


February 10, 2021



Forest Practices Board
1111 Washington St. SE
PO Box 47012
Olympia, WA 98504-7012

Members of the Board:

I last spoke before this Board when Brian Boyle and Jennifer Belcher were Commissioners of Public Lands (1981-2001). At that time, I frequently came, with many other citizens from around the state, to try to get the DNR to consider the cumulative effects of the rampant cut-and-run commercial logging in this state and in my community. I lived then and live now in Roslyn, Washington.

I am asking you to take action to alleviate several problems in the Small Landowners Long-term FPA process. I see in today's report, "Small Forest Landowner Office and Advisory Committee," that there are 307 total such applications approved to date, making my experience with a permit that was approved in 2018 (#2706221) something of an indicator species of LTAs.

Our town owns a small forest, the Roslyn Urban Forest, some 300+ acres within our city limits. These lands are on the base of the ridge (Cle Elum Ridge) that rises behind the developed footprint of Roslyn.

The City applied for, and received its LTA (2018) to perform forestry needed to move toward a more resilient forest.

Our forest has had a Land Stewardship Plan since 2008. This plan seeks to foster and enhance the forest's wildlife habitat, wildlife connectivity, recreational opportunities, and to survive wildland fire as well as rain-on-snow flooding.

I was party to drafting the LSP, and served on the City's advisory committee on forestry when the LTA was drafted and submitted.

Times change, politics change. The City's current administration is altering its forestry plans. That action is not the purview of the DNR.

However, in altering it's on the ground forestry practices, the City is altering substantive aspects of its approved FPA. TO date the following elements of the approved LTA have been altered:

- * stream typing

NOTE: Stream re-typing has a separate process and form (Water Type Modification Form Review Process), but this is not being used.)

- * Critical area buffers that exceed DNR requirements, that were mandated by City permitting cited in the LTA

- * harvest prescription for timber removal

- * post-harvest treatment of landings

- * road siting and road construction.

The City is doing so by filing a series of 5 Day Notices and Amendments to the LTA.

5 Day Notices and Amendments require no public notice, and do not allow for public review or comment.

5 Day Notices and Amendments do NOT trigger any notice within the FPARS system, so there is no way for a citizen to know what is happening other than to check the application online and see if its page count has changed. This holds true for the 15-year period this LTA is valid.

Where is a definition of what constitutes "substantial" change to an FPA? 5 Day Notices are to address immediate work in keeping with the LTA. Amendments are to incorporate such changes to the LTA as are "insubstantial."

It would seem at least some of the actions I listed above are substantial, and certainly all of them together are.

So far nothing has triggered an ID Team visit or review.

Currently, there is no possibility for public comment, and no process to even be notified.

I ask you to immediately revisit the Long-term FPA process.

At this point, in this case, all of the planning, many of the conditions and mitigations that are part of the original application have been and are being changed, piecemeal.

- 1) Require public notice of all proposed modifications to an LTA via FPARS.

- 2) Allow a minimum 2-day comment period on 5 Day Notices, Amendments, and other alterations to LTAs.

3) Identify explicitly:

- a) what constitutes "substantial" change to an LTA, and
- b) an appeal process for such alterations to an LTA.

4) Direct me to DNR staff who can address these problems in a timely way.

I will close these comments as I signed my comments twenty years ago.

Working for a sustainable forest community and a sustainable forest economy,

Ellie Belew
Ellie Belew





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February 8, 2021

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Re: Performance Audit, Water Typing Rule Making

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 for the Forest Practices Board's February 2021 meeting.

State Auditor Performance Audit Report

We congratulate the department and Forest Practices Board (FPB) on completing the first Adaptive Management Program (AMP) performance audit and thank the State Auditor's Office for delivering on this important task. Washington Administrative Code (WAC) 222-12-045 requires biennial fiscal and performance audits of the AMP; therefore, we are hopeful this is the first step in more frequent fiscal and performance reviews which will help us continuously improve.

There are some disappointing aspects of audit report:

- An incomplete and imbalanced description of the history/context of the AMP,
- A bias towards a single measure of AMP success,
- Confusion about Type F, Type N, and Clean Water Act Assurances, and
- Apparent misunderstanding of the difference between rule and guidance.

Nonetheless, there are also some good recommendations worth pursuing:

- Use of a net gains approach to decision making,
- Being clear in advance about decision criteria,
- Embracing dispute resolution as a necessary and beneficial part of our process,
- Regular science program peer reviews
- Systematic on-boarding and training processes, and
- A centralized and transparent project monitoring and tracking system.

WFPA is not supportive of doing away with the collaborative, consensus-based decision-making model. That model has been a hallmark of our system for 35 years, it guards against a tyranny of the majority, forces us to consider other viewpoints and is fully integrated into the structure of the program. We have all found ourselves in the minority on one topic or another, making consensus work better, rather than doing away with it, is how we improve the system.

The Forest Practices Act along with the Timber, Fish, & Wildlife (TFW) process and Forests & Fish law has a rich history. Most of the people and memory of the history and process have moved on. A deeper dive into where we started from and how we got to where we are today is helpful to acknowledging the accrued and ongoing benefits, diagnosing the challenges to meeting the Forests & Fish goals, and charting a productive course for the future. The audit report glosses over much of this, providing a very limited and imbalanced description. A more comprehensive and accurate accounting of the history and the context will assist current and future participants in moving forward.

The audit report repeatedly references a problem statement of rule changes not occurring in a timely manner. This is a very narrow and biased definition of success for the AMP. It implies a predetermination the existing rules are wrong and need to be “fixed”. While it is fine to have that viewpoint, it needs to be borne out by rigorous and thorough scientific research and monitoring of existing rules, and alternatives to existing rules, then vetted in a policy process which must balance the various goals of Forests & Fish and required by the Forest Practices Act. That is not easy and takes considerable time to do well. If one is narrowly focused on the outcome of “fixing” the rules there can be a tendency to shortcut necessary scientific investigation and/or the policy vetting process, be frustrated by how long the process takes, not be satisfied with the outcome, or some combination of all three. This dynamic tends to surface in debates about “settled science” and the depth/breadth of technical information needed for decision making. There is no such thing as settled science. The point of scientific investigation is the continuous advancement of knowledge. Learning often takes the form of negative feedback, finding out we do not know as much as we thought we did and/or surfacing new questions. This can be frustrating for those desiring to “fix” the rules, but is valuable and necessary learning nonetheless.

