

Agenda Item No.:	6
Work Plan:	Private Forests Work Plan
Topic:	Forest Practices Act (FPA) Rule Policy Review
Presentation Title:	Petition to Initiate Rulemaking to Identify and Develop Protection Requirements for Coho Salmon Resource Sites
Date of Presentation:	July 24, 2019
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SUMMARY

The Board of Forestry (Board) will review and discuss the Petition to Initiate Rulemaking under specified resource sites for coho salmon, received on April 24th, 2019 (Attachment 1). The department will outline Board response options as required in rule and statute and the Board must decide to accept or deny the petition.

CONTEXT

The Board’s 2011 Forestry Program for Oregon (FPFO) supports and contributes to continuing statewide efforts under the Oregon Plan for Salmon and Watersheds to enhance, restore and protect Oregon’s native salmonid populations, watersheds, water quality, and fish and wildlife habitat, while sustaining a healthy economy (Goal D-6). The FPFO also strives to conserve diverse native plant and animal populations and protect and improve their habitats in Oregon's forests (Goal E). The Board also promotes a variety of non-regulatory tools, such as landowner recognition, incentives, easements, exchanges, and technical assistance.

BACKGROUND

The Board’s work plan for Private Forests has a set of priority issues for 2018-2019, which includes a Specified Resource Sites Policy Review under the Forest Practices Act (FPA). The topic recognizes that some time has passed since the adoption of special resource site protection policies and a Board review of such policies—related statutes and/or rules—is needed in light of changing circumstances for private forests in Oregon and species protection efforts. Changes include the development of a federal recovery plan for spotted owls, effective implementation of the Oregon Plan for Salmon and Watersheds, Oregon Department of Fish and Wildlife’s development of a statewide conservation strategy, and the development of a programmatic safe harbor agreement for spotted owls. Overall, there is a growing recognition that species-by-species approaches to resource protection, as opposed to more holistic landscape level approaches, may not be the most effective or efficient means to achieve specified resource site protection goals.

ANALYSIS

Under the Administrative Procedures Act (ORS 183.390; OAR 137-001-0070) any interested party may petition an agency to adopt, amend, or repeal any agency rule. When a new rule is proposed the petition shall set forth the proposed language in full including the facts or arguments in sufficient detail to show the reasons for and the effects of adoption. The petition must also include all propositions of law to be asserted by the petitioner.

Petitioners have requested the Board of Forestry: *(1) collect and analyze the best available information on coho salmon; (2) conduct a resource site inventory; and (3) adopt rules to protect resource sites and to develop a process to identify new sites in the future. ORS 527.710(3) (b), (c). Specifically, the Petitioners propose the addition of a new rule with proposed rule language specified in the petition (see attachment 1, pages 64-66).*

The Forest Practices Act requires the Board of Forestry to collect and analyze the best available information and establish inventories of the resource sites for threatened and endangered fish species needing protection. Once those inventories are established, the Board must determine whether forest practices would conflict with the resource sites. If the Board determines that a forest practice would conflict with resource sites, the Board is obligated to consider the consequences of the conflicting uses and determine appropriate levels of protection. Then the Board, consistent with ORS 527.630, must adopt rules appropriate to protect resource sites in the inventories identified.

The Board (within 90 days) must consider the petition and make a decision on whether to deny the petition or to accept the petition and initiate rulemaking. If the Board initiates rulemaking, it is not bound by the proposed language and may come up with its own language. If the Board denies the petition, it must do so in writing. The Board has broad discretion on this and staff may make recommendations.

RECOMMENDATION

The Board has options to respond to the petition at the July 24 meeting;

1. Accept the petition and proceed to rulemaking related to resource site protection rules for coho salmon described in ORS 527.710.
2. Deny the petition in writing.
3. Deny the petition in writing and direct the department to begin rulemaking to better align water protection and resource site protection rules.

NEXT STEPS

Private Forests Staff will provide information based on the outcome of the petition by the Board.

ATTACHMENTS

1. Petition to Initiate Rulemaking and Identify Resource Sites to Establish an Inventory and Protect Existing Coho Sites. 77 p.