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February 12, 2025

Re: Type F Exploratory Results

Washington State Forest Practice Board

Chairman Young and members of the Forest Practices Board:

For the record I'm Ken Miller, co-representing Washington Farm Forestry Association with Dave Roberts on behalf of the small forest land owners (SFLOs) on the TFW Policy Committee.

About 20 years ago TFW Policy developed, and you approved BM 21 for Alternate Plans that incorporated AP Guidance that set the "areas of influence" (buffer width) needed to protect regulatory functions. This guidance indicates functions are generally all protected within 75' with the possible minute exception of LWD recruitment. It's been long known that about 80% of the functional LWD comes from within 50' of Bank Full Width and well over 90% comes from within 75' of Bank Full Width.

Fast forward to the recently completed Type F Riparian Prescription Monitoring Exploratory Report before you today. This report confirms what you approved of many years ago: few if any RMZ functions are provided beyond about 75'! We are now likely to spend another 20+ years (by consensus) further refining these recent duplicate findings.

My hope is that some, if not all of the Board members will look at this information as potential "trading stock" to help us out of the Np rule-making train wreck, we seem headed towards. Without tangible benefits, and high economic costs (regardless of whose figures) the Np rule proposal provides zero win-win potential. If Board members truly want win-win in the spirit of Timber Fish & Wildlife our well-known & reconfirmed overprotection on Fish buffers creates clear opportunities for win-win collaboration. . . a way out of the lose-lose Np spot we are in.

Moving trees around (trading F for more Np) is the solution. . . if we have the desire for win-win? "Trading" rather than "taking" leads to more of everything our TFW predecessors desired. Science has created more palatable options for you!

Ken

12 February 2025

To: The honorable Commissioner of Public Lands, Dave Upthegrove, Washington Department of Natural Resources.

From: Chris Mendoza, Mendoza Environmental LLC, representing the Washington Conservation Action and the Conservation Caucus.

Subject: Public testimony on proposed water-typing rule and board manual 23 guidance.

Dear honorable Commissioner of Public Lands,

Thank you for the opportunity to provide public comments on an important issue critical to the conservation of aquatic species covered under DNR's federally approved, Forest Practices Habitat Conservation Plan. For the record, my name is Chris Mendoza and I represent Washington Conservation Action and other Environmental NGOs known as the Washington Conservation Caucus. I have actively participated in DNR's Forest Practices Adaptive Management Program for twenty plus years (2003-2025).

I have decades of experience stream typing under DNR's water typing rules and board manual guidance and am co-author of the Fish Habitat Assessment Method (FHAM) the Forest Practices Board is poised to adopt into rule. I have served on many of DNR's board manual technical committees over those 20 years providing input based on my experience implementing DNR's forest practices rules and board manual guidance in the field so that they are repeatable, enforceable, and implementable as directed by prior DNR staff.

The WA FP Board is tasked with protecting fish habitat as defined in rule (WAC 222-16-010) and the Board formally requested via motion (2015) to "reduce electrofishing" consistent with the FP HCP. The TFW Policy committee went through two formal dispute resolution processes spanning 5 years attempting to agree on how much fish habitat to protect, and how much to reduce electrofishing. In failing to agree, and consistent with DNR's AMP process, TFW Policy submitted majority / minority reports to the FP Board to make that decision.

At the August 28, 2024 special FP Board meeting, the Board shirked their responsibility of deciding how much fish habitat to protect and how much electrofishing should be reduced. Instead of choosing 1 of 3 Options, the Board directed staff to move all of the PHBs from 3 different fish habitat protection Options (A, B, C) into DNR's board manual guidance. That decision was irresponsible and nonsensical because those 3 Options represent distinctly different levels of fish habitat protection and reductions in electrofishing.

Listing all of the PHBs from 3 distinctly different protection Options together into board manual table serving as a "menu" for surveyors to choose from is nonsensical (e.g.  $\leq 5\%$  with  $\leq 10\%$  stream gradients). This will surely create public confusion since all 3 Options represent different levels of fish habitat protection that is not repeatable, enforceable, or implementable.

Respectfully, one question the Board should ask themselves is why after 3 years of adamant public testimony from landowners not to adopt any PHBs or AFF Options except their Option (C), they are suddenly supporting moving all 3 Options into DNR's board manual 23? The answer is quite simply that they will now be free to solely use their PHBs with impunity by default. If that's what the Board intended, then you should publicly state that you are choosing the Landowner Option (3) that affords the least amount of fish habitat protection and the most amount of electrofishing. As a state agency, not doing so is misleading the public into believing the more protective fish habitat Options (1,2) will be used by surveyors, when from a field implementation standpoint, they will never be used.

Finally, technical experts like me, serving on DNR's Board Manual 23 committee, cannot and should not be put in the position of resolving what are clearly fish habitat protection Policy not technical issues. I have vetted all of the above concerns with DNR staff at board manual 23 meetings and they have fallen on deaf ears. Board staff have also failed to restore the non-vertical / step PHB in the Westside Tribal Option (A) supported by the Conservation Caucus. We have repeatedly requested DNR staff restore this PHB critical to the foundation of Option A and DNR staff have refused to do so, unlike Board staff quickly correcting Landowner's Option (C) at their request. This critical omission was unjustifiably carried over into DNR's preliminary cost / benefit analysis. In this regard, DNR staff have inappropriately put their thumb on the scale of the Board's rule making process favoring the landowner's Option 3.



