

P.O. Box 1010  
Chehalis, WA 98532  
Phone (360) 388-7074  
info@wafarmforestry.com  
www.wafarmforestry.com

August 11, 2021

Re: "Relatively Low Impact" defined

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

Chairman Bernath and members of the Forest Practices Board:

My name is Ken Miller, co-representing SFLOs and Washington Farm Forestry Association along with Steve Barnowe-Meyer on the TFW Policy Committee. My comments today are in support of our Proposal Initiation submitted to the AMPA last week regarding "relatively low impact" – that Elaine shared with you 8/2/2021. Some summary points:

- As a reminder our 2015 science based "low impact template" PI is still in the works. I'm happy to give you an update if asked but not enough time now.
- Over the last several years of discussions in AMP about our template proposal it's been clear many aren't/weren't aware of the RCW regulatory deference to SFLOs for our "smaller" "relatively low impact" harvests.
- The WACs required DNR/us/you to develop some clarifying language/criteria to help everyone better understand Relatively Low Impact - 15-20 years ago – never got done until now.
- Reaching a consensus definition within the SFLO AC was a 2 year project completed in July 2020! The members of the SFLO AC and DNR had very productive and collaborative conversations – a really good example of the good things that are achievable even when 100% consensus is required.
- This consensus language is still very general – it doesn't determine what SFLO buffers should be – simply gives additional guidance to the professionals on criteria they can/should consider **for SFLOs only**. It's less than a page of common sense language, basically:  
**Three Potential Criteria for "Relatively Low Impact"**
  - 1) ***An activity with a short-term impact which produces a better long-term outcome.***
  - 2) ***An activity beyond the point of diminishing returns for resource protection.***
  - 3) ***Smaller harvest units with stream reaches that are relatively smaller in width or shorter in length than typical larger landowner harvests.***
- Our new AMP Administrator already has a plate full of work – we are hopeful he will move this along relatively quickly for three reasons:
  - 1) It already has a high degree of stakeholder buy in. SFLOs, DOE, WDFW, & Tribes all voted to support this language! DNR was fully participative and helpful throughout this 2 year process – **all** these stakeholders had valuable input that made the ultimate Relatively Low Impact definition better!
  - 2) It's our hope that to some degree this clarification will help the stalled 2015 low impact template discussions within TFW Policy – so timeliness matters!

- 3) The Adaptive Management Program is struggling today with multiple big issues – making many (including the State Auditor's Office) wonder if the consensus process can survive? We all (including the FPB) could use a relatively small, hopefully easy win right now if only to show this process can actually work!

I urge you all to share your desire today for TFW Policy to demonstrate how AMP can work by moving this PI forward quickly, perhaps even with improvements – with an eye towards a consensus Policy recommendation to this Board at your November **2021** J meeting.

Sincerely,

Ken Miller  
Washington Farm Forestry Association



## FORESTS AND FISH CONSERVATION CAUCUS

Forest Practices Board

Attn: Chairperson Stephen Bernath

c/o: forest.practicesboard@dnr.wa.gov; stephen.bernath@dnr.wa.gov; tom.bugert@dnr.wa.gov;  
patricia.anderson@dnr.wa.gov.

Department of Natural Resources

c/o: Hilary Franz; Stephen Bernath, Marc Engel

August 09, 2021

Re: Clean Water Act Assurances Concerns and Recommendations

Dear Board Members and DNR:

We write to convey the Conservation Caucus' legal and policy concerns with the Board and the Policy Committee's failure or inability to commence initial rulemaking steps in the wake of the completion and submission to Policy of the Type N (small streams temperature) study. As a result, it will be difficult or impossible for the Board to meet the "milestones" that the Department of Ecology imposed upon the Board in the two-year Clean Water Act (CWA) extension Ecology gave the Board in June 2019.

Our Caucus recognizes that implementation of required actions based on the Type N study is currently stalled at Policy as a result of both the invocation of dispute resolution and the inability of Policy to reach consensus on a science-based rule response. Our Caucus has been and remains committed to coming to the table in good faith to negotiate a science and policy-based response that takes into account all of the purposes and policies of the Forest Practices HCP. At the same time, this letter reiterates the Board and DNR's **independent legal duty** to pursue, obtain, and maintain Ecology and EPA's CWA assurances and why the Board should press Policy to make progress expeditiously.

### Background

Especially in the context of our warming climate, measures taken to protect water temperature are key to assuring the resilience of our climate-challenged riparian and aquatic species and ecosystems. Ecology and EPA's Clean Water Act assurances (set forth in Appendix M to the 1999 Forests and Fish Report) are not only biologically crucial for water quality, but they are also fundamental pillars of the federal government's (EPA, NOAA, USFWS) approval of Washington's forest practices regulatory scheme via the 2005 Forest Practices HCP. An Ecology memorandum to the Board dated January 11, 2006 sets forth the important regulatory background and context (Note: we attach a copy of this memo for the Board and DNR's convenience).

In October 2009, Ecology granted the Board a ten-year extension of the Assurances to give the Board more time to demonstrate that the Board, Policy, and the Adaptive Management Program could meet Ecology's "milestones." Ecology provided a second two-year extension in a letter dated December 2, 2019 (Bellon letter) with specific expectations, including, for Type N, the filing of a CR 101 by the "summer" of 2021 followed by a more specific CR 102 by the end of November 2021. In providing this extension, former Director Bellon emphasized that Ecology found "that the Type N Studies clearly show Type N riparian rules need strengthening to protect water quality."

Unfortunately, neither DNR nor any other member of the Board proposed a CR 101 (RCW 34.05.310) for the Board's May 2021 meeting, and it further appears that DNR will not be offering a CR 101 at the Board's August 11, 2021 meeting. Because a more in-depth CR 102 (RCW 34.05.320) requires twenty days-notice, rule language, and pre-supposes the filing of a CR 101, it appears that the Board would be on a very tight, if not impossible, timeline to meet Ecology's deadlines. Ecology has not yet formally reported what it will do in December, but it appears that Ecology would have grounds to not extend them past December 31.

