

May 9, 2019

Washington State Forest Practice Board Re: SFLO Template Proposal update
P.O. Box 47012
Olympia, WA 98504-7012

Chairman Bernath and Members of the Board:

As Chairman Bernath mentioned yesterday TFW Policy has not met your requirement to bring our template proposal back to you for this meeting – mostly for good reasons. Mainly awaiting the independent Science Review and subsequent blessing of that review by ISPR which is now completed.

Two scientific organizations used different processes to measure the relative effectiveness of our template prescriptions vs Forests and Fish. The resulting relative effectiveness for each process ended up with essentially the same answers – no significant difference between two separate scientific evaluations of relative effectiveness! That leaves us with the policy question of whether or not our proposed prescriptions are relatively low impact as required by RCW? I've attached two slides from last week's WFFA Annual meeting utilizing some of what Tami Miketa will present today along with DNR Harvest data to help shed some light on the "relatively low impact" question.

Chairman Bernath also reported yesterday something to effect that the new target date for bringing our template proposal back is now the November Board Meeting. The only real chance of that happening is if you mean November of 2020. ☹ November of 2019 is only possible if a consensus is reached by then – very unlikely, but I suppose possible. To get to the November 2019 FPB someone would have to call for dispute resolution at the June Policy meeting – I'm fearful of pushing too hard in that direction but would welcome a joint call for dispute resolution, if only to help expedite the TFW processes.

Our Template Work Group hasn't been able to meet since Feb – primarily because (my opinion) the stakeholders are just too busy on higher priority issues like what you worked on yesterday – and I believe another factor was not being able to find a DNR Silviculturalist willing to work with the State Caucus to help with their draft thinning prescriptions.

When we've been able to have prescription related meetings I was increasingly confident we would be able to reach consensus on prescriptions within whatever RMZ widths we eventually settle on. Mark Hicks and Don Nauer in particular have really been working collaboratively in search of win-win's – if we could restart meetings with that same kind of work I think we could narrow our differences down very quickly so that if we must go into dispute resolution it would be on fewer items rather than the entirety of our proposal. I'd welcome clarifying questions anytime.

Respectfully,

Ken Miller



Average # Forest Practices Applications per Year

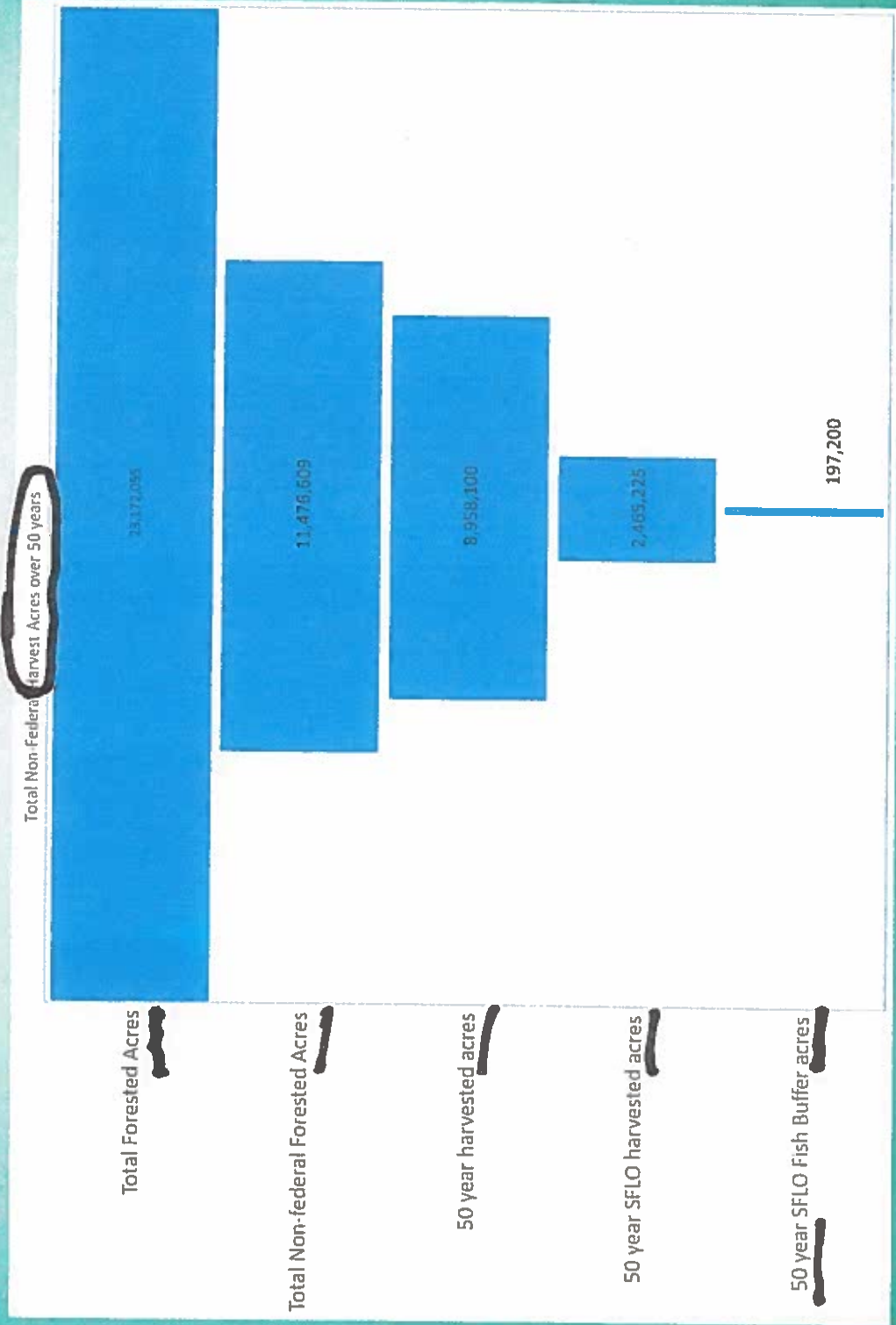


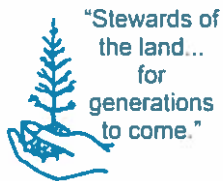
Average # FPA

Average # SFLO FPA

Avg # SFLO FPA with Fish Streams

Less than 5% are 20
acre exempt; less than
1% are long term plans





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**Testimony of Elaine Oneil to the Washington State Forest Practices Board on May 09, 2019
to provide a Status Update on WFFA Proposed Eastside Template and Landowner
Database**

Chairman Bernath and members of the Forest Practices Board, I am Elaine Oneil, Executive Director of the Washington Farm Forestry Association. Today I would like to update you on two items.

First, the fate of our request at the last FPB meeting in November for support in advocating for an update to the SFLO landowner database that would provide current metrics on SFLO distribution, size class, intent to harvest, and harvest metrics. This was said to be a needed source of information to help the board members understand the potential impact of the WFFA westside riparian template proposal. We are happy to report that we were able to get a \$500K request through the legislature to update the current landowner database, conduct a trends analysis, and conduct an analysis of the reasons for observed trends, including how regulatory impacts affected those trends. The bill that passed (ESSB 5330) is currently waiting for the Governor's signature and if signed into law would direct those funds to the University of Washington School of Environmental and Forest Sciences. We expect the data update to be completed by December 2019 and the full report on trends and their causes by December 2020. Thanks to DNR, WFFA, and Board Member Swedeen for their support as we moved the bill through the process.

