Minutes
Board of Natural Resources Meeting
February 4, 2014
Natural Resources Building, Olympia, Washington

BOARD MEMBERS PRESENT
The Honorable Peter Goldmark, Washington State Commissioner of Public Lands
The Honorable F. Lee Grose, Commissioner, Lewis County
JT Austin, Designee for the Honorable Jay Inslee, Washington State Governor
Thomas H. DeLuca, Director, School of Environmental and Forest Sciences, University of Washington
Ron C. Mittelhammer, Interim Dean, College of Agricultural, Human, and Natural Resource Sciences, Washington State University
The Honorable Randy Dorn, Superintendent of Public Instruction

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

SAFETY REVIEW
Ms. Vansot gave a safety overview and instruction on evacuating the building in case of an emergency.

APPROVAL OF MINUTES
Chair Goldmark called for approval of the minutes for the January 7, 2014 Regular Board of Natural Resources Meeting.

MOTION: Director DeLuca moved to approve the minutes.
SECOND: Commissioner Grose seconded the motion.
ACTION: The motion was approved unanimously.

PUBLIC COMMENTS FOR TIMBER SALE ACTION ITEMS
Glen Morgan, representing the Rochester School District and the Timberland Trust Task Force, stated that it is important to know that the proceeds of the timber sales go to support schools and education. He thanked the board stating that the Rochester School District appreciates it along with many other school districts across the state.
TIMBER SALES (Action Item)
Proposed Timber Sales for March 2014 | 3 Handouts
Paul Bialkowski, Assistant Division Manager, Product Sales & Leasing Division

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

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

The proposed March sales were then presented to the board.

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

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

Mr. Bialkowski asked for approval of the proposed March 2014 sales.

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

SECOND: Ms. Austin seconded the motion.

ACTION: The motion was approved unanimously.

PUBLIC COMMENTS FOR HARBOR AREAS ACTION ITEMS
Maria Warren, owner of a houseboat residing in West Bay Marina, requested assistance in changing the law to define the difference between a houseboat and floating home, referencing that the US Supreme Court distinguishes between houseboats and floating homes. Ms. Warren stated that her houseboat is registered as a vessel and does not impede navigational traffic within the marina.

Conner Edwards stated that he filed a petition to repeal rule 332-30-109, subsection 11, which bands houseboats from harbor areas. Mr. Edwards claimed that last October DNR threatened to shut down two Olympia area marinas, Martin and West Bay, if they did not evict the houseboat residents that lived there by November 28th. He stated the houseboat owners had done nothing wrong, and that local marina managers say that they are good tenants. Mr. Edwards asked the board to repeal rule 332-30-109, subsection 11, and went on to say that he hopes to bring an existing problem to light and assist DNR in finding a solution. He listed three reasons why the board should consider repealing this rule: 1) it serves no legitimate purpose as the houseboats in harbor areas have not resulted in any problems; 2) DNR does not have the authority to impose
the rule; and 3) the rule is forcing the Olympia houseboat owners to abandon their long term homes.

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

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

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

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

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

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

**FLOATING HOMES (Action Item)**
**Proposed Request by Freedom Foundation to Repeal a WAC Related to Floating Homes in Harbor Areas**

Megan Duffy, Deputy Supervisor
Kristin Swenddal, Aquatic Resources Division Manager
Christa Thompson, Assistant Attorney General

Ms. Duffy reviewed a request for the Board of Natural Resources to repeal a WAC related to floating homes in harbor areas, and provided a brief overview of residential use on state-owned aquatic lands.
The Aquatic Resources Division of the Department of Natural Resources is responsible for the management of 2.6 million acres of state-owned aquatic lands. In 1983, the Legislature passed a set of laws, the Aquatic Lands Act, that provide explicit direction to the Commissioner of Public Lands for aquatic land management. Codified in RCW 79.105.030, the statute directs that the lands be managed to provide for a balance of public benefits.

