

1 **FOREST PRACTICES BOARD**
2 **Regular Board Meeting – November 13, 2019**
3 Natural Resources Building, Room 172, Olympia, WA
4

5 *Meeting materials and subject presentations are available on Forest Practices Board's website.*
6 <https://www.dnr.wa.gov/about/boards-and-councils/forest-practices-board>
7

8 **Members Present**

9 Stephen Bernath, Chair, Department of Natural Resources
10 Ben Serr, Designee for Director, Department of Commerce
11 Bob Guenther, General Public Member/Small Forest Landowner
12 Brent Davies, General Public Member
13 Carmen Smith, General Public Member/Independent Logging Contractor
14 Dave Herrera, General Public Member
15 Jeff Davis, Designee for Director, Department of Fish and Wildlife
16 Maia Bellon, Department of Ecology
17 Noel Willet, Timber Products Union Representative
18 Kelly McLain, Designee for Director, Department of Agriculture
19 Paula Swedeen, General Public Member
20 Tom Nelson, General Public Member
21

22 **Staff**

23 Joe Shramek, Forest Practices Division Manager
24 Marc Engel, Forest Practices Assistant Division Manager
25 Patricia Anderson, Rules Coordinator
26 Phil Ferester, Senior Counsel
27

28 **WELCOME AND INTRODUCTIONS**

29 Chair Bernath called the Forest Practices Board (Board) meeting to order at 9 a.m. Introductions of
30 Board members and staff were made.
31

32 **APPROVAL OF MINUTES**

33 **MOTION:** Bob Guenther moved the Forest Practices Board approve the August 14, 2019
34 meeting minutes.
35

36 **SECONDED:** Maia Bellon
37

38 Board Discussion:
39 None.
40

41 **ACTION:** Motion passed unanimously.
42

43 **REPORT FROM CHAIR**

44 The report from the Board Chair included:

- 45 • The State Auditor's Office is currently scoping the Adaptive Management Program's (AMP)
46 performance audit project.
47 • Forest Practice Program's budget proposals for the 2020 legislative session include a correction
48 of a fund source shift that created a budget shortfall; facilitation work by the Center for

- 1 Conservation Peacebuilding; additional staff in the Small Forest Landowner Office; and the
2 development of a voluntary programmatic northern spotted owl safe harbor agreement.
- 3 • The SSB 5597 workgroup addressing the aerial application of pesticides on forestlands has met
4 several times in locations around the state. A report will be provided to the legislature by the end
5 of 2019.
 - 6 • An Environmental Protection Agency Exchange Network grant was awarded to DNR last April
7 for \$200,000. This will fund a pilot project to assess efforts to convert DNR’s hydrography layer
8 into the National Hydrography Dataset.

9
10 **PUBLIC COMMENT**

11 Ken Miller, Washington Farm Forestry Association (WFFA), recapped the efforts put into WFFA’s
12 western Washington small forest landowner riparian alternate plan template proposal. He said TFW
13 Policy Committee (Policy) took four and a half years to determine that the proposal isn’t eligible for
14 an alternate plan template in whole, or in part. He said many folks in Policy are not comfortable
15 accepting WFFA’s science review, which they believe is a process foul over the approach to
16 evaluate their science. He said the odds are 50/50 on whether the Board will receive
17 recommendations by the August 2020 Board meeting. He ended by saying they were not giving up
18 and will continue no matter how long it takes.

19
20 Elaine Oneil, WFFA, said it was a shock to hear that Policy would not be evaluating any of the
21 science included in their proposal initiation since the science track did not include a review by the
22 Cooperative Monitoring, Evaluation, and Research Committee (CMER). She said by not evaluating
23 the science utilized in their proposal makes the whole effort a complete waste of time. It took
24 WFFA a year to develop and an investment of a lot of money – both WFFA funds for the
25 supporting science and AMP funds which paid for an external science review. She said they believe
26 a fix may be forthcoming in Policy but if not, the Board could expect a petition for Board
27 intervention at the February 2020 Board meeting.

28
29 **WATER TYPING SYSTEM BOARD COMMITTEE RECOMMENDATIONS**

30 Committee Chair Guenther thanked the Water Typing Rule Committee (committee) members and
31 those attending the meetings for their hard work to develop recommendations. The
32 recommendations are outlined in the [committee’s memo dated November 5, 2019](#).

33
34 Recommendation #1 – Clarify the goals and targets for the water typing system rule. Board member
35 Swedeen said because of the complexity of the issues, stakeholders agreed that defining the goals of
36 the rule and the intent of the Forest Practices Habitat Conservation Plan (FPHCP) as it relates to fish
37 habitat is needed. She also suggested that third-party facilitation will help define the goals and help
38 get folks on the same page.

