FOREST PRACTICES BOARD
Special Board Meeting – June 6, 2025
Zoom Webinar and Room 172, Natural Resources Building

Members Present:
Lenny Young, Chair, Department of Natural Resources
Ben Serr, Designee for Director, Department of Commerce
Chris Conklin, Designee for Director, Department of Fish and Wildlife
Frank Chandler, General Public Member/Independent Logging Contractor
Laura Butler, Designee for Director, Department of Agriculture
Jim Peters, General Public Member (absent from 10 a.m. – 1 p.m.)
Meghan Tuttle, General Public Member
Pene Speaks, General Public Member
Steve Barnowe-Meyer, General Public Member/Small Forest Landowner
David Bowen, Designee for Director, Department of Ecology
Wayne Thompson, Timber Product Union Member

Staff:
Colleen Granberg, Policy Analyst
Donelle Mahan, Senior Policy Planner
Maggie Franquemont, Policy Manager
Patricia Anderson, Rules Coordinator
Saboor Jawad, Division Manager
Terry Pruit, Senior Counsel
Tracy Hawkins, Policy Analyst

WELCOME AND INTRODUCTIONS
Chair Lenny Young called the Forest Practices Board (Board) meeting to order at 9:00 a.m. Introductions of Board members and staff were made.

WATER TYPING SYSTEM RULE MAKING
Maggie Franquemont, DNR, presented the updated Concise Explanatory Statement (CES) that was provided at the May 14, 2025, Board meeting. The updated CES included one updated comment that DNR received during the public comment period, as well as several new comments that DNR received just before and at the May meeting. She said there are two changes that are different between the proposed rule and the final rule: In WAC 222-16-0301:

1. The wording for the Anadromous Fish Floor (AFF) is changed to add "of biologic significance to anadromous fish". The change clarifies the rule to reflect the intent that the AFF would be biologically significant, and it was raised in several comments that the clarification is necessary.
2. The steps for the Fish Habitat Assessment Method (FHAM) under the Potential Habitat Break section had language that no longer aligned with the language of the rest of the rule. The change clarifies how the FHAM works in the two different scenarios of when using the end of the AFF as the beginning of survey point, as opposed to uppermost known fish.

Franquemont said that staff is requesting an effective date of January 1, 2026, to allow time for training.

Board member Pene Speaks said that she appreciates the addition of biological significance, but there is not a definition for it. Franquemont said that biological significance to anadromous fish is explained in Board Manual Section 23.

Board member Speaks requested an update one year post implementation on how the rule is working in the field. Saboor Jawad, DNR, said that DNR is committed to providing the requested report, and would seek input from TFW partners before submitting it to the Board.

Board member Speaks asked if a memo or something similar could be created for the public so there is more assurance that the board manual is enforceable along with the rule. Terry Pruit, ATG, said something that explains how the board manual works in conjunction with the rule, as the guide to technical implementation of the rule, and why significant in the legal context can be prepared.

Board member Meghan Tuttle asked if it would make sense to delay the effective date until March 2026 to coincide with the field season. Franquemont said that in talking with DNR Operations staff, it is better to have a clean break in advance of the implementation season so there is time to process.

Jawad said that if DNR receives water-type modification forms and a flood of applications in anticipation of a rule change, DNR will not rush the concurrence process because resource risks need to be fully evaluated.

Board member David Bowen said that it is good to hear there is a description of biological significance in guidance. He asked if the change is a clarifying change versus a significant change to the rule. Pruit said that the intent of the AFF is to identify waters where fish habitat is presumed, and this is in line with that.

Board member Steve Barnowe-Meyer asked whether protocol surveys conducted under the current rules will be accepted. Jawad said that on January 1, 2026, the new rule applies. The date of the submission of a Water Typing Modification Form (WTMF) is important. It is possible that a survey and data collected four years ago can be used and submitted using the new forms. That WTMF would be evaluated under the new rule. DNR will not consider evaluating WTMFs under a rule that is no longer in effect. Jawad said DNR will take some time before the implementation to conduct outreach with landowners to clarify this.

