

1 **FOREST PRACTICES BOARD**
2 Regular Board Meeting – November 8, 2023
3 Zoom Webinar and Room 172, Natural Resources Building
4

5 **Members Present:**

6 Alex Smith, Chair, Department of Natural Resources
7 Ben Serr, Designee for Director, Department of Commerce
8 Chris Conklin, Designee for Director, Department of Fish and Wildlife
9 Cody Desautel, General Public Member
10 Dave Herrera, General Public Member
11 Frank Chandler, General Public Member/Independent Logging Contractor
12 Kelly McLain, Designee for Director, Department of Agriculture
13 Meghan Tuttle, General Public Member
14 Pene Speaks, General Public Member
15 Rich Doenges, Designee for Director, Department of Ecology
16 Steve Barnowe-Meyer, General Public Member/Small Forest Landowner
17 Wayne Thompson, Timber Product Union Member
18 Vickie Raines, Elected County Commissioner
19

20 **Staff:**

21 Karen Zirkle, Assistant Division Manager, Policy, and Services
22 Marc Engel, Senior Policy Advisor
23 Patricia Anderson, Rules Coordinator
24 Saboor Jawad, Forest Regulation Division Manager
25 Terry Pruit, Senior Counsel
26

27 **WELCOME AND INTRODUCTIONS**

28 Chair Alex Smith called the Forest Practices Board (Board) meeting to order at 9:00 a.m.
29 Introductions of Board members and staff were made.
30

31 **REPORT FROM THE CHAIR**

32 Chair Smith shared staffing changes which included John McEntyre is the new Region-
33 Operations Outreach Team Manager. Maggie Franquemont is the new Policy Team Manager and
34 Mandie Tix has joined the Board support team.
35

36 She stated the Board received two letters in advance of this meeting: 1 -Upper Columbia United
37 Tribes requesting the Board remove the potential habitat break Option B from the rule analysis
38 and replace it with Option A that will apply to both sides of the state. 2 – Department of Ecology
39 outlining their understanding of the process for an anti-degradation Tier II analysis and how it
40 aligns with the rule making process. Chair Smith said the Board could discuss these during the
41 rule making update as they could impact the timelines associated with the rule making.
42

43 **APPROVAL OF MINUTES**

44 **MOTION:** Meghan Tuttle moved the Forest Practices Board approve the August 9, 2023,
45 meeting minutes as amended.
46

1 **SECONDED: Wayne Thompson**

2
3 Board Discussion:

4 Board member Steve Barnowe-Meyer suggested three grammatical/spelling edits on page 2, line
5 21, page 6, line 38 and page 9, line 37. He also suggested the following edits: Page 6 line 7 “said
6 his understanding of Austin’s statement is that the Tier II process. . .” and page 9 lines 18-20
7 “constraints, but the ~~measurable temperature change is a limit that must be met in all 19~~
8 ~~circumstances~~ interpretation of treating measurable temperature change as a limit, a water quality
9 standard that cannot be exceeded is not true”.

10
11 **ACTION: Motion passed unanimously.**

12
13 **BOARD MANUAL SECTION 14 SURVEY PROTOCOL FOR MARBLED MURRELET**
14 **AND SECTION 15 MARBLED MURRELET NESTING PLATFORMS**

15 Marc Engel, DNR, presented the updated board manual sections pertaining to the Marbled
16 Murrelet for Board approval. Board Manual Section 14 incorporates the term “most current” to
17 clarify the version of the Pacific Seabird Group terrestrial survey protocol to be used. Section 15
18 has been updated to amend the existing guidance on harvest near occupied sites with a 300-foot
19 buffer and how to identify platforms, determine number of platforms in a stand and determine
20 the next steps up to that including how to successfully accomplish the survey.

21
22 Engel requested the Board approve Board Manual Sections 14 and 15 with the ability for staff to
23 make additional edits for clarity, correct grammatical errors and formatting.

24
25 **PUBLIC COMMENT ON BOARD MANUAL SECTION 14 AND 15**

26 Court Stanley, Washington State Association of Counties, said the counties fully support the
27 amendments to Sections 14 and 15.