There are multiple measures of success for an AMP. Management changes can be one, so can learning and reducing uncertainty. Determining appropriate management responses to learning involves individual value-based beliefs and risk tolerance, which are additional layers of complexity not addressed in the science work. Future performance audits should incorporate broader and deeper assessments of performance. For example, the attached proposal from the Department of Fish & Wildlife (attachment A), which came to TFW Policy approximately two years ago, would have greatly assisted this effort. This type of review would also assist in meeting the required Cooperative, Monitoring, Evaluation, and Research (CMER) five-year peer review process (WAC 222-12-045 (2) (f)). While conducting this type of periodic review is necessary, the follow-up based on the review is what matters. The first and last CMER science review was conducted more than 10 years ago by Stillwater Sciences. Many good recommendations resulted from that review, and some have received attention by CMER. Many of the more meaningful recommendations remain unaddressed.

There have been more than 50 science projects completed in the AMP, most of those resulting in a consensus no-action recommendation to the FPB. A big part of the reason for so many no-action recommendations is approximately 75% of those projects were technical tool or methods development, which are often a prelude to more in-depth research and monitoring projects. Approximately 20% of the total projects have been “effectiveness” projects which generally aim to test a specific rule in the field. Approximately 5% of the projects have focused on establishing

landscape scale status of key resource metrics, otherwise known as extensive monitoring. The focus has been shifting over the last several years with many more effectiveness projects in the development stage and scheduled for implementation in the coming months and years. Even though the AMP has completed many projects and we have learned a great deal, there is still much to do to fulfill the original research and monitoring vision described in the CMER work plan. One area we have been particularly remiss is monitoring at different scales across the landscape, extensive and intensive monitoring.

The Forest Practices Rules are implemented on over nine million acres with an incredible amount of variability. To understand the status and trend of important biological/physical conditions and if established performance targets are the right ones to achieve the objectives, regular landscape scale extensive and intensive watershed scale monitoring is necessary, respectively. We will not gain these insights through site scale testing of specific rules. The whole is always greater than the sum of the parts, and yet we tend to focus on the smallest elements. Extensive and intensive monitoring have been deprioritized, the rationale being direct testing of rules at the site scale is more important. Some in the AMP believe it is not important because it will not produce actionable information, which is a prime example of to narrow a focus on “fixing” the rules, and lack of knowledge about how different scales of research and monitoring are necessary to understand complex interactions between forestry and key biological and physical processes. No collection of site-specific studies can provide a defensible evaluation of the program’s overall effectiveness. Maintaining this narrow focus means answering the two key Forests & Fish questions will likely not be answered.

- *Will the rules produce forest conditions and processes that achieve resource objectives as measured by the performance targets, while taking into account the natural spatial and temporal variability inherent in forest ecosystems?*
- *Are the resource objectives the right ones to achieve the overall performance goals?*

Elevating the scientific research skills and experience level around the science table and finding opportunities for collaborative efforts with others around the state and throughout the region through a clearly articulated and actively engaged science program may help address these issues.

The Forest Practices Act and Rules regarding the AMP are requirements on the program, they are not discretionary. We can do better at aligning practices and procedures with law and rule. Some of these should be relatively easy, such as periodic performance and fiscal reviews. Some will be more challenging, such as determining if/when the science work has produced adequate actionable information. It also is important to remember Board Manual (BM) 22 is guidance, it does not have the force of law or rule and therefore cannot require anything. It can expound upon how to meet the intent and clearly must be consistent with the rule, but it is not the only way to meet the rule. Nonetheless, we’ve all informally agreed to follow the AMP BM even though it is not rule. Problems can arise when we have situations infrequently encountered or unanticipated by the rule or BM. In those situations, there can be a tendency to make up process to push a particular interest, constrain it, or disallow it altogether dependent upon which route advantages an individual caucus or group. Spending some time filling in some of these blanks in the existing BM will assist in decreasing the frequency of process debates.

As stated earlier, collaborative, consensus-based decision making is hard, it requires patience and flexibility. Despite its challenges, this program has a lot going for it and is why it is heralded as a model for other land uses and more recently other state forest practice regulatory programs. The key challenges in the AMP are less about process and more about people. While fine tuning our process is important, appointing the right people to participate, creating more understanding between, acceptance

of, and trust/confidence in one another must happen concurrently. The C-Peace process is purportedly intended to assist us in improving our capacity to handle conflict constructively, hopefully we will have the chance to complete it. Moving forward, WFPA recommends the following:

- Address the obvious errors and inaccuracies in the report as much as possible,
- Commit to incorporating recommendations we collectively believe will make a positive difference and set out a timeline/process for doing so, and
- Request the Auditor's Office put us on their schedule for a future performance audit in two - four years, encourage an independent adaptive management expert be included on the next audit team.

Water Typing Committee Update

In many ways, the water typing rule making process could be exhibit A for some of the challenges described above and in the audit report.

WFPA has provided comment multiple times over the last several months about "screening" of the CMER eastern Washington (EWA) upper most fish data. We still do not agree with the approach. Nonetheless, we want to be aware of and involved with the remaining work rather than hearing about it just before a FPB meeting. The EWA data workgroup has not met since last fall, yet work has been happening over the last few months which we are just now hearing about and have yet to see. Further, the memo indicates the workgroup will meet once the work is done to determine next steps. This is not acceptable; the workgroup should be meeting as the work is commencing.

The Anadromous Fish Floor (AFF) workgroup has been making progress but continues to lack clear and ongoing policy direction. There has been discussion in the FPB's committee about the policy objective of the AFF, but it occurred only once nearly a year and a half ago and many AFF workgroup members were not in attendance at the meeting. Given our understanding of the AFF policy objective, it is very likely the spatial analysis will indicate some AFF alternatives exceed the objective in some areas, running upstream of existing Type F/N breaks. For some caucus members this may be perfectly acceptable, for others it will not. Passing such a result on to the FPB is not recommended.