Board member Tuttle said that landowners have been working under an interim water typing rule for 20 years and that there has been no push to increase efforts this summer to do more water typing modifications than is needed before the new rule is implemented.

Board member Tuttle said that she would like to know what the dictionary definition of biological significance is. Jawad said that what is important is the definition that is included in Board Manual Section 23. Along with that definition there is a three-step process for delineating the AFF. The board manual guidance describes that the AFF extends from saltwater to a point where there is a permanent distinct measurable change to instream physical characteristics of biological significance to anadromous fish. He said the Board's approval of the AFF clarifies that this is what was meant by implementing the AFF on the ground.

MOTION: Board member Barnowe-Meyer moved the Forest Practices Board to adopt the proposed Water Typing System rules with a delayed effectiveness date of January 1, 2026. He further moved to request staff to file a CR103 Rule Making Order with the Office of the Code Reviser. Rules amended in this rulemaking are WACs 222-12-090, 222-16-030, 222-24-040, adding a new section 222-16-0301 and repealing 222-16-031.

SECONDED: Board member Bowen

Board Discussion:
Board member Speaks said that the Conservation Caucus' perspective is the rule is not adequate as is because the language that identifies how you use PHBs and AFF has been removed from the rule.

Board member Tuttle moved to amend the motion by changing the effective date to March 1, 2026. No second, therefore the Board moved on to the original motion.

ACTION: Motion passed. 10 support / 1 oppose (Speaks)

BOARD MANUAL SECTION 23
Saboor Jawad, DNR, said Board Manual Section 23 was presented to the Board at their May 14, 2025, Board meeting. Parts 1 and 2 cover demarcation between fish bearing and non-fish bearing waters and a sub-section on off-channel habitat. Part 3, which is not complete will address perennial non-fish and perennial seasonal waters. Jawad said Board Manual Section 23 reflects the rules the Board just adopted. He requested the Board approval which would give DNR staff certainty that preparations for training and outreach can begin.

Board member Tuttle said the sections on tributary junctions and electrofishing above artificial barriers need more analysis and work and the bankfull width PHBs are overly specific.

Jawad said that the origin of the width reduction PHB is based on the 2018 science panel report recommendations. It is measured as a ratio. In practice, concerns have been reported from DNR foresters that guidance needs more clarity to make sure that a junction does not becomes a PHB. As we go into training, the intent will be further clarified.

Jawad said that there is an obligation to consult before doing surveys above artificial barriers. There is no agreement to remove that from the guidance.

Board member Jim Peters said that there may be things learned in the field that would clarify Board Manual Section 23. There is a budget for training to make sure foresters and practitioners understand how to implement the rules and needs to make sure the budget provides for that and any amendments as we move forward.

Jawad said that there is a minimum of resources for basic training. If additional training is needed, additional funding will be required. He said DNR is working on a concept note to ask for more funds for training for water typing and any other rule that might be adopted this calendar year.

Jawad said that amending the board manual guidance is a routine process. If during field implementation changes to the guidance manual are needed for clarity, DNR will consult with TFW partners and present an updated Board Manual Section 23 to the Board.

Board member Speaks said that it is disappointing that the Board did not select a single option for PHBs. It is not clear how the training will help foresters correctly apply PHBs.

Jawad said that the guidance provides the information for applying FHAM and the PHBs on the ground. The PHB validation study is likely to produce results for CMER to propose revised criteria. The study is ongoing and will take two years.

PUBLIC COMMENT ON BOARD MANUAL SECTION 23

Elaine Oneil, Washington Farm Forestry Association (WFFA), said she supports approval of Board Manual Section 23.

Jenny Knoth, PNK Consulting LLC, provided suggestions on how to improve the Adaptive Management Program:

- Return to in-person meetings at all levels of AMP.
- Emphasize qualifications and scientific disciplines over caucus representation when considering the composition of the CMER voting membership.
- Seek programmatic understanding of the differences between a question and a testable hypothesis within CMER so that it's easier to make decisions.
- Embrace and incorporate cutting edge science.