28
29 **BOARD MANUAL SECTION 14 SURVEY PROTOCOL FOR MARBLED MURRELET**
30 **AND SECTION 15 MARBLED MURRELET NESTING PLATFORMS**

31 **MOTION: Steve Barnowe-Meyer moved the Forest Practices Board approve Board Manual**
32 **Sections 14 and 15 relating to Marbled Murrelet. He further moved the Board**
33 **allow staff to make minor clarifications, grammatical and formatting changes, if**
34 **necessary, prior to distribution.**

35
36 **SECONDED: Vickie Raines**

37
38 Board Discussion:

39 Board member Pene Speaks suggested a friendly amendment to add “clarifications” and
40 “formatting” to the motion.

41
42 Board member Meghan Tuttle asked if this will be completed in time for the training occurring
43 the first week of December. Engel said the edits will be made in time for the training. The
44 approved manual sections will be posted on the website at the same time the new rules go into
45 effect which is January 1, 2024.

1 **ACTION:** Motion passed unanimously.

2
3 **PROPOSAL INITIATION FOR ANADROMOUS FISH FLOOR VALIDATION STUDY**

4 Lori Clark, Adaptive Management Program Administrator (AMPA), said when the Board
5 approved the two anadromous fish floor (AFF) alternatives, the Board requested DNR staff to
6 prepare a proposal initiation to develop the AFF validation study through the Adaptive
7 Management Program to validate the Board identified alternatives.

8
9 Clark said that the proposal was submitted to TFW Policy Committee (TFW Policy) for
10 consideration in May. Clark provided an assessment of the PI recommending at the July TFW
11 Policy meeting a science track.

12
13 Clark said that she also recommended that CMER prepare a technical summary that clarifies how
14 the AFF validation study would best fit as a companion or an add-on study to the existing
15 Potential Habitat Breaks study, including the recommended timeline for scoping and
16 implementation to inform effective and efficient sequencing to integrate this validation study into
17 the existing water typing strategy suite of projects.

18
19 TFW Policy did approve the AFF proposal initiation at their August meeting to add the project to
20 the CMER work plan and to the Master Project Schedule

21
22 CMER received the AFF proposal initiation and assigned the project to the Instream Science
23 Advisory Group (ISAG). Once a project team has been assigned, they will begin to develop a
24 timeline for scoping, including recommending sequencing with the other projects. Clark said she
25 expects to have a solid budget estimate for Board consideration to formally add this as a project
26 to the MPS in May 2024.

27
28 Board member Barnowe-Meyer asked for clarification regarding what is meant in the portion of
29 the memo about existing predictive model may not be relevant given inaccuracies.

30
31 Saboor Jawad, DNR, said that inaccuracies mentioned pertain to a previous iteration of the
32 predictive model, which did not perform well. Jawad said that a LiDAR-based model remains an
33 objective of the water typing system and is awaiting CMER completion of studies. He further
34 explained that language from Schedule L-1 is from calendar years 2004 or 2005 where the focus
35 is on a regression-based model. With LiDAR, the mechanics of the model will change, and
36 accuracy of the model is expected to increase. Therefore, the underlying data of the (i.e., LiDAR)
37 model will not be the same as was referenced in Schedule L-1.

38
39 Board member Tuttle said that it may be helpful for the Board to discuss performance targets,
40 and since the Board is doing some collaborative training in late November, the Board could
41 consider performance targets as an agenda item for the regular meeting in February.

42
43 Chair Smith said DNR would like to tee up at the November 28-29 meeting, a discussion about
44 the Board perhaps developing decision criteria for the permanent water typing system rule,
45 because it has several alternatives we will need to choose between.

1 **TFW POLICY’S RECOMMENDATIONS FOR SCHEDULE L-1 REVISION PROCESS**
2 **(STATE AUDITOR’S RECOMMENDATION (SAO) #5, NET GAINS OPTION #1)**

3 Lori Clark, AMPA, presented a process for revising Schedule L-1 for Board approval. Clark said
4 TFW Policy included the revision of schedule L-1 among the options for implementing the
5 auditor’s net gains recommendation. This schedule sets the performance targets and functional
6 objectives for the Adaptive Management Program. The rationale for the timing of these updates
7 comes from the SAO recommendations and the requirement for multi-criteria decision making
8 and structured decision making.