39
40 Recommendations #2/3 – Request DNR to re-do the potential habitat break (PHB) spatial analysis
41 and engage with Policy leads during the PHB and the anadromous fish floor (AFF) spatial analyses.
42 Board member Nelson said these two recommendations show support for effective collaboration
43 during the analyses and to ensure the communication lines remain open for feedback.

44
45 Recommendation #4 – Delay the adoption of the rule for eastern Washington and consider phasing
46 the PHB validation study to start in eastern Washington. Board member Herrera said a workgroup
47 will be formed to assess the feasibility of using additional eastern Washington data to supplement
48 the current PHB data set. Acknowledging that this task may take some time, the eastern Washington

1 tribes recommended considering administrative steps to protect fish habitat in eastern Washington
2 in the interim. Committee consensus occurred on the first part of the recommendation (obtaining
3 additional data), but not for implementing the proposed administrative steps.

4
5 Recommendation #5 – Request CMER develop revised study designs for the PHB validation,
6 physical characteristics and lidar-based model studies. Board member Davis said this
7 recommendation acknowledges that as the Board moves forward, the AMP can advise and help
8 refine the process. This recommendation tasks CMER to consider revising the study designs, but
9 not necessarily start from scratch.

10
11 Recommendation #6 – Acknowledge that a lidar-based model is one of the goals of a permanent
12 water typing system. Board member Guenther said best available science can help inform a new
13 lidar-based model. He also said this aligns with the small forest landowner caucus’ request for
14 continued support for a lidar-based model.

15
16 Recommendation #7 – Continued support for AFF workgroup and their charter. Board member
17 Guenther said this recommendation grew out of the western Washington tribal initiative to develop
18 a methodology and coordinate a plan to collect data and analyze options for an AFF. He said other
19 caucuses have agreed to work together to help develop the AFF criteria. He acknowledged that
20 funding may be needed for expanding the GIS related work.

21
22 Recommendation #8 – Retain the committee to continue working on water typing issues. Board
23 member Guenther said this recommendation is to retain the committee’s involvement for oversight
24 to the AFF workgroup and to help work through additional water typing concepts.

25
26 Recommendation #9 – Support the effort of the Center for Conservation Peacebuilding to help
27 improve relationships throughout the AMP. Board member Guenther said the committee anticipates
28 that the contract for facilitation may be used to work through one or more of the unresolved issues
29 in the rule making effort.

30
31 Marc Engel, DNR, said that not every recommendation requires action by the Board. The following
32 are tasks DNR staff will implement:

- 33
- 34 • Re-do the PHB spatial analysis including the AFF alternatives. DNR’s methodology will be
35 revised given the clarification gained through the committee’s work for applying the width-
36 based stream concept. DNR will coordinate with each caucus during the spatial analysis and
37 make information available to stakeholders during the process.
 - 38 • Request the Washington State Geologic Survey provide a presentation at the February 2020
39 Board meeting on the current availability of high quality lidar on forested lands, the projected
40 schedule for acquiring additional lidar not currently available and potential funding options to
41 acquire the remaining data.

42 Chair Bernath clarified that DNR has committed to re-doing the PHB spatial analysis because they
43 have found a way to conduct the analysis in a manner that was not known to DNR during the initial
44 analysis needed for the draft cost-benefit analysis.

45
46 Engel presented the necessary Board actions based on the committee’s recommendations.
47

1 Action #1 – Request CMER develop study designs for the PHB validation, physical characteristics,
2 and lidar-based model studies. It is intended that the studies will be designed for cost savings,
3 including the phasing of the studies with eastern Washington to be initiated first and the advisability
4 of combining the three studies with a report on the study designs at the May 2020 Board meeting.
5

6 Board member Herrera said he believes this recommendation was to have CMER determine *if* the
7 PHB and stream physical criteria studies should be combined, not necessarily automatically assume
8 the studies will be combined.
9

10 Action #2 – Have the committee explore whether there is other data available to inform rule criteria
11 in eastern Washington, ensure collaboration is maintained during this effort and have the committee
12 provide recommendations to the Board by the May 2020 meeting. The first step is to evaluate if
13 additional data in eastern Washington can be collected to augment the 18 points used in the initial
14 analysis. He added that if a delay for a rule is inevitable, the committee may evaluate other actions
15 to protect fish habitat in eastern Washington until a rule is effective.
16