Chris Mendoza, Conservation Caucus, said he does not support the approval of Board Manual Section 23. The PHBs carry distinctly different levels of fish habitat protection and electrofishing. The draft Board Manual Section 23 is confusing and complex. TFW Policy Committee provided three different alternatives that carry distinctly different levels of habitat protection. It is misleading to adopt them all in one menu.

Peter Goldman, Washington Forest Law Center, said he does not support the approval of Board Manual Section 23. The Conservation Caucus has serious concerns about the effectiveness and replicability of a menu-like board manual substituting for a rule that applies scientifically and evenly to everyone. Also concerning is whether DNR has legal authority under Board Manual Section 23 to override a landowner decision as to where a PHB is located. He had two requests: Board to ensure that DNR can and will enforce DNR's decisions under Board Manual Section 23 and within one year of the final adoption of a final rule that DNR commit to reporting to the Board that it is able to support and enforce the Board Manual Section 23 on a site-specific basis.

Jason Walter, Weyerhaeuser Company, said despite the potentially contentious nature of the process, DNR staff did a good job of listening to the different perspectives provided by different stakeholders; however, he strongly believes additional work by the group to improve the final version of the document is needed. The draft before the Board was not vetted or agreed to by the work group and has the potential to result in significant confusion by and contention between practitioners and regulators if implemented as is.

Rico Vinh, Conservation Caucus, said they do not support the approval of Board Manual Section 23 as written because core elements have been removed from rule and placed into guidance. This reduces enforceability, weakens transparency, and leaves too much open to interpretation in the field. If this guidance is enforceable, then an attorney generals' opinion supporting this should be made public. DNR should closely track how it is applied and how often determinations differ from tribal biologists and WDFW. The data should be reported publicly, so the system can be evaluated whether it is working as intended. He said this is not a final solution and once PHB study is complete, the Board should revisit the rule and revise it based on stronger science.

BOARD MANUAL SECTION 23

MOTION: Board member Bowen moved the Forest Practices Board approve Board Manual Section 23 - Guidelines for Field Protocol to Locate Mapped Divisions Between Stream Types & Perennial Stream Identification. He further moved to allow staff to correct any grammatical/spelling errors or broken web links, if necessary, prior to distribution.

SECONDED: Board member Tuttle

Discussion:
None.

ACTION: Motion passed. 9 Support / 1 Oppose (Speaks). (Peters not available for the vote.)

TYPE NP WATER BUFFER RULE MAKING

Maggie Franquemont, DNR, said the Board was presented with the proposed language rule and the Cost Benefit Analysis at their May 14, 2025, meeting for their consideration to initiate rule making which will start the public review process.

PUBLIC COMMENT ON THE TYPE NP WATER BUFFER RULE MAKING

Elaine Oneil, WFFA, said that there needs to be a pause in this rulemaking until technical, economic, and regulatory issues are resolved. The cost of this rule includes $2.3 billion of lost asset value, $90 million reduced forest excise tax to counties, and per analysis by WFFA represents $5 to $8 billion loss to rural economy; and removes 200,000 acres from production. She said that there is no way to justify finding that benefits outweigh the costs.

Ken Miller, WFFA, said the Board should re-start the Type Np buffer rulemaking. The 1999 SBEIS regulatory mitigations weren't honored, study results are questionable, and no touch is the wrong direction toward solving forest health issues.

Victor Musselman, WFFA, said that the value of the land to the small forest landowners that will be impacted will be considered a taking valued at nearly $2 million and that can be claimed in a court of law.

Dave Roberts, WFFA, said that the studies for the Type Np buffer rulemaking are deficient and lack sites that were sampled to represent all western Washington. He said he is not convinced it is good science, and the studies do not warrant a tripling of the present Type Np stream buffer area without considering other studies or prescriptions focused on Type Np temperatures.

Claudine Reynolds, Port Blakely, said that Port Blakely is concerned about moving forward with this proposal as it will disproportionately impact family-owned businesses. Reynolds asked the Board to consider where conservation is needed the most in the watersheds. From an ecological perspective it is downstream in the lowlands where there are mixed land uses.