9
10 The review and revision process involves:

- 11 1. Historical review
- 12 2. Prioritize review – identify the functional objectives and performance targets that need more
13 clarity and refinement.
- 14 3. Establish subject matter expert groups.
- 15 4. Review evidence
- 16 5. Identify measurable criteria for performance targets.

17
18 Board Member Speaks asked if there have been any discussions with the Federal Services since
19 there is a federal approval process associated with the Habitat Conservation Plan. Chair Smith
20 concurs that DNR will inform/discuss or consult with the Services. Jawad confirms that DNR
21 will work with the Services in this process and that the existing HCP Implementation Agreement
22 provides for the kind of changes being made if changes emerge out of the Adaptive Management
23 Program.

24
25 **PUBLIC COMMENT ON TFW POLICY’S RECOMMENDATIONS FOR SCHEDULE**
26 **L-1 REVISION PROCESS**

27 Ken Miller, Washington Farm Forestry Association (WFFA), said that Schedule L-1 is
28 foundational for the Adaptive Management Program and that salmon are foundational for the
29 Forests and Fish rules. Miller shared a video of pink salmon spawning in a stream and the fact
30 that he was not aware that this large a salmon run even existed in western Washington. He shared
31 his opinion for the changes he feels are necessary to address the needs of small landowners in the
32 state.

33
34 Elaine Oneil, PhD, WFFA, said the goals are sustaining fish, endangered species, and water
35 quality. She said effectiveness monitoring is needed to understand the resource objectives and
36 validation monitoring is also needed to answer if what is being done is having a positive impact.
37 She said rules need to be developed based on outcomes as the driver rather to the current system
38 of prescription-based rules. She said she supports Miller’s comment that the problem is not the
39 forestry. She questions if the problem to solve with salmon is the right focus and whether the
40 Board has taken this as far as they can, and if DNR is getting the desired results.

41
42 **SCHEDULE L-1 REVISION PROCESS**

43 **MOTION:** Kelly McLain moved the Forest Practices Board approve TFW Policy’s
44 recommendation for the revision process for Schedule L-1.

45
46 **SECONDED:** Rich Doenges

1 Board Discussion:
2 None.

3

4 **ACTION:** Motion passed unanimously.

5

6 **ALTERNATIVES TO PILOT RULE MAKING FOR RESEARCH PROJECTS**

7 Saboor Jawad, DNR, provided a summary of past updates to the Board.

- 8 • Board approves pilot rules allowing landowners to selectively deviate from specific rules
- 9 (relying on APA (RCW 34.05.313))
- 10 • Exclusively used for Adaptive Management Projects
- 11 • Board seeks alternatives to pilot rulemaking (February 2023)
- 12 • Staff reported the following options in May 2023:
 - 13 ○ Amend WAC 222-16-050(5) and add scientific research as an activity under Class III
 - 14 forest practices requiring an application.
 - 15 ○ Staff also recommended negotiated rulemaking.

16

17 Jawad said legislative authority is needed for the Board to amend the rules to allow the rules to
18 be suspended for pilot research. The Board does not have the authority to suspend its own rules
19 outside of the Administrative Procedure Act. He said continued research and consultation with
20 the Board is needed to seek feasibility on a path forward.

21

22 Board member Barnowe-Meyer agrees it is a legislative process but feels that it is a worthy
23 action to pursue and if the Board supports this, then the Board should work towards this.

24

25 Board member Ben Serr said agency request legislation would be the right way to go; however,
26 it is too late for the upcoming legislative session. Most of the Board members expressed interest
27 in participating in a Board Committee to move this forward.

28

29 Chair Smith requested that this be worked on and brought back to the August 2024 Board
30 meeting to get it to the legislature in a timely fashion. She said there are alternate methods to
31 agency request legislation.