Per our January 27th memo to the FPB and many previous requests, we ask the FPB and/or its Water Typing Committee to affirm and/or clarify the water typing performance target. This recommendation came to you from the water typing committee in November 2019, it remains unaddressed while work in support of rulemaking continues. In addition to addressing the performance target, we request the FPB tackle the glaring omissions in the rulemaking process, clear problem statement(s) and adequate technical analysis of the existing practice, and alternatives to the existing practice, consistent with the Forest Practices and Administrative Procedures Act. We look forward to this being discussed at the February 10, 2021 meeting.

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

Attachment A

Assessing Changes in Uncertainty during Adaptive Management: A Case Study of the Washington State Forest Practices HCP

Timothy Quinn PhD, Aimee McIntyre, Reed Ojala-Barbour, and George Wilhere

The Problem

Adaptive management is touted as an effective process to improve management of natural resources in the presence of high uncertainty and ecosystem complexity (Holling 1978; Walters 1986). However, to some, adaptive management fails because it produces too few changes to management (Allen and Gunderson 2011). To others, problems originate with a potential disconnect between policy and science (Wilhere and Quinn 2018), where the parties possess different perspectives on scientific uncertainty and ecological risk, as well as the information needed to address those risks.

A number of recent studies (Stankey et al. 2003; Allen and Gunderson 2011; Johnson 2011) have suggested that the strength of adaptive management efforts lies more with the recognition and confrontation of uncertainty than with its use in modifying management. We hypothesize that the adaptive management program (AMP) of the Forest Practices Habitat Conservation Plan (FPHCP) includes many studies that have accomplished their original and primary goals of reducing unacceptable levels of scientific uncertainty, or mitigating risks in the form of new knowledge (Wilhere 2002). Further, we suggest that the AMP has contributed invaluable information to ecosystem-based management of forests throughout the Pacific Northwest. The Forests and Fish Report was completed in 1999 and the 20th anniversary of that report is an opportune time to document adaptive management success stories and help diagnose shortcomings.

A Research Proposal

The authors listed above, many of whom have been involved in the science enterprise of the AMP, created this proposal outline. If this proposal is well received and considered for funding, we will work closely with a subgroup of the Timber, Fish, and Wildlife Policy Committee to ensure the products resulting from the work meets their needs. We envision two major parts of the work.

First through reviews of existing documents and interviews with current and past AMP members, we will examine the history of AMP studies since 1999, document the reasons why each study was funded with respect to scientific and policy uncertainty, and evaluate the degree to which those studies have contributed to resolving policy issues within the FPHCP. This work is composed of four tasks: 1) characterize the history of adaptive management, research, and monitoring of the FPHCP, 2) identify key uncertainties (Schedules L1/L2; CMER work plans, etc.) and expectations for addressing them; 3) develop a comprehensive accounting of all CMER-funded studies, organized by research approach (i.e., effectiveness monitoring, extensive status and trend monitoring, intensive/validation monitoring and rule tools projects), and identify which key uncertainty(ies) each was intended to address; and 4) the Policy outcome of research efforts (e.g., reduced uncertainty, rule change).

Second, we will assess how a reduction in scientific uncertainty may have affected Policy perceptions of risk, and how new scientific information may have led to the resolution of outstanding management issues without requiring changes to management. The work is composed of three tasks and will rely at least partially on participation from a social scientist to: 5) describe how well Policy members felt that study results addressed key uncertainties (e.g., need for policy change, need for additional study, or (un)satisfactory resolution of scientific uncertainty); 6) policy makers' satisfaction with ultimate policy outcomes based on new knowledge (i.e., were outcomes rationale, fair, transparent, decisive, true to Forests & Fish goals, etc.); and, contingent on the outcome of task 6, 7) an enquiry as to why policy makers were dissatisfied with certain policy outcomes, and how the AMP process could be improved to avoid future dissatisfaction.

The final product will be an historical accounting of the FPHCP AMP that includes critically important adaptive elements that are often underappreciated, i.e., the need to continually characterize uncertainty (science lead with policy support) and the risks of that uncertainty to natural resources management (policy lead with science support) under the FPHCP.

Ancillary proposal information as described in the Board Manual Section 22 (3.1) Stage 1: Initiation and Screening of Proposals. This part of the Board Manual asks how the proposal pertains to or addresses the following five topics.

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

Our study should lead to improvements of the AMP that might be formalized as changes to *Board Manual Section 22, Guidelines for Adaptive Management Program*. In particular, our study supports the AMP of the FPHCP by offering participants an opportunity to understand important and overarching outcomes of the AMP that to date have not been formally characterized. These outcomes reflect foundational elements and goals of all adaptive management programs (Stankey et al. 2003; Allen and Gunderson 2011; Johnson 2011). Further, this work would also provide opportunities for reflection and learning, which have been identified as critical components for the success of adaptive management as a social-ecological system (Armitage et al. 2009). In particular, we believe that evaluating the degree to which the FPHCP has reduced scientific uncertainty and contributed to resolving policy issues within the FPHCP is fundamental to measuring AMP success and a useful tool to evaluate program functionality.

Topic 2. The urgency based on scientific uncertainty or resource risk

The urgency associated with this study is related to two issues. First, much of the work described here is based on collecting historical information (past 20 years) from written records and from interviews of long-term participant in the program. We need to take advantage of the opportunity to talk with these participants before they retire or become otherwise unavailable. Second, some AMP members have recently expressed dissatisfaction with the AMP, which we believe is based on unmet expectations about the pace of study completion and subsequent rule change. While these metrics can be important, they reflect only one part of successful adaptive management outcomes. Better measures include understanding the program as a whole, that is, how it has addressed uncertainty over its entire history.

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

We are not aware of any specific agreements but this study may help inform the Biennial Fiscal and Performance Audit.