Second, the status of the Eastside Riparian Template. As we did with the Westside Riparian Template, we started this process using a scientific approach that incorporated the intent of the eastside rules combined with the need to develop a simple, economical approach that can be easily implemented by small forest landowners. As I have mentioned to you in prior testimony the analysis completed by Cramer Fish Sciences using CMER riparian data sets showed that when fire hits the riparian zones, the loss of shade under current FFR, all available shade, or any combination of no harvest buffer ranges from 70-100% for over 80% of the riparian stand inventories. In other words, business as usual will not work given our existing inventories, even in 'normal' fires years, never mind the conflagrations of 2014, 2015, or that are predicted in the future. As part of developing a template proposal we also looked at existing alternate plans for eastside forests. That was a disappointing exercise as most approved alternate plans were for salvage after fire which is akin to closing the barn door after all the horses have escaped. This after the fact approach does nothing for water quality, for fish habitat, and for our own goals as stewards of the land. It is also the antithesis of the all hands – all lands approach DNR has taken for its very aggressive 20 year Forest Health Plan.

So how do we handle the forest health challenges in these sensitive sites? We have come to the conclusion that addressing the larger issue of forest health in riparian zones will likely require a

rule change, and that it will also require the integration of efforts from this body as well as those working on the 20 year forest health plan. For that reason we have decided it is necessary to develop a series of alternate plans with a forest health focus. We envision that for this approach to be successful, there would be the need for what we are calling a 'Super ID team' that would assess all proposed prescriptions with an eye toward integrating the requirements set forth in regulation along with forest health into their evaluation of these alternate plans. We have identified several candidate alternate plan sites. We expect that they would go through the normal FPA process, with the exception of having a request for the 'Super ID Team' to evaluate their proposals. I have begun conversations with DNR Forest Health and DFW on this approach, and I am hopeful that by mid-summer we could establish such a 'Super-ID team' that could take on this task. It is an opportunity to integrate two critical challenges facing our eastern Washington riparian forests using a tool that is currently at our disposal while developing data that can inform a much longer term process of rule change or template development.

5/9/19

Forest Practices Board meeting

WFPA general public comments – water typing

Thank you for your consideration yesterday. While there's still work to do to refine the motion, it appears we may be on a positive path. Given the motion is still in play, I'd like to put a finer point on what we think needs to happen in order for the process to be successful and the Board to have a defensible outcome.

- The spatial analysis of the PHB alternatives needs to be rerun, this time including width; the results of the rerun needs to be incorporated into the CBA, SBEIS, and SEPA analysis
- The anadromous overlay concept needs to be clarified, and we need to bring data/science to the table to find a solution; the WWA tribes are assembling some data, we have some information, it's likely we're going to need more
- A field component to prove out/refine the PHBs and anadromous overlay over time is going to be necessary; we need to do that in a cost effective and time efficient manner, and ensure we have buy in from all stakeholders up front
- There are other components of the rule which need to be addressed, default physicals and a LiDAR based model; we may be able to incorporate these components into the field study or studies, in any case we can't leave them behind while the rest of the rule making moves forward
- Stakeholders have to be meaningfully involved in all these steps; while that may not precisely be an AMP process, if you get buy in, the Board's and Department's risk going forward is low
- The Board needs to be as clear as possible about what we're trying to achieve, a qualitative description will only get us so far. One example which came up yesterday is the phrase from the fish habitat definition "...potential habitat likely to be used by fish..." What is that and how is it measured? We need targets which can be measured, otherwise there will be endless debate about whether we're achieving the desired outcomes
- All of this needs to be integrated into a plan/timeline and brought back to the Board at the August or November meeting

Thank you for the opportunity to comment, we look forward to working with the Board and all stakeholders to complete the permanent water typing rule.



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May 7, 2019

Washington Forest Practices Board
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PO Box 47012
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Re: 2019-2021 CMER Proposed Biennial Budget

Dear Forest Practices Board Members:

Washington Forest Protection Association (WFPA) is a forestry trade association representing large and small forest landowners and managers of nearly four million acres of productive working forests, including timberland located in the coastal and inland regions of the state. Our members support rural and urban communities through the sustainable growth and harvest of timber and other forest products for U. S. and international markets. For more information about WFPA, please visit our website at www.wfpa.org.

WFPA supports the consensus TFW Policy recommendation regarding the 2019-21 CMER Biennial Budget. However, we do have a couple concerns which have also been highlighted in the Co-Chairs' and Adaptive Management Program Administrator's report.

As you have heard, TFW Policy is recommending not moving the PHB study forward at this time. Rather the Forest Practices Board should put all water typing related technical work - the PHB validation and default physicals study, and the LiDAR based model - back into the collaborative stakeholder process consistent with the requirements of, and caucus commitments to follow, the Adaptive Management Program (AMP). WFPA is supportive of moving all this important work forward, but not in its current form and not outside the collaborative or legal process.

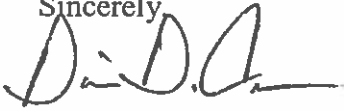
The other concern is two expenses being charged to the AMP budget TFW Policy had not previously seen on the Master Project Schedule (MPS). One is apparently pass-through funding for the Department of Archeology and Historic Preservation to review Forest Practices Applications; the other is unclear but appears to be agency overhead. These items add up to more than \$400,000 per

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• Page 2 Washington Forest Protection Association

biennium. This is no small expense, and even if legitimate, TFW Policy should have the opportunity to review and provide feedback before they show up on the MPS. WFPA request the Board direct staff to thoroughly investigate these expenses and report back to TFW Policy and Board at their next meetings.

Sincerely



Darin D. Cramer

Senior Director of Forest and Environmental Policy



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May 7, 2019

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**Re: Type N Experimental Buffer Treatment Project in Hardrock Lithologies Study
Recommendations**

Dear Forest Practices Board Members:

Washington Forest Protection Association (WFPA) is a forestry trade association representing large and small forest landowners and managers of nearly four million acres of productive working forests, including timberland located in the coastal and inland regions of the state. Our members support rural and urban communities through the sustainable growth and harvest of timber and other forest products for U. S. and international markets. For more information about WFPA, please visit our website at www.wfpa.org.

WFPA supports TFW Policy's consensus recommendation regarding the Type N Experimental Buffer Treatment Project in Hardrock Lithologies (hardrock study). While the temperature response finding of the hardrock study has created much of the excitement and is the primary focus of the workgroup, we encourage Board members to take the time to read the entire study report. There are several notable findings in this and other related studies which have reduced scientific uncertainty, particularly regarding amphibians.

At its core, that's what adaptive management is about, learning and reducing scientific uncertainty. Though we understand the concern about temperature, TFW Policy has decided on a course of action to address that concern. This course of action incorporates thorough consideration all existing and pending, relevant science, which includes at least four more CMER studies. This is the prudent thing to do before recommending any management changes. In the meantime, we would do well to acknowledge the existing and ongoing contributions the Adaptive Management Program makes to reducing scientific uncertainty.

We're managing private forests, so they work for all of us. ®

Sincerely,



Darin D. Cramer

Senior Director of Forest and Environmental Policy

Testimony Presented to the Forest Practices Board

By

Vic Musselman

May 8, 2019

Good day Chairman Bernath and members of the Forest Practices Board. My name is Vic Musselman and I am President of the Washington Farm Forestry Association.

