



WASHINGTON FOREST PROTECTION ASSOCIATION

724 Columbia St NW, Suite 250
Olympia, WA 98501
360-352-1500 Fax: 360-352-4621

May 12, 2020

Washington Forest Practices Board
1111 Washington St SE
PO Box 47012
Olympia, WA 98504-7012
Forest.practicesboard@dnr.wa.gov

Re: Water Typing

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 respectfully submits the following comments on the Water Typing committee's recommendations.

The WFPA and our member companies have been active in collaborative efforts for more than 20 years to establish effective water typing rules and guidance consistent with best available science and the goals of Forests & Fish Report (FFR). Considerable science was developed within the Adaptive Management Program (AMP) with the intent of evaluating and refining regulatory approaches to classifying streams. However, after decades of hard work at both policy and technical levels, we are seemingly no closer to having a lasting solution. WFPA agrees the rules and guidance should better reflect the negotiated elements of FFR and our evolving understanding of fish habitat utilization; however, it is essential that a disciplined process is followed consistent with rule-making requirements in RCWs 76.09.370 and 34.05.328.

As stated many times in prior Board testimony, current rule-making activity was initiated without clear technical basis or regulatory expectations, occurring largely outside of the prescribed regulatory and AM process. The objectives for the current rule-making effort in the CR-101 are focused on achieving consistency and stability in the determination of the boundary between established water types, and on following the adaptive management process to evaluate the need for adjustments in rule.

“Reasons why rules on this subject may be needed and what they might accomplish:

The Forest Practices Board is considering rulemaking to amend the water-typing rules. Rule amendments will provide a consistent, stable system to determine the water type classification for all typed waters. The emphasis of the water type system is to establish fish-bearing/non-fish-bearing habitat, or Type-F Water designations.

Pursuant to RCW 76.09.370, the Forest Practices Board incorporates a scientific-based adaptive management process to determine the effectiveness of the 2001 forest practices rules in aiding Washington's salmon recovery effort. Under this adaptive management process, the TFW Policy Committee is evaluating components needed to establish a singular water typing system rule and changes will be based on TFW Policy's recommendations."

The CR-101 is silent on the potential need for changes upstream or downstream in current fish habitat protections. There has been no science produced within the Adaptive Management Program (AMP) and rule-making process which demonstrates a need for changes in protections afforded under current rule. Nor has there been science produced which specifically demonstrates the adequacy of current rule. Therefore, the current rule-making effort is proceeding in the absence of supporting science as required in statute and rule. This absence of supporting science has resulted in a polarized TFW community, with a wide range of constantly evolving positions being taken due to perceived lack of clarity on the goals, objectives, and performance expectations of the water typing system. It is unclear how a rule-making process can be successful given the broad differences in the perceptions of participants.

The absence of science in this rule-making effort is largely the result of a long-standing need for direction and clarification related to the determination and evaluation of fish habitat in the field. There is no consensus among policy and technical participants what fish habitat means outside of the predictions of the model envisioned in FFR. The Instream Scientific Advisory Group (ISAG) disbanded in 2007 pending requested TFW Policy clarification. No further work within the AMP was conducted for a decade as a result. This lack of clarity on policy objectives and specific metrics for evaluation of performance of alternatives continues to present a roadblock to progress.

Today ISAG has submitted a document as requested by the Forest Practices Board (FPB) which includes a recommendation for the collection of data through an unbiased and representative sample of streams for use in evaluating a variety of methods for determining the upper extent of fish habitat. While this is a worthy objective, there is still no agreement exactly how to determine the true upper extent of fish habitat from these field data. Prior studies conducted in the early 2000s by ISAG for the same purpose of determining the upper extent of fish habitat failed to result in successful rule change that had already been agreed to in FFR. The justification for regulatory inaction on this science was largely based on disagreements about how to identify fish habitat, what the negotiated agreement was, and where to "hang the flag" in the field (i.e. different interpretations of the performance target). These same data, including two additional studies funded through the AMP process to address concerns about seasonal use of fish habitat, managed forestland versus wilderness extent of fish occupancy, and other unexplained temporal variability concerns, are once again disputed for that same purpose in the FPB's ongoing rulemaking process. This dispute is based, in part, on the same familiar disagreements regarding whether these data are consistent with divergent contemporary views of what fish habitat means in the absence of clear FPB direction. It is unclear why the FPB believes ISAG has a better chance for success this time around when the underlying problems remain.