17 Chair Bernath clarified that if the workgroup is successful in determining possible criteria for an
18 eastern Washington rule, then the Board may not have to implement interim guidance while a rule is
19 being developed.
20

21 Board member Davies said that if the Board is being asked to decide on these recommendations, she
22 asked that adequate timelines be provided.
23

24 Board member Nelson said he would like the committee to discuss DNR’s recommended actions
25 before the Board decides on them today. He suggested the workgroup provide the adequate timeline
26 to complete these actions rather than have the Board determine an arbitrary date such as May 2020.
27

28 Board member Bellon recommended DNR staff engage with the committee to determine logical
29 timelines to complete the recommended tasks and report at the February 2020 Board meeting the
30 status of their findings.
31

32 Action #3 – Approve the AFF workgroup charter, assign the committee to oversee the AFF
33 workgroup and direct the committee to bring recommendations to the Board by the May 2020
34 meeting. He said the AFF charter specifies that the workgroup will provide recommendations to the
35 committee and the committee will provide recommendations to the full Board.
36

37 Action #4 – Extend the committee’s involvement to May 2020 to oversee the AFF workgroup,
38 evaluate options for an eastern Washington water tying rule and to address additional rule elements.
39

40 **PUBLIC COMMENT ON WATER TYPING SYSTEM RULE RECOMMENDATIONS**

41 Darin Cramer, Washington Forest Protection Association (WFPA), said confusion and uncertainty
42 exists because discussions have been focused on the timeline rather than resolving the items of
43 substance. He said WFPA is generally supportive of the committee’s recommendations, but the
44 priority for rule development should be defining the performance targets since the work hinges on
45 the overall objectives. He said he hopes DNR analyzes the WFPA, WFFA and county caucus PHB
46 option as intended and to work with all PHB proponents during the analysis. He said there is
47 abundant data in eastern Washington to help determine the eastside criteria. WFPA supports

1 maintaining a lidar-based model option and believes it can be developed sooner than some seem to
2 think.

3
4 Steve Barnowe-Meyer, WFFA said his caucus supports clarifying the performance goals and targets
5 for the rule. They support DNR working with WFFA, WFFA and counties caucuses to properly
6 complete the PHB spatial analysis. He said collaboration with the various experts may help this
7 effort. He said the validation studies must include the three components – physical stream criteria,
8 PHBs and the lidar-based model. They recommended the Board retain a lidar-based model rule
9 component. He said they support the recommendations in the [WFFA letter dated November 10,](#)
10 [2019](#).

11
12 Alec Brown, Washington Environmental Council, said their caucus is concerned that the effort to
13 complete the water typing rule has taken so long, especially since it was estimated to be completed
14 two years ago. They believe the initial system adopted was based on fish habitat, not fish presence.
15 He questioned whether DNR should do a second PHB spatial analysis given that it had already been
16 done. He questioned how DNR could perform a spatial analysis before the AFF workgroup has
17 provided the necessary criteria. He said their caucus is concerned that determining the goals will
18 take time, especially since they believe the goals were conceptualized 20 years ago.

19
20 Scott Swanson, Washington State Association of Counties, said they support defining the rule
21 targets, having DNR perform a re-analysis of the PHBs and the commitment for collaboration when
22 working with stakeholders and the AFF workgroup. He said they believe a lidar-based model is still
23 one of the goals of the permanent rule and asked the Board to retain the development of a model.
24 He requested the Board consider all the committee recommendations.

25
26 Chris Mendoza, Conservation Caucus, quoted [RCW 77.85.180](#) relating to the use of best available
27 science and [RCW 76.09.370](#) relating to the use of a peer review process. He reminded the Board
28 that the peer review element is a standard practice of CMER. Conducting a peer review retains the
29 integrity for those wanting to refute study results. Addressing the three studies being considered
30 (physical stream criteria, PHBs and lidar-based model) for CMER development, he cautioned that
31 the path forward may unwind the peer review already completed. He asked the Board to clarify
32 what CMER is to do and asked the Board to not undo study development that CMER has already
33 peer reviewed.

34
35 Ash Roorbach, Northwest Indian Fisheries Commission, said the AFF workgroup is finalizing their
36 work plan and will work to finalize their timelines needed to complete the AFF analysis. He said
37 they are working with different experts that have performed analyses to compare methodologies. He
38 said a meeting of technical experts is planned for December – after that meeting, the workgroup will
39 provide more accurate timelines for completion of work. The goal is for the technical group to
40 provide the data and information for the committee to make a recommendation to the Board.