#### Potential Implications of a Failure of Assurances.

The Assurances have critically important legal significance for the Board and the set of forest practices rules the Board is legally charged with maintaining. For example, according to Ecology, an affirmative finding of Assurances permits Ecology to defer implementation of the CWA's total maximum daily load (TMDL) scheme for water-quality impaired streams and rivers. The Assurances are key legal and scientific assumptions and conditions of the federal government's approval of the Forest Practices HCP's "incidental take permit," and the failure to achieve these Assurances could lead to federal permit suspension, revocation, or reinitiation of consultation under ESA § 7. The Assurances confirm that the forest practices rules comply and are consistent with water quality laws, requirements of state law, RCW 76.09.010 (1)(g); RCW 90.48.420. The Assurances also allow Ecology to defer developing its own water quality forest practices rules (RCW 76.09.040 (1)(b): (2)(a)), and they prevent the Governor and Legislature from exercising oversight upon the failure of assurances. RCW 77.85.190 (2),(3).

#### Conservation Caucus Recommendations.

In light of the above, the Conservation Caucus respectfully requests the Board to consider the following of the Board and DNR at the Board's August 11, 2021 meeting.

- (1) Direct Policy to Act with Deliberate Speed. Because the State's CWA Assurances could hang in the balance, the Board should firmly direct Policy to consider consensus or majority/minority Type N recommendations as quickly as the adaptive management rules permit. The Board should direct Policy to process any "dispute resolution" objection as quickly as possible. The Board should inquire of DNR staff to determine key dates to implement Type N accordingly. The Board should sternly remind all stakeholders of the Board's ultimate responsibility to meet Ecology's CWA direction.

- (2) Direction to DNR. The Board should direct DNR to report to the Board at its November 2021 meeting on measures the DNR should take if the Board fails to meet Ecology's 2021 deadlines.
- (3) Communications with Federal Agencies. The Board should invite high-level staff from the EPA, USFWS, and NOAA Fisheries to its November meeting to address the federal permit legal and science ramifications of the Board not meeting Ecology's 2021 deadlines.
- (4) Deliberations over next steps. The Board should inquire how the Board, DNR, and Policy can put the Type N implementation process back on track. Included in this discussion should be how the Board can work with the Governor to address the "failure of assurances" statute, RCW 77.85.190 (2),(3).

Thank you for taking our concerns and recommendations on the CWA Assurances seriously.

Sincerely,

Paula Swedeen, Conservation Northwest

Peter Goldman, Washington Forest Law Center

Rachel Baker, Washington Environmental Council

cc: Laura Watson, Rich Doenges, Brandon Austin, Dept. of Ecology; Policy Committee

\*Attachment

# Washington State's Forest Practices Program and the Clean Water Act

Washington State Department of Ecology and  
U.S. Environmental Protection Agency

In the 1999 Forests and Fish Report, Washington forest landowners and federal, state, local, and tribal governments agreed on a new set of aquatic resource protection commitments governing forest practices on state and private forest lands. The U.S. Environmental Protection Agency (EPA) and Ecology believe that as a result of these commitments, waters covered by the report will meet water quality standards in the future. This paper describes Clean Water Act assurances that EPA and Ecology identified in response to implementation of the Forests and Fish Report. The paper also outlines what information is needed to continue these assurances beyond 2009.

## Background

The Clean Water Act is the cornerstone of surface water quality protection in the United States. The objective of the statute is to restore and maintain the chemical, physical, and biological integrity of the nation's waters, and it includes a national goal to attain water quality "which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." 33 USC § 1251(a).

The U.S. Environmental Protection Agency (EPA), the Washington State Department of Ecology (Ecology) and tribes with EPA-approved water quality standards are co-stewards of the Clean Water Act in Washington State. EPA and Ecology anticipate that implementation of the Forests and Fish Report and associated statutes and rules will achieve steady progress in improving water quality in the short term and help water bodies under state jurisdiction meet water quality standards in the longer term.

One of the purposes of the Forest Practices Act is to "achieve compliance with all applicable requirements of federal and state law with respect to nonpoint sources of water pollution from forest practices" (RCW 76.09.010(2)(g)). The legislature intended that the Forest Practices Act and rules would fully satisfy the requirements of the Clean Water Act with respect to nonpoint sources of pollution attributable to forest practices (RCW 77.85.180(2)).

## Clean Water Act Assurances

EPA and Ecology have identified the following Clean Water Act assurances, which are paraphrased from Schedule M-2 of the 1999 Washington Forests and Fish Report. The current status is listed below each assurance:

- Total Maximum Daily Loads (TMDLs) for waters impaired due to forest practices subject to forest practices rules, are a lower priority for EPA and Ecology. Therefore, these TMDLs need not be prepared prior to July 1, 2009.

On June 2, 2005, Ecology submitted a 303(d) list of impaired waters to EPA for formal review and approval. The submittal included a section justifying a lower priority for TMDLs on state and private forestlands prior to July 2009.

- EPA and Ecology will not ask the Forest Practices Board to adopt any new forest practices rules to address Clean Water Act (CWA) requirements prior to 2009, unless those new rules are recommended through the agreed upon adaptive management process (RCW 76.09.370(6) and (7) and WAC 222-12-045) or are made necessary by changes to the CWA or CWA implementing regulations.

In 2003, the State adopted new water quality standards (Chapter 173-201A WAC), including stricter temperature criteria for some waters and stricter antidegradation provisions than in previous standards. If necessary to meet the new standards, Ecology will ask the Forest Practices Board for changes to forest practices rules or guidance, through the adaptive management process.