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

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

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

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

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

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

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

Christa Thompson, Assistant Attorney General, gave an overview of the requirements of the Washington State Administrative Procedure Act (WAPA) as it pertains to petitions for rulemaking. Administrative Procedure Act is the act that governs the conduct of state agencies and allows members of the public to petition state agencies or rule making bodies to enact new rules, amend an existing rule, or repeal rules. In response to a petition, the Board must take action within 60 days from when the petition was filed. The WAPA provides two options: 1)
grant the petition and direct the Department of Natural Resources to commence the rule making
process (collecting public comments, publishing a proposed draft rule) or 2) deny the petition. A
denial must state the reasons for the denial, specifically addressing the petitioner’s concerns, and,
if appropriate, identify alternate means of addressing the petitioner’s concern(s).

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

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

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

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

MOTION: Dean Mittelhammer moved to approve Resolution 1420.

SECOND: Ms. Austin seconded the motion.

ACTION: The motion was approved unanimously.

RULEMAKING: DERELICT VESSEL REMOVAL PROGRAM/VESSEL
INSPECTIONS (Information for Future Action)
Kristin Swenndal, Aquatic Resources Division Manager
Melissa Ferris, Derelict Vessel Removal Program Manager
Lisa Randlette, Environmental Planner

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

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

The Program has spent $5.4 million from the Derelict Vessel Removal Account (DVRA) which
is funded through a recreational boater registration surcharge. In addition, the Program spent
another $5 million in other one-time appropriations from other accounts, including the State
Capital Fund.

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

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

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

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

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

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

CHAIR REPORTS | 1 Handout

Western Washington Sustainable Harvest Calculation
Kyle Blum, Deputy Supervisor for State Uplands
Angus Brodie, Forest Resources Division Manager

Mr. Blum provided the process for the Western Washington Sustainable Harvest Calculation,
which includes context with other plans, Sustainable harvest RCW’s and Policy for Sustainable
Forests, Review of 2004 and 2007 calculations, and a timeline. He noted that for the east-side,
DNR is in the process of gathering new inventory data for major blocks of land and will keep
things moving on the west-side prior to adopting an east-side sustainable harvest calculation. Mr.
Blum spoke about the longer term timeline and major state lands planning projects: the current
sustainable harvest calculation (SHC), the Marbled Murrelet long term conservation strategy,
and adjusting the decadal SHC and OESF Forest land plan for the MMLTCS. First, the
background presentation, then an in-depth look at the modeling assumptions, the harvest volume, environmental analysis, and arrearage. He added that we will need to review how we preformed over time against those modeling assumptions. By June, the board will need to take action on the sustainable harvest recommendation resolution.

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

There are approximately 1.4 million acres of forested land in Western Washington, of which about 82,000 is natural areas. This leaves about 1.376 million acres of trust land that is being considered for this harvest calculation. Two of the 20 sustainable harvest units are the Olympic Experimental State Forest (OESF) and the Capitol State Forest. OESF comes out of the Commission for Old Growth Alternatives, and one of the recommendations of the commission was to create an experimental forest with a designated sustainable harvest level. We have specific obligations in the Habitat Conservation Plan, and we measure in the context of the sustainable harvest for the OESF. Back in the 1980’s it was approved by the Board to create a sustainable harvest unit for Capitol Forest in order to meter out the flow of volume, as it is a very significant recreational area. For each of the counties, 17 of the 20 sustainable harvest units are state forest transfer units. We treat each Westside county as its own sustainable harvest unit.

There are 498,147 acres of State Forest Transfer forest lands in Western Washington across 21 counties. The Forest Board was established in 1923 to manage logged and abandoned properties. The lands reverted to the counties as property owners failed to pay taxes. The properties were subsequently transferred to the state, and the Forest Board was established to manage the lands for timber production in perpetuity. Revenues from these lands support the county and junior taxing districts (such as schools, road and cemetery districts) in which they are located. The Department manages these properties as trustee individually, and the reason for this division was to reduce the revenue variation being distributed to the various counties into a more even-flow.