41
42 Jaime Glasgow, Conservation Caucus, said their caucus wants to get the water typing system right,
43 but not take longer than necessary. He suggested one interim step is to revise Board Manual Section
44 13 to include guidance for identifying habitat above the last detected fish. To provide context for
45 how the current water type maps are inaccurate, he said Wild Fish Conservancy conducted two
46 surveys and found 5.5 miles of unmapped fish habitat in one system and 24.6 miles of unmapped
47 habitat in another system. Additionally, he said an eDNA research project found evidence of fish

1 presence in 9 out of 29 stream segments upstream from where an electrofishing survey had
2 previously established the Type F and N water break.

4 **WATER TYPING SYSTEM RULE RECOMMENDATIONS**

5 Board members discussed various options for acting on the committee's recommendations,
6 discussed adding potential dates pertinent to the steps included within the recommendations and
7 discussed their interpretation of the recommendations. They also discussed options for drafting
8 motions the Board could vote on.

10 Board member Davies suggested the Board implement the current physical stream criteria in rule as
11 the determination for fish habitat while considerations for an eastern Washington rule are being
12 evaluated.

14 Chair Bernath said using the physical stream criteria as proposed by Board member Davies would
15 require a rule change. He added that DNR staff could provide estimated timelines for completion of
16 the rulemaking at the February 2020 Board meeting.

18 Board member Davis asked if the Board could request the federal services to provide their
19 interpretation of the intent of the FPHCP as it relates to the definition and protection of fish habitat.

21 Board member Herrera agreed and suggested the federal services provide their understanding at the
22 February 2020 Board meeting.

24 Board member Swedeen suggested the federal services provide a factual understanding, not policy
25 statements regarding the agreement in place between the federal services and the state.

27 Phil Ferester, Board counsel, reminded the Board that the FPHCP is composed of the Board's rules
28 and clarifying uncertainty in what the rules say is a matter of state interpretation, not federal
29 interpretation.

31 Chair Bernath said he will commit to making a request to the federal services.

33 **MOTION:** Tom Nelson moved the Forest Practices Board take the following action:
34 Action 1: Accept the Board's Water Typing Rule Committee recommendations as
35 presented in the memo dated November 5, 2019.

37 Action 2: (addressing committee recommendation #5)
38 Recommend the Cooperative Monitoring, Evaluation and Research Committee
39 (CMER) to develop study designs for the PHB validation, physical characteristics,
40 and map based Lidar model studies. Design the studies for cost savings, including
41 the phasing of the studies with eastern Washington to be initiated first, and the
42 possibility and advisability of combining the PHB validation, physical characteristics
43 and map based Lidar model studies, and then to report on the study designs to the
44 Board by their May, 2020 meeting.

46 Action 3: (addressing committee recommendation #4)
47 Recommend the Board direct the Board Committee on water typing to explore
48 whether there is other data available to inform the water typing system rule in eastern

1 Washington, that the work be performed by a collaborative workgroup formed by the
2 Committee, and that the committee bring recommendations to the Board by their
3 May, 2020 meeting.
4

5 Action 4: (addressing committee recommendation #7)

6 Recommend the Board approve the anadromous fish floor workgroup charter, assign
7 the Board Committee on water typing to oversee the anadromous fish floor
8 workgroup, and direct the Board Committee to bring recommendations to the Board
9 by their May 2020 meeting.
10

11 Action 5: (addressing committee recommendation #8)

12 Recommend the Board extend the Board Committee on water typing to the May
13 2020 Forest Practices Board meeting to provide oversight to the anadromous floor
14 and eastern Washington data workgroups, and to address other outstanding water
15 typing rule issues as assigned by the Board.
16

17 **SECONDED:** Carmen Smith
18

19 Board Discussion:
20 None
21

22 **ACTION:** Motion passed unanimously.
23

24 **WATER TYPING SYSTEM RULE MAKING UPDATE**

25 Marc Engel, DNR, said staff is continuing to work on other water typing system elements outside
26 the work being considered by the committee – Board Manual Section 23 and the economic analysis.
27 The Board Manual workgroup is focused on guidance for conducting electrofishing surveys
28 upstream from man-made barriers and refining the flow chart for the fish habitat assessment
29 method.
30

31 He said the cost-benefit analysis advisory group still needs to determine the process for the
32 qualitative analysis component. The group is preparing to have a biological discussion to address
33 and determine the methodology for the fish population analysis in upstream reaches. DNR has
34 asked stakeholders to bring forward comments for the contractor to address and to evaluate a
35 change in fish populations from the current rule.
36

