
43

44 Board member Davis suggested the Board hear from the WWG if a concerted push on the forage side
45 is needed. The issue falls in the category of figuring out how to help landowners maintain habitat and
46 encourage them not cut habitat, which is not just about incentives. He said The Board has Type N,
47 Type F, marbled murrelet and spotted owls in play at one time and there needs to be a candid

1 conversation about the economics, the Board’s mandate and the broader conservation of landscapes
2 moving forward.

3
4 Desimone said some recommendations from the WWG assessment might be easy to make. He added
5 that alternative plans adopted for murrelets outside of current rules need to ensure they help meet the
6 intent of the rules and the survey component. He suggested the agencies scrutinize SHAs to ensure
7 they are providing the best benefit possible for the bird and go above the current rules.

8
9 Board member Nelson asked if WDFW is not in favor of the recent USFWS approved SHAs.

10
11 Desimone said he would defer to the Board’s WDFW representative to answer that question. He would
12 have preferred that the SHA proponents consulted with WDFW’s expertise during the development of
13 the SHAs.

14
15 Board member Nelson said he disagreed and suggested the conversation continue offline.

16
17 Board member Davis said that in the past, WDFW typically works with the proponents and that
18 USFWS would have reached out to WDFW – that did not happen. He said WDFW is still digesting the
19 SHAs. The overall goal should be to ensure that incentives are not less protective than what is
20 currently provided for in rule.

21 22 **STAFF REPORTS**

23 There were no questions on the following reports.

- 24 • Adaptive Management Program Update
- 25 • CMER Update on Water Typing Study Design Development
- 26 • Small Forest Landowner Office Update
- 27 • TFW Policy Committee Update
- 28 • Upland Wildlife Update

29 30 **2021 WORK PLAN**

31 Marc Engel, DNR, presented the Board’s 2021 work plan for changes.

32
33 Board member Doenges recommended adding an update in May on the Clean Water Act Assurances.

34
35 **MOTION:** Rich Doenges moved the Forest Practices Board accept the 2021 work plan as amended
36 today.

37
38 **SECONDED:** Brent Davies

39
40 **ACTION:** Motion passed unanimously (Raines not available for vote).

41 42 **EXECUTIVE SESSION**

43 None.

44
45 Meeting adjourned at 3:45 p.m.