

From: [Amy Trainer](#)
To: [DNR RE FP BOARD](#)
Cc: [Jeremy Wilbur](#); [Amy Trainer](#); [cody.desautel \(DOHi\)](#); [jpeters](#); [Ash Roorbach](#)
Subject: Swinomish Tribal Senator Wilbur testimony for Forest Practices Board meeting 8/28/24
Date: Tuesday, August 27, 2024 1:22:24 PM

External Email

Hello Forest Practices Board,
Swinomish Senator JJ Wilbur asked me to share with you his comments on the Anadromous Fish Floor vote to be held at the Board meeting tomorrow.
Thank you,
Amy

August 27, 2024

Dear Forest Practices Board Members,
I'm Swinomish Tribal Community Senator Jeremy "JJ" Wilbur, a lifelong fisherman, and advocate for implementing the agreement that was made years ago to follow the science and help recover our fish. I would like to respectfully urge the Board to take action at its August 28th meeting and move forward with Alternative A4-7% (Alternative A4). I believe that our goals with this vote are to reduce the harm from electrofishing and protect usable fish habitat, and Alternative A4 is the best alternative to do that.
Despite the imperfect analyses, Alternative A4 is worthy of support and moving forward in the process. It is the most protective alternative, and will likely not overshoot the true F/N break when implemented in the field. Our technical staff have shared the robust body of literature that demonstrates fish commonly utilize habitats with gradients greatly in excess of 7%, which would be the regulatory endpoint of the Anadromous Fish Floor under Alt A4. In other words, it is very reasonable to assume that fish will be found upstream of the Alternative A4 AFF. I would ask the Board, and especially our state agency partners, to recall that the tribes have already compromised on the Anadromous Fish Floor. Our original proposal ended the AFF at a 10% gradient. We brought the gradient threshold down to 7% to try to broaden support. It is simply unfair to ask the Tribes to further compromise when that would put more fish in harm's way.
Alternative A4 includes permanent natural barriers as ending criteria (along with the gradient threshold, whichever comes first). These barriers are a safeguard against the situation where the AFF extends upstream of fish habitat, yet the spatial analysis did a poor job of locating vertical barriers in lidar data. Fish biologists are experienced at detecting this type of barrier feature; therefore, the field implementation of Alternative A4 will end below the end of fish habitat, as intended.
While the tribal proposal would be the best outcome, the worst outcome is a delay in the rule making process while more analyses and/or data collection are conducted. There is no guarantee that more analyses will result in better answers, and field data collection efforts could take years. Alternative D would be an improvement over the current system, but it would not be an improvement where no anadromous data exist within the SWIFD database. This is particularly concerning in smaller streams that flow directly to saltwater such as non-natal ('pocket') estuaries and some larger streams found in low lying areas.
Please vote to move Alternative A4-7% forward in this process. It is the best outcome based on science and equity. Thank you for your consideration.
Swinomish Tribal Community Senator Jeremy "JJ" Wilbur

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August 26, 2024

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Re: Water Typing Rule Making

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) August 28, 2024, meeting.

The current water typing rule making process originated in 2011 with concerns expressed at a FPB meeting about map accuracy and compliance issues noted in the first water typing compliance monitoring effort in 2008/09¹. Later that same year, consistent protection of off-channel habitat was raised as an additional issue. A rule making petition focusing on off-channel habitat was drafted, shared with the Forests & Fish (F&F) caucuses, and used as leverage to convince DNR and Timber, Fish and Wildlife (TFW) Policy to reengage on the issue or the petition would be submitted to the FPB. TFW Policy agreed to take it up and the FPB reprioritized it towards the top of their list. Over time these original issues mushroomed into broader concerns about perceived differences between the "interim rule" and the "permanent rule" and unsupported assertions of systematic under protection of fish habitat. While the former concerns about compliance and off-channel habitat had legitimate basis and have mostly been addressed by past DNR² and proposed FPB actions³, the latter unsupported assertions are where we have spent enormous time and effort over the last ~ten+ years. The concerns about map accuracy are common knowledge and why forest landowners must verify features on the ground as part of the Forest Practice Application process. Accuracy and use of the DNR HYDRO Map by others is a broader state and local jurisdiction issue not resolvable by the FPB.