While not requested by the FPB, it is worth noting the ISAG strategy is silent about anadromous fish floor (AFF) research needs. This is a glaring omission. While the pending AFF spatial analysis may answer some research questions, a field-based study will be necessary to meet both the spirit and intent of the AMP informing rulemaking decisions. In addition, delaying a LiDAR based model until default physical criteria (DPC) and potential habitat break (PHB) studies are done is not specifically focusing on the question asked by the FPB. The request from the FPB was to evaluate the potential for improvements to the existing model from incorporating LiDAR data; it was not to develop and apply

a statewide LiDAR model. A model-based map is a commitment the FPB made to small forest landowners and others without the resources to conduct surveys. If there is opportunity to improve the situation, even in a sequential manner, that should be explored. The existing model maps perform vastly superior to the existing DPC with regard to accuracy and error balance; this can be demonstrated with existing data. Improving that situation for the regulated community through use of available LiDAR should not be dismissed and delayed until some unknown time in the future.

Many are advocating for a more precautionary water typing rule than was envisioned in the FFR. Others hang their arguments on a single rule definition while ignoring other components of the negotiated water typing system. Still others are resisting change due to lack of supporting science through the AMP which demonstrates a need for regulatory change. An outcome of this confusion is that the current rule and Board Manual guidance have largely been ignored in current applied regulatory practice, resulting in inconsistency in the application of protection through an undefined and undocumented process based on variable interpretations of regulatory intent and individual risk tolerance. These differing perceptions and execution of water typing objectives and methods to determine fish habitat need to be resolved. Long-standing and unresolved technical disputes about influences such as habitat recovery, low population abundance, management influence on the upper extent of fish, and potential fish benefit of expanding protections present significant roadblocks to finding technical solutions.

It is unlikely that meaningful progress can be made on the water typing rulemaking without a process which provides clarification of what fish habitat means in the context of a site-specific field determination. The Fish Habitat Assessment Method (FHAM) was developed and approved as the solution to this problem. Yet we are stuck on disagreements about what fish habitat means and are even seeing indications of FHAM being reinterpreted to meet individual policy objectives. A process to identify the boundary between Type F and Type N waters in the field is essential to solve this problem as it provides the baseline from which to compare all alternative water typing methods or potential rules against. It is long past time for that difficult conversation to occur.

Finally, the lack of adherence to the established rule-making process that relies on best available science to demonstrate and/or evaluate the need for rule change is unacceptable. Similarly, changing or establishing untested permanent rules to be evaluated later is inconsistent with the stability and predictability tenants of the FFR. Our members were supposed to obtain regulatory certainty and process predictability through the FFR, those principals need to find their way back into our system and be incorporated into this process.

Thank you for the opportunity to comment. I can be reached at dcramer@wfpa.org or (360) 280-5425 should you have any questions.

Sincerely,

Darin D Cramer

Sr. Director of Forest & Environmental Policy



P.O. Box 1010
Chehalis, WA 98532
Phone (360) 736-5750
info@wafarmforestry.com
www.wafarmforestry.com

May 12, 2020

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

Re: Update on WFFA Template Proposal

Chairman Bernath and Members of the Board:

My February update (attached below) held out some hope for reaching consensus recommendations within a new Technical Workgroup on at least some core RMZ width prescriptions. The Workgroup has met several times and the outcome is likely to be non-consensus, even though those prescriptions were supported by all three science reviews (WFFA, Cramer Fish, & ISPR).

Our caucus is insistent that this Feb 2015 proposal get back to you by no later than Feb 2021 with or without a consensus in Policy. It takes a minimum of 5 months to get through the Dispute Resolution (DR) process once it's formally accepted as a Dispute. The apparent lack of meaningful progress and the calendar left WFFA with no alternative other than starting this Dispute Resolution process at the May 7th TFW Policy meeting. We will be working with the Policy Co-chairs to ensure this DR process clock gets started at the June Policy meeting to ensure Policy has recommendations for you no later than your February FPB meeting.

I don't hold out much hope for Stage 1 (2 months minimum), but I do have hope for the Stage 2 mediated portion (minimum 3 months) of Dispute Resolution. I know that Francine Madden (C-Peace) could be very helpful as she is respected by all – she could not only help on our issue but use this as a teaching moment for all that desire to reinvigorate the Adaptive Management Program. I respectfully request the Board give some direction to DNR to include this mediation in her work plan.

Our caucus has been extremely patient in pursuit of meaningful alternate harvest restrictions that the 1999 Legislature required for our smaller, relatively low impact harvests. Our constituents, (like Carl Ruestig who sent you comments earlier) simply don't understand why RCWs and peer reviewed science carry so little weight with caucus representatives. While DR may still result in a consensus opinion carried forward to the Feb 2021 board meeting, if it does not, our question to you will be: Will you, as Board members, be willing to accept the science and RCW intent that formed the basis of our 2015 science based proposal?