Topic 4. How the results of the proposal could address AMP key questions and resource objectives or other rule, guidance, or DNR products

The proposed research could affect the guidance provided by *Board Manual Section 22, Guidelines for Adaptive Management Program*. If we find that some policy makers were dissatisfied with ultimate policy outcomes, or if we find that some policy makers believe that certain past outcomes were not rationale, fair, transparent, decisive, or true to Forests and Fish goals, etc., then obvious questions arise. We would ask these policy makers why they hold those beliefs, and what could be done to improve the decision making process within the AMP.

Further, we believe that we can provide a more complete assessment of the value of the AMP science enterprise than can be measured by considering simple metrics such as the number of studies resulting in rule change, the average cost per study, or average time required to complete a study.

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

Collectively, we are familiar with a fair amount of the literature regarding adaptive management, we have authored papers on adaptive management (Wilhere 2002, Wilhere and Quinn 2018), and have extensive experience with the FPHCP (Quinn) and AMP (Quinn, McIntyre).

If funded, we will complete a formal literature review. We also plan to contract the services of a social scientist to assist in the design and execution of the participant surveys.

Draft Budget for 2019-2021. This budget may be revised in cooperation with a policy subgroup input.

Study Component	Duration (FTE months)	Scientists (Salary and Benefits)	Estimated Indirect	CMER Contribution	Inkind Contribution (Salary and Benefits)	Grand total
Task 1	1.5	\$13,686	\$4,146	\$17,832	\$4,458	\$22,290
Task 2	3.0	\$27,373	\$8,219	\$35,592	\$8,898	\$44,490
Task 3	3.0	\$27,373	\$8,219	\$35,592	\$8,898	\$44,490
Task 4	3.0	\$27,373	\$8,219	\$35,592	\$8,898	\$44,490
Task 5-6	3.0	\$27,373	\$8,219	\$35,592	\$8,898	\$44,490
Task 7	3.0	\$27,373	\$8,219	\$35,592	\$8,898	\$44,490
Totals	16.5	\$150,551	\$45,241	\$195,792	\$48,948	\$244,740

Literature Cited

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Comments by Peter Goldman for February 10, 2021 Forest Practices Board Meeting

Good morning Board and Chair Bernath:

My name is Peter Goldman and I direct the WFLC. I work closely with the Washington Env. Council staff—on whose Board I serve— and other groups to implement the Forest and Fish AM program. It's been a long time since I've seen you and I hope all of you and your families have been well during the epidemic.

Mr. Chair, I was hoping you would graciously permit me to combine my comment times for the two public comment periods (11:25 am and 12:55 pm) into one 5 minute comment about the Auditor's report.

Former board-member Paula Swedeen, WEC chief policy officer Lisa Remlinger, and I were the 3 conservation representatives, the “principals,” who attended the five day “principals” retreat at Skamania Lodge in May 2019. I think the three of us walked away from those 5 long days with the hope that the caucuses would re-commit to the AM process, stop the science and policy delay tactics, and focus the program's limited resources on important studies and implementation issues as opposed to pursuing time and money-consuming redundant scientific and landscape analysis.

Unfortunately, as the Auditor's report clearly reflects, things have broken down and the program is not “operating as intended.” Type F is very clear evidence of this dysfunction. The development of a modernized water typing rule has bogged down and this Board and Policy have spent over 5 years—and hundreds of thousands of dollars—analyzing what should be two relatively simple concepts: what is a scientifically accurate “anadromous floor” and what are “potential habitat barriers” (PHBs) below which it is inappropriate to use electrofishing to detect fish presence or non-presence. But rather than work collaboratively to answer these questions and adopt a water-typing rule reflecting them, Type F has been transformed into a process by which the burden has figuratively been put on the fish to prove their historic habitat and some are using a “cost-benefit analysis” as a weapon to resist implementing HCP-required protection of potential fish habitat.

Perhaps the most important study yet produced by the AM program, the two Type N studies, have also bogged down in process. The Type N studies were initiated in 2005 and the Type N

hard rock study came to Policy in 2017-2018. In these days of climate change, where Type N waters that feed Type F waters are heating up by forest management adjacent to Type N waters, it is inexcusable that the AM program has already spent 3 years deliberating on policy and regulatory adjustments. This non-action will risk the HCP's Clean Water Act assurances.

WFPA's letter to this Board regarding the Auditor's report dated February 8, 2021 contains multiple concerning assertions that this Board should reject when it considers how to respond to the Auditor report. First, WFPA's letter says that the purpose of the AM program was to protect the minority from the "tyranny" of the majority? Excuse me, but the AM process is a regulatory process and there is nothing "tyrannical" about a majority of the Board or Policy concluding that modification of a rule is required by the HCP's commitment to sound science. Second, WFPA's defense of the consensus process ignores that, in DNR and WFPA' 2012 legal settlement agreement, the parties agreed that if consensus cannot be reached, majority and minority reports will be presented to the Board. Consensus is not the law today. Third, WFPA's letter suggests a presumption that the rules should not be modified and sets an impossibly high bar for doing so; I am confident this type of burden is not what Billy Frank had in mind when he agreed to a 50 year HCP with a robust AM program. And finally, WFPA suggests a framework whereby anecdotal industry economic viability arguments trumps science. Not only has there been no economic viability data presented, that is not how a science-driven AM process underlying a federal HCP should work.

In summary, DNR and the Board should pay serious attention to the Auditor's report. The Board should consider imposing strict time-lines on all of its and Policy's work and re-confirm that it will act on majority-minority reports from Policy or take votes at the Board on issues for which there may not be consensus. I urge the Board to not, as WFPA's letter implies, set the bar so high for regulatory reforms that none ever happen. That will jeopardize this program in more ways than one.

Thank you very much.



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January 26, 2021

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Re: Preliminary Assessment of Current Regulatory Protocol Survey Practice

Dear Forest Practices Board Members:

As you know, over the last several years we have provided public comments to the Forest Practices Board (FPB) about the inadequacy of the water typing rule making process. In response, the FPB has made some minor adjustments to the planned, supporting analyses and associated work products, which is appreciated. Unfortunately, there are still foundational issues which need to be addressed for the rule making to proceed in a clear, complete, and transparent manner consistent with the Forest Practices Act and Rules.