- If a TMDL is produced in a forested or a mixed-use watershed, achievement will be through implementation of the Forest Practices Program. After 2009, if the TMDL load allocations cannot be met through the forest practices rules, the adjustment of those management practices will be through the adaptive management process. Assurances for forest landowners in mixed-use and single use watersheds will be the same, and subject to the same conditions.

The Forest Practices Program has been the implementation mechanism for achieving load allocations in state and private forestlands since 2001. For example, the Forest Practices Act or Forests and Fish Report are referenced as an implementation mechanism in the Upper Chehalis River Basin Temperature TMDL, the Willapa River Watershed Temperature TMDL and the South Prairie Creek Temperature TMDL.

Schedule M-2 identified three contingencies for Clean Water Act assurances, which have been or are currently being met:

1. A final Forests and Fish Report is produced.

The official Forests and Fish Report was produced on April 29, 1999.

2. State legislation implementing the Forests and Fish Report is passed, emergency or final forest practices rules are adopted by the Forest Practices Board, and sufficient funds are appropriated to fully implement the Report.

The Salmon Recovery Act (ESHB 2091), adopting the Forests and Fish Report, was signed by Governor Locke in 1999. Forest practices rules implementing the report were adopted in 2001. State and federal governments have appropriated funds to implement the Forest Practices Program.

3. Landowners will share water quality data collected in cooperative research, adaptive management, and TMDL development. Landowners are further encouraged to share all pertinent water quality data to assist in water quality planning efforts.

Landowners participating in Forests and Fish adaptive management studies have been sharing data collected for those studies. In addition, some landowners have shared data they collected in watersheds where TMDL studies have been conducted.

## **Continuing Obligations under the Clean Water Act**

Ecology and EPA have ongoing obligations related to the Clean Water Act and the Forest Practices Program.

- Under a 1997 memorandum of agreement with EPA, Ecology agreed to develop TMDLs (water cleanup plans) as required for waterbodies on the 1996 303(d) list of impaired waters by 2013. The timeline was the result of a settlement agreement between EPA and a consortium of environmental groups in response to a lawsuit.
- Between now and 2009, Ecology will continue to develop TMDLs for waterbodies affected by causes other than forestry and for those affected by mixed land uses, including forestry. TMDL implementation for lands subject to the Forest Practices Act will be through implementation of the Forest Practices Program.
- Landowners, including those with individual Habitat Conservation Plans, may request a TMDL prior to 2009, and are encouraged to do so. Forest landowners are also encouraged to participate in broader cooperative watershed planning and restoration efforts to improve water quality.
- Ecology and EPA will continue to review water quality standards to ensure protection of beneficial uses of state waters. Water quality standards include antidegradation of existing water quality. Ecology and EPA will also review adaptive management study results to determine if the Forest Practices Program meets antidegradation requirements.



- Ecology will continue its roles of reviewing and concurring on rule changes with the Forest Practices Board, assuring compliance with forest practices regulations along with DNR, monitoring compliance with water quality standards, pursuing necessary changes through adaptive management, and participating in water quality research related to forest practices. As part of its review of rule changes pertaining to water quality protection, Ecology will analyze the rule's effect on antidegradation.
- Ecology and EPA will continue to assess water quality of state waters and add or subtract water body segments in the Water Quality Assessment, including the 303(d) list of impaired water bodies in accordance with an approved listing policy.
- Ecology will continue to identify the Forest Practices Program as the implementation mechanism for compliance with the Clean Water Act on state and private forestlands in the following documents:
  - The Washington State Water Quality Management Plan to Control Nonpoint Source Pollution.
  - The Washington State Water Quality Assessment Section 305(b) Report.
  - Other reports and agreements with EPA addressing pollution from activities covered by the Forest Practices Act.
- Ecology and EPA will work with the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration Fisheries Service to coordinate Forest Practices Program progress reviews at approximately five-year intervals.
- EPA will participate in periodic Forest Practices Program progress reviews to ensure that the Clean Water Act assurances remain appropriate. EPA will invite affected Tribes to participate in these progress reviews.

## **Conditions Affecting Clean Water Act Assurances**

EPA and Ecology would need to consider modification or withdrawal of Clean Water Act assurances under any of the following circumstances:

### Statewide

- Adoption of new water quality standards not anticipated in the Forests and Fish Report, if those new standards cannot be accommodated with adaptive management. The Report anticipated potentially lower temperature standards, and targeted numeric and narrative standards relevant to aquatic habitat, including antidegradation.

- Failure to implement the rules called for in the Forests and Fish Report for any reason, including:
  - Significant loss of funding or staffing to the state agencies dedicated to forest practices regulation or monitoring.
  - Lack of enforcement of forest practices on the part of state regulatory agencies.
  - Broad scale landowner non-compliance with the Forest Practices Act or rules.
  - Weakening of state enabling statutes or regulations affecting implementation of the Forests and Fish Report.
- Failure to upgrade regulations or guidance called for in adaptive management. This includes failure to develop agreed upon resource objectives, research priorities, and compliance monitoring programs.
- Court orders, changes to the CWA, or state or federal regulatory changes that cannot be otherwise addressed.

#### Individual landowner

An individual landowner who is not in compliance with forest practices rules pertaining to water quality protection is also not in compliance with the federal Clean Water Act or state Water Pollution Control Act. The state will take an appropriate level of enforcement to achieve compliance. If the non-compliance is contributing to a water quality impairment, Ecology or EPA may consider other options under state and federal law, including the requirement for a TMDL.

## 2009 Review

Ecology and EPA are responsible for determining, by 2009, if waters of the state will be on a positive trend toward meeting state water quality standards as a result of Forest Practices Program implementation. If not, Total Maximum Daily Loads (TMDLs) may need to be developed to identify if any further implementation requirements are necessary under the Clean Water Act, for waters impaired by sediment, turbidity or temperature in the forest environment.

