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RESOURCES

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## MEMORANDUM

1/29/2025

**To:** Forest Practices Board

**FROM:** Saboor Jawad, Forest Regulation Division Manager  
*[Signature]*  
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**SUBJECT:** Board Manual 23 and Rulemaking update

This memo provides an update on rule making and board manual efforts that are underway.

### **Permanent Water Typing System Rule Language**

After approval of the CR102 at the November 2024 meeting the CR102 and SEPA Determination of Non-Significance were filed. There were no comments received under the SEPA public comment period, which concluded 1/3/2025. The rulemaking public comment period remains open through 2/12/2025 at 5 p.m., a day after the final public hearing. At the time of this mailing, public hearings have been held in Burlington, Kelso and Spokane. Additional public hearings are scheduled for Ellensburg and Olympia. Staff will synthesize comments in a Concise Explanatory Statement and finalize the Cost Benefit Analysis to accompany the CR103 at your May 2025 meeting.

### **Type Np Stream Buffer Rule Language**

The draft rule language reflects your August 2023 decision. Staff received feedback from the Timber, Fish and Wildlife (TFW) stakeholders on this version of the draft rule and you reviewed the language at your May 2024 regular meeting. I look forward to presenting the draft rule language at your May 2025 regular meeting.

### **1- Preliminary Cost-Benefit Analysis (CBA) and Small Business Economic Impact Statement (SBEIS)**

A Cost-Benefit Analysis (CBA) and a Small Business Economic Impact Statement (SBEIS) are required for the proposed Type Np stream buffer rule pursuant to RCW 34.05.328. Industrial Economics, Inc. (IEc) is drafting the Preliminary CBA and will present the findings at your May 2025 regular meeting. The draft preliminary CBA/SBEIS are nearly complete and TFW stakeholders will be provided three weeks to

review and comment, including the opportunity for a presentation and Q&A session with IEC.

*The CBA remains preliminary until the public review process is complete and the Board adopts the rule by filing CR103 (November 2025).*

## **2- State Environmental Policy Act (SEPA) Analysis**

The SEPA Responsible Official and Board Chair, Lenny Young, will make and announce his SEPA determination at the May 2025 Board meeting. If the Board approves the rule language and the filing of the CR102, the SEPA Checklist and associated determination decision will then be filed in the SEPA Register and sent to interested parties for a public comment period.

## **Board Manual 23 Update**

The TFW stakeholder group to amend Board Manual Section 23 continues to meet twice every month. In addition to reviewing the entire Board Manual, the main focus of the group remains on incorporating a description of the AFF and PHB that aligns with your decisions. Providing guidance on both AFF and PHB continues to be challenging. However, I am pleased to inform the Board that staff and stakeholders are nearing conclusion on the AFF (attached for your information) and PHB sections. Efforts are underway to draft a PHB section that includes all PHB options, staff is interpreting your direction as inclusive of PHB metrics and criteria however not verbatim PHB A, B, C language. The Board Manual is not ready for your review and approval. It is also not required to be complete at this stage of the rule making process. The Board can expect a complete draft of Board Manual 23 Part I by May 2025. The group will begin working on Board Manual 23 Part II as soon as Part 1 is complete.