Court Stanley, Washington State Association of Counties (WSAC), said the counties did agree that the hard and soft rock studies warranted action and WSAC wanted to participate. He said there is only one untested alternative with a huge cost to landowners, counties and the state. Tensions are high, and going forward with the proposed rule could have devastating effects on tearing apart TFW. He suggested that the Board assemble a group of leaders, technical and science people to work on lower cost alternatives that achieve the benefits everyone is looking for. Better results if structured decision making had been carried out all through the process and had several alternatives for the Board to consider.

John Gold, Sierra Pacific Industries (SPI), said that SPI is opposed to the Board filing the CR102. This rule will result in the loss of 200,000 acres of productive forestland and a reduction in annual harvest equivalent to the consumption of one sawmill. The total price tag has been estimated in billions of dollars. He said that the Board must answer what problem the proposed rule will address before advancing the CR-102.

Nick Somero, WFFA, said he strongly opposes this rule making.

Lisa Olsen, Pacific County Commissioner, said that Pacific County along with small forestland owners oppose the Type Np rule making. Pacific County is already one of the most impacted by set asides for spotted owl and marbled murrelet Endangered Species Act listings. Commissioner Olsen said that a University of Washington assessment estimates that if the proposed rule goes into effect, there would be a 12% reduction in harvestable inventory in Pacific County. This would be a $12m excise tax revenue loss and impact county services to residents. Pacific County ports, fire districts and schools would be impacted. Jobs and timber-related businesses would be lost.

Chris Mendoza said the early habitat conservation plans have full length buffers, like what the Board is considering now for Type Np. He said that science at the time was indicating that to meet those assurances full length buffers were needed. Both the hard rock and soft rock studies are comprehensive and have been peer reviewed and approved by CMER consensus.

Tim Thompson, Thompson Consulting, said that there was no consensus decision, and the negotiation process failed. He said that the hard and soft rock studies are good science and that the Board should send this back to TFW Policy to come to consensus and asserts that this vote will destabilize the actions going forward.

Dan Brown, Environmental Protection Agency (EPA), said that the principal objective of the Clean Water Act (CWA) is to restore and maintain the integrity of the nation's waters. The CWA and its regulations require States to implement a comprehensive approach to water quality that must include anti-degradation requirements and methods. Anti-degradation is intended to maintain and protect water quality that has already been achieved and supports beneficial uses such as salmonid habitat. The state of Washington established its anti-degradation rules consistent with CWA. There are several tiers of anti-degradation; and Tier II applies to waters where water quality is better than the numeric criteria. These are often referred to as high quality waters. For the Board's purposes, Tier II applies to Type N streams specifically because they are colder than the biologically based criteria to protect salmonids. Tier II anti-degradation establishes that those colder temperatures can only be raised if necessary to achieve important economic and social needs, and only after consideration and selection of lesser degrading alternatives. Even then, water temperature can only be raised up to the numeric temperature criteria to protect salmonids. The state of Washington is responsible for applying its policies and rules, not the EPA. He said EPA is confident in Ecology's ability to implement the state's anti-degradation rules.

Peter Goldman, Conservation Caucus, said he supports initiating rulemaking and that it does not represent taking of land. He describes the current rule as under-protective and does not see the Board putting landowners out of business. He said landowners participated in the processes that led up to the decision today and that this is a fifty-year program through the implementation of the Forest Practices HCP.

Ann Stinson, WFFA, asked the Board to think about the comparison of forested land in private ownership to converted land. She said the values and practices of small forest landowners are unique, diverse and important. She asked the Board to reconsider their decision today with rulemaking.

Harry Bell, WFFA, said before adopting any new rules the Board should have a transparent, independent analysis of the existing data with a focus on why sites (different regions) with the same buffer lengths had different temperatures and amphibian responses. He also requested to wait for the final Hard Rock Phase 3 report that includes additional temperature and amphibian data. He said without an effort to better understand this science; the proposed one size fits all buffer rule will likely overprotect some streams and

under-protect others. He said he is concerned that land conversion will increase should this rulemaking happen.

Jeremy "JJ" Wilbur, Swinomish Indian Tribal Community, said he is concerned of losing the way of life for tribal members and that the Forest Practices Rules are not protective enough for temperature. He said that a reasonable solution of full-length buffers is the preferred action and urged the Board to initiate rule making.