32

33 Chair Smith said further discussion will occur at the November 28 Special Meeting.

34

35 **TFW POLICY COMMITTEE 2024 PRIORITIES**

36 Brandon Austin, TFW Policy Co-Chair, Department of Fish and Wildlife, said the
37 accomplishments and ongoing work for this status update include:

- 38 • Small Forest Landowner Experimental Harvest Prescriptions: Policy has formed a workgroup
- 39 and recommendations may be brought forward to the Board in 2024.
- 40 • State Auditor’s recommendations: Policy is developing implementation criteria for
- 41 recommendations number 5. Net Gains Options and 6. Adopt Decision Criteria.
- 42 • Master Project Schedule (MPS): Policy continues to maintain focus toward keeping on track
- 43 with the MPS including staying within budget and being flexible to potential needs for
- 44 changes.
- 45 • CMER Work Plan: Delivered to Policy in January 2023.

- 1 • Extensive Riparian Monitoring: Charter was received November 2023 and approved by
- 2 Policy and moved forward. CMER is working on the scoping document for delivery to
- 3 Policy in 2024.
- 4 • Riparian Literature Synthesis Report: CMER is expected to deliver to Policy in January
- 5 2024.
- 6 • Eastside Forest Health Strategy: Charter not yet received, work ongoing.
- 7 • Westside Type-F Riparian Prescriptions Effectiveness Study: Anticipated to Policy in 2024.
- 8 • Policy Operations Procedures Manual: Policy has made considerable progress and will have
- 9 regular review periods.
- 10 • Multi-criteria structured decision making: Workshop scheduled for April 2024.
- 11 • Schedule L-1: Anticipated to Policy in 2024

12
 13 Board member Ben Serr said he appreciated being able to attend the CMER meeting in Spokane
 14 and appreciated the efforts that went into organizing the field trip. It was a good day and
 15 provided an interesting opportunity to learn how things are being studied.

16
 17 Chair Alex Smith said she appreciated the work that TFW Policy is doing, especially diving into
 18 the State Auditor’s recommendations, because those are intended to make our processes more
 19 effective and hopefully as fair as they can be. Chair Smith said she also appreciates TFW Policy
 20 for working on the manual, the more we have defined processes the better these various
 21 committees and groups work.

22
 23 **WATER TYPING SYSTEM DRAFT RULE**

24 Marc Engel, DNR, said that the draft language presented today reflects many Board decisions.
 25 He said WAC 222-16-030 has been amended to include Board approved elements of the interim
 26 WAC 222-16-031 and adds additional Board approved elements:

- 27 • Waters which are off-channel habitat
- 28 • All department concurred Type F and N Water breaks shown on the water type map are
- 29 official.
- 30 • Default physical characteristics

31
 32 Engel said that the Board is not being asked to act today as this is a check-in on the language of
 33 draft rule. This draft rule will be used to complete the associated analyses and documents the
 34 Board is required to have for when a decision is made to initiate rule making through the filing of
 35 a CR-102 Proposed Rule Making with the Office of the Code Reviser.

36
 37 Engel reviewed a new WAC (222-16-0301) that has been added to incorporate:

- 38 • Fish Habitat Assessment Methodology (FHAM)
- 39 • 2 Anadromous Fish Floor (AFF) alternatives
 - 40 • Specific to the AFF alternative A
 - 41 • Definition of non-vertical barrier, vertical barriers
 - 42 • Specific to AFF alternative B
 - 43 • Definition of a permanent natural obstacle
- 44 • 3 Potential Habitat Breaks (PHB) where:
 - 45 • PHB Option A proposed for western Washington only.

- 1 • PHB Options B and C proposed for statewide application.
- 2 • Specific to the PHB options
- 3 • Permanent Natural Obstacle – natural non-deformable obstacles
- 4 • Potential Habitat Breaks – permanent, distinct, measurable changes in channel or
- 5 bankfull width, or combination of both

6
7 Board member Barnowe-Meyer asked if AFF Alternative A is the alternative previously referred
8 to as A4 (7-percent). Engel said yes.

9
10 Board member Barnowe-Meyer asked if there will be additional work on the Water Typing
11 System Board Manual Section 23, and Engel said there will be additional work needed and will
12 likely re-convene the work group in early 2024.

13
14 Board member Barnowe-Meyer asked if it was a good time to bring up the letter from Upper
15 Columbia United Tribes requesting the removal of PHB Option B from rule analysis and
16 substituting it with PHB Option A to apply to both sides of the state.