Key foundational issues which still need to be addressed include:

- Clear articulation of and agreement on the water typing performance target.
- Clear and specific description of the problem(s) being solved by the rule making.
- Adequate technical evidence supporting the problem statement(s).

Our repeated requests for the above issues to be addressed have not been successful thus far. However, at the November 2020 meeting, discussion between several FPB members appeared to open the door for a future discussion. At the same time, we have been working to assemble preliminary field data collected by a Washington Forest Protection Association member which are relevant to the above issues. Therefore, we offer the attached technical memo for your review and consideration at the February 2021 meeting. 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

Preliminary Assessment of Current Regulatory Protocol Survey Practice

Introduction

A discussion occurred during the November 2020 Forest Practices Board meeting regarding the performance of current water typing protocol survey practices in meeting fish habitat protection objectives. During the meeting, a question was posed by Board member Davies regarding whether interim guidance measures may be warranted to address unspecified problems with protocol survey water typing procedures in the upcoming survey season. Questions were then raised by Board member Nelson about the broader foundational technical basis for the ongoing rule-making process. A follow-up conversation was requested by Board member Swedeen to further explore these issues.

In support of this request, WFPA offers the following review of prior negotiated and regulatory water typing performance expectation language, along with preliminary results from a landowner field study examining effectiveness of current survey practices. We are hopeful this information will provide a catalyst for productive and necessary discussion to inform and support the ongoing rule-making process.

Performance Expectations of the Water Typing System

Several decades of documents, decisions, and prior technical evaluations support the need for two core elements to be considered in determining the performance of the water typing system:

- Minimize the total amount of error in determining the division between fish habitat and non-fish habitat (Type F and Type N) waters.
- Equitably allocate the remaining error and uncertainty in the placement of the Type-F/N Break regarding impacts to public and private resources.

Beginning with the Timber Fish and Wildlife agreement in 1987, it was understood that maintaining a balance between public and private resource interests was necessary:

“The values of public and private resources are very real. Precise quantification of those values is quite variable, however. When tradeoffs occur between public and private resources, it is logical to seek ways to maintain equity.”

The 1999 Forest and Fish Report echoed those expectations by including clear performance expectations for an interim water typing rule in the event the anticipated model maps were not adopted:

“If statewide water type maps are not available by the time of rule adoption, water typing will proceed under an interim rule modeled after the current emergency rule but modified in the following respects: (A) stream types will be described in terms of Types S, F and N waters instead of Types 1, 2, 3, 4 and 5 waters; (B) the risks between resource protection and timber harvest as determined by a model with a statistical accuracy of +/- 5% will be revised so that the line demarcating fish and non-fish habitat waters will be drawn so as to be equally likely to be over and under inclusive;...”

In 2005, the NMFS Biological Opinion and Findings included broader language describing expectations for the performance of any potential water typing system developed within the Forest Practices HCP:

“Failure to correctly identify fish-bearing waters will occur and is assumed to lessen over time. It is assumed that any methods used to map or delineate such waters will have an approximately equal probability of identifying waters as fish-bearing where fish do not actually occur or the reverse, identifying waters as non-fish-bearing where fish actually do occur. It is further assumed that such errors will be relatively small and largely offset at the landscape scale. This assumption is based upon the fact that this concept of equal error probabilities was inherent to the FPHCP.”

In August 2016, the Forest Practices Board approved a motion incorporating recommendations from TFW Policy that further clarified their expectations for performance for the water typing system:

“The Board generally expects TFW Policy Committee to:

- *use the existing information,*
- *develop a method for addressing streams not on the hydro layer,*
- ***make methods as accurate as possible,***
- ***balance error,***
- *minimize electrofishing,*
- *improve map over time,*
- *develop methods to locate the stream break points on the ground, and*
- *ensure the methods address small forest landowners.”*

We assume these, and other similar prior expressions of regulatory intent, provide the basis for evaluating performance of water typing alternatives. All share common objectives to minimize overall error in the water typing system with a measurable, acceptable, and equitable allocation of the remaining uncertainty. Until or unless these objectives are modified, we assume they provide the basis for evaluating performance of the current water typing system and any future alternatives to accomplish water typing.

If expected performance of the water typing system described above is an area of disagreement among stakeholders, we suggest we seek resolution of these issues prior to initiating any further work intended to evaluate or develop regulatory water typing alternatives.

Summary of Current Survey Practice

Consistent with the above regulatory intent in meeting a landscape-scale fish habitat objective, contemporary DNR-approved water typing surveys conducted under current rule and guidance not only incorporate stream reaches that are used by fish - but also include habitats upstream of surveyed fish use that are adjacent, accessible, and similar - where upstream fish movement is deemed likely to occur over the course of their freshwater rearing life-history. These approved regulatory breaks between Type F and Type N waters are typically established at a natural physical obstacle to fish movement or a measurable and distinct change in physical habitat character, at or above the surveyed extent of fish use, beyond which fish use is presumed to be unlikely.

Features associated with the proposed F/N break are generally based on distinct changes in stream gradient, changes in stream size, and/or permanent natural obstacles to upstream movement. This extension of Type F waters beyond surveyed fish use has been the standard expectation of DNR and Water Type Modification (WTM) reviewers for approving proposed Type F/Type N breaks, and provides the foundation for the Fish Habitat Assessment Method (FHAM) previously endorsed by TFW Policy and the Forest Practices Board. Unfortunately, while nearly a million dollars has been spent within the Adaptive Management Program on water typing research, no CMER studies have focused specifically on evaluating the effectiveness of the placement of field-determined regulatory breaks between Type F and Type N waters in meeting the prescribed performance expectations for the water typing system. Significant changes have been made in contemporary protocol survey practices through collaboration between survey practitioners, regulators, and WTM reviewers to incorporate habitat likely to be used by fish. Unfortunately, Board Manual guidance and rule language have not been updated as contemporary survey practices evolved. As a result, there are wide-ranging opinions of how well current survey practices meet intended fish habitat protection objectives. Field studies requested by the FPB more than five years ago to evaluate and refine criteria used to determine the F/N break by field survey are in the development stage and are expected to take at least five additional years to complete. In the interim, as the current rule-making process proceeds ahead of the necessary supporting science, it is important for the FPB to have a general understanding of how well current survey practices are likely meeting the prescribed performance expectations of the water typing system.