The Preliminary Cost-Benefit Analysis of the Proposed Water Typing System Rule prepared by Industrial Economics, Incorporated (IEc), April 30, 2019, indicates that the proposed new Water Typing Rules will be a heavy burden for Small Forest Landowners (SFLs). Depending on the Option being analyzed, IEc projects that the new Rules would impact SFLs by a margin of 29% to 42% more than large forest landowners. This is definitely an unacceptable effect, particularly in view of the fact that the mitigation allowed SFLs for the dis-proportionate effect of the Forests and Fish Act has yet to be fully implemented by this Board twenty year later.

Therefore, I urge you to strongly consider fast tracking the completion of Lidar based water type maps and revisit the definitions of the default stream physicals to bring them more in line with the type F/N breaks that will result from the use of the new FHAM protocol. In addition you should direct that more assistance be given to SFLs to apply the new FHAM protocol.



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May 7, 2019

Washington Forest Practices Board
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Re: Comments on Water Typing Rule Making

Dear Forest Practices Board Members:

Washington Forest Protection Association (WFPA) is a forestry trade association representing large and small forest landowners and managers of nearly 4 million acres of productive working forests, including timberland located in the coastal and inland regions of the state. Our members support rural and urban communities through the sustainable growth and harvest of timber and other forest products for U. S. and international markets. For more information about WFPA, please visit our website at www.wfpa.org.

WFPA would like to acknowledge the substantial effort put forth by Forest Practices Board (FPB) staff and cooperators to move the Water Typing Rule making process forward. Progress has been made and learning has occurred on several topics, such as electrofishing, the Fish Habitat Assessment Methodology, and off channel habitat. We've learned conducting a spatial analysis of potential habitat breaks (PHB) and an anadromous overlay, while informative, can be challenging, and there's no substitute for good field data. WFPA submits that one of the most important things we've learned is conducting rule-making outside of the collaborative stakeholder process can be precarious.

If the FPB chooses to continue moving the rule-making process forward, WFPA requests that be done in a collaborative stakeholder process consistent with the requirements of, and caucus commitments to follow, the Adaptive Management Program (AMP). In FPB rule-making, the Administrative Procedures Act (APA) requirements are supplemented by the FP HCP commitments, including compliance with RCW 76.09.370, the FP HCP Implementing Agreement, WAC 222-12-045, and Board Manual Section 22. In this case, given the complex rule development process, the FPB should ensure its rule-making file documents compliance with those HCP commitments, to avoid any perception that the rule was not adopted in compliance with the FPB's statutory authority. RCW 34.05.570(2)(c).

Additionally, the spatial analysis of PHBs needs to be completed before any other work can proceed. Specifically, the width based PHBs adopted by the FPB needs to be included in the analysis. We acknowledge the challenge associated with identifying a discrete bankfull width in small stream channels using GIS methods, but WFPA's width based PHB relied on a change in stream size at stream junctions, which can be reliably estimated using GIS methods. In addition to incorrectly describing WFPA's PHB based anadromous alternative in draft rule language, it was also not included in the spatial analysis as directed by the FPB. Our anadromous overlay proposal was accepted by the FPB and the FPB motion specifically referred to analysis of our anadromous alternative:

"Landowner's Proposal, as amended during board discussion at 2/14/2018 meeting; (test #15 from the science team's recommendations plus their description of an anadromous layer, eastern and western Washington.)" FPB Motion 2/14/18

There is a large degree of uncertainty associated with the anadromous component of this rule making, yet we believe it to be an important element and are very willing to work on it in a collaborative stakeholder process consistent with the requirements of the AMP. Finally, we strongly recommend the FPB clearly reaffirm the policy level performance targets for the water typing system in order to give this process the best chance for success.

Concerns About DNR's Spatial Analysis Have Not Been Adequately Addressed

The spatial analysis of PHBs is the foundation for estimating the potential impact of rule proposal alternatives, and it is a required element of the rule-making process. It is critical to get that analysis right as it drives the outcomes of other work such as the State Environmental Policy Act (SEPA), Cost Benefit Analysis (CBA), and Small Business Economic Impact Statement (SBEIS). We have previously expressed concerns about the potential limitations of the DNR's data set and lack of clarity about the methodology used for the DNR's spatial analysis. Despite the Board's direction at the November 2018 meeting, and efforts by DNR staff to meet with the caucuses, no thorough explanation about the data selection, methodology, or results have been provided. Our concerns about the spatial analysis remain and were recently confirmed when we learned no width based PHB was analyzed for any of the proposed alternatives, and WFPA's PHB based anadromous alternative was also not include in the analysis.

As we committed in our February 2018 proposal to the Board, WFPA has conducted an independent spatial analysis of the PHB alternatives in six watersheds, three in Western Washington (WWA) and three in Eastern Washington (EWA). In WWA we compared the PHB alternatives to more than 400 Type F/N breaks established through DNR's water typing concurrence process. The results of our analysis differ significantly from the results DNR presented at the November 2018 Board meeting. In EWA we compared the PHB alternatives to more than 200 end-of-fish and end-of-habitat data points collected through CMER approved fish habitat model development and seasonal/annual variability studies. Our EWA results differ in magnitude from DNR's; however, the overall direction is the same. In EWA there is a scarcity of concurred with Type F/N breaks, and less high-resolution LiDAR coverage; therefore, WFPA elected to use fish distribution and temporal variability data collected

through CMER approved studies to do our baseline comparison. We believe the CMER data provides a reliable data set since it was collected under a single, consistent methodology, similar to what is used for protocol surveys in WWA. The CMER data includes a seasonal and annual variability component to characterize the extent of habitat likely to be used by fish beyond that which is observed in a single survey. We have also compared the WWA PHB alternatives to unpublished seasonal and annual fish distribution data to characterize the extent of habitat likely to be used by fish. In addition, we have developed information which will be useful to inform discussion and analysis of anadromous fish distribution potential.

We are not suggesting our analysis provides the final solution for this rule making, but we have developed a considerable amount of useful information which we stand ready to share, including access to the spatial analysis, within a collaborative stakeholder process. The goal of this process would be to refine and agree on a single, PHB and anadromous alternative which meets the stated objectives for the water typing system adopted by the Board in August 2015 (use existing data, accurate as possible, balance uncertainty, improve map over time, minimize electrofishing, methods to locate break points on the ground, address SFLO needs, etc.).

Anadromous Layer Alternatives Create Too Much Uncertainty

DNR's approach of comparing the percent of overlap between the anadromous overlay alternatives and the Statewide Washington Integrated Fish Distribution layer (SWIFD) is a good start, but inadequate to fully evaluate the performance of proposed anadromous overlay alternatives against the full extent of anadromous fish use and FPB objectives for the water typing system. WFA's analysis of the anadromous overlay alternatives indicates all of them add considerable length to the existing Type F stream network. Most of that additional Type F stream has not been surveyed and is therefore of unknown accuracy. This is problematic because the lack of data means the layer would not be based on science and inconsistent with the objectives of the Forest Practices HCP and the AMP process. Based on our analysis of proposed anadromous alternatives, all add significant uncertainty into the water typing system. In addition, it appears that much of that uncertainty will be disproportionately borne by small forest landowners and non-forest users of DNR's water typing system. Our conversations with stakeholders indicate there may be differing views of what problem is being solved with an anadromous overlay. Given the lack of a clear and agreed upon problem statement, and the substantial uncertainty associated with the anadromous alternatives, additional work is needed before adoption of a state-wide alternative. Again, we recommend the Board engage a collaborative stakeholder process to resolve this issue rather than continue with Board directed work outside of the rule-prescribed AMP process.