17
18 Marc Engel said that at present, staff are working on analyzing all the options under the current
19 framework accepted by the Board. When the Board makes additional decisions, the timeline and
20 rule elements for analysis may change.

21
22 Board member Speaks asked what the process is for incorporating stakeholder comments into the
23 draft language. She said that there needs to be good communication and a process for
24 incorporating additional changes from stakeholders.

25
26 Marc Engel said that staff have been holding numerous stakeholder meetings on drafting the
27 language. Staff received comments from all stakeholder groups and through open meetings
28 comments are discussed for clarity. Engel said that ultimately, DNR as staff to the Board weighs
29 all comments and makes recommendations to the Board.

30
31 Board member Speaks asked if the analysis shows draft rule language needs to change, is there
32 an opportunity for stakeholder groups to recommend changes. Engel said that as we move
33 forward to performing analysis, including spatial analysis, staff may need to bring proposed
34 changes to the Board for consideration.

35
36 Chair Smith said that DNR staff attempt to get consensus on the draft language and at present
37 there is sufficient general agreement that the draft rule is ready to pivot to the analysis phase.
38 Chair Smith added that when all the analyses have been conducted, there is additional
39 opportunity for more recommendations from staff and stakeholder caucuses as well as from
40 public comment through the CR102 Proposed Rule Making process.

41
42 Engel said that the process will take time and that we are on a timeline to bring the documents to
43 the Board in August 2024 to consider initiating rule making. Engel said that if new information
44 surfaces, DNR staff will present that information in a timely manner before August.

1 Chair Smith said that given there are three different AFF options and two different PHB options,
2 she would like the Board to take some time to develop some decision criteria between now and
3 August 2024, to consider what the decision criteria will be the Board will use when selecting
4 between the different AFF options and PHB options. Chair Smith said she would like to tee up
5 that conversation at the Board’s November 28, 2023, Special Meeting.
6

7 Board member Tuttle thanked Chair Smith for talking about the decision criteria, as that is an
8 important discussion to have. Board member Tuttle said that teeing it up now gives the Board an
9 opportunity to think about the topic and be prepared for a substantive discussion.
10

11 Board member Tuttle mentioned a letter dated November 7, 2023, about WFPA perspectives on
12 what they would like changed in the draft water typing rule. Board member Tuttle said that from
13 a specific landowner perspective, there is concern about expansive use of interdisciplinary teams
14 (ID Teams) and the process written in rule. She said that as currently written, it is cumbersome
15 for landowners and state agencies to manage and perhaps it could be simplified or potentially
16 removed from the rule and considered for guidance.
17

18 Engel said that staff included draft language that reflects decisions of the Board. The language
19 for ID Teams maintains the current process for use with proposed water type modifications.
20 Engel said that a separate process for AFF has not been considered, and there is potential for
21 additional resources such as FP Online that staff would welcome.
22

23 Board member Tuttle said that at a minimum it would be good to get a timeline around
24 concurrence review and ID Team requirements.
25

26 Board member Barnowe-Meyer said that he appreciates the way staff is considering the use of
27 ID Teams under current rule. Board member Barnowe-Meyer said that the AFF is different, and
28 to have potential to stop a protocol survey and have to walk away because something on the
29 ground that was observed does not align with a definition in rule, call and have an ID team look
30 at it, then go back and perform the survey, then maybe have a follow-up ID team review, was
31 never the intent.
32

33 Chair Alex Smith asked if Board members can signal if they are generally in favor of having
34 staff use the draft water-typing system rule language as presented today for the analysis phase.
35

36 Board members were in favor of the proposed rule language.
37

38 **RULE MAKING AND BOARD MANUAL UPDATE**

39 Marc Engel, DNR, said that the spatial analysis contract completion work is on schedule. The
40 synthetic streams have been presented to DNR and staff is conducting QA/QC to ensure the
41 synthetic stream data represents actual streams on the ground.
42

43 Marc Engel said the spatial analysis will be used for the Water Typing System rule as well as the
44 Type Np Water Buffer rule. DNR will make available the final report and methods used in the
45 analysis as soon as possible after the work is complete.
46