One of the purposes of this paper is to describe the information needed by Ecology and EPA to determine if implementation of the Forest Practices Program is leading to attainment of water quality standards for waters of the state, based on credible science. Ecology and EPA will use this information to make a TMDL determination by 2009<sup>1</sup>.

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<sup>1</sup> Determinations on whether TMDLs are required are made as part of 303(d) listing decisions. EPA will rely on Clean Water Act regulations and the most current EPA guidance regarding 303(d) listings when making decisions on Ecology's 303(d) listing/delisting submittals.

The forest practices rules and other commitments from the Forest and Fish Report form the basis for attaining water quality standards on lands subject to the Forest Practices Act. In 2009, Ecology and EPA will review the Forest Practices Program to determine if:

- The forest practices rules, guidance and outreach commitments related to water quality have been implemented.
- Compliance monitoring shows consistent application of the rules.
- The assumptions for the prescriptions that form the basis of the protection measures have been validated.
- Effectiveness monitoring shows that waters of the state are on a trajectory to achieve water quality standards; and finally.
- The Adaptive Management Program is effective in assisting the Forest Practices Board in determining when it is necessary to adjust the Forest Practices Program for aquatic resources to meet Clean Water Act goals.

Below we describe the information needed, identify projects in the current CMER Work Plan that will or could meet some of these needs, and identify specific information gaps that will need to be filled in order to make a TMDL determination in 2009. Ecology and EPA's intent is to maximize the clarity, predictability and defensibility of all Clean Water Act decisions related to the Forest Practices Program, hence the need for this document.

Ecology and EPA are focusing attention on two parameters, water temperature and sediment, in determining whether Forest Practices Program implementation will allow state waters affected by forest practices to meet state water quality standards. These two parameters are presumed to be the most sensitive indicators of the net effect of forest practices on aquatic ecosystems and water quality.

## **Information Needed for 2009 Review**

The following is a list of information needs that will allow Ecology and EPA to determine in 2009 if implementation of the Forest Practices Program will adequately address 303(d) listed water bodies subject to forest practices rules.

### **Guidance, Training and Outreach Commitments**

The Forest Practices Program includes both regulatory and voluntary commitments to help ensure consistent implementation of the Forest Practices Act and rules. Ecology and EPA will work with other adaptive management participants to determine which commitments still need to be completed or continued to protect water quality. Examples of these commitments might include:

- Protocol for perennial stream identification.
- Implementation of Regional Unstable Landform Identification Project.
- Procedure manual with detailed guidance regarding contents and approval process for alternate plans.
- Training to identify potentially unstable slopes.
- Training programs for operators on road maintenance and construction standards;.
- Outreach to small forest landowners on protecting public resources.

### **Compliance monitoring and Program Evaluation**

Information needed from compliance monitoring and program evaluation includes:

- Documentation based on compliance monitoring data that the forest practices rules are being implemented in a reasonably consistent manner across the state. The questions that need to be answered include:
  - What level of compliance is being achieved in each DNR region,.
  - When rules are different for small landowners than for large landowners, what level of compliance is being achieved by each landowner category.
  - How well rules regarding water quality protection measures such as riparian buffers; road construction, maintenance and abandonment; alternate plans; and unstable slope requirements are being implemented.
- Road Maintenance and Abandonment Plan (RMAP) results that are readily available, including: where RMAPs are complete, a summary of all active and orphan roads and abandoned roads.
- Results of an analysis of small forest landowner roads not yet covered by RMAPs or checklist RMAPs. The goal of the analysis is to estimate whether these roads potentially threaten water quality, so that strategies can be developed or modified to assure they are fixed by 2016.
- Results of an analysis of alternate plan compliance with standards in the rules that evaluates whether alternate plans provide protection to public resources at least equal in overall effectiveness as default forest practices prescriptions.

## **Adaptive Management Program**

In general, EPA and Ecology are looking for an active, functional Adaptive Management Program. The following will help achieve this:

- An approved Adaptive Management Program section in the Forest Practices Board Manual that will provide formal procedures for participants to successfully link science questions to policy decisions.
- A CMER Work Plan that includes water quality-related projects that have been prioritized for funding and include program integration across spatial scales.
- Easy access to reports and data from the Adaptive Management Program on the Internet so the information can be used in existing public processes associated with the Clean Water Act.

## **Adaptive Management Monitoring Needs by 2009**

Adaptive management is dependent on quality research projects that answer key questions. It requires cooperation from Forest Practices Program participants for designing appropriate studies, finding representative study sites, and conducting studies in a timely manner.

The projects that Ecology and EPA believe are necessary for evaluating the effectiveness of forest practices prescriptions for temperature and sediment are currently underway or are starting up. The results should tell us what the current condition is, whether current practices are effective at the site-scale and if current practices are likely to lead to waters meeting standards over time. Ecology and EPA have identified the following information needs for making the 2009 TMDL decision. Examples of projects that could fulfill these needs are provided, with the recognition that this is not an exhaustive list and that project scopes may change over time.

### Temperature

- An estimate of the current status of stream temperature and riparian stand condition on forest lands subject to the Forest Practices Act across Washington State. For example, the Extensive Riparian Monitoring Phase I, as currently designed, will provide an estimate of the status of stream temperature and riparian buffer condition and will provide the baseline data for evaluating changes over time.
- An evaluation of the reach-scale effectiveness of riparian buffer prescriptions at providing adequate shading post-harvest to protect stream temperatures. For example, the Type N Buffer Characteristics, Integrity and Function Project; Type N Experimental Buffer Treatment, including competent and incompetent lithologies; Type 5 Experimental Buffer Treatment; and Eastside Riparian

Shade/Temperature Effectiveness Project all test some aspect of the effectiveness of riparian buffers in protecting water temperature.