Preliminary Performance Assessment of Current Survey Practice

Recently, an independent landowner evaluation was completed by Weyerhaeuser Company scientists that can shed some light on this topic. Consistent with the proposed Science Panel PHB validation study, which is currently in development at CMER, the recently completed Weyerhaeuser study relies on repeated field surveys conducted across multiple seasons and years to assess variability in fish distribution for the purpose of characterizing habitat likely to be used by any species of fish at any life stage or time of year. The frequency and magnitude of fish movement was summarized across multiple years within the prescribed regulatory window (“spring”) and during the higher flow months outside of the regulatory window (“winter”) in relation to the distance from the proposed regulatory F/N break identified during the original protocol electrofishing survey. Coupled with F/N break determinations made during operational water typing surveys, these data can provide a preliminary measure of the effectiveness of placement of the F/N break using current protocol survey practices in encompassing the likely extent of fish use occurring across multiple years and seasons. We offer the following preliminary summary of the results of this work in the context of evaluating the performance of current survey practices for FPB and stakeholder consideration.

In this study, sampled streams were randomly drawn from a pool of operational water typing surveys conducted between 2015 and 2019. Streams where the upstream extent of fish distribution was associated with a man-made barrier or were impacted by a recent disturbance event were excluded from this study. Re-surveys on 202 sites were conducted in both spring and winter seasons, and the distance between the upper-most fish observed and the originally proposed regulatory break was recorded in each re-survey. To eliminate anticipated concerns about the potential impact of an upstream or downstream harvest impact to fish use, sites where adjacent upslope timber harvest occurred during the study were removed from the sample population and replaced with a new site from the pool of candidate sites for re-survey. A manuscript summarizing this research is currently in preparation and intended for peer-reviewed publication, which will provide a more comprehensive

analysis including evaluation of features associated with a low likelihood of upstream movement by fish. Results presented below should therefore be considered preliminary.

Within the combined sample of 517 total re-surveys of the proposed F/N breaks, the upper extent of fish use was identified at or below those proposed F/N break in 90% of the combined samples. Maximum distances fish were found above and below the proposed break during all re-surveys were 433 ft and -2496 ft respectively (Fig 1).

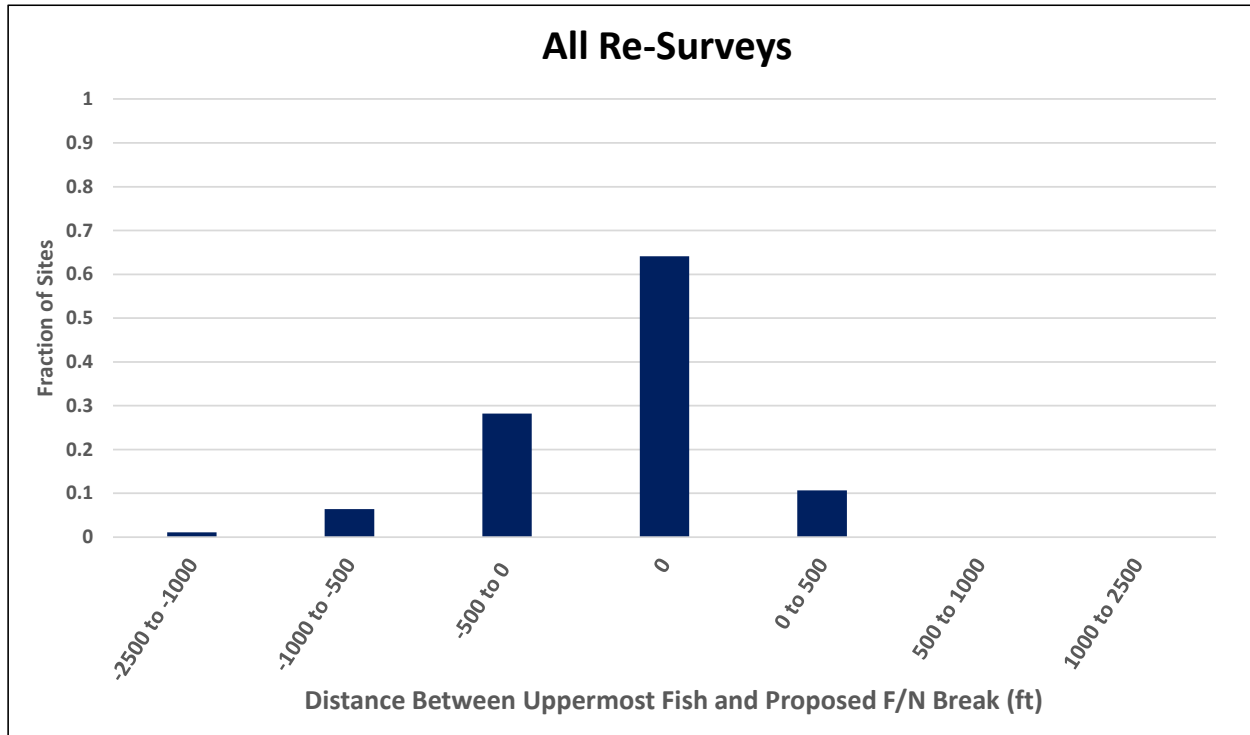


Figure 1. Frequency histogram of all re-surveys (n=517). Distances represent the measured difference between uppermost fish identified during a resurvey and the originally proposed F/N break.

Consistent with CMER and other research studies conducted in the early 2000's, there was no landscape-scale trend in the performance of the proposed F/N break related to season. Patterns of fish occurrence relative to the proposed F/N break were nearly identical among the spring and winter samples (Fig 2).