1 Marc Engel said the draft Cost Benefit Analysis and Small Business Economic Impact Statement
2 (CBA/SBEIS) conducted in 2019, addressed quantitative analysis relevant to the data that was
3 available at that time. The draft CBA will need to be amended based on decisions by the Board
4 for inclusion of elements in the rule. Moreover, there were some elements in the original spatial
5 analysis that we could not see. The new spatial analysis will show all the elements for each PHB
6 option, and the results of that new data will be available for economic analysis. Based on the new
7 data, we will re-work the draft CBA/SBEIS. DNR, DFW, and Ecology are working toward
8 convening an economic analysis workgroup, to use the new data for completing the analysis on
9 fish effects and for initiating and conducting the qualitative analysis. The workgroup will have
10 economists participating from westside Tribes and DFW.

11
12 Engel said that the environmental analysis under SEPA is paused until the results of spatial
13 analysis are available.

14
15 Engel said that DNR has convened the stakeholder workgroup for developing the Type Np Water
16 Buffer rule. The stakeholder group had their first meeting on October 25, 2023, DNR received
17 good comments, which are being considered. Once the new draft is ready, we will schedule the
18 next session of the stakeholder workgroup.

19
20 Engel said that the SEPA, CBA/SBEIS, and Board Manual Development for the Type Np Water
21 Buffer rule will start later in the process.

22
23 **GENERAL PUBLIC COMMENT**

24 Chris Mendoza, Conservation Caucus, shared his comments he made on the draft Water Typing
25 rule which included some legacy language that he recommended be removed, clearly defining
26 what “department concurred” means, separating out "Type F channelized streams" from "Type F
27 non-channelized streams " including associated wetlands (non-channelized) based on Board
28 adopting new language following TFW Policy’s dispute resolution, incorrect reference to board
29 manual section and replace above with directly upstream within FHAM steps and change
30 gradient to width in PHB section.

31
32 Dr. Elaine Oneil, WFFA, expressed her belief that the Board is headed down the wrong path
33 with the Water Typing rule as it is going to cost a lot of money. She said this would be okay if
34 there were measurable improvement to the stated goals.

35
36 Darin Cramer, WFPA, commented on the draft Water Typing rule in that he agrees mostly with
37 Mendoza’s comments except for the reference to the performance targets. He said the draft rule
38 is weak on what the performance target is for water typing. He said as Mendoza pointed out there
39 is a Board adopted performance target which was intended for map as rule. He also said that he
40 believes the one short sentence that reflects the commitment made to small landowners is
41 inadequate.

42
43 **2024 DRAFT WORK PLAN AND REVIEW OF 2023 WORK PLAN**

44 Marc Engel, DNR, reviewed the accomplishments and ongoing work on the 2023 Work Plan. He
45 then reviewed the 2024 Work Plan.

46

1 **MOTION:** Meghan Tuttle moved the Forest Practices Board approve the 2024 work plan as
2 presented.

3
4 **SECONDED:** Steve Barnowe-Meyer

5
6 Board Discussion:
7 None.

8
9 **ACTION:** Motion passed unanimously. (McLain & Chandler not available for vote.)

10
11 **STAFF REPORTS**

12 There were no questions for the following reports.

- 13 • Adaptive Management Program Update
- 14 • Small Forest Landowner Office Update
- 15 • TFW Policy Committee Update
- 16 • Upland Wildlife Update

17
18 **Annual Reports**

19 Western Gray Squirrel Annual Report

20
21 Chair Smith reported that the Washington Fish and Wildlife Commission is considering uplisting
22 the Western Gray Squirrel to state endangered. She asked if DFW had a timeline for that
23 decision.

24
25 Darrin Masters, DFW, said that the wildlife program just presented the periodic status review for
26 the Western Gray Squirrel to the Fish and Wildlife Commission on October 28, 2023, where they
27 recommended to uplist the species to state endangered. Masters said that the Commission will
28 vote on that decision in November.

29
30 **EXECUTIVE SESSION**

31 None.

32
33 Meeting adjourned at 1:50 p.m.