- An evaluation of the cumulative effects of harvest on stream temperature. For example, active participation in the Intensively Monitored Watersheds project could provide the opportunity to evaluate effects at a watershed scale.

### Sediment

- An evaluation of the effectiveness of the Forest Practices Program in reducing input of road sediment to streams. Road Sub-Basin Scale Effectiveness Monitoring, as currently planned, is an example of a study that could provide this information.
- An evaluation of the cumulative effects of forest practices on sediment input and effects on stream habitat. For example, active participation in the Intensively Monitored Watersheds project could provide the opportunity to evaluate sediment inputs and instream effects at a watershed scale.
- Identification of high landslide hazard areas. As planned, the Landslide Hazard Zonation map (currently under development) could provide this information.

## **Conclusion**

Ecology and EPA recognize the considerable progress achieved since the Forests and Fish Report was developed. The needs in this paper are based on what we know now. As validation, compliance and effectiveness monitoring move forward, priorities may change. EPA and Ecology look forward to working closely with other Adaptive Management Program participants to ensure that the Forest Practices Program is successful over the long term, and meets the objectives of the Clean Water Act. We hope that this paper has helped answer questions regarding Clean Water Act assurances and will be considered in decisions regarding monitoring priorities.



P.O. Box 1010  
Chehalis, WA 98532  
Phone (360) 388-7074  
info@wafarmforestry.com  
www.wafarmforestry.com

August 2, 2021

Forest Practices Board  
c/o Department of Natural Resources  
Forest Practices Division  
PO Box 47012  
Olympia WA 98504-7012

(via electronic transmittal to [forestpracticesboard@dnr.wa.gov](mailto:forestpracticesboard@dnr.wa.gov) )

Dear Board Members:

The Washington Farm Forestry Association (WFFA) is a membership based non-profit organization that represents approximately 1100 tree farming families that collectively own about 150,000 acres of forest land in Washington State. Our objectives include educating small landowners about improved management of forest land, representing small forest landowners in the legislative process and in the Adaptive Management Program (AMP) through CMER science, and Policy, and educating the public on the contribution of small forest landowners to the environment and rural economies in Washington.

A definition of "Relatively Low Impact" (RLI), as it pertains to alternate plans for small forest landowners (SFLO), is required by WAC 222-12 0403 (5) [Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). WSR 01-12-042, § 222-12-0403, filed 5/30/01, effective 7/1/01]. Over the 21 years since the Forests and Fish legislation was passed, the requirement has never been developed. In July 2018, the Small Forest Landowner Advisory Committee (SFLOAC) started working on an acceptable definition to meet the requirements of WAC 222-12 0403 (5). The Advisory Committee consists of seven members, including a representative from the Department of Ecology, the Department of Fish and Wildlife, and a Tribal representative. Four additional committee members are small forestland owners who are appointed by the Commissioner of Public Lands from a list of candidates submitted by the Board of Directors of the Washington Farm Forestry Association or its successor organization.

The SFLOAC delivered a final consensus product on the "definition of relatively low impact" to the Department of Natural Resources (DNR) so that they could update the Board Manual Section 21 Guidelines for Alternate Plans in July 2020. The DNR determined that they would need to develop a proposal initiation to take this consensus document through the AMP. That PI was partially developed by DNR, but they informed the SFLOAC committee on July 20, 2021, that they would not advance the PI due to time and staffing limitations. Rather than allow all that effort on behalf of volunteer SFLO members and representatives from the Department of Ecology, the Department of Fish and Wildlife and the westside Tribes to languish, the WFFA agreed to take the consensus agreement through the PI process with the Forest Practices Board (FPB) and into the AMP.

Accordingly, we promptly approached the Forest Practices Board (FPB) Chair regarding the possibility of including the attached proposal initiation (PI) on the "Definition of Relatively Low Impact" as an agenda item for the August 11, 2021, Forest Practices Board meeting. We were told there simply wasn't room on the agenda. Therefore, as representatives of the small forest landowner caucus of the Adaptive Management Program, we will take the PI directly to AMP Policy table for inclusion on its agenda consistent with the processes that are permitted within that framework. We will however be speaking to

this proposal in the public comment period of your August 11, 2021, meeting. We would be delighted to answer any questions that Board members may have at that time.

As the Board members are aware, the Adaptive Management Program is an integral part of the Forest Practices Habitat Conservation Plan (FP HCP) and the Forest Practices Rules. Adaptive Management is the method agreed on by the stakeholders to examine alternative strategies for meeting measurable biological goals and objectives. (FP HCP at 173; WAC 222-12-045(1)). The Implementation Agreement for the FP HCP requires the stakeholders to use the Adaptive Management Program to determine if and when it is necessary or advisable to adjust rules and guidance to achieve the goals of the Forests & Fish Report. (IA at §10.1; WAC 222-10-045(1)). The Board may also use the Adaptive Management Program to adjust rules and guidance to further the purpose of the Forest Practices Act. (WAC 222-08-160(2)).

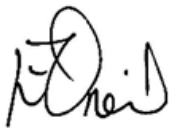
The RLI definition is appropriate for review by the Adaptive Management Program because it is integral to guidance in the Board Manual, Section 21 Part 1. As a participating representative for small forest landowners in both the SFLOAC and AMP, WFFA believes the consensus language for the RLI definition reflects a measured, thoughtful approach that will help in many ongoing AMP discussions.

Our objective for moving this proposal through the adaptive management PI process is to gain more insights from additional stakeholders who don't attend SFLOAC meetings, and to ascertain if there are suggestions for appropriate changes (if any) to improve the RLI definition to ensure it meets the Legislative objectives and the Forest Practices HCP. Following completion of the review by Policy and any appropriate revisions to the RLI definition, WFFA anticipates it will be brought back to the Board for review and adoption, based on Policy's recommendation.

