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FINAL DRAFT -- December 19, 2013

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Subject: **TYPE F – Questions and Recommendations**

I. Questions

A. Should the Policy Committee develop a permanent water typing rule that applies F buffers to fish habitat as defined in WAC 222-16-010 and WAC 222-16-030?

B. Why continue to use WAC 222-16-030 "Type F" rule language for on the ground determinations yet not follow the definitions of "Type F" from WAC 222-16-030, and why implement WAC 222-16-031, but not use the type 1-5 water typing system?

C. Due to the confusion on the interpretation of WAC 222-16-031 and the resulting disagreements we continue to have at the Policy Committee and in the field, should the Policy Committee develop field guidance for implementing WAC 222-16-031 that is consistent with the permanent rule WAC 222-16-030?

D. Should the Policy committee recommend guidance to consistently locate the end of fish habitat on the ground, and should Policy make a final determination on what is a "permanent" fish barrier and what constitutes a defined channel?

F. Should continuation of single pass electrofishing surveys as a benchmark for delineating the extent of fish habitat occur given the following information?

1. Electrofishing likely results in federally prohibited take by two methods: (a.) direct effects of electric shock on fish, and (b.) false negatives achieved through surveying overwintering habitat in the spring and summertime that essential habitat is not buffered per rules.
2. Spring and summertime fish distribution fluctuation with seasonal stream flow.
3. Fish presence surveys do not identify recoverable habitats. Is it possible to explain why the current process for delineating Type F in the field does not use the default physical criteria to determine the F/N break, which accounts for seasonal variability and restorable habitat?

II. Recommendations

A. *Issue 1*: **Different Water Type Standards from Permanent/030 and Interim/031 Rules Get Implemented**.

This disagreement is a result of the difference in rule language between WAC 222-16-031 and WAC 222-16-030. Merging 030 and 031 would ensure proper determination of fish habitat by finalizing the definition of Type F Waters to include off-channel habitat. It would also confirm that stream associated wetlands are protected as defined in 030 and 031. In addition, this provides an opportunity to address how to best move forward in the absence of having a final model. The issues get too easily confused since the AMP implements 031 while working to finalize 030. And operationally, water typing also occurs under a mixture of 030 and 031 language.

- *Solution*: Merge 030 and 031 for the purposes of water typing and to provide a definition of fish habitat. And create a water typing strategy that uses physical defaults and ID Teams to make Type F determinations.

B. *Issue 2*: **Fish Distribution and Fish Habitat Cannot be Determined by a Single Pass Electrofishing Survey**.

There are years of debate among experts regarding single pass electrofishing surveys. These surveys do not account for seasonal variability of fish distribution and recoverable habitat. As a result, permanent downgrades to modeled fish habitat can occur. This method was intended to be a short term solution while the model was finalized. Today we still do not have a reliable model and the protocol surveys are done without considering if spring and summer fish presence actually accounted for fish habitat. In addition, this approach does not consider habitat that has the potential to be restored and maintained, which is one of the foundational principles of our HCP and essential for the protection of endangered species.

Solution: Discontinue the use of electrofishing for permanent downgrades of streams because of the limited survey window and the ineffectiveness of determination of fish habitat.

C. *Issue 3*: **Default Physical Habitat Criteria Are a More Appropriate Measure of Fish Habitat.**

To comply with the Incidental Take Permits issued under the ESA for our HCP, it is our position that the use of physicals nearly eliminates the use of electrofishing surveys and the likely unacceptable level of take that occurs on listed species. Default physicals could be used in conjunction with a final definition of defined channel, permanent natural barriers, and Board Manual guidance on how to determine fish habitat in the field. In addition, clarification of when and where electrofishing surveys can occur likely provides final resolution on the determination of fish habitat.

The counter argument from some caucuses is that the current physicals over predict fish habitat. But, this is solely based on the one pass survey method that uses presence to determine the extent of fish habitat. Physicals can also under predict fish habitat and this has been confirmed through the use of one pass surveys as well. Therefore, physicals should be utilized except in those instances where the presence of fish has been determined through a site visit and confirmed visually or through other approved methods.

This approach resolves longstanding disagreements at the Policy table. It also reduces the disputes that occur with field crews and ID Teams. Finally, this approach provides a method that can be consistently applied across all of DNR's Regions, and it would fulfill WA State's best intentions for the Forest Practices Rules to be implementable, repeatable, and enforceable.

- *Solution1:* Finalize the definition of a defined channel and permanent natural barriers. Create Board Manual Guidance for fish habitat field determinations, including when and where electrofishing can occur.

- *Solution2*: Use current physical defaults as the tool to make the F/N break determination until a method is developed that fulfills WAC 222-16-030.

We look forward to continuing to work with the other Caucuses to help ensure that progress and eventual resolution is brought back to this body when Type F is ready for action. Please contact UCUT central staff, Marc Gauthier/Forests Practices Coordinator or Chase Davis/Forest, Fish, and Wildlife Liaison, should you have questions or require additional information about our Type F recommendations. Thank you for your time and consideration. We appreciate the opportunity to share our thoughts on this critically important matter.

Sincerely,

D.R. Michel, Executive Director