37 He said DNR is preparing to procure services of a contractor to assist in applying the revised width-
38 based PHB methodology for the PHB spatial reanalysis. He said the anticipated time to finalize the
39 contract is most likely late February or early March 2020.
40

41 **PUBLIC COMMENT (PM)**

42 Alec Brown, Conservation Caucus, thanked DNR staff for their hard work on the water typing rule.
43 He also thanked Director Bellon for her consideration to extend the Clean Water Act (CWA)
44 assurances.
45

46 **CLEAN WATER ACT ASSURANCES**

47 Maia Bellon, Ecology Director/Board member, acknowledged the historic interface between forest
48 practices regulations and implementing provisions for clean water in the forested environment. She

1 said Ecology, with the support of the federal Environmental Protection Agency, has maintained the
2 commitment to provide CWA assurances for forest practices in Washington. The assurances
3 provided a predictable and a consistent regulatory framework for the forestry industry.
4

5 She said Ecology's original assurances were issued pursuant to Schedule M-2 of the [1999 Forests
6 and Fish Report](#). Those assurances established a conditional ten-year agreement to treat the
7 development of our traditional clean water program. She said the assurances were implemented as a
8 commitment to work with forest practices program mainly because of the concept of adaptive
9 management. Ecology extended the ten-year extension in 2009 with a deadline of December 2019.
10

11 The decision for determining if an extension is warranted beyond 2019 acknowledged the progress
12 the AMP has made to complete milestones including the completion of the Type F Buffer
13 Effectiveness Monitoring Study in eastern Washington as well as the west side Type N Hard Rock
14 Study. She also recognized the importance of the commitments in the Forests and Fish agreement.
15

16 As a result of the on-going work, she said she has decided to extend the CWA assurances for an
17 additional two years, to December 31, 2021. She stated that it is her understanding that Policy will
18 have recommendations for a Type Np rule by the summer of 2021 with the expectation that the rule
19 is implemented by the end of 2021. If the Type Np rules are effectively improved at the end of that
20 timeframe, Ecology will consider another extension. She added that the Board will receive a formal
21 letter that will address her comments provided today.
22

23 **ADAPTIVE MANAGEMENT PROGRAM BUFFER/SHADE EFFECTIVENESS STUDY** 24 **(AMPHIBIAN RESPONSE)**

25 Mark Hicks, Adaptive Management Program Administrator, provided a summary of the results of
26 the *Stream Associated Amphibian Response to Manipulation of Forest Canopy Shading* study. The
27 three part purpose of the study was to:

- 28 • Assess the effects of shade reduction on stream breeding amphibians,
 - 29 • Determine if there is an optimum level of shade retention, and
 - 30 • If possible, identify potential causal mechanisms for any changes observed.
- 31

32 Hicks clarified that this is not a study on the effectiveness of Type Np rules. The study did not test
33 the Type Np prescriptions and it did not apply treatments at a spatial scale that is common for
34 commercial harvests. Therefore, the study results can only indirectly inform with regard to the
35 effectiveness of the rule. He said six species of amphibians were tested for three different biological
36 responses; abundance, growth, and body condition and four functional feeding groups of the
37 macroinvertebrates were also tested.
38

39 Hicks summarized the study and its key findings as follows: The study examined 25, 50-meter
40 (164-foot) stream reaches across western Washington where overhead stream cover was removed in
41 three different treatment levels (from $\leq 97\%$ pretreatment cover to 77%, 61%, and 40% post
42 treatment). The step-wise reductions in shade increased photosynthetically active radiation and
43 stream temperatures. Stream temperature increased on average 0.5°C, 2.2°C, and 2.5°C for the three
44 treatments, being statistically significant only in the two most intensive treatments.
45

46 He said the changes in macroinvertebrate production seemed to track shade reduction gradient
47 induced changes. Similarly, some of the stream associated amphibian responses are consistent with
48 expectations linked to the shade reduction gradient. Some of the changes or lack of changes in both

1 the macroinvertebrate and stream associated amphibians lacked a clear explanation. He said taken
2 together considering the macroinvertebrates and amphibians collectively, the study found more
3 positive and fewer negative responses in the intermediate than either the no- or the low-shade
4 treatments. This means that a little bit of increased light can have a benefit to stream productivity,
5 and the benefit declines as the amount of light increases.

6
7 Hicks concluded by stating that Policy determined that they would not recommend the Board take
8 action in response to this study.

9
10 **PUBLIC COMMENT ON BUFFER/SHADE STUDY**

11 Darin Cramer, WFPA, said the study is an example of good work by the AMP. He recommended
12 Board members read the full report, and while the study did not test the rule, it provided information
13 that should be considered. He suggested that a continuous riparian buffer containing high density
14 and high shade levels is not what folks typically want and the program should be conducting
15 additional studies that inform learning opportunities.