Our goal in advancing this PI is to clear up this long outstanding issue and provide additional context and information for our February 2015 Westside Alternate Plan Template proposal that responds to this legislative intent by proposing alternate harvest restrictions for riparian management zones (RMZs) along typed waters within the AMP process. The lack of a clear definition of "relatively low impact" has hindered discussions on the Westside Alternate Plan Template, and this RLI consensus document can be expected to help inform that discussion. Moreover, we are hopeful that the pending process will serve as a testament to the cooperative spirit that led our predecessors to include adaptive management as part of the original TFW and FFR agreements.

We look forward to bringing forth a AMP approved consensus document that defines Relatively Low Impact as required by WAC 222-12-0403 in the near future.

Sincerely,



Elaine Oneil, PhD  
Executive Director  
Washington Farm Forestry Association

Encl: Attachment 1: Proposal Initiation Document



## **Attachment 1: Proposal Initiation Document, Washington Farm Forestry Association Request to the Forest Practices Board, August 11, 2021.**

The Washington Farm Forestry Association (WFFA) requests the Forest Practice Board incorporate into Board Manual Section 21 – Guidelines for Alternate Plans the following 100% consensus recommendation from the Small Forest Landowner Advisory Committee (SFLOAC) as approved at their July 21, 2020, meeting. **The full and exact text of the SFLOAC consensus document is available in Appendix 1.** In summary,

*The Small Forest Landowner Office Advisory Committee (SFLOAC) defined three potential criteria that can be used to define “relatively low impact” alternate plan to the Small Forest Landowner Office as required by WAC 222-12 0403 (5).*

- 1) An activity with a short-term impact which produces a better long-term outcome.*
- 2) An activity beyond the point of diminishing returns for resource protection.*
- 3) Smaller harvest units with stream reaches that are relatively smaller in width or shorter in length than typical larger landowner harvests.*

The SFLOAC further reached 100% consensus on the following statement: *“The ongoing engagement of working forest landowners is critical for achieving resource protection objectives. When faced with the disproportionate economic impact of regulations, the risk of land conversion or disengagement by landowners increases, leading to greater and longer lasting impacts than ongoing forest management.”*

This Proposal Initiation (PI) for adopting the consensus definition of Relatively Low Impact (RLI) submits the following information consistent with WAC 222-12-045(2) (d) (i) and the Forest Practices Board Manual.

1. The affected forest practices rule, guidance, or DNR product;
2. The urgency based on scientific uncertainty and resource risk;
3. Any outstanding TFW, FFR, or Policy Committee agreements supporting the proposal;
4. How the results of the proposal could address Adaptive Management Program key questions and resource objectives or other rule, guidance, or DNR product; and
5. Available literature, data and other information supporting the proposal.

The Small Forest Landowner Advisory Committee (SFLOAC) was established in RCW 76.13.110 to assist the Small Forest Landowner Office in developing policy and recommending rules to the Forest Practices Board. The Small Forest Landowner Office has not been able to complete this PI so the Washington Farm Forestry Association is bringing it to you to assist the Department. While this proposal is not coming direct from DNR, we acknowledge and thank the SFL Office Administrator whose original draft language has largely been retained. While DNR is not a member of the SFLOAC, the SFO Administrator and DNR staff were present and helpful in crafting this recommended language in a process that started at the July 2018 meeting. The Advisory Committee consists of seven members, including a representative from the Department of Ecology, the Department of Fish and Wildlife, and a Tribal representative. Four additional committee members are small forestland owners who are appointed by the Commissioner of

Public Lands from a list of candidates submitted by the Board of Directors of the Washington Farm Forestry Association or its successor organization.

### **1. The affected forest practices rule, guidance, or DNR product.**

As stated in WAC 222-12-0402, *“The small forest landowner office was established within the department to be a resource and focal point for small forest landowner concerns and policies. The legislature recognized that the further reduction in harvestable timber owned by small forest landowners would further erode small forest landowners' economic viability and willingness or ability to keep the lands in forestry use, and, therefore, reduced the amount of habitat available for salmon recovery and conservation of other aquatic resources. The legislature directed that office to assist small forest landowners in preparing alternate plans appropriate to small forest landowners. See RCW 76.13.100 and 76.13.110(3).”*

WAC 222-12-0403 states that *“The Dept. of Natural Resources will develop the section for alternate plans (WAC 222-12-090(21)” (Forest Practices Board Manual Section 21: Guidelines For Alternate Plans) “to submit to the board in cooperation with representatives of the small forest landowner office and advisory committee, the departments of ecology and fish and wildlife, United States Fish and Wildlife Service, NOAA Fisheries, and affected Indian tribes.*

*The manual should include:*

- (1) As required by RCW 76.13.110(3), the small forest landowner office recommendations for alternate plans or alternate harvest restrictions that meet riparian functions while generally requiring less costly regulatory prescriptions;*
- (2) The effectiveness of strategies for meeting resource objectives and protecting public resources;*
- (3) Template prescriptions designed to meet resource objectives to address common situations that are repeatedly addressed in alternate plans or strategies to simplify the development of future plans or strategies, including low impact situations and site-specific physical features;*
- (4) Appropriate recognition or credit for improving the condition of public resources; and*
- (5) Criteria to assist the department in determining whether a small forest landowner alternate plan qualifies as a low impact alternate plan.”***

The Small Forest Landowner Advisory Committee recommendation specifically addresses WAC 222-12-0403 (5) listed above by developing specific criteria to assist the Department of Natural Resources in determining whether a small forest landowner alternate plan qualifies as a low impact alternate plan. As a reminder, a “template” is a form of an alternate plan that is available only to Small Forest Land Owners (SFLOs).