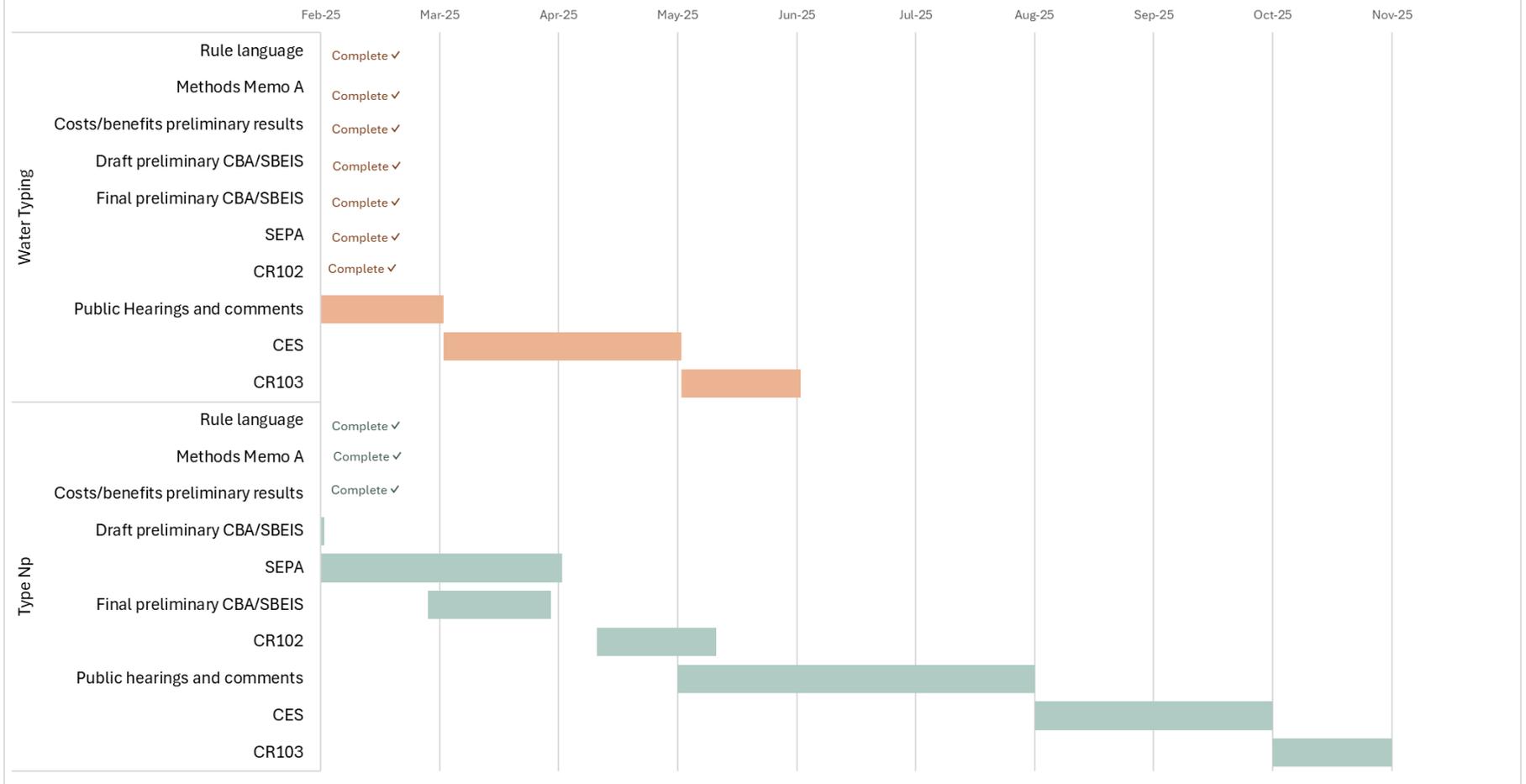
Please feel free to reach out to me for any questions or clarifications.

### **Attachments:**

- 1.** Updated Rulemaking Timeline
- 2.** Draft BM23 Description of the AFF

**c:** Katie R Allen, Acting Deputy Supervisor, Forest Resilience, Regulation and Aquatics  
Terry Pruit, Assistant Attorney General and Board Attorney  
Karen Zirkle, Assistant Division Manager, Policy and Landowner Services  
Maggie Franquemont, Policy Program manager

# Current Timeline & Status



## **PART 1. IDENTIFY AND LOCATE THE DIVISION BETWEEN TYPE F AND N WATERS**

This guidance is a technical supplement to the water typing system rule which ensures that – at the landscape scale - the full extent of fish habitat is identified. Per WAC 222-16-010<sup>1</sup>, fish habitat consists of “those areas 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”. The water typing system includes an Anadromous Fish Floor (AFF), the Fish Habitat Assessment Methodology (FHAM), which includes the use of Potential Habitat Breaks (PHBs), and Default Physical Characteristics (DPC).

### **Anadromous Fish Floor (AFF)**

The AFF is a key component of the water typing system alongside FHAM, PHBs and DPC. The AFF delineates a zone or segment of fish bearing streams within which anadromous fish habitat is always presumed. As a subset of fish bearing streams (Type F), the AFF, while wholly within the total extent of Type F streams, is not necessarily coincident with the upstream extent of fish habitat nor is it always the upper most extent of anadromous fish habitat. Instead, the AFF is intended to provide regulatory certainty by designating and delineating a portion of fish bearing streams, presumed to be anadromous fish habitat, where no surveys are necessary or allowed for stream typing purposes without assembling an ID team. By limiting surveys in the AFF, the Board is protecting known and likely anadromous fish habitat that may otherwise be misidentified because of survey timing, low fish abundances, man-made barriers or other factors. Reducing electrofishing is also among the stated goals of the water typing system. Beyond certainty in protecting known and likely anadromous habitat, the AFF also serves a practical purpose in the water typing system. The upstream extent of the AFF is one potential starting point of the FHAM which relies on identification of PHBs upstream of AFF to determine the regulatory break between Type F and Type N waters. Additionally, proponents must verify the subject waters are upstream of AFF when using DPC to type waters.. A known fish presence point, if upstream of the AFF, supersedes the AFF and becomes the starting point of surveys. .

