



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

November 8, 2023

Re: A Beautiful Sight – Salmon & Forestry

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

Chairwoman Smith and members of the Forest Practices Board:

For the record I'm Ken Miller, co-representing Washington Farm Forestry Association and Small Forest Land Owners on the TFW Policy Committee. Also for the record, all the SFLOs I know supported Forests and Fish in large part because of a genuine desire to help salmon flourish in Washington.

This year some landowner friends on the Olympic Peninsula allowed me an opportunity to see what those of us in the Forests and Fish Policy world have been striving to achieve or protect the last 24 years. These landowners are rightly concerned about their privacy, so I'll not reveal the actual location . . . suffice it to say this is one of several river valleys with 100-year history of aggressive logging before buffer rules.

The following 12 second video of spawning salmon is one of several I took in total amazement of the circle of life. I wasn't aware this large of salmon runs even existed in Washington. This was late in this run so the stream banks were full of dead carcasses.

Click here: [Spawning salmon, a beautiful sight](#)



A Beautiful Sight!

This video was at a side channel of a larger stream. It was boiling with activity even though almost a month into this run. This channel was bordered on one side by forestland, and a large agricultural field on the other side allowing a mixture of shaded and sunlit water surfaces, likely like what I've heard is behind our Desired Future Condition (DFC) ultimate goals if we are to replicate pre-European conditions.



Above is an aerial view of the main stem of this stream from a much smaller run a few years ago. I never imagined anything like this existed on the west side and was shocked and delighted to see such a site out in full sunlight.

As a reminder, this main stem runs through light residential, into a combination of agricultural lands and mostly forestland upstream. Historically this stream used to have similar sized runs of other types of salmon throughout the same year.

I'm no expert on anything but here's what I know:

1. SFLOs and I believe all of Industry want to do their share in support of salmon (& other aquatic species).
2. Some level of sunshine is good for fish productivity – it's certainly not all bad for salmon!!
3. This particular variety of salmon has little commercial value, but likely very valuable to all the fresh water/sea critters that depend on ample runs.
4. From a pure financial standpoint this watershed has other far more lucrative potential "highest and best uses".
5. The current culture in the larger Adaptive Management Program does not seem to appreciate, nor respect the contributions made by forest landowners.
6. We need a paradigm shift soon if we are to salvage the 1987 visions of TFW Policy.
7. At a minimum the science, and particularly this example, has completely convinced me that **Forestry is not the problem!**

Ken Miller

From: [Christopher Mendoza](#)
To: [ANDERSON, PATRICIA \(DNR\)](#)
Cc: [Smith, Alex \(DNR\)](#); [Jawad, Saboor \(DNR\)](#)
Subject: Attached comments to Testimony provided to Forest Practices Board yesterday.
Date: Thursday, November 9, 2023 2:55:40 PM
Attachments: [bc_fpb_wtyping_rule_prop_20230809_mendoza.pdf](#)

External Email

Patricia,

Attached are my comments embedded in DNR staff's Draft Water Typing rule language document distributed to the public via DNR's website. Comments are on "sticky notes" recorded in the margin and align with the verbal comments I provided at the FP Board meeting yesterday.

Thanks for your time and consideration.

Chris Mendoza
Mendoza Environmental, LLC

From: [ANDERSON, PATRICIA \(DNR\)](#)
To: [Cody Desautel](#); [Conklin, Christopher L \(DFW\)](#); [David Herrera \(dherrera@skokomish.org\)](#); [Doenges, Rich \(ECY\)](#); [Ferester, Phil \(ATG\) \(PhilF1@ATG.WA.GOV\)](#); [Frank Chandler \(frankjr@candclogging.com\)](#); [McLain, Kelly \(AGR\)](#); [Tuttle, Meghan \(DNR Forest Practices Board\)](#); [Speaks, Pene \(DNR Forest Practices Board\)](#); [Pruit, Terry \(ATG\)](#); [Serr, Benjamin \(COM\)](#); [Smith, Alex \(DNR\)](#); [Barnowe-Meyer, Steven \(DNR Forest Practices Board\)](#); [Raines, Vickie](#); [Thompson, Wayne \(DNR Forest Practices Board\)](#)
Cc: [ANDERSON, PATRICIA \(DNR\)](#); [Austin, Brandon K \(DFW\)](#); [Champion, Tina \(DNR\)](#); [Ciapusci, Teresa \(DNR\)](#); [Clark, Lori \(DNR\)](#); [ENGEL, MARC \(DNR\)](#); [Franquemont, Maggie \(DNR\)](#); [Gildersleeve, Melissa \(ECY\)](#); [GRANBERG, COLLEEN \(DNR\)](#); [Hawkins, Tracy \(DNR\)](#); [Jarvela, Kimmy \(DFW\)](#); [Jawad, Saboor \(DNR\)](#); [Leslie MacMillan \(Imacmillan@skokomish.org\)](#); [MAHAN, DONELLE \(DNR\)](#); [OBrien, Thomas W \(DFW\)](#); [Stout, Rachel \(ECY\)](#); [Zirkle, Karen \(DNR\)](#)
Subject: FPB -FW: How to sign up for public comment?
Date: Tuesday, November 7, 2023 4:27:18 PM