16
17 Ken Miller, WFFA, addressing his earlier testimony, clarified that portions of the small forest
18 landowner alternate plan template includes an alternative prescription applied in 150 foot
19 increments for intermediate size streams.

20
21 **ADAPTIVE MANAGEMENT PROGRAM BUFFER/SHADE EFFECTIVENESS STUDY**
22 **(AMPHIBIAN RESPONSE)**

23 **MOTION:** Carmen Smith moved the Forest Practices Board accept TFW Policy Committee's
24 recommendation to take no action on the Buffer/Shade Effectiveness Study.

25
26 **SECONDED:** Bob Guenther

27
28 Board Discussion:
29 None.

30
31 **ACTION:** Motion passed unanimously.

32
33 **GUIDELINES FOR EXTENDED MONITORING**

34 Terra Rentz, Policy co-chair, conveyed that in August 2018 the Board asked Policy to develop and
35 present to the Board a process to help decide how to evaluate and prioritize requests for extended
36 monitoring associated with CMER research projects. She said a joint workgroup was created
37 comprised of representatives from both Policy and CMER. The workgroup identified that there are
38 three occasions when the considerations for extended monitoring could arise:

- 39
- 40 • During project initiation;
 - 41 • During the mid-point of study projects; and
 - 42 • Near the end of the field component of a study project.

43 Rentz said the workgroup developed a decision-making framework to be used if extended
44 monitoring is being considered near the end of a study. The framework includes four main
45 components and considerations:

- 46
- 47 • If extended monitoring is needed, the associated scientific advisory group will develop a brief
48 extended monitoring proposal by updating the prospective findings report; and
 - provide the proposal to CMER for formal review and approval; and

- 1 • If approved, CMER will forward the proposal to Policy; and
- 2 • If Policy approves, then CMER will work with the appropriate scientific advisory group to
- 3 implement.

4
5 Rentz said it will be important to apply the new framework by December of each year to ensure that
6 Policy includes the extended monitoring proposals within the context of its consideration of CMER
7 recommendations for the biennial master project schedule.

8 9 **PETITION FOR RULE MAKING RELATING TO THE NORTHERN SPOTTED OWL**

10 Todd Thorne, member of the North Central Washington Audubon Society, addressed the Board
11 regarding the [Audubon’s northern spotted owl \(NSO\) rule petition](#). He said their petition requested
12 a moratorium on timber harvests within eastern Washington spotted owl special emphasis areas
13 (SOSEA) while the NSO protection measures are re-evaluated.

14
15 Marc Engel, DNR, provided an overview of the petition and how Forest Practices Applications
16 (FPA) are classified when a proposed forest practices activity falls within suitable owl habitat
17 within an owl circle in a SOSEA. He said SOSEAs are established in rule to provide demographic
18 and dispersal support as necessary to complement the habitat recovery strategies on federal lands.
19 He also shared the State Environmental Policy Act (SEPA) review process for NSO in [WAC 222-](#)
20 [10-041](#) as it relates to the FPA classification procedure.

21
22 Gary Bell, Washington Department of Wildlife (WDFW), shared the process DNR and WDFW
23 uses to evaluate proposed FPAs within suitable habitat. Each FPA is screened and checked against
24 agency habitat data. In some cases, in order for DNR and WDFW to make the most accurate
25 determination, they ask the applicant to provide current stand data or additional information to help
26 verify correct habitat typing and whether or not the proposed FPA is within suitable habitat.

27
28 Engel described DNR’s decision process that resulted in approval of the FPAs specific to
29 Audubon’s concern. During the period between August 2016 and September 2019, ten FPAs were
30 submitted that contained proposed harvest activities in suitable NSO habitat. The areas were
31 screened and evaluated by WDFW and Yakima Nation biologists prior to FPA submittal or site
32 visits were conducted by interdisciplinary teams to evaluate on-ground habitat conditions. None of
33 the forest stands met the rule definition of suitable habitat and for that reason, the FPAs were
34 categorically exempt from SEPA analysis.

35
36 Engel said Audubon’s rule petition is focused on how DNR is implementing the SEPA policies in
37 WAC 222-10-041. He recommended the Board deny the petitioner’s moratorium request for
38 harvesting in eastern Washington SOSEA circles based on two reasons: (1) the Board does not have
39 the authority to enact a moratorium (as determined by [AGO Opinion in 2015](#)) and (2) the SEPA
40 policies do not establish substantive standards for types of timber harvests or a locations of harvest
41 if a proposal does not include harvest in NSO habitat.