Request Board Clearly Define Its Objectives for the Water Typing Rule-Making

One of the reasons past water typing rule making efforts have failed is due to lack of understanding and agreement on the performance targets and expectations for risk allocation. Comparing alternatives with concurred Type F/N breaks as a measure of performance has been implied through the department's spatial analysis. WFA agrees this is currently the best baseline to evaluate performance against, and we used the same metric in our WWA analysis. However, for this rule making to be successful, we recommend the Board clearly reaffirm the performance targets for water typing, which

are clearly stated in the Forests & Fish Report, the Forest Practices Rules adopted in 2001, the Forest Practices HCP, and reaffirmed at the August 2015 board meeting.

Finally, we strongly encourage the Board re-engage the collaborative stakeholder process. Outsourcing this critical work to independent expert panels under the Adaptive Management Program Administrator's (AMPA) direction has not been very successful. It has deepened position-based bargaining amongst the caucuses, which will not likely result in durable solutions in the long run, and negatively effects collaboration on a variety of issues in the short run.

Potential Consequences for the Rule Making Processes

WFPA expressed its concerns about the integrity of the rule-making process in its comment letter to DNR on the "SEPA Analysis Suggestions." A copy of that letter is attached for the Board's reference. If DNR's spatial analysis of alternatives adopted by the FPB is not completed, it is unclear how work on the other rule making process steps, such as the CBA and Small Business Economic Impact Statement (SBEIS), can be legally defensible. In addition, while we've not had much time to review the CBA/SBEIS (it was distributed last week with a five day comment period), the fish benefits analysis contains many simplifying assumptions and is highly speculative given there has been no credible science produced within the AMP or elsewhere which suggests fish and fish habitat is not being protected as intended on forestland subject to the Forest Practices Rules. Given the lack of data and many simplifying assumptions, we question whether the CBA benefits analysis will be meaningful. In addition to ensuring the spatial analysis is correct, we recommend DNR coordinate a meeting between the CBA authors and caucus fish biology experts to discuss the inherent assumptions and analytical methods of the fish benefit analysis.

Conclusion

We acknowledge the collaborative stakeholder process can be burdensome to all involved. However, that process is the fundamental backbone of the Forest Practices HCP, and our governing statutes and rules. Compliance with this process might require more time during initiation and development of science and rules, but it is designed to ensure a defensible product at the conclusion. It is a required component of any Board rule making for aquatic resources, and when successful, significantly reduces risks for Board decisions and DNR implementation. WFPA respectfully requests the Board engage the collaborative stakeholder process, with clearly stated performance objectives for the Water Typing Rule, and prioritize development of consensus alternatives, including draft rule language, to present to the Board's as soon as possible, ideally before the end of 2019. WFPA looks forward to continued work with the Board and caucuses on a permanent water typing rule which meets the legal requirements and the intent of the Forest Practices HCP. Please don't hesitate to contact us with questions.

Sincerely,



Darin D. Cramer

Senior Director of Forest and Environmental Policy



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Sent by e-mail

January 14, 2019

Sherri Felix, Forest Practices Policy Analyst
Department of Natural Resources
1111 Washington Street SE
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sherri.felix@dnr.wa.gov

Re: Invitation – Water Typing System Rule Making – SEPA Analysis Suggestions

Dear Ms. Felix:

Thank you for the opportunity to comment on DNR's anticipated SEPA Analysis for permanent water typing rule making. The Washington Forest Protection Association (WFPA) is a trade association representing large and small forest landowners and managers of nearly 4 million acres of productive working timberland located in the coastal and inland regions of Washington State. WFPA members are founding partners in the historic Forests & Fish Agreement that created a forestry blueprint for science-based, collaborative assurances under the federal Endangered Species Act (ESA) and the Clean Water Act (CWA). Our members support rural and urban communities through the sustainable growth and harvest of timber and other forest products for U.S. and international markets. WFPA members also support salmon recovery and decrease greenhouse gas emissions. From 2001 through 2017, forest landowners removed over 7,900 barriers to fish passage, opening up more than 5,200 miles of historic fish habitat. Washington's forests and wood products offset 35% of the state's carbon emissions. Wood is renewable, requiring less water, energy, and fossil fuels than other manufactured products. When wood is used for building products, two tons of carbon emissions are offset for every dry metric ton of wood used.

WFPA appreciates DNR's efforts to engage its stakeholders in a transparent rule-making process, particularly due to the lengthy history and complex scientific questions underlying the water typing issues. As you know, these issues pre-date the adoption of the interim and permanent water typing rules, as well as the Forest Practices Habitat Conservation Plan (FP HCP), since the rules were originally adopted in 2001 (interim) and 1976 (permanent). WAC 222-16-030, -031. DNR filed the CR 101 for this rule-making in December 2016, and its current timeline anticipated a six-week stakeholder review process for the draft rules in the summer of 2018.¹ That timeline does not include any deadlines associated with scoping or preparation of an environmental impact statement. WFPA encourages DNR to comply with the SEPA process required by statute and rule, as well as the FP HCP's Adaptive Management commitments, in order to maintain the integrity of the FP HCP and

¹ 2018 and 2019 "Water Typing System Rule Making Plan", https://www.dnr.wa.gov/publications/bc_fpb_wtrm_timeline_07112018.pdf?fuhmgpa (last visited January 4, 2019).

rules and ensure the final rule is defensible, enforceable, consistent with the FP HCP, and practical to implement.

In brief, WFPA encourages DNR to work collaboratively with its stakeholders and the members of TFW Policy to develop a rule through consensus. This approach is the most likely to lead to a defensible and effective rule that is consistent with the process requirements for SEPA and the FP HCP, and will ensure the proposed rule is based on the best available science. If DNR takes this approach, SEPA may require only preparation of a checklist and issuance of a threshold determination, depending on the scope of the rule, or an addendum or supplement to the FP HCP EIS. If, however, DNR chooses to independently develop proposed rules, particularly a suite of alternative rules that are based on incomplete and inadequate science, SEPA's process requirements will require DNR to prepare an environmental impact statement for the rule-making due to the scientific uncertainty, lack of consensus, and potential cumulative effects.

A. If DNR Proposes Rules Without Compliance with Adaptive Management, the SEPA Process Should Include Scoping and Preparation of an EIS

At this stage, DNR's request for suggestions on key environmental issues, specific mitigation measures, and environmental information relevant to the rule-making is premature. SEPA identifies a process to identify whether an "action", here, a rule-making, has probable, significant, adverse, environmental impacts. If impacts are identified, SEPA requires preparation of an environmental impact statement, including a reasonable range of alternatives and cumulative effects analysis. Stakeholders cannot properly identify key environmental issues, specific mitigation measures, or identify environmental information *before* DNR has completed and provided an opportunity to review DNR's full spatial analysis or DNR's methodology that it relied on to identify the impacts of the alternative draft rules. *See Ferry County v. Concerned Friends of Ferry County*, 155 Wn.2d 824, 836-37, 123 P.3d 102 (2005) (in context of Growth Management Act, a decision-making process that fails to coordinate with other scientists with expertise, conduct on-site field observations, conflicts with ongoing activities, and fails to reference known science is inadequate both scientifically and analytically, and is not a reasoned process; resulting in a mistaken and clearly erroneous decision).