### **2. The urgency based on scientific uncertainty and resource risk.**

In 2003 the Forest Practice Board approved WAC 222-12-0403(5) that required DNR to cooperatively develop “guidelines for alternate plans” that include these criteria. All Forests and Fish stakeholders have struggled over the ensuing years to implement the regulatory deference intended by RCW 76.13.100 (2) in part because of these missing criteria. This consensus recommendation will not eliminate all uncertainty or resource risk but will help all stakeholders better fulfill their Legislative mandates to protect both resources and the SFLO community that provides those resource protections. WFFA believes formally adopting these consensus criteria **may** help other Forests and Fish stakeholders struggling with the WFFA Low Impact Template Proposal you accepted for their review in February 2015.

The Adaptive Management Program is in the middle of a lot of stress, pulling at the fabric of the TFW Spirit. Collectively we need a win sooner than later – a consensus recommendation from multiple stakeholders may be the “easy win” that will help spark consensus on much tougher issues.

The ongoing engagement of working forest landowners is critical for achieving resource protection objectives. When faced with the disproportionate economic impact of regulations, the risk of land conversion or disengagement by landowners increases, leading to greater and longer lasting impacts than ongoing forest management. The proposed criteria to determine whether a small forest landowner alternate plan (or template proposal) qualifies as a low impact alternate plan seeks to help address these disincentives for keeping forestland forested by reducing regulatory complexity and cost to small forest landowners, while still protecting resources at least equal in overall effectiveness as the standard rules and act.

The approval standard for alternate plans tries to provide guidance to all stakeholders attempting to balance the uncertainty, resource risk, **and** the legislative obligations to SFLOs disproportionately impacted. WAC 222-12-0401 (6) states: *“Approval Standard. An alternate plan must provide protection for public resources at least equal in overall effectiveness to the protection provided in the act and rules”. Please note “the act” in this WAC. The RCW regulatory deference to SFLOs is necessarily included in this Board Manual guidance to encourage alternate plan reviewers to attempt to balance all RCW considerations along with resource risks.*

### **3. Any outstanding TFW, FFR, or Policy Committee agreements supporting the proposal.**

The Legislature recognized the value of alternate plans (particularly “templates”) to small forest landowners in the Forest Practices Rules. Low impact alternate plans provide even greater value to small forest landowners for situations warranting greater management flexibility where resource protection can still be met with no, or “relatively low impact on aquatic resources”. These consensus recommendations for relatively low impact criteria still do not provide exact metrics for alternate plan/template approval but do serve to remind reviewers and the Adaptive Management Program of the RCW regulatory mitigation (only for SFLOs) that must additionally be considered when looking at “. . . alternate harvest restrictions on smaller harvest units . . .” (RCW 76.13.100 (2))

Additionally, RCW 76.09.368 states: “The legislature intends that small forest landowners have access to alternate plan processes or alternate harvest restrictions, or both if necessary, that meet the public resource protection standard set forth in RCW 76.09.370(3), but which also lowers the overall cost of regulation to small forestland owners including, but not limited to, timber value forgone, layout costs, and operating costs. The forest practices board shall consult with the Small Forest Landowner Advisory Committee in developing these alternate approaches.”

According to RCW 19.85.030 requirements for the Small Business Economic Impact Statement (SBEIS) that was completed when the Forests and Fish Agreement was adopted by rule, there are identified methods that: *“The agency must consider, without limitation . . . methods for reducing the impact of the proposed rule on small businesses.”* These methods include:

“a) *Reducing, modifying, or eliminating substantive regulatory requirement:”*

The proposed criteria to determine whether a small forest landowner alternate plan qualifies as a low impact alternate plan will help to modify the substantive regulatory requirements outlined in the Forest Practices Rules, thus reducing the economic impact on small forest landowners.

#### 4. How the results of the proposal could address Adaptive Management Program key questions and resource objectives or other rule, guidance, or DNR product.

At a minimum this consensus recommendation responds to WAC 222-12-0403 (5) by fulfilling the 2003 Forest Practice Board mandate to define criteria. Consistent with RCW 76.13.110(3) and WAC 222-12-0403(1), the recommended criteria will help alternate plan/template reviewers identify "alternate harvest restrictions that meet riparian functions while generally requiring less costly regulatory prescription.". All existing Alternate Plan approval processes (WAC 222-12-0401) would remain in effect.

The Section 21 Guidelines for Alternate Plans (below, in part) are available to all forestland owners. The 1<sup>st</sup> eligibility bullet below for all landowners references site specific **disproportionate impact** situations for all landowners, whereas the disproportionate impacts on SFLOs (generally) referenced above (RCW 19.85.030) require additional mitigations ("*Reducing, modifying, or eliminating substantive regulatory requirement*") - hence the need to further define the criteria for "*relatively low impact*" (RCW 76.13.100) for SFLOs as required by WAC 222-12-0403(5).

*Board Manual-8/2013*

*Alternate Plans*

### Section 21 Guidelines for Alternate Plans

This section provides guidelines for developing and analyzing alternate plans for activities that vary from specific forest practices rules. Alternate plans may be useful in a variety of situations. Examples could be:

- Where the cumulative impact of rules disproportionately affects a landowner's income production capability.
- Where a landowner's minor on-the-ground modifications could result in significant operational efficiencies.
- Where site conditions have created an economically inaccessible management unit when using the forest practices rules.
- Where local landforms lend themselves to alternate forest management practices.
- Where a landowner proposes methods to facilitate landscape, riparian or stream restoration.

Relatively low impact criteria 1) *An activity with a short-term impact which produces a better long-term outcome* was developed in response to the Section 21 Guidelines for Alternate Plans bullet "Where a landowner proposes methods to facilitate landscape, riparian or stream restoration" as noted above. More detail is provided in the proposed criteria full text (Appendix 1)

Relatively low impact criteria 2) *An activity beyond the point of diminishing returns for resource protection* was developed in response to the Section 21 Guidelines for Alternate Plans bullet "Where the cumulative impact of rules disproportionately affects a landowner's income production capability" as noted above. This consensus recommendation from the SFLO Advisory Committee recognizes the complexity of multiple riparian functionality science relationships between buffer width and cumulative riparian benefit. More detail is provided in the proposed criteria full text (Appendix 1), and in Question #5 below.

