



DEPARTMENT OF
NATURAL RESOURCES

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MEMORANDUM

TO: Forest Practices Board
FROM: Marc Engel, DNR
SUBJECT: Anadromous Fish Floor and Water Typing System Rule

On August 10, 2022, the Board will:

- 1) Discuss the Anadromous Fish Floor (AFF) alternatives received from the Water Typing Board Committee and presented to the Board at the June 27th Special meeting for inclusion in the Water Typing System rule.**
- 2) Review all decisions regarding elements of the Water Typing System rule.**

With an approved AFF alternative and confirmation of rule elements the Board can request staff to proceed with the Water Typing System rule making packet by completing:

- The draft rule and Board Manual guidance,**
- Cost benefit analysis,**
- Small business economic impact statement, and**
- SEPA analysis**

These final steps will allow for the Board to consider filing a CR-102 *Proposed Rule Making*.

The Board has been actively engaged since 2014 in the development of a permanent water typing system rule to replace the interim water typing system rule adopted in 2001. A permanent Water Typing System rule will establish how to classify streams, lakes and ponds including how to locate the water type break between stream segments containing fish habitat (Type F Waters) and segments lacking fish habitat (Type N Waters).

For the purpose of guiding discussions and assisting the Board to understand the outstanding issues and rule elements associated with the proposed water typing system rule, staff has prepared a Forest Practices Board Key FPB Decisions document for preparation of the August meeting, attached.

The materials provided are an overview of Board discussions and decisions regarding the rule and guidance elements, including supporting work products, to provide all elements required for a permanent Water Typing System rule. Board approval of all rule elements is necessary for staff to complete the water typing system rule packet for Board consideration and approval needed initiate the next step of rulemaking through the filing of a CR-102 *Proposed Rule Making*.

Key Board decisions

The Board began the assembly of a permanent Water Typing System rule with the approval of Policy recommended rule elements in November 2016. The key Board decisions for development and approval of rule elements:

- *November 2016*, Board accepted Policy recommended elements and additional language for inclusion on the rule, rule elements needing further clarification and elements of non-consensus; Board motion directing staff to file a CR-101 Preproposal Statement of Inquiry to notify the public the Board is considering rule making related to a permanent water typing system.
- *May 2017*, Board accepted by motion the Policy consensus elements and dispute resolution majority decisions for inclusion in the rule; and, Board assumed management for the development of the final issues needed for a complete permanent water typing system rule. Acceptance included the framework for a Fish Habitat Assessment Methodology (FHAM); and creation of a scientific expert panel to: determine those elements that would constitute a barrier and/or potential habitat break (PHB); and, recommendations for a study to identify the metrics to identify the PHBs and a plan for a PHB validation study.
- *February 2018*, Board motion accepting PHB options for inclusion in draft rule proposals and accompanying analysis. The PHB options:
 1. No action – existing rule language;
 2. UCUT Proposal as amended during board discussion;
 3. Western Tribes Proposal; and
 4. Landowner’s Proposal, as amended during board discussion.
- *June 4, 2019 Special meeting*, Board established a Board committee to make recommendations on outstanding issues associated with the proposed water typing system, specifically to:
 - § Understand the spatial analysis and work to resolve whether width can be precisely estimated for the purposes of the required economic and environmental analyses;
 - § Determine how the rule making should be applied in eastern Washington;
 - § Determine if and when the PHB validation study should be done and whether it should be combined with the study to determine physicals; and,
 - § Determine if rule language, Board resolution, or other non-rule options would suitably encourage moving toward a Lidar modelled map-based water typing rule.
 - § Board committee shall work with stakeholders to resolve any outstanding issues regarding the anadromous floor.

The Board also directed Policy to address first the anadromous floor and then road water crossing structures to recommend whether these items should be part of the water typing system rule.

- *August 2019*, Board accepted the Policy recommendations that an AFF should be considered for inclusion as a component of the water typing system rule; and additional water-crossing structure language not be included in the water typing system rule.
- *November 2019*, Board approved the Committee recommendations to:
 - § Approve how to perform the spatial analysis for the width-based PHBs;
 - § Direct the Cooperative Monitoring, Evaluation and Research Committee (CMER) to develop study designs for the PHB validation, physical characteristics, and map based Lidar model studies;
 - § Direct the Committee to explore whether there is other data available to inform the water typing system rule in eastern Washington; and
 - § Approved of the AFF workgroup charter, assigning oversight of the AFF workgroup to the Committee, and directing the Committee to bring AFF recommendations to the Board.
- *August 2020 and May 2021*, Board accepted Committee recommendation to use additional eastern Washington fish data identified by the eastern Washington Qa/Qc technical group screening process. The data added 227 fish data points to the existing 18 fish data points to perform the eastern Washington PHB spatial analysis.

On August 10th staff will present the Board identified outstanding issues associated with the proposed water typing system rule and Board actions addressing them. I am available in advance of the meeting at marc.engel@dnr.wa.gov or at 360 628-1107 to answer questions.

ME/TH

Attachment