By identifying five alternative rules, DNR's request for comments on its future SEPA analysis suggests that DNR anticipates preparation of an environmental impact statement, despite the absence of the 12-18 month timeline associated with that workload in DNR's rule-making plan. WAC 197-11-400(2). Alternatives are only required under SEPA when the proposed action is likely to have probable, significant, adverse environmental impacts. When the action does not have impacts, or those impacts can be mitigated, the SEPA process does not require an alternatives analysis.

To ensure compliance with SEPA's requirements, WFPA respectfully proposes that DNR's next steps if it intends to move forward with non-consensus alternative rules is to initiate expanded scoping, and provide stakeholders with at least the SEPA-prescribed 21 to 30-day opportunity to review and comment on the draft rules, if not the six weeks it proposed in its rule-making plan timeline. WAC 197-11-408 (scoping), -410 ("expanded scoping is intended to promote interagency cooperation, public participation, and innovative ways to streamline the SEPA process."), -792(2) ("To determine the scope of environmental impact statements, agencies consider three types of actions, three types of impacts, and three types of alternatives."). Scoping should request feedback on and define DNR's goal and objectives for the water type rule-making. WAC 197-11-060(3)(ii); *see also* RCW 34.05.328(1)(a). After completion of scoping, DNR will then need to prepare a Draft EIS and Final

EIS, with associated public comment and hearing periods. WAC 197-11-455, -460, -502, -535, -560. Following the prescribed SEPA process will minimize DNR's risk of future procedural challenges, which could undermine years of effort in creation of a collaborative final product. When State Parks recently failed to prepare an EIS prior to its Commission taking action, despite over 10 years of planning and process, it created several additional years of delay and a court order requiring preparation of an EIS. *Lands Council v. Washington State Parks & Recreation Comm'n*, 176 Wn. App. 787, 806 ¶45, 309 P.3d 734 (2013).

If DNR decides to move forward independently, rather than with a consensus rule developed through TFW Policy, WFPA believes that expanded scoping is the prudent next step for SEPA compliance because in its initial review of the five alternative rules, it identified the following issues:

- Evaluation of impacts to FP HCP Integrity. The EIS for the FP HCP analyzed the environmental impacts of a 50 year adaptive management program. If the Forest Practices Board chooses to adopt rules in a manner inconsistent with the FP HCP and RCW 76.09.370, an environmental impact statement will likely be required to identify and analyze the environmental impacts of termination or modification of the FP HCP.
- Need for reasonable range and "no action" alternative analysis in EIS. The attached Appendix A summarizes the difference in the rule language between alternatives A, B, C1, C2, and C3.¹ In brief, the alternatives vary Type F waters within the anadromous fish overlay depending on gradient (5%, 7%, or 10%); and vary the potential habitat breaks (PHB) by eastern and western Washington, gradient (increase 5% or equal to 5%), bankfull width decrease (two feet or 20% decrease), non-vertical step (20% or 30%), and whether tributary junctions are considered a PHB (if consistent with criteria or survey). SEPA requires the EIS to analyze "reasonable alternatives".² WAC 197-11-440(5); 197-11-442(2) ("Alternatives should be emphasized" for nonproject proposals.). The EIS must also evaluate the impacts of the "no action" alternative (the status quo), and compare its impacts to the reasonable range of alternatives. WAC 197-11-440(5)(b)(ii). WFPA respectfully proposes that its alternative, as well as the alternatives submitted by the eastern and western Washington tribes are included as "reasonable alternatives" and analyzed in the EIS with the no action alternative.
- Inadequate spatial analysis. A rule based on inadequate data or analysis creates risk of being arbitrary and capricious by failing to rely on best available science. *See Ferry County*, 123 P.3d at 108 ¶¶ 27-28 (when record fails to disclose methodology used, it "does not pass the smell test" for best available science); RCW 76.09.370(7) (requires use of best available science for permanent rules covering aquatic resources).

¹ Based on the Board minutes, Alternative A appears to be the westside Washington tribe alternative, Alternative B is the eastside Washington tribe alternative, and C1, C2, and C3 are the WFPA alternative.

² WFPA will provide additional comments at the scoping stage and on the draft EIS, if DNR provides that opportunity, but notes that several of the elements of the environment in WAC 197-11-444 require an analysis of the economic impacts of the proposed rule, including energy and natural resources, land and shoreline use, transportation, and public services and utilities, because supporting a viable timber industry is an explicit goal of the rules. RCW 76.09.010(1); WAC 197-11-444(1)(e), (2)(b), (c), and (d). *See also* WAC 197-11-960(B)(8)(b) (working forest lands), (B)(8)(i), (j), (k), and (m) (effects on employment), (B)(14)(d) (infrastructure improvements).

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- As DNR and the other participants in TFW Policy are aware, WFPA conducted its own spatial analysis of the PHB and anadromous overlay alternatives. Results of WFPA's PHB analysis are significantly different than DNR's, but WFPA has not been able to compare results of the anadromous overlay alternatives since DNR's results and data have not been made available. Before moving forward with rules based on potential scientific inadequacies, WFPA encourages DNR to collaborate with WFPA and other stakeholders to ensure its assessment of the potential impacts of its rules is as robust as possible, and to ensure its SEPA determination is based on the best available science. WFPA also requests that DNR transparently disclose the methodology and data it relied on. WAC 197-11-335.
 - SEPA requires more robust review for actions which are based on uncertain science. WAC 197-11-080. Even if DNR disagrees with WFPA's analysis, should DNR pursue a rule without reassessing its scientific analysis, it will need to prepare an EIS to evaluate the potential worst case analysis of the environmental impacts, given the conflicting scientific results and the lack of available data supporting the anadromous layer.
- Arbitrary and capricious C/BA and SBEIS. Reliance on erroneous data or methodologies will result in an inadequate and incorrect cost/benefit analysis and small business economic impact statement, which can subject DNR to litigation under the APA and potentially a judicial order to redo the analysis, delaying implementation of a final permanent rule, eroding stakeholder confidence in the collaborative process, and creating additional burdens on DNR's limited staff resources. The APA and Regulatory Fairness Act require analysis of the economic impacts of a proposed rule. RCW 34.05.328(1)(c) – (e), Chp. 19.85; WAC 197-11-448, -450. Since a fundamental underlying tenet of the HCP is a viable forest products industry, as reflected in the FP HCP and RCW 76.09.010(1), an economic analysis based on incorrect initial assumptions will be susceptible to challenge as arbitrary and capricious and exceeding the agency's statutory authority.
- Inability to Rely on Existing EIS. While SEPA encourages the adoption or incorporation of prior environmental review, that process is limited to a rule that was within the scope of the prior analysis. WAC 197-11-600, -655(3)(b). A rule which does not rely on the process or methodology analyzed in the EIS for the FP HCP will require additional environmental analysis to identify the probable, significant, environmental impacts from the expanded range of impacts. *See Nisqually Delta Ass'n v. City of DuPont*, 103 Wn.2d 720, 741-42, 696 P.2d 1222 (1985).
- Need for Cumulative Impacts Analysis. SEPA requires DNR to consider whether its proposed rules will impact other jurisdictions. WAC 197-11-060(4)(b), (d); 197-11-330(3)(e)(iii); 197-11-440(6)(d)(i). Due to the interplay with the Federal Services in ongoing implementation of the FP HCP and its assurances, as well as the reliance of local governments on DNR's maps, if DNR moves forward without a consensus recommendation consistent with the Implementing Agreement requirements, it will need to evaluate whether the proposed rules could result in significant cumulative impacts for those entities, including additional conversion or changes in RMAP efforts. *See also* RCW 76.09.370(1) (if rule is not consistent with Forests & Fish Report recommendations, DNR must notify legislature). This will likely require environmental analysis under both SEPA and NEPA, as the alternative rules proposed may also impact other fish passage projects, including those of large and small forest landowners, local governments, FFFPP projects, projects funded by RCO and the Department of Agriculture, and tribal projects.