Board Members

Below is a comment from Robert Mitchell for your meeting tomorrow.

Patricia Anderson
Forest Practices Board
Department of Natural Resources
360.890.0277

From: Robert Mitchell [REDACTED]
Sent: Tuesday, November 7, 2023 4:05 PM
To: DNR RE FP BOARD <forest.practicesboard@dnr.wa.gov>
Subject: Re: How to sign up for public comment?

External Email

Here is my written public comment, as I cannot attend the November 8 meeting:

To the Members of the Forest Practices Board,

I write to you today as a member of the general public committed to the responsible stewardship of our forests and the protection of our natural resources. I would like to present a unique proposal for your consideration.

Rather than investing substantial funds in traditional scientific studies that may yield inconclusive results, I recommend allocating \$10 million toward a transparent and financially-driven research endeavor. This project would involve carefully crafted options trades on wood product industry stocks, with the objective being simple: does the value of these investments increase over time?

This transparent financial measurement would provide a clear, quantifiable, and objective outcome. By comparing the returns from these options trades to the results of an equivalently expensive scientific study, we can assess whether the traditional science-driven approach is producing

meaningful and conclusive data.

This approach acknowledges that the forest industry is not only a custodian of our environment but also a significant economic player. We aim to ensure that regulatory decisions are guided by unbiased and factual information, as opposed to the often contentious or unclear findings of some scientific studies.

I believe that this alternative perspective could serve as a constructive and pragmatic way to inform policy and rule-making. It promotes transparency, objectivity, and economic awareness, all of which are critical for the sustainable management of our forests.

Thank you for your attention, and I look forward to further discussions on this innovative proposal.

Sincerely,

Robert Mitchell

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WASHINGTON FOREST PROTECTION ASSOCIATION

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

November 7, 2023

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

Re: Board Manual Sections 14 and 15, Anadromous Fish Floor Validation Study Proposal Initiation, Schedule L-1 Review, Water Typing Draft Rule

Dear Forest Practices Board Members:

Washington Forest Protection Association (WFPA) is a forestry trade association representing large and small forest landowners and managers of more than 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 for the Forest Practices Board's (FPB) November 2023 meeting.

Board Manual Sections 14 and 15

WFPA appreciates the substantial and expeditious effort to amend Board Manual (BM) Sections 14 and 15 to provide guidance to implement the recently adopted Marbled Murrelet rules related to suitable habitat delineation and buffer management requirements, and to clarify existing marbled murrelet habitat assessment. BM 15 has not been updated in nearly two decades. In addition to changes related to the newly adopted rules and those provided by the Wildlife Working Group, stakeholders took the opportunity to thoroughly review all sections of the board manual and in doing so have made substantial and comprehensive improvements throughout the guidance. The stakeholder workgroup diligently worked through at least seven versions of the guidance in a short period of time in order to provide material for staff and practitioner training to support a rule-effectiveness date of January 1st, 2024. The workgroup strove for perfection and would have benefited from additional time to continue working through details. As such, there will likely be additional revisions that may be needed to support training and implementation. WFPA supports the adoption of BM 14 & 15 with this understanding.