#### ***1. How is the AFF delineated?***

Measurable physical stream characteristics are used to delineate the upstream extent of the AFF. A study designed to find and validate appropriate measurable physical stream characteristics for the determination of AFF is in development. Until measurable physical characteristics are validated, use this guidance to delineate the AFF in the field. To delineate the AFF, practitioners should rely on three key considerations: known anadromous fish data, physical stream characteristics of biological significance to anadromous fish movement, and consultation with DNR, WDFW, and Tribal biologists (bilateral or through an ID team when necessary).

Proposals to permanently type streams should use the following guidance to delineate and propose an AFF on streams connected to saltwater and accessible to anadromous fish:

#### ***1.1. In all cases:***

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<sup>1</sup> WAC 222-16-010 Fish Habitat

- 1.1.1. Start with pre-survey planning to ensure that surveys are based on the best existing data and information available to identify areas of anadromous fish habitat. Pre-survey planning includes consultation with WDFW and Tribal biologists for information on known fish distributions, flow seasonality, fish barriers, and status of fish populations to aid in the delineation of the AFF
- 1.1.2. Refer to available WDFW, Tribal and publicly available fisheries databases and GIS products (see Appendix A) with information on the distribution of anadromous fish populations. These products include: Salmonscape, Statewide Integrated Fish Distribution (SWIFD); and Salmonid Stock Inventory (SaSI), and
- 1.1.3. Review fish passage barrier information (see Appendix B for a list of resources).

## **1.2. On streams with documented or presumed anadromous fish data:**

- 1.2.1. Review the termination point reported in SWIFD for relevance and to determine/document in-stream limitations to upstream movement of anadromous fish. This review is needed to ensure the SWIFD or other data point is not a database error or placed at a point for reasons such as imprecise map transfers, property restrictions, etc.
- 1.2.2. The terminal point of the AFF is at the SWIFD end point if associated with observable changes in channel conditions or permanent natural obstacles that in either case are potentially biologically significant to anadromous fish. \_\_\_\_\_
- 1.2.3. If the SWIFD point is not associated with observable changes mentioned above or is a database error, surveyors and proponents should propose a terminal point for the AFF using the guidance in section 1.3 below. Also, proponents should consult WDFW and Tribal biologists with local knowledge regarding seasonal fish use, water availability patterns, or other local considerations that may affect the placement of the boundary between the AFF and FHAM portions of the watershed. Landowners should consult with DNR, WDFW, and Tribal biologists for this process. A reviewer can request and DNR may assemble an ID team in the event of non-concurrence.
- 1.2.4. Proponents and surveyors are encouraged to provide good documentation with their proposed terminal point of the AFF. Including photographs is encouraged and could be very helpful in the review process. Information on upstream extent of AFF includes fish distribution, existing type breaks, stream characteristics and consultation feedback. In some cases, such as where property access is restricted or downstream reaches of the watershed contain well-known features restricting anadromous passage, remote delineation of the AFF may be appropriate. In these instances, thorough documentation is especially important.

## **1.3. On streams without anadromous fish data including tributary streams flowing into Type-S or Type-F streams with known anadromous fish use:**

- 1.3.1. The AFF extends to a point where there is a permanent, distinct and measurable change to in-stream physical characteristics of biological significance to

anadromous fish. These changes are typically associated with underlying geomorphic conditions and may consist of:

- A permanent natural obstacle (e.g., non-vertical bedrock chute, vertical waterfall) that physically limits access of anadromous fish to upstream reaches
- A distinct measurable change in channel gradient (e.g., a change in gradient measured over 20 BFW)

1.3.2. Like the process described in 1.2.4., proponents and surveyors should provide DNR with thorough documentation and propose a terminal point for the AFF on streams without known anadromous data including on tributaries flowing into Type-S and Type-F streams of known anadromous fish use. Documentation includes summary of feedback received through consultation with WDFW and Tribal biologists with local knowledge. DNR may convene an ID team in the event of non-concurrence.

Anadromous fish distributions expand and contract seasonally and annually. Knowledge of anadromous fish species life histories can aid surveys and help pre-survey consultation. Appendix C provides an overview.

For technical assistance, small forest landowners can reach out to DNR regulatory assistance foresters or DNR fish and wildlife biologists.

### **Figures and Illustrations/Examples**