As DNR moves forward with its rule-making, WFPA will continue to provide comments and participate at the appropriate stage and time in the SEPA process. WFPA assumes that DNR will comply with all of the SEPA requirements for notice and comment, including preparation of an environmental checklist, issuance of a DS, a minimum 21-day scoping comment period, preparation of the DEIS, a minimum 30-day comment period on a DEIS, preparation of the final EIS, and compliance with the rule-making timelines in the APA.

B. Compliance with Adaptive Management Process Could Streamline SEPA's Process Requirements and Reduce DNR's Legal Risk

Alternatively, WFPA proposes that DNR comply with the Adaptive Management process, thereby eliminating the need for a prolonged SEPA process. As DNR is aware, the Implementing Agreement for the FP HCP requires a TFW Policy recommendation through the Adaptive Management process. Although reaching consensus on a water typing rule has been challenging, the Forest Practices Board has provided direction following the initiation of multiple dispute resolutions over technical aspects of water typing issues. In each, the Board thoughtfully reviewed the majority and minority positions from TFW Policy. In February 2014, the Board directed additional work by TFW Policy on electrofishing and off channel habitat, terminating the first dispute, and in November 2016, the Board directed DNR staff to file a CR 101, but noted that until the Board received TFW Policy recommendations or majority/minority reports on Fish Habitat Assessment Methodology, off-channel habitat, use of default physicals, and the status of existing type F/N breaks through Water Type Modification Forms, DNR staff will not proceed on a CR 102. The Board directed TFW Policy to present consensus recommendations, or minority/majority reports, by the May 2017 Board meeting. These unanimous Board motions terminated the second dispute, and recognized the role of TFW Policy in any future rule development. In May 2017, the Board moved to convene a technical group, and moved to assume management of the permanent rules.

A Report from TFW Policy is Required Under Rule and the FP HCP Before Rule-Making Proceeds
While the Implementing Agreement gives the Board the authority to direct an approach, the Implementing Agreement and WAC 222-12-045(2)(d) require TFW Policy engagement to complete that process. *See also* Attorney General Opinion 2015 No. 1 (April 17, 2015) at p. 7, citing RCW 76.09.370(6), WAC 222-08-160(2) (Board must use Adaptive Management process for proposed changes to the rules to meet timber industry viability and salmon recovery). This approach is required regardless of whether the direction stems from initiation of dispute resolution, Board direction, or through TFW Policy.

The first step of rule adoption requires the Board to direct or approve a proposal. WAC 222-12-045(2)(d)(i). After the AMPA prioritizes the work plan, the proposal is sent to CMER for implementation. WAC 222-12-045(2)(d)(iii). Third, CMER provides a report to the AMPA and TFW Policy. WAC 222-12-045(2)(d)(v). Fourth, TFW Policy provides a report to the Board.¹ WAC 222-12-045(2)(d)(vi). Finally, the Board makes the final determination and takes appropriate and timely action. WAC 222-12-045(2)(d)(vii). To comply with the Implementing Agreement for the FP HCP and DNR's own rules, the Board's next step in the rule-making process should be step four: TFW Policy review and preparation of a report to the Board. TFW Policy will make the recommendations to the Board regarding rule language. WAC 222-12-045(2)(b)(ii), (2)(d)(vi) (TFW

¹ As with other issues, Policy will either make a consensus recommendation or initiate dispute resolution, and provide a majority and minority recommendation to the Board. WAC 222-12-045(2)(d)(vi).
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Policy includes rule petition in recommendation). This approach is also consistent with the approach described in the Board Manual. M22-10, -14.

The development of a recommendation and petition for rule-making, including draft rule language, by TFW Policy is consistent with the Board's direction at its meetings addressing water typing rule making over the last five years. In order to avoid a challenge to compliance with the Implementing Agreement procedures and DNR's own rules, at a minimum, the proposed rules should be reviewed by TFW Policy with a consensus report and rule-language and petition, or alternatively majority and minority reports, submitted to the Board, rather than proceed directly to Board action on a CR 102. Compliance with the Implementing Agreement through continued effort by DNR and the stakeholders is essential to maintain the integrity of the HCP and the assurances it provides under the ESA and CWA.

Deviation Could Trigger Additional Environmental Review and Exceed DNR's Statutory Authority
WFPA cautions DNR to consider that should the Board or DNR decide to deviate from the Implementing Agreement obligations, that decision may trigger additional environmental review under both NEPA and SEPA. For example, if the final rule adopted by the Board does not comply with the Adaptive Management process and does not rely on the methodology anticipated in the FP HCP and its EIS, the accuracy or equitable allocation of risk, or results in changes to the current protocol, these may constitute significant deviations from the environmental analysis prepared in the EIS for the FP HCP, necessitating additional environmental review under both NEPA and SEPA. The Implementing Agreement for the HCP anticipated that changes to the rules would be through consensus-based decision making. Implementing Agreement at § 10.1. A rule which does not comply with the analyzed approach may exceed the impact analysis conducted in the EIS and require additional environmental analysis.

WFPA is concerned that a failure to strictly comply with SEPA and the Adaptive Management process creates unnecessary procedural risk and fails to document how DNR considered stakeholder input. Although the Board has given direction to DNR staff and to TFW Policy during the last several years, there is no documentation that stakeholder comments were considered by DNR. For example, three caucuses provided DNR with questions and concerns as part of the stakeholder rule group in the spring of 2018. Before those concerns were addressed, DNR cancelled the meetings. Some of the rules attached to DNR's pre-SEPA analysis do not appear to have addressed those concerns. The procedural requirements of SEPA and the Adaptive Management process assist the Board in documenting its scrutiny of those stakeholder concerns and explain to the public how it modified its approach – or why it chose not to – for transparent decision-making and to avoid a successful challenge that the final rule is arbitrary and capricious.

Moreover, if the Board moves forward with a proposed permanent water typing rule that has not complied with the Adaptive Management process, it may violate RCW 76.09.370(6) and 34.05.328(1)(f)-(i). A violation would subject the rule to invalidation under the APA, RCW 34.05.570(2)(c), as exceeding the agency's statutory authority, despite the rule's laudable objectives. To avoid the risk of this type of challenge, the Board will either need a court order or legislative direction. RCW 76.09.370(6)(a), (b) (“[C]hanges to [the 1999] rules and any new rules covering aquatic resources may be adopted by the board but only if the changes or new rules are consistent with recommendations resulting from the scientifically based adaptive management process established by a rule of the board. Any new rules or changes under this subsection need not be based upon the recommendations of the adaptive management process if: (a) The board is required to adopt or

Sherri Felix

• Page 7 Washington Forest Protection Association

modify rules by the final order of any court having jurisdiction thereof; or (b) future state legislation directs the board to adopt or modify the rules.”); *Gerow v. Washington State Gambling Comm’n*, 181 Wn. App. 229, 237-38 ¶ 16, 324 P.3d 800 (2014) (a rule is invalid if the agency exceeds its statutory authority in adopting the rules, the rules are adopted without complying with statutory rulemaking procedures, or the rules are arbitrary and capricious), citing RCW 34.05.570(2)(c).