Anadromous Fish Floor Validation Study Proposal Initiation

As explained in the October 20, 2023, memo from Lori Clark, Adaptive Program Administrator (AMPA), TFW Policy approved the Anadromous Fish Floor (AFF) Validation Study Proposal Initiation at the August 2023 meeting. WFPA has long supported the production of Adaptive Management Program (AMP) science on this topic, per RCW 76.09.370(6)(7) the science should be completed before rule making is considered. However, there are hurdles in the way of completing a successful AMP process. As explained in prior written comments and public testimony, substantive policy objective differences exist amongst the caucuses which have not been resolved. This will make

it difficult, at a minimum much less efficient, to design and execute a science project. Even if the science side of the AMP is able to design a study acceptable to all viewpoints, the chances of a consensus recommendation are low lacking agreement on a measurable performance target.

The FPB approved a definition of the AFF in November 2022 “...*measurable physical stream characteristics downstream from which anadromous fish habitat is presumed and an agreement that the AFF would establish the location upstream of which fish protocol surveys may begin under fish habitat assessment methodology.*” Even though this didn’t happen until well after the AFF workgroup process had concluded, it may be a useful starting place for determining a performance target (i.e., decision criteria). If TFW Policy is supposed to determine decision criteria in advance of science projects, it would seem the FPB needs to in turn determine decision criteria for the AFF in advance of adopting a rule. Translating the above definition into measurable decision criteria will serve the FPB and the AMP well. The FPB can be transparent with the public in advance about how performance of different alternatives will be evaluated in the rule making process, and the AMP can be more efficient/effective in designing a study and determining appropriate responses, if any, to study results. WFWPA recommends the FPB discuss this topic during the retreat at the end of November.

The statement “...*this recommendation does not resolve policy differences on an AFF...*” is contained within the August 2023 motion approved by TFW Policy. As reflected in this motion and the notes from the meeting, there was general acknowledgement around the table that TFW Policy had policy work to do on this topic and it needed to be done on the front end of developing a study. Unfortunately, that acknowledgement appears to have dissolved quickly. Several members recently stated there’s nothing for TFW Policy to work on right now relative to any of the water typing components. This is disappointing and inconsistent with performance audit recommendations as well as TFW Policy’s and the FPB’s commitment to determine measurable decision criteria in advance of executing science projects. We all have an interest in ensuring the AMP functions authentically, consistent with the commitments and the hallmarks of a collaborative, science-based forum. We are not doing that however, and it’s unclear if or when the AMP will evolve beyond a primarily competitive process to something which resembles the intent espoused in the law, rules, and guidance.

Schedule L-1 Review

Assuming the FPB accepts the TFW Policy recommendation for Schedule L-1 review, the AMP will embark on its second attempt to review and potentially recommend revisions to Schedule L-1. A quick scan of Schedule L-1 attached to the AMPA’s October 20 memo reveals AMP performance targets run the spectrum, from detailed and quantitative to vague and narrative. Timeframes for achieving objectives and targets are completely absent. Needless to say, the AMP has known for quite some time a review is needed. Even some of the specific, quantitative targets likely need revising based on preponderance of scientific evidence accumulated over the last 20+ years since Schedule L-1 was adopted by the FPB. While conducting this review is long overdue, we should have no illusions about how time-consuming and challenging it can be. The AMP did not have the staying power to complete it previously, hopefully this time we’ll be successful. Doing so will likely require hiring contracted expertise as it’s unlikely existing CMER members and AMP science staff have the capacity to tackle the job. Hiring contracted expertise will have a budget impact, therefore I recommend the TFW Policy budget committee begin evaluating funding options as soon as possible.

One note of caution, Ecology's evolved interpretation of Tier II of the Antidegradation Policy presents a substantial problem for reviewing and revising Schedule L-1 performance targets. Schedule L-1 performance targets serve as measurable decision criteria to determine if resource objectives will be met, and they include more than just stream temperature. Currently, a substantial portion of AMP work can be rendered meaningless given the draconian interpretation of no temperature change beyond a measurable amount is allowed anywhere, anytime. Even though completed projects, such as the Hardrock and Softrock studies, measured multiple variables, most received little to no attention once Ecology described how the Antidegradation Policy would apply to the results. There are many projects in the AMP pipeline which will measure water temperature, in addition to a host of other variables associated with resource objectives and performance targets in Schedule L-1. However, the no temperature impact stance of Ecology will likely overwhelm other variables, making their use in the AMP pointless. It does little good for us to design and execute projects which measure multiple parameters, ensure we have scientifically supported and measurable performance targets, and determine decision criteria in advance of projects if measurable temperature change is the only thing that matters. The no temperature change stance will also undoubtedly conflict with other important riparian resource protection goals.