The key substantive topics currently in front of the FPB, selection of anadromous fish floor (AFF) and potential habitat break (PHB) criteria, are mostly unrelated to the original issues raised in 2011 and demonstrates what can happen when we allow an unstructured and undisciplined approach to the decision-making process. Which AFF and PHBs are "correct" is primarily a science question, yet no collectively developed and accepted Adaptive Management Program (AMP) science exists to inform the decision. And clearly there is not common understanding of the problem or how to measure if the problem is solved. This is a serious concern for the landowners; it should be for all caucuses.

¹ [bc_fp_presentation_20110208_wt](#)

² [fp_como_biennium_2020-21](#)

³ [bc_fpb_wtyping_rule_prop_20230809](#)

As shared in prior letters to the FPB, the reliability of the information available in the rule making record to inform a good decision on AFF and PHB criteria is incomplete and unclear. To briefly summarize those issues:

Spatial Analysis

- Multiple spatial analyses of PHB alternatives have been completed since 2018, results from the PHB analyses have varied from 300+' upstream to 200+' downstream of field verified, concurred F/N breaks in WWA; results in EWA are less variable (more results downstream of F/N breaks) but still range from 500+' upstream to 400+' downstream.
- Although not quantified, the full range of criteria within each PHB alternative was not assessed by Four Peaks given the resolution of the DEMs is greater than or equal to some of the criteria contained within each PHB alternative; gradient change criteria were dominant factor in estimating the F/N break.
- Multiple spatial analyses of AFF alternatives have occurred since 2018 as well, results have varied even more widely than the PHB analysis results, strongly indicating the concept is not developed well enough to consider in a rule making context.
- Prior FPB analysis in 2021/22 indicates both AFF alternatives occasionally were coincident with or exceeded field verified, concurred F/N breaks in WWA by an average of 500+'; the rate was substantially different however with alternative A4 coincident with or exceeding F/N breaks ~35% of the time and alternative D coincident with or exceeding F/N breaks ~7% of the time.
- Four Peaks 2024 analysis indicates alternative A4 exceeds F/N breaks in WWA to a much greater magnitude and that alternative D is significantly downstream of F/N breaks; EWA results indicate both alternatives are substantially downstream, which is different than WFPAs independent analysis in the Naneum basin which found both alternatives upstream of field verified F/N breaks.
- AFF alternative D was not assessed properly in the latest analysis due to insufficient DEM coverage; it's unclear if AFF alternative A4 was assessed properly.
- If an AFF alternative is coincident with or upstream of all fish distribution, it does not meet the FPB's objective of locating a point where FHAM may be conducted to determine the F/N break; instead, the AFF becomes the water typing system to determine the F/N break, this can only be corrected through additional ID Team process according to the draft rule language.
- Non standardized, remote based, spatial analysis cannot be expected to be better at identifying stream physical features than a field-based survey; variable results mean it's unclear how well any PHB or AFF alternative will perform and therefore the consequences of selecting any given set of criteria are not known.
- No field validation of the existing water typing system or the proposed water typing components (AFF, PHB, DPC) has occurred, that should be the FPB's priority prior to rule making.

Preliminary Economic Analysis

- The preliminary draft findings report by IEC indicated AFF alternative D meets the objectives of the rulemaking and is the least burdensome alternative; the report indicated AFF alternative A4 may have significant disproportionate impacts requiring a more rigorous CBA and a SBEIS.
- The report also indicated monetized probable costs of AFF A4 exceed the monetized probable benefits, whereas AFF alternative D would only have minor impacts under where benefits exceed costs.
- The FPB presentation by IEC on 8/14 drew different conclusions, indicating the probable benefits of AFF A4 exceeded the probable costs and that AFF D benefits & costs were uncertain⁴. This surprising discrepancy was not adequately explained during the meeting.
- The cumulative estimated timberland acreage impact is not reproducible with the information provided; timberland losses are underestimated by using an inconsistent discount rate, leading to misleading annualized values; the correct annualization should reflect a significantly higher financial impact on timberland.
- The report contains spurious assumptions in the discussion of regional impacts that are inconsistent with the rest of the analysis, particularly underestimating the loss in timber harvest volume and the corresponding job losses.
- The carbon benefit calculation is not reproducible with the information provided and the direction/magnitude of effects appears to be substantially inflated.
- The projection that AFF A4 would increase anadromous fish populations by 1,200 is unsupported by published literature, and in any case is indistinguishable from 0 given highly variable fish returns; production of any additional fish associated with AFF A4 is a deeply flawed assumption, relying on a remotely sensed estimate of habitat beyond known habitat, and that it will produce additional fish at a fairly constant rate.