Respectfully,

Ken Miller



P.O. Box 1010
Chehalis, WA 98532
Phone (360) 736-5750
info@wafarmforestry.com
www.wafarmforestry.com

February 12, 2020

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

Re: Update on WFFA Template Proposal

Chairman Bernath and Members of the Board:

As a reminder this is the 5th anniversary (2015) of your accepting our proposal for review by the Adaptive Management Program, and your request for recommendations by **2016**. During the last 5 years we've (all) patiently had numerous meetings that mostly focused on process issues but also:

- Researched/reviewed key template elements from prior attempts
- Agreed on science questions for outside contractor review – where all submitted or had options to submit follow-up questions/concerns for the contractor and for ISPR.
- Although some have concerns about the science review process and some of the caveats within the analysis, the bottom lines are:
 - The science review process was collaborative, transparent, & with input from many/most CMER representatives.
 - The science reviews by Cramer Fish and the ISPR process at U of W essentially confirmed the “relative effectiveness” assertions WFFA included in our original proposal.
 - The scientists concluded our site-specific/stream width based proposals were either more effective than rule (Np), or as effective as rule (Fish) when you give any benefit of statistical doubt to SFLOs (required by Legislative deference for our smaller, relatively lower impact harvests).
- We did have some very collaborative discussions on some of the minor prescriptions – the groundwork is laid for real progress when we ultimately know the acceptable RMZ widths.

However, in these past 5 years we have not had any meaningful collaboration, or even meaningful discussion on the any of the 4 primary stream width based prescriptions! ☹ Last October we were heading towards the unpopular Dispute Resolution process (5-6 months) when there was agreement to form a smaller group of experienced professionals to focus on 3 of our 4 primary RMZ width proposals with an eye towards getting to “YES” on each RMZ width by identifying site-specific conditions, if any, that might need to exist for each of these 3 RMZ width proposals. The Adaptive Management Program processes took 4 months to formalize this agreement in a Charter approved just last week. Hopefully they will start immediately to bring recommendations to TFW Policy no later than May (2020!!!).

I have full confidence in the competence of the folks who volunteered (or were volunteered) to give Policy some insight using their best professional judgement in hopes their recommendations get us

to yes, with acceptable restrictions on 50', 75' Fish, and 25' Np buffers. If so, it will be relatively easy lifting (my opinion) to marry the State Caucus work on the minor prescriptions to further ensure smaller RMZs on SFLO harvest units and still enhance our collective efforts to meet desired future conditions (DFC). If your caucus is represented on this smaller workgroup please encourage them to work towards win-win recommendations that balance the actual needs of riparian zones & fish, with the legislative intent for deference to SFLOs for their smaller (and dispersed) harvests.

If this effort fails to help TFW Policy reach consensus on something to bring to you in August (2020!!) the Dispute Resolution process will be our only option to meet your 2016 deadline, albeit a few years later. If non-consensus recommendations do come to you that can't happen until November at the earliest within the Adaptive Management Program processes. If non-consensus, I believe you will be asked to decide the appropriate balance between science & legislative intent VS. regulatory inertia that seems to prevail, at least on this long standing issue.

We certainly understand this proposal is a huge uncomfortable paradigm shift for many but we believe our proposal does no harm and is justified by an objective look at the science conclusions regarding "relative effectiveness"; along with regulatory deferences that may be unclear to some but at a minimum mean something if only the benefit of reasonable doubt. We very much want to bring you a consensus recommendation that we can live with that also passes your smell test so family forest owners will no longer feel disrespected and unappreciated.

Respectfully,

Ken Miller



P.O. Box 1010
Chehalis, WA 98532
Phone (360) 736-5750
info@wafarmforestry.com
www.wafarmforestry.com

May 13, 2020

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

Re: Support for Smart Buffer efforts

Chairman Bernath and Members of the Board:

For the record, I'm Ken Miller, co-representative for SFLOs with Steve Barnowe-Meyer on TFW Policy Committee.

I've seen the smart buffer field demonstration – it makes a lot of sense to me and could be a win for the landowners **and** resource protection. Complexity looks to be a potential problem for SFLOs but we are eager to see this project play out in hopes for potential win-win's.

While perhaps not quite as "smart", I can't resist reminding the Board that our low impact Template proposal for Np streams could be considered a smart buffer because 3 science reviews suggest our 25' full length RMZ proposal provides more net total resource protection than 50' RMZs on only 50% of the stream.

Additionally, our proposed RMZs on Fish streams could also be considered "smart buffers" because they are based on science supported distances from the streams, and are based on site-specific common sense stream widths (BFW), rather than the negotiated site class RMZ widths that are counter-intuitive for the intended LWD function being addressed.

Just saying! ☺ Thanks for listening,

Ken Miller