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

Lastly, Mr. Blum spoke about the difference between maximizing economic value of the forest versus maximizing volume over time. The Department used harvest volume to calculate the harvest. The objective was to regulate the harvest and maximize the long-term harvest volume.
Mr. Brodie presented a review of the 2004 and 2007 calculation. Chair Goldmark asked Angus
to inform the board how he was an integral part of the earlier work, and Mr. Brodie stated that he
led the technical process (the actual calculation) and also provided the environmental impact
statement. In 2004, the public process for the calculation was started, and in 2002 scoping
meetings were held around the state (6 public meetings, plus 10 informal meeting with
stakeholders) to understand the scope and purpose of the calculation. We then had to add new
information and use new technology to recalculate the sustainable harvest that was calculated
and adopted in the Habitat Conservation Plan in 1996. Second, the board was interested in
examining policies that control the harvest in terms of harvest units and regulations. In
December of 2003 a draft EIS was published. Seven public meetings were held around the state
with 330 participants. The Department also received 410 written letters and approximately 2,000
individual comments. The final EIS was published in August of 2004, and in September of 2004
a final decision was made by the board on the sustainable harvest calculation.

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

After the adoption of the calculation, the Washington Environmental Council (WEC) filed
litigation seeking a declaration that Resolution 1134 was invalid on the grounds that it was
adopted without proper compliance with the State Environmental Policy Act (SEPA). In
October 2005, Judge Armstrong rendered an opinion that the Final EIS, which provided the basis
for SEPA compliance for Resolution 1134, was inadequate as to impacts on the northern spotted
owl, riparian management, and the alternatives analyzed. This ruling vacated Resolution 1134
and the department’s ability to implement the sustainable harvest volume anticipated to 5.97
billion board feet over the 2004-2014 planning decade. As a consequence, DNR estimated it
would harvest less than 400 million board feet per year until a legal remedy and/or an
administrative remedy could be achieved, which could take from two to four years. To avoid
this potential loss in revenue to the beneficiaries and delay in meeting several HCP objectives,
the department entered into settlement negotiations with the plaintiffs and interveners in
November 2005. In March 2006 all parties signed a settlement agreement that required DNR to
manage some habitat differently for the planning decade, but restored Resolution 1134. This
settlement avoided a costly and uncertain future for the trust beneficiaries, but will reduce by 4%
the sustainable harvest volume estimate of 5.97 billion board feet over the planning decade. Per
Policy for Sustainable Forest, the department revised and adjusted the calculation due to changes
in circumstances. Mr. Brodie concluded that in 2007 the Department settled the lawsuit,
approved the Policy for Sustainable Forests, and implemented riparian forest restoration strategy
for five Westside HCP planning units. The outcome was that the harvest volume was reduced from 597 to 550 mmbf.

PUBLIC COMMENTS FOR GENERAL ITEMS OF INTEREST
Joel Frenderfal, Public Works for Yakima County, spoke about the issues for state aquatic lands, and how they relate to both the counties and the Yakima flood control zone district. The statue requires the counties and flood control district to manage flood hazard for the residents of the state. DNR’s change in stance on aquatic and state owned land is causing friction between DNR and the county’s flood control zone. Mr. Frenderfal stated that he wanted the board to understand that by statue the county is the lead agency for flood control, and their liability is limited by statue and they do not need DNR’s approval for flood control. He requested that under RCW 79.10.130 D, DNR undertake comparative management of state owned aquatic lands relevant to flood control.

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

Meeting adjourned at 11:19 AM
Approved this 4th day of March, 2014

[Signature]
Peter Goldmark, Washington State Commissioner of Public Lands

[Signature]
JT Austin, Designee for Governor Jay Inslee

[Signature]
Randy Dorn, Superintendent of Public Instruction

[Signature]
F. Lee Grose, Commissioner, Lewis County

via conference call

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

absent

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

Attest:

[Signature]
Sarah Vassor, Board Coordinator