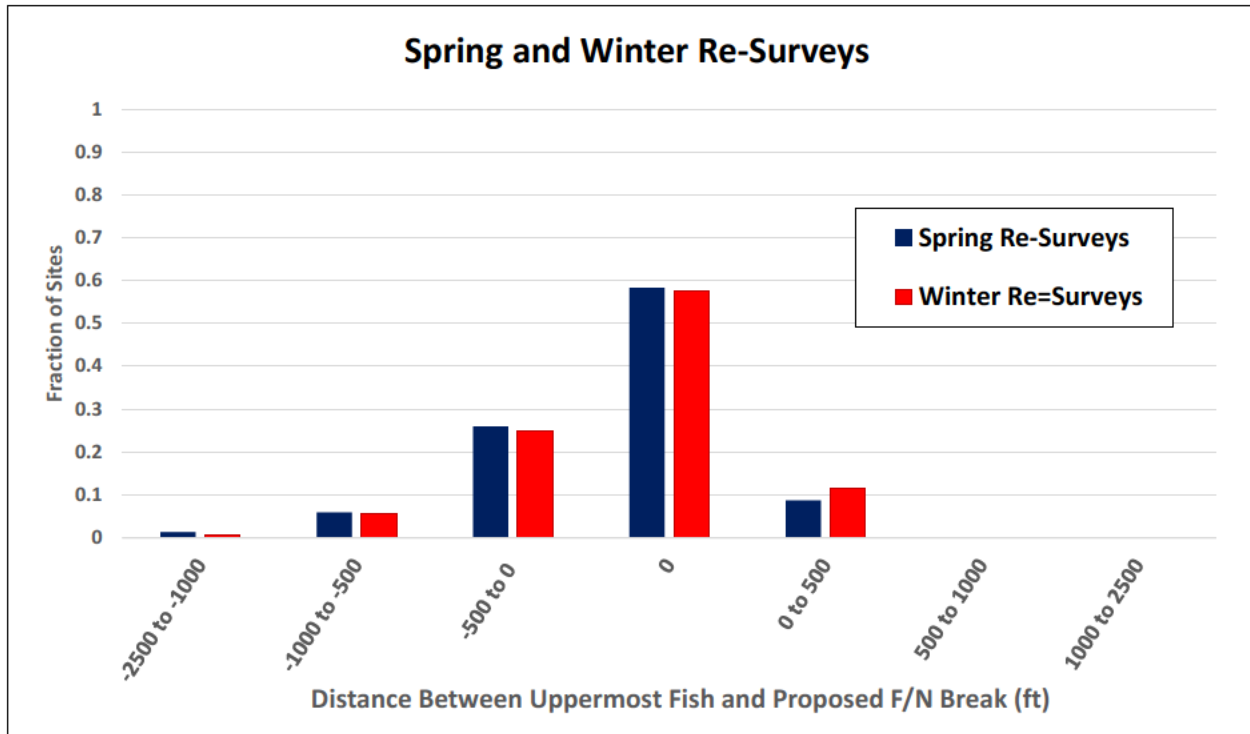


Figure 2. Frequency histogram of re-surveys by sampling period (Spring n=324, Winter n=193). Distances represent the measured difference between uppermost fish identified during a resurvey and the originally proposed F/N break.

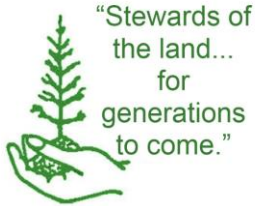
Distances between the proposed F/N break and the location of the uppermost fish identified during the re-surveys were summarized to provide information characterizing the performance of the F/N break. The absolute average distance between the location of uppermost fish identified in re-surveys and the proposed F/N break (where upstream and downstream distances are counted equally) provides a measure of the precision in placement of the regulatory break relative to the re-surveyed fish locations. Across the 517 re-surveys the absolute average distance was 111 ft. The mean distance between the uppermost fish identified in re-surveys and the proposed F/N break (where upstream and downstream distances are off setting), provides a measure of equity and balance of uncertainty in placement of the F/N break between public and private resources. The mean location of the proposed break relative to the uppermost fish location identified in the 517 re-surveys was +87 ft upstream.

Summary

Performance of the current regulatory survey practice, which generally attempts to incorporate adjacent, accessible, and similar habitat likely to be used by fish above the surveyed upstream extent of fish use, is summarized below in the context of the prior documented and negotiated landscape-scale regulatory expectations of the water typing system.

- Results of the Weyerhaeuser study re-survey data provide a preliminary indication of the likely frequency, magnitude, and direction of stream classification error resulting from current practices employed for placement of the F/N break during a single visit protocol survey.

- These data can provide a useful benchmark for evaluating performance of other water typing alternatives currently being considered (e.g. PHBs, fish habitat model, Default Physical Criteria) for placement of the F/N break.
- Current survey practices and timing appear to result in Type F/N breaks that generally meet or exceed the previously stated performance expectations, minimizing error, and encompassing broad landscape-scale patterns of seasonal and inter-annual variability in fish habitat use with reasonable equity in the allocation of remaining uncertainty.
- The location of the proposed F/N break was upstream of the observed uppermost fish in 90% of the Weyerhaeuser study re-surveys. This result indicates a somewhat precautionary outcome of current survey practice in favor of public resource protection when assessed against the performance expectations previously identified.
- Under-classification error arising from placement of the F/N break below habitat later found to support fish appears to be infrequent and occurs over a relatively short distance, well within the 500 ft continuous buffer reach prescribed in rule above most F/Np water typing breaks.
- The Weyerhaeuser data do not support assumptions suggesting significant problems with the outcomes of surveys as conducted under current rule.
- Further refinement of guidance and numeric criteria for use in supporting placement of the regulatory break in a manner consistent with current practice will likely result in similar performance outcomes and improved consistency in making those determinations.



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February 10, 2021

Re: State Auditor Performance Audit Report

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 Steve Barnowe-Meyer and, along with Ken Miller, I have represented small forest landowners and the Washington Farm Forestry Association (WFFA) on the TFW Policy Committee for almost four-and- one-half years.