Recommendation

WFPA proposes that the most efficient approach to a permanent water type rule, under both the Implementing Agreement and SEPA, is Board direction to TFW Policy to attempt to develop consensus-based permanent rule language and petition, with direction to provide a report and recommendation to the Board. If the stakeholders are able to reach consensus on a rule based on best available science, the SEPA process may only require incorporation by reference of the existing EIS in DNR’s threshold determination. RCW 43.21C.034; WAC 197-11-330(2)(a), -600; *see also* WAC 197-11-360(3), 197-11-405(4). Although this approach requires continued commitment and collaboration of the stakeholders, it requires the least SEPA process and is consistent with the intent of the FP HCP, and avoids substantially prejudicing the participants in the 20-year Forests & Fish and adaptive management process:

1. To provide compliance with the ESA for aquatic and riparian-dependent species on non-Federal forestlands;
2. To restore and maintain riparian habitat on non-Federal forestlands to support a harvestable supply of fish;
3. To meet the requirements of the CWA for water quality on non-Federal forestlands; and
4. To keep the timber industry economically viable in the state of Washington.

WFPA appreciates the opportunity to continue to work collaboratively with DNR, the Board, other members of the Adaptive Management process, and DNR’s stakeholders to develop a rule that is science-based, consistent with the FP HCP requirements, and compliant with SEPA’s process requirements. All parties have the objective of maintaining the integrity of the FP HCP and Forests & Fish commitments, and ensuring that the final water typing rule is defensible and implementable, and protects fish life while maintaining a viable timber industry.

Sincerely,

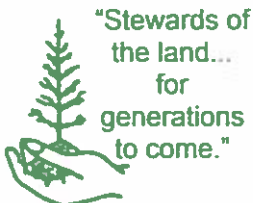


Martha Wehling
Forest and Environmental Policy Counsel

Appendix A

	A	B	C1	C2	C3
222-16-030(2)(a)	Type F Water includes: Waters connected to saltwater <u>and extending up</u> to a sustained <u>ten-percent gradient or a permanent natural barrier, whichever comes first.</u> These waters include main stem stream segments <u>and associated tributaries.</u>	Same as A	Type F Water includes: Waters connected to saltwater that have a sustained <u>gradient of five-percent</u> or less, and include associated tributaries lacking a five-percent <u>gradient increase or permanent natural obstacle at the junction with the main stem.</u>	Type F Water includes: Waters connected to saltwater that have a sustained <u>gradient of seven-percent</u> or less, and include associated tributaries lacking a five-percent <u>gradient increase or permanent natural obstacle at the junction with the main stem.</u>	Type F Water includes: Waters connected to saltwater that have a sustained <u>gradient of ten-percent</u> or less, and include associated tributaries lacking a five-percent <u>gradient increase or permanent natural obstacle at the junction with the main stem.</u>
222-16-0301	PHB criteria for Western Washington only (Eastern Washington reserved)	Statewide criteria	Statewide criteria	Statewide criteria	Statewide criteria
222-16-0301(2)(a)(i)	PHB criteria: Stream gradient <u>increase equal to or greater than five percent.</u>	PHB criteria: Stream gradient <u>equal to or greater than ten percent.</u>	PHB criteria: Stream gradient <u>equal to or greater than five percent.</u>	PHB criteria: Stream gradient <u>equal to or greater than five percent.</u>	PHB criteria: Stream gradient <u>equal to or greater than five percent.</u>
222-16-	PHB criteria:	Same as A	PHB criteria:	PHB criteria:	PHB criteria:

0301(2)(a)(ii)	Bankfull width <u>equal to or less than two feet.</u>		<u>Upstream to downstream</u> bankfull width <u>decrease greater than twenty percent.</u>	<u>Upstream to downstream</u> bankfull width <u>decrease greater than twenty percent.</u>	<u>Upstream to downstream</u> bankfull width <u>decrease greater than twenty percent.</u>
222-16-0301(2)(a)(iii)(B)	PHB criteria: Non-vertical step equal to or greater than <u>thirty percent.</u>	PHB criteria: Non-vertical step equal to or greater than <u>twenty percent.</u>	PHB criteria: Non-vertical step equal to or greater than <u>twenty percent.</u>	PHB criteria: Non-vertical step equal to or greater than <u>twenty percent.</u>	PHB criteria: Non-vertical step equal to or greater than <u>twenty percent.</u>
222-16-0301(2)(a)(iv)	PHB criteria for tributaries: <u>Protocol survey continues from the junction ... until a PHB is located.</u>	Same as A	PHB criteria for tributaries: Tributary junctions are considered a PHB if they <u>coincide with the criteria in (i), (ii), or (iii).</u>	PHB criteria for tributaries: Tributary junctions are considered a PHB if they <u>coincide with the criteria in (i), (ii), or (iii).</u>	PHB criteria for tributaries: Tributary junctions are considered a PHB if they <u>coincide with the criteria in (i), (ii), or (iii).</u>



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May 8, 2019

Re: A path forward for water typing

Washington State Forest Practice Board
P.O. Box 47012
Olympia, WA 98504-7012

Good afternoon Chairman Bernath and members of the Forest Practices Board,

My name is Steve Barnowe-Meyer and I am the TFW Policy Lead on water typing for the Small Forest Land Owner caucus and for the Washington Farm Forestry Association.

For a variety of reasons described in detail by the TFW Policy Co-Chairs in their "TFW Report – Attachment 2: MPS Budget Narrative" document, TFW Policy, in a consensus vote, recommends eliminating funding for the PHB Validation Study (in its current form) from the FY20 / 21 Biennial Budget.

In spite of this consensus budgetary recommendation, TFW Policy recognizes that water typing and associated rulemaking remain a high priority for the Forest Practices Board, as well as the entire Adaptive Management Program community. But essentially, TFW Policy has requested that the Board pause the entire rule-making process to take stock of where we are and to assess the best path or paths forward on Type F water typing.

So what are potential paths forward for Type F water typing?

First off, all potential paths forward pertaining to Type F water typing need to be designed and conducted entirely within the structure of Adaptive Management Program (AMP); no half measures or out-sourcing of critical work. Collaborative stakeholder processes within the AMP may be too slow and cumbersome for some, but those time-tested science and policy processes are designed to produce the most scientifically credible, durable and legally defensible solutions.

In order to have any real chance for success with Type F water typing, we need to:

- re-engage the collaborative AMP stakeholder process,
- clarify the problem or problems being solved,
- clearly state the specific performance objectives and criteria for a permanent Type F water typing system and rule,
- sort out remaining technical and policy issues (i.e. best performing PHB alternative, seasonal / annual variability, anadromous floor, default physical accuracy and balance, LiDAR-based modeling),
- obtain clarification, where needed, from TFW Policy and / or the FPB,
- determine and resolve any data gaps not filled by existing data and implement appropriate data collection and documentation standards to fill those gaps,
- collaboratively determine and support the best science / policy path forward to solve the identified problem(s) and to address / resolve the technical / policy issues,
- all potential paths forward must include credible and collaborative spatial analyses of the PHB alternatives, as a critical required element and foundation for rule-making.