Water Typing Draft Rule

The proposed draft water typing rule is much improved over where it started earlier this year. Nonetheless, there are still opportunities to improve the proposed rule through additional clarification to ensure the FPB's objectives and Forests & Fish Report (FFR) goals for the water typing system are met.

The preamble to the proposed rule on page 2, line 17 contains the phrase “...*this objective is the accurate determination of the extent of fish habitat streams at the landscape scale.*” While this is good, the language does not describe how the rule will meet this objective and is silent on the minimizing and balancing error objectives. These objectives are important for evaluating performance of different water typing alternatives and should be translated into transparent and measurable criteria. Schedule L-1 contains a measurable performance target for water typing, developed when the goal was a model produced map as rule. WFPA recommends the performance target be more fully stated in rule. If the FPB wants to adapt the existing performance target to better fit a field-based system, we recommend following the proper AMP process for doing so.

The FPB's objective regarding SFLs, ensure the methods provide the ability to be applied by small forest landowners, and the subsequent FPB commitment to develop a map as rule is apparently addressed with one sentence on page 3, lines 8-9 “*Small forest landowner can contact the department for technical assistance and/or ID Teams to determine water typing breaks.*” The degree to which this is satisfactory or not is ultimately up to the SFL community, but one short, generic sentence amongst eight pages of rule language doesn't inspire confidence the FPB and department will follow through on their commitment. Further, the misplaced notion that working on a modeled map must wait until all the other water typing science is complete, which many years away at best, puts a fine point on this issue. SFLs will continue heavily relying on the default physical criteria (DPC) and burdened with the associated disproportionate economic impact.

The proposed rule increases the use of ID Teams in the water typing system not envisioned in the FFR nor the original version of the permanent rule. This is particularly problematic in the case of

the AFF. The AFF will undoubtedly be at least partially map based and the FPB has information from the AFF workgroup to demonstrate potential error rates associated with the alternatives. In 7 - 30% of cases, the AFF alternatives coincided with or exceeded existing, concurred F/N breaks. In these cases, the AFF becomes the water typing system (i.e., the ceiling) instead of a component to determine a starting place for performing the fish habitat assessment method (FHAM). While this information should've clearly demonstrated the AFF is not ready for rule making, at a minimum it demonstrates the need for an efficient system to address error and align with the FPB adopted objectives for the rule. Currently, the proposed rule requires the landowner to identify the error, request an ID Team, participate in the ID Team, hopefully get an affirmative response from the ID Team, return to the field to conduct FHAM, and submit the information to DNR in order to officially correct the error. This is highly inefficient and continues the long-standing practice of placing the burden of building the State's regulatory map on landowners. It also provides opportunity for mischief and uncertainty in the regulatory review process. This uncertainty and mischief are the primary reasons some landowners either don't use surveys or choose to not submit them through the water type modification form process. The proposed rule institutionalizes the subjective and uncertain regulatory review system it was supposed to replace.

On page 8, lines 26-33, the proposed rule attempts to define permanent natural obstacles (PNO) and potential habitat breaks (PHB). PNOs are a subset of PHBs, descriptions of PNOs are contained within each PHB alternative. There are others PHBs, such as change in gradient and a change in bankfull width, these are also described in each PHB alternative. While the PHB definition on page 8 is fine, the PNO definition is not as it's inconsistent with the PHB definition. It's unclear why a PNO definition is necessary when each PHB alternative describes PNOs. Note the PHB definitions contains the phrase "*...may consist of natural obstacles that physically limits fish access to upstream reaches...*" and the PNO definition contains the phrase "*...obstacle that completely blocks upstream fish movement.*" FPB staff appear to be confusing obstacles with barriers. I repeatedly provided comments to this effect during the stakeholder process, yet the language remains. I recommend the PNO definition be stricken from the proposed rule, or at least reworded to be consistent with the PHB definition.

Finally, it would be helpful to get an update from FPB staff on the status of the various tasks and analyses for both the water typing and Np buffer rule making. In particular, I recommend a stakeholder workshop to share details on the spatial analysis methodology once approved by FPB staff.

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

Sincerely,

Darin D. Cramer

Sr. Director of Forest & Environmental Policy