42
43 Board member Swedeen acknowledged that the petition focuses on SEPA policies, but said the
44 petition raises a concern that the owl is using forests that does not meet the current rule definition of
45 NSO habitat and that the forest being used by this particular owl pair is being harvested. She
46 questioned if the habitat rules are actually protecting these owls and, if not, she questioned what the
47 Board should do to re-evaluate the habitat rule definition.

1 Board member Davis thanked the Audubon Society for having “eyes on the ground”. He said
2 WDFW is likewise concerned because the NSO is on the brink of being extirpated in Washington.
3 He said one major factor is the presence of the barred owl and suggested an interim strategy may be
4 needed for this particular situation. He also suggested WDFW provide the Board with a presentation
5 at the February 2020 Board meeting on the current status of the NSO or form a workgroup to
6 discuss potential solutions.

7
8 Bell said that evaluation of habitat typing continues to occur within NSO circles. He said past
9 habitat typing through photo interpretation alone was not always accurate. He added that the US
10 Fish and Wildlife Service has not been engaged in the habitat typing along with DNR and WDFW,
11 although they are welcomed to do so as participants on interdisciplinary teams.

12
13 Chair Bernath summarized the discussion to include a WDFW NSO update at the February 2020
14 Board meeting, the formation a workgroup to evaluate habitat criteria and the continuation of the
15 development of a safe harbor agreement.

16 17 **PUBLIC COMMENT ON PETITION FOR RULE MAKING**

18 Todd Thorne, North Central Washington Audubon Society, said they believe this owl pair was the
19 only documented successful breeding pair in eastern Washington in 2018. He said they are
20 concerned that continued harvests in non-habitat will contribute to a downward population trend
21 and increase the challenges for maintaining adequate habitat. He said while he understands the
22 Board lacks the authority to place a moratorium on harvesting, rule amendments are needed for the
23 overall protection of the NSO.

24
25 Martha Wehling, WFPA, said the reproduction trend of these owl shows that the pair are fine and
26 that this particular area of the state has successfully had breeding pairs for many years. She said the
27 current regulatory systems allows for the protection of the NSO through the ability to appeal a FPA
28 to the Pollution Control Hearing Board, the on-going work from the NSO advisory group and
29 DNR’s conditioning authority. She said WFPA supports the staff recommendation and supports the
30 development of additional voluntary protection approaches.

31 32 **PETITION FOR RULE MAKING RELATING TO THE NORTHERN SPOTTED OWL**

33 **MOTION:** Paula Swedeen moved the Forest Practices Board deny the petition for rule making
34 related to the Northern Spotted Owl due to lack of authority for a moratorium to
35 harvest. She further requested WDFW work with U.S. Forest Service, DNR and the
36 associated forest landowners to provide additional information and recommendations
37 on alternative solutions at the February 2020 meeting.

38
39 **SECONDED:** Tom Nelson

40 41 **Board Discussion:**

42 Board member Willet said he believes this petition is based on an assumption as to why the owl pair
43 moved. He agreed with the path outlined today, but is uncomfortable with the concept of assuming
44 the owl pair’s movement was because of timber harvest.

45
46 Board member Davis said the goal of WDFW is to protect the northern spotted owl in the interim
47 while the long-term conservation strategy for the NSO is being developed.

1 **ACTION:** Motion passed (11 Support / 1 Abstention (Bellon)).

2
3 **NORTHERN SPOTTED OWL CONSERVATION ADVISORY GROUP**

4 Marc Engel, DNR, provided background that resulted in the development of the Northern Spotted
5 Owl Conservation Advisory Group. He said the rule forming the group was adopted in 2010 to
6 allow time to develop a long-term conservation strategy. The rule established a three-member group
7 designated by the Board with members having a working knowledge of NSO habitat relationships
8 and factors affecting owl conservation. Current members are: Marty Vaughn, forest product
9 industry; Kara Whitaker, conservation organization; and Stephen Bernath, DNR Forest Practices
10 Program. The group's process is to evaluate WDFW-approved NSO surveys showing the absence
11 of an owl. The group determines if the habitat in the circle needs to be maintained to contribute to
12 the recovery of the owl on federal lands.

13
14 He said the rule is open-ended with an annual review to ensure that potential habitat is maintained
15 while the Board develops a long-term NSO conservation strategy. He recommended the Board
16 retain the group while the Board pursues voluntary spotted owl recovery measures.