In addition to the unreliable information in the FPB's rule making record, narrowing the AFF and PHB alternatives is inconsistent with FPB motions adopted in 2018 and 2022. Multiple motions direct staff to incorporate all PHB and both AFF alternatives into the rule making and conduct the analysis necessary to consider a CR-102⁵. While the FPB can certainly change its mind, no motion has been passed changing prior direction to staff. A substantive change in staff direction should be done through motion rather than FPB discussion.

One of the Western Washington Tribes' stated concerns and rationale for an AFF is protection of small, low gradient streams which are connected to salt water or larger streams which have anadromous fish use. This is of course a legitimate concern and shared objective amongst all caucuses. Therefore, even though the landowners believe incorporating the concept of an AFF into the rule making is improper procedure⁶, we developed AFF alternative D to specifically address the stated concern. It was obviously not enough to satisfy the tribes. Given anadromous fish encounters are extremely low in decades of water typing surveys (e.g., ~2%) and our fidelity to the principle of science-based decision making, we did not attempt to modify

⁴ [Prelim Econ Analysis of Water Typing Rule](#)

⁵ [fpb_mtgmin_20180213_14](#), [fpb_mtgmin_20220810](#), [fpb_mtgmin_20221128](#)

⁶ [RCW 76.09.370](#)

AFF alternative D further once the tribes rejected it. Given the low anadromous fish encounter frequency in water typing surveys, we presume the tribes' concerns are primarily related to other users of the DNR HYDRO map. As stated earlier, that is not directly within the FPB's jurisdiction. Nonetheless, WFPA has been and still is willing to collaborate with the tribes and others to determine what, if anything, can be collectively done to address it. We are not interested however in absorbing additional regulatory impact to address a problem which may exist elsewhere.

Another stated concern is protection of "recoverable habitat." Recoverable habitat is not defined in the Forest Practices Act or rules. The concept of "potential habitat" is contained with the general definition of "fish habitat" in WAC 222-16-010. Fish habitat is defined as "*habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.*" Since there is no specific regulatory definition of recoverable habitat, landowners have relied on a commonsense description - thousands of miles of fish habitat made accessible by removing fish passage barriers under Road Maintenance and Abandonment Plans (RMAP)⁷, and recovery of habitat function over time by applying fish buffers to streams likely to be used by fish. Maintaining fish buffer protection on streams affected by disturbance events such as debris flows is also an important component. Beyond these broader scale, tangible descriptions, potential or recoverable fish habitat on forestland subject to the Forest Practices Rules is a site-specific rather than a landscape scale consideration.

The water typing rule making record is lengthy, variable, and contains inconsistencies. However, what has become abundantly clear is that there is no demonstrated urgency and no logical justification for selecting one set of AFF and PHB criteria over another. There is also considerable uncertainty regarding the consequences of selecting any particular set of criteria. Therefore, the best course of action is to incorporate the TFW Policy recommendations into rule and descriptions of the AFF intent and PHBs in the Forest Practices Board Manual (BM). This improves the situation over today, maintains a degree of field flexibility to apply the most appropriate PHB to the site-specific situation, and most importantly, preserves the integrity of the FPB's decision making process.