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February 11, 2025

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## Re: Tier II Analysis Update

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, please visit our website at [www.wfpa.org](http://www.wfpa.org). WFPA respectfully submits the following comments for the Forest Practices Board's (FPB) February 2025 meeting.

### Tier II Analysis Update

WFPA has commented previously on the proposed Np buffer rule making, in particular how the underlying premise of the rule making relies on a misinterpretation of [WAC 173-201A-320](#) Tier II - Protection of water of higher quality than the standards. The misinterpretation results in several interrelated issues and these are detailed in WFPA letters submitted to the FPB in August 2023. However, the primary problem is the repeated misstatements claiming the measurable change criterion for temperature of  $\geq 0.3$  °C in Tier II is a limit which cannot be exceeded. These misstatements prejudiced the Adaptive Management Program (AMP) process by constraining recommendations to only those which could meet the misstated criterion. It also influenced the FPB to reject consideration of legitimate Np buffer alternatives recommended by landowners and counties. To date, none of the serious questions and concerns raised have been addressed in any meaningful way by Ecology or the FPB.

While Ecology's interpretation of measurable change is accurate for Tier I waters, those at or exceeding designated use water quality standards, it is not for Tier II waters. The measurable change criteria in Tier II are triggers for the overriding public interest analysis process described in WAC 173-201A-320(4). Ecology's Water Quality Program staff have acknowledged this in responses to public comments during the last major revisions to the water quality standards (~2003-06) and recent internal emails obtained through public records requests. Blurring the distinction between Tiers I and II defeats the purpose of having different tiers, is inconsistent with the intent of the Clean Water Act (CWA) and undermines the integrity of the FPB's rulemaking process by determining the outcome before the analysis.

While the misinterpretation about the measurable change criterion is the primary issue, there are other related issues which are also unclear. For example, during the same water quality standards rule revision referenced above, Ecology responded to other public comments about the application of Tier II by citing the state Forest Practices Rules as an example of a programmatic water pollution control program. According to WAC 173-201A-320(6), a general permit or a water pollution control program must undergo a Tier II analysis before being approved. The WAC goes on to state that Tier II analyses will not be conducted for

individual activities and Tier II can be considered met for general permits or water pollution control programs which have a formal adaptive management process for refining management practices over time. Ecology does have an exception, however. WAC 173-201A-320(1) states that new or expanded actions will require a Tier II analysis if the action could result in  $\geq$  measurable change in water quality. New or expanded action is defined in WAC 173-201A-020 as actions regulated for the first time or expanded such that they result in an increase in pollution. This raises many questions. For example, if the Forest Practices Rules are a water pollution control program and a Tier II analysis has already been done, why does this particular rulemaking require another analysis? What is the new or expanded action, consistent with the definition, which elicits the analysis? Have there been Tier II analyses done for past FPB rule making affecting aquatic resources?

How these actions fit under CWA Assurances is also dubious. As stated in prior written comments, CWA Assurances has evolved to something mostly unrecognizable to landowners<sup>1</sup>. Originally, the impetus was that some forested streams were not meeting designated use water quality standards and therefore on the 303(d) list of impaired water bodies. The Forests and Fish rules were expected to improve water quality in the short term and meet water quality standards in the long term, to be verified through monitoring. In the meantime, cleanup plans for listed water bodies were deprioritized. That is what CWA Assurances was about<sup>2</sup>. A monitoring program was not established, however. In fact, Ecology considers it a “completed” CWA Assurance milestone. Further, Ecology is disinterested in the status of 303(d) listed water bodies on forestland. Internal Ecology emails obtained through public records requests indicate the status of potentially impaired water bodies is not their focus, rather “the whole thing.” While the meaning of this statement is not entirely clear, it appears CWA Assurances has been redefined and is being used as leverage to achieve a desired regulatory outcome on streams which in large part are meeting designated use water quality standards. This is an unwise use of limited resources and inconsistent with the FPB’s obligation to oversee a science-based decision-making process<sup>3</sup>.

It is difficult for landowners to reconcile our experience in this rule making process with our understanding of the Forests & Fish agreement and how the Forest Practices Act, and rules and the Water Pollution Control Act, and rules are intended to work together. In the interest of avoiding future conflict, we are hopeful a substantive dialogue can occur at this or a future regular or special FPB meeting. We are also available anytime to discuss these issues individually with any FPB member and/or any other interested stakeholder.

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

Sincerely,

*Darin D. Cramer*

Sr. Director of Forest & Environmental Policy

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<sup>1</sup> [fpb\\_written\\_comments\\_20230510.pdf](#)

<sup>2</sup> [Forests & Fish Report, Schedule M-2](#)

<sup>3</sup> [RCW 76.09.370\(7\), WAC 222-12-045\(1\)\(2\)\(a\)](#)