17
18 Board member Davis suggested that WDFW, although not a member of the group, may recommend
19 that the Board not de-certify a NSO site center simply because a survey found no owls during a
20 particular year.

21
22 Engel felt that the group would consider the biological expertise of WDFW during their evaluation
23 should a survey occur showing no owls.

24
25 **PUBLIC COMMENT ON NSO CONSERVATION ADVISORY GROUP**

26 None

27
28 **NORTHERN SPOTTED OWL CONSERVATION ADVISORY GROUP**

29 **MOTION:** Maia Bellon moved the Forest Practices Board maintain the Northern Spotted Owl
30 Conservation Advisory Group for another year.

31
32 **SECONDED:** Ben Serr

33
34 Board Discussion:

35 None.

36
37 **ACTION:** Motion passed unanimously. (Brent Davies not available for vote.)

38
39 **ADAPTIVE MANAGEMENT PROGRAM FISCAL AUDIT REPORT**

40 Joe Shramek, DNR, summarized the October 30, 2019 memo included in [the meeting information](#)
41 [packet](#) (beginning on page 209) regarding the outcome from the AMP fiscal audit performed under
42 contract with Jennifer Woods, CPA, CIA, CFE, CRMA from the Department of Retirement
43 Services in partial fulfillment of requirements of [WAC 222-12-045\(2\)\(e\)](#). The audit covered the
44 2017-2019 biennium and approximately \$14.5 million dollars in contracts. The audit focused in
45 three areas:

- 46
- 47 • Assurances that the processes used for AMP science contracts followed applicable state rules
and regulations;
 - 48 • That only allowable costs were paid under non-governmental participation grants; and

- 1 • That only allowable costs were paid for the one time travel participation grants for cultural
2 resources projects.
3

4 The fiscal audit found the program implemented a process that protects state funds and is compliant
5 with state laws and regulations. He said fiscal audits don't generally address performance actions,
6 but one example where a performance improvement is needed was related to verbal agreements that
7 were given for minor contract changes. He said such changes require a written authorization and
8 that DNR has taken steps to make this adjustment.
9

10 **RECOMMENDATION ON CRITICAL HABITAT (STATE) FOR THE CARIBOU**

11 Marc Engel, DNR, reported that US Fish & Wildlife Service has amended their Endangered Species
12 Act listing for woodland caribou which reconfirmed previously designated critical habitat for 17-
13 subpopulations. The Board's critical habitats rule ([WAC 222-16-080 \(1\)\(c\)](#)) includes the mountain
14 woodland caribou. The Board's rules require DNR to consult with WDFW and then provide a
15 recommendation to the Board.
16

17 He said WDFW considers the remaining Washington caribou as extirpated from the state and that
18 WDFW has concluded that forest practices are not having any negative affect on caribou habitat.
19 WDFW endorses the action to retain habitat in the state for the species. He recommended the Board
20 make no change at this time to the Board's critical habitat rule for the caribou.
21

22 Board members Davis noted the species is currently no longer in the state and is declining in British
23 Columbia and Alberta.
24

25 **PUBLIC COMMENT ON CRITICAL HABITAT FOR THE CARIBOU**

26 None.
27

28 **RECOMMENDATION ON CRITICAL HABITAT (STATE) FOR THE CARIBOU**

29 **MOTION:** Carmen Smith moved the Forest Practices Board not amend the current protection
30 measures in WAC 222-16-080 for the mountain (woodland) caribou at this time.
31

32 **SECONDED:** Noel Willet
33

34 Board Discussion:

35 None.
36

37 **ACTION:** Motion passed unanimously. (Brent Davies not available for vote.)
38

39 **STAFF REPORTS**

40 There were no questions on the following reports:

- 41 • Adaptive Management
 - 42 • Compliance Monitoring
 - 43 • Small Forest Landowner Office
 - 44 • TFW Policy Committee Work Plan
 - 45 • Upland Wildlife
- 46
47
48

1 **2020 WORK PLANNING**

2 Marc Engel, DNR, presented a draft Board Work Plan for calendar year 2020. The 2020 Board
3 meeting dates will be February 12, May 13, August 12 and November 12.

4
5 **MOTION:** Carmen Smith moved the Forest Practices Board approve the 2020 work plan as
6 amended.

7
8 **SECONDED:** Ben Serr

9
10 Board Discussion:
11 None.

12
13 **ACTION:** Motion passed unanimously. (Brent Davies not available for vote.)

14
15 **EXECUTIVE SESSION**

16 None.

17
18 Meeting adjourned at 4:25 p.m.