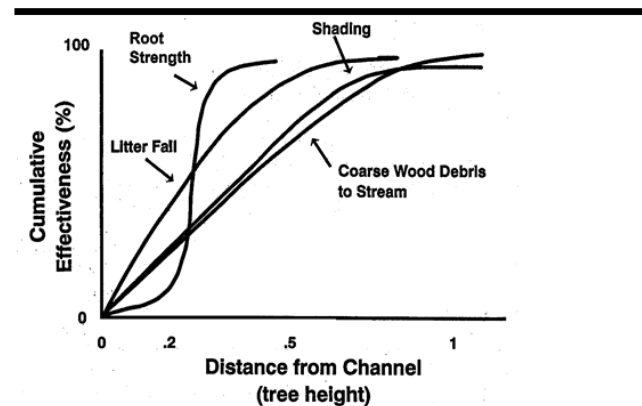
Relatively low impact criteria 3) *Smaller harvest units with stream reaches that are relatively smaller in width or shorter in length than typical larger landowner harvests* in this consensus recommendation from the SFLO Advisory Committee recognizes what the legislature also recognized: the smallness of treatment areas (by SFLOs only) is a meaningful resource risk criterion. This 3<sup>rd</sup> criterion bullet also includes RCW reference for context. More detail is provided in the proposed criteria full text (Appendix 1).

### 5. Available literature, data and other information supporting the proposal.

As this proposal states, “relatively low impact is the marginal impact/benefit to riparian function/resources generally found beyond the “point of diminishing returns”. Applied to RMZs, for the purpose of protecting riparian functions, the relationship between cumulative effectiveness of each riparian function and the distance from the stream channel determines that point of diminishing returns related to protection of riparian function and economic impact to the landowner.

Although there are “areas of influence” defined in Section 21 - Alternate Plan Guidance for most functions the SFLO Advisory Committee’s recommendation for “relatively low impact criteria” settled on a more general statement that allows for evolving science and site-specific interpretation by the practitioners/reviewers with the following additional language: Using the FEMAT curve below as an example, the inflection point in determining a relatively low impact occurs where small additional benefit is achieved only with exponentially greater cost per unit of effectiveness (buffer width). Harvesting or other forest management activities outside the RMZ effectiveness inflection point can therefore be classified as relatively low impact.

**Figure 4.8 Relationship between cumulative effectiveness of various riparian functions and distance from the stream channel. Distance from channel is expressed as a proportion of tree height. From FEMAT (1993).**



## Appendix I

Full and exact Small Forest Landowner Advisory Committee consensus language on the definition of “Relatively Low Impact” as approved at the July 2020 meeting is as follows. Caucuses agreeing to this language were: Department of Ecology, Washington Department of Fish and Wildlife, Tribes, Small Forest Landowners.

***Small Forest Landowner Office Advisory Committee Recommends the following criteria for defining the term “relatively low impact” to the Small Forest Landowner Office as required by WAC 222-12 0403 (5):***

***1) An activity with a short-term impact which produces a better long-term outcome.***

*A “relatively low impact” harvest or forest management activity within a restricted harvest zone (for example, a Riparian Management Zone (RMZ)), is an activity that may temporarily impact aquatic functions/resources, but will expedite the attainment of Desired Future Condition (DFC).*

***2) An activity beyond the point of diminishing returns for resource protection.***

*Additionally, “relatively low impact” is the marginal impact/benefit to riparian function/resources generally found beyond the “point of diminishing returns.” Applied to RMZs, for the purpose of protecting riparian functions, the relationship between cumulative effectiveness of each riparian function and the distance from the stream channel determines that point of diminishing returns related to protection of riparian function and economic impact to the landowner. Using the FEMAT curve as an example, the inflection point occurs where small additional benefit is achieved only with exponentially greater cost per unit of effectiveness (buffer width). Harvesting or other forest management activities outside the RMZ effectiveness inflection point can therefore be classified as relatively low impact.*

***3) Smaller harvest units with stream reaches that are relatively smaller in width or shorter in length than typical larger landowner harvests.***

*RCW 76.13.100(2) partially states: ....“The legislature further finds that small forest landowners should have the option of alternate management plans or alternate harvest restrictions on smaller harvest units that may have a relatively low impact on aquatic resources....”*

*Add to cover letter:*

*The ongoing engagement of working forest landowners is critical for achieving resource protection objectives. When faced with the disproportionate economic impact of regulations, the risk of land conversion or disengagement by landowners increases, leading to greater and longer lasting impacts than ongoing forest management.*

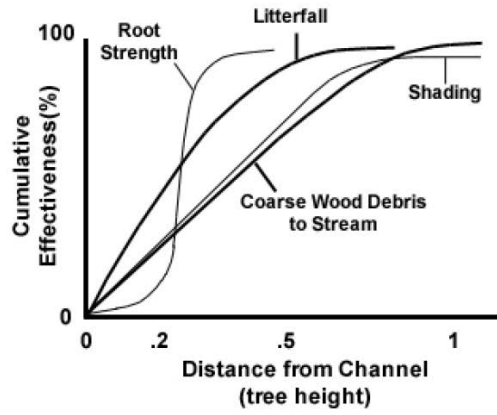


Figure 2. Cumulative effectiveness of various riparian functions. From Forest Ecosystem Management Assessment Team (FEMAT), (1993). *Forest ecosystem management: an ecological, economic, and social assessment*. Washington DC: US Government Printing Office 1993-793-071.