Thank you for this opportunity to provide input to you today about the Adaptive Management Program Performance Audit Report by the Office of the Washington State Auditor. For the record, I was interviewed three separate times by members of the State Auditors Office and provided several documents to them in response to questions by them during the performance audit.

As you are no doubt sick of me reminding you, except for a seven-year period when I worked exclusively in Oregon in the mid-1980s, I have worked almost 40 years of my professional forestry life under the Washington Forest Practices Act and rules, starting in 1974 when the current Forest Practices Act was enacted.

I was working in Oregon when the TWF Agreement was signed in February 1987, but upon my return to working in Washington in 1988, I immediately recognized that the commitments made by all parties to the agreement, heralded a much better way to manage the forest-based natural resources in Washington State, than how we had managed previously. Protection of fish, wildlife and water quality were greatly improved as a result of this ground-breaking Agreement.

Two of the most significant ingredients of the Agreement was the **use of adaptive management and a commitment to a decision-making process at CMER and TFW Policy, with ground rules and consensus at its core**. At the heart of the TFW ground rules was (and is) the assumption that everyone wins by addressing the needs and goals of **ALL** participants. And the TFW Agreement set the stage for the Forest and Fish Report that followed over a decade later.

From the summer of 1999 through the spring of 2001, the Forest Practices Board enacted new forest practices rules consistent with 1999 Forest and Fish Report to develop biologically sound and economically practical solutions to improve riparian habitat on non-federal forest lands in the state of Washington, but **adaptive management, use of amended ground rules and consensus decision-making at CMER and TFW Policy has remained a consistent core principle since 1987**.

During my four-and one-half years on the TFW Policy Committee, the Committee has reached consensus on many dozens of actions, involving significant recommendations to the Forest Practices Board, including major components of the Type F & N water typing systems, while only needing to enter dispute resolution twice. In my experience, not one single topic needing recommendation from TFW Policy has failed to reach the Forest Practices Board for lack of consensus or without majority / minority recommendations. Again, in my experience, consensus decision-making has guaranteed that universally

good science-based recommendations come to TFW Policy from CMER and equally good science- and policy-based recommendations are delivered to the Forest Practices Board from TFW Policy.

The State Auditor's Office made several findings based on procedures, practices and records described to or observed by them during the audit of the Adaptive Management Program (AMP). While these findings are quite good overall, they do not necessarily capture all elements of the current state of the Program and appear to concentrate on forest practices rule change (or their observed lack thereof) as a primary indicator of the AMP not operating as intended. The auditors appear to be confused about some differences between Type F and Np waters, as well as Clean Water Act Assurances, and may have a basic misunderstanding of the differences between rule and Board Manual guidance.

Based on their findings, the audit identifies six leading practices that could help the Board reach decisions while improving accountability and transparency (Page 22). **One of these practices (#3) is antithetical to consensus decision-making, a core foundational element of the Adaptive Management Program and which practice I strongly recommend that the Board does not adopt.** Practices #1, #2 and #4 through #6 certainly warrant further consideration and potential adoption by the Board. Practice #1 is already an approach utilized by some caucuses but not universally, so may improve consensus-building, if utilized by all.

The audit reports emphasis on increasing accountability and transparency within the AMP are spot on.

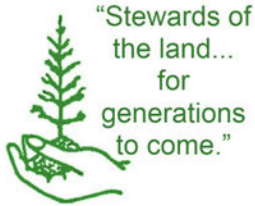
The audit identifies eleven specific recommendations to the Forest Practices Board, with two additional recommendations for the Legislature (Pages 33 and 34). Those recommendations that address compliance with RCW or WAC (Recommendations 7 and 9) demand immediate attention by the Board. Recommendations 2, 3, 5, 6, 8, 11 and 12 are clearly opportunities for improvement from the audit team and warrant further review by the Board and potential development of actions plans.

In my opinion, the TFW Agreement and the current Adaptive Management Program created from the Forest and Fish Report remain the premier forest-based natural resources protection program in the nation and the most effective means for the State of Washington to meet its four stated goals and objectives for water quality and fish habitat within the jurisdiction of the Forest Practices Program.

Thank you once again for this opportunity to provide input to you today and I strongly recommend continuation of capacity-building efforts within the AMP via the CPeace process.

Steve Barnowe-Meyer

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February 10, 2021

Re: State Auditor Performance Audit Report

Washington State Forest Practice Board
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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. I offer the following general comments regarding the Adaptive Management Program and the State Auditor Performance Audit Report:

- Few SFLOs understand/appreciate AMP – but the WFFA Leadership does respect the potential benefits of a well-functioning AMP. Despite being exasperatingly slow it seems better than any other options on tough issues – and powerful when we all agree.
- We do appreciate the changes that gave us a full seat at the AMP table (albeit we are still shorted on the participation grant funding). However, until the 1999 RCW regulatory deference requirements for “relatively low impact” prescriptions for SFLOs are fulfilled/realized we will continue to feel like secondary citizens in an important process.
- The processes do allow members to get to know one another where friendships and greater respect for each other can blunt some of the sharper substantive issues. We share a bond with all others in the AMP that care about forest stewardship and keeping forestland forested – a bond we believe should overshadow the science gaps with simpler/common sense solutions - particularly for SFLOs who are economically & technically disadvantaged. Respect & appreciation (for us and for our property rights), and incentives (even small ones) achieve conservation best with SFLOs, particularly when the science is unclear.
- Changes should only occur when substantial science supports the change, or significant functional problems/opportunities are found in the field. Changes should honor/balance all the F&F goals/4 legs with shared risks in a process where economics are more than an afterthought.
- We often deal with tough issues – somehow we need to gear up for and utilize the Dispute Resolution process more frequently/more effectively/more efficiently to bring issues to a head rather than waste time on avoidance do-loops that tend to simply extend decision making.

Conceptually it's a great process; functionally we all need to do better at understanding other points of view/needs; we need outside help like CPeace; and more frequent process audits from the State Auditor.

Respectfully,

Ken Miller
Washington Farm Forestry Association