The entire process must be based on open and honest collaboration at every stage of the process, in the true spirit of TFW. Everyone must have the same goals and objectives, there should be no hiding of the ball, critical expertise and quality data should be sought out and accepted wherever it exists no matter

from which caucus, and mistrust / innuendo at all levels must end. We are doomed to failure unless we collaborate at every step along the path forward.

What follows are several specific water typing topics and suggestions for potential paths forward:

PHBs: DNR staff and contractors, WFPA and any other caucus with appropriate GIS / spatial analysis expertise (and there is definitely such expertise) need to meet, as soon as possible, to collaboratively review and compare data selection, methodologies, data gaps / analysis shortcomings and results of the spatial analyses that have been performed by DNR and WFPA. The path forward here screams for honest collaboration and sharing, with a specific and reasonable goal of refining and agreeing to a single PHB alternative (as well as a potential single anadromous floor alternative) that meets stated objectives for a Type F water typing system (use existing information, accurate as possible, balance error, minimize electrofishing, methods to locate the F / N break in the field, and of course, ensure the methods address small forest landowners).

An anadromous floor component for Type F water typing still appears to have merit in any permanent Type F water typing program but there is woefully little protocol survey / concurrence / CMER data available for this portion of the landscape. As will be the case for this component of water typing as well as several more discussed below, we need to identify where we have data gaps, develop a plan to obtain required data, collaboratively collect the data to appropriate standards and use the data to inform our policy decisions.

Small forest landowners and non-forest users of DNR's water typing system are particularly interested in and will likely be disproportionately impacted by any uncertainty about fish habitat within this landscape and by any anadromous floor rulemaking, since a high percentage of our forestlands exist here, at percentages significantly higher than large forest landowners. Given a lack of consensus about what specific problem that an anadromous floor solves and substantial uncertainty in the assessment of anadromous alternatives, I recommend that the Board engage a collaborative stakeholder process to resolve this issue.

Eastside Type F water typing data: once again, there appears to be significant shortfalls in the amount of appropriate quality, concurred protocol survey-generated water typing data for eastern Washington. It appears that there is a high-quality CMER data set that has not been utilized by DNR as yet (it should be), but once again we need to identify the data gaps and collaboratively collect the appropriate data to fill those gaps.

Validation study: There are significant concerns among Policy members and most caucus' technical staff that the current study design will not "validate the eventual rule" as directed by the Board at your May 2017 meeting. TFW Policy is proposing a return to normal AMP processes, as well as proposing to work with the Board to collaboratively frame policy questions associated with water typing, determine which questions need science to answer, and to work with CMER to consider existing draft study designs (including not only PHB Validation but also default physical criteria and LiDAR modeling) or determine if new studies are required to answer those questions. I strongly support this TFW Policy-recommended approach.

Thank you for this opportunity to provide input to you on water typing issues and a path forward from the perspective of the Small Forest Landowner Caucus and Washington Farm Forestry Association.

Steve Barnowe-Meyer



Washington Farm Forestry Association
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May 8, 2019

Re: Draft Water Typing System Rule and other materials

Washington State Forest Practice Board
P.O. Box 47012
Olympia, WA 98504-7012

Good afternoon Chairman Bernath and members of the Forest Practices Board,

My name is Steve Barnowe-Meyer and, along with Ken Miller, I represent small forestland owners and the Washington Farm Forestry Association on the TFW Policy Committee.

It is also my distinct honor and privilege to represent small forest landowners and work with DNR staff and the other TFW caucuses to prepare draft rule language for the permanent water typing rule, as well as develop the field protocol guidelines for water typing within Board Manual Section 23.

Significant progress has been made within the Board Manual 23 development stakeholder group to describe the steps for identifying the water type break between Type F (fish habitat) and Type N (non-fish habitat) waters, particularly when applying the Fish Habitat Assessment Methodology (FHAM). In addition, we have been utilizing prior relevant guidance from Board Manual 13 and prior recommendations from technical work groups to develop and clarify best management practices for electro-fishing surveys. We still have numerous issues to resolve, so our work is not yet complete, but significant collaborative progress is being made. As noted in your meeting materials, Board Manual 23 cannot be completed until the Board has chosen which anadromous fish floor or which PHB option will be included in the permanent water typing rule.

Progress has also been made in the draft rule-making stakeholder group, but issues likewise remain. The issue of greatest concern to the Small Forest Landowner Caucus is a DNR staff recommendation to delete (from draft rule) use of regulatory maps based on a LiDAR / GIS fish habitat prediction model that may be adopted by the Board. Such regulatory maps would be an alternative to use of FHAM, default physical stream criteria or ID teams for determining the Type F / N breaks. Although no such LiDAR-based prediction model currently exists, development of just such a Type F / N break model alternative remains a high research priority in the CMER Master Project Schedule, and adoption by the Board of a regulatory LiDAR-based fish habitat model is extremely important to small forest landowners. The Board may decide to accept DNR's recommended deletion of a model alternative but I feel obligated to directly inform you about their recommendation and hope you will instead decide to retain a model option in rule.

The recommended draft rule language for off-channel habitat still needs to be revised to meet the motion passed by the Board at your May 10, 2017 meeting and an appropriate Board Manual location for off-channel habitat guidance still needs to be determined.

Thank you for this opportunity to provide input to you from the Small Forest Landowner Caucus and Washington Farm Forestry Association.

Steve Barnowe-Meyer

Washington Farm Forestry Association
(360) 880-0689

May 8, 2019

Washington State Forest Practice Board
P.O. Box 47012
Olympia, WA 98504-7012

Re: Water Typing and PHB Agenda items

Chairman Bernath and Members of the Board:

For the record, I'm Ken Miller, Co-Representative for SFLOs at TFW Policy. Today's agenda is so complex the vast majority of SFLOs are not able to comprehend or follow the discussions in a meaningful way – I defer to our Steve Barnowe-Meyer for any questions - he does understand all this technical stuff! The bottom line take-away for me is that some stakeholders think: our Non Fish buffers are too small; and the break between Fish and Non Fish needs to be further upstream. I'm counting on the Adaptive Management Program to: sort all this out in understandable terms before you are asked to make any significant decisions; and to ensure statistically sound science will prevail and be appropriately balanced between the four legs of Forests and Fish.

What SFLOs need at the end of the day are:

- A map based system that we can use in the field. It's my understanding that advances in Lidar accuracy have now made it possible to meet the 95% accuracy requirement that stymied us before.
- If we, and I suspect some of you, can't understand all the technical talk you will hear today it's also obvious that SFLOs still need the Technical Assistance promised to us in Forests and Fish 20 years ago.

I also can't help pointing out the obvious:

- The debate is NOT about Fish or Fish Habitat – it's about trees. We need to be moving towards a tree budget or smarter buffers.
- It's quite likely that the upper reaches of these smallish streams being debated for fish habitat will already have at least Np buffers – it's not a question of buffering or not, it's a question about the sufficiency of existing buffers in these narrow stream reaches.
- Setting precise rules related to variable natural processes such as fish habitat definitions is likely fraught with error w/o any meaningful difference or benefit to fish.

Changes contemplated by some will surely culminate in another finding of disproportionate impacts on SFLOs. How can we trust any potential mitigations offered until the mitigations in the 1999 Forests and Fish actually materialize?

Respectfully,



Ken Miller