While we strongly urge you proceed as described above, if the FPB insists on proposing specific criteria in rule, we request a transparent and detailed justification, within the context of the FPB's rule making objectives⁸, by each FPB member for selecting one set of criteria over another. In addition, the FPB can help demonstrate a genuine commitment to science-based decision making and provide incentive for the caucuses to cooperatively complete the appropriate AMP work as expeditiously as possible, by incorporating a sunset clause on the criteria within the proposed rule. A compromise solution on PHBs which provides opportunity to demonstrate cooperation is preferred over competition, would entail combining the alternatives into one set of criteria. While this approach would result in more criteria, it still maintains the three categories recommended by the FPB's science panel in 2017 - changes in stream gradient, stream size, and permanent natural obstacles, both vertical and non-vertical. This also offers helpful field flexibility until the field-based AMP science can be completed.

A suggested set of PHB criteria is as follows:

- Stream segments having a gradient increase equal to or greater than five percent.

⁷ [RMAP Accomplishments](#)

⁸ [Water Typing CR-101](#)

- Downstream to upstream bankfull width decrease at a tributary junction equal to or greater than twenty percent; or stream segments having a bankfull width equal to or less than two feet.
- A vertical natural obstacle equal to or greater than three feet, or a height equal to or greater than the bankfull width; or a non-vertical step equal to or greater than twenty percent gradient and the elevation increase is equal to or greater than the upstream bankfull width.

Details on how to measure the various PHB features are best left to expert practitioners during the BM development process.

There isn't a way to logically combine the AFF alternatives as they represent quite different approaches to accomplishing the FPB's stated objective for the AFF⁹. As stated earlier, an AFF may be sound concept but there is simply not adequate information available to select specific criteria at this time. If criteria are selected, landowners need an efficient way to address errors without requiring more ID Team process. Being able to move in both an upstream and downstream direction, with appropriate documentation, would accomplish that objective.

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

⁹ [fpb_mtgmin_20221128](#)



August 23, 2024

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Re: Water Typing Rule Making

Dear Forest Practices Board:

The Washington State Association of Counties (WSAC), created in 1906, is a voluntary, non-profit association serving all of Washington's 39 counties. WSAC members include elected county commissioners, council members, councilors, and executives from all of Washington's 39 counties. We respectfully submit the following comments for the Forest Practices Board's (FPB) August 28, 2024, meeting regarding the Water Typing Rule Making decisions.

WSAC has several concerns with the water typing rulemaking process. Our major concern is that the anadromous fish floor (AFF) and potential habitat break (PHB) rulemaking is taking place before any field-based science has been completed. AFF has never been formally discussed by the Timber, Fish, and Wildlife Policy Committee (TFW Policy) during deliberations on water typing and is not included in any of their recommendations. We are unaware of any studies that have taken place that suggest that the current rule is failing to identify streams that are fish habitat.

According to the Adaptive Management Process (AMP), we should study the effects of the current water typing rules, bring the findings to the TFW Policy, and provide a recommendation to the Forest Practices Board (FPB). The AFF proposals appear to be a solution without a defined problem and put policy before science.

The spatial analysis done by Four Peaks is incomplete and has not been field verified. It may have overpredicted AFF A-4 end of fish above actual fish/non-fish breaks and underpredicted AFF D. This analysis needs to be verified on the ground before we can make an informed decision.

The Cost Benefit Analysis, done by Industrial Economics Inc., is based on the spatial analysis and has many assumptions that cannot be backed up. The increase in fish populations, the increase in recreation, and the increase in harvestable areas in Alternative D cannot be corroborated. We also believe that the financial impact on forestland owners is underestimated, while the benefits of A-4 are not realistic. Finally, there is no analysis of the impact of each alternative on the affected counties from either the reduction in the timber excise tax or the loss of jobs and

other related economic impacts in rural areas. We cannot make an informed decision based on incomplete data.

To address our concerns, WSAC requests that the board take the following actions:

- Complete the AMP validation studies before bringing AFF and PHB to the FPB.
- Complete a cost-benefit analysis report that includes the effects of each alternative on timber-dependent counties and small forest landowners.
- Adopt the Fish Habitat Assessment Methodology and wait to complete the AMP PHB validation study.
- Adopt the validated Statewide Washington Integrated Fish Distribution map anadromous points to serve as an AFF for mainstem waters until the AMP completes the AFF validation study.

Thank you for the opportunity to comment,

Sincerely,



Derek Young
Interim Executive Director