Sara Pursely, WFFA, said additional funding for the Forestry Riparian Easement Program will be needed and potentially an increase of forest fires will occur if this rulemaking proceeds. This will cost small forest landowners billions of dollars not to mention what it will do to the communities that depend on the timber industry. She said the Type Np streams are afforded far more protection under the current rules than if converted to residential housing.

David Chamberlain said the lack of data from the North Cascades region and the characteristics of the region and states rules should be protective not punitive. He requested more consideration be given to the variety of Type Np waters throughout the state and that better studies be done to understand the complex characteristics of Type Np waters. He encouraged the Board to honor the intent of the Forest Practices Act.

Kendra Smith, Skagit County, said it's unfortunate that the Board has only one alternative proposal to work with rather than two (majority and minority proposals) as this would have allowed the Board to move a balanced proposal forward at far less economic impacts to families, communities, and counties. She asked the Board to take a step back and reinstate confidence and integrity to the Adaptive Management Program. She said this cannot be a subjective decision derived from studies designed to determine responses to the current regulations, but from science-based studies evaluating water temperature responses. The Board must consider what the factual requirement of the CWA Tier II waters entails, whether the cost of the proposed rule outweighs the benefit to the resource, and whether there could be a more reasonable approach to the current and future protection of the resources.

Heath Heikkila, American Forest Resource Council, said he agrees with comments made by Tim Thompson and Court Stanley on the process. This rule threatens the counties' financial support and the reduction of sustainable forests in Washington by reducing the number of available trees for harvest which negatively impacts the current mills and conversions.

Rico Vinn, Conservation Caucus, said he strongly supports the Type Np buffer proposed rule to proceed to the public review process. He urged the Board to honor the process and consider moving the rule proposal forward.

Jason Spadaro, Washington Forest Protection Association (WFPA), said the process for the Type Np buffer rulemaking is problematic and should be halted. The Tier II process has not been properly followed nor is it in line with EPA policy. He said the temperature threshold has not been properly addressed by Ecology and by their admission does require the Tier II process. He urged the Board to not proceed with the rulemaking without additional viable alternatives.

TYPE NP WATER BUFFER RULE MAKING

MOTION: Board member Speaks moved the Forest Practices Board to approve the Western Washington Type Np Buffer proposed rules for the public review process. She further moved to request staff to file a CR102 Proposed Rule Making to initiate the public review

process. The rule amended in this rulemaking is 222-30-021 and adding a new section 222-30-0211.

SECONDED: Board member Bowen

Board Discussion:
Board member Bowen said the prior discussion lacked science and the science produced by the Adaptive Management Program supports that the current Type Np buffer rules are ineffective at preventing these streams from warming post-harvest. He clarified the anti-degradation criteria as part of a water pollution control program state that forest practices must be conducted to meet the numeric water quality standards and the Tier II anti-degradation requirements. He said he is confident that Ecology has not misinterpreted the anti-degradation rule. The Tier II process is in the early stages and if the Board approves to initiate rule making then the Tier II analysis will go forward for public review.

Board member Bowen addressed concerns about the methodology of evaluating forest practice applications that are limited to certain regions and that stream lengths evaluated are also concerning. He said Ecology has been working with agriculture, municipalities, and industry for at least ten years, emphasizing that this has not been a sudden decision process. He acknowledged the support of the legislature for the Forest Riparian Easement Program and the value that it provides for landowners concerned about the Type Np buffer rulemaking and that Ecology continues to be committed to the process and appreciates all that has been accomplished so far.

Board member Laura Butler said she will abstain from the vote due to a parallel process for riparian buffer restoration currently ongoing in the Department of Agriculture. Additionally, Butler said she has concerns with discrepancies in economic analysis.

Board member Tuttle expressed disappointment with the Board in approving a single proposal that only reflected the majority report to move forward in rule making. She said the study sample for the underlying science for hard rock and soft rock is too limited to gain good data and the Tier II analysis does not reflect the full results of the study sites. She said as Tier II moves forward; she would like to see that all the hard rock and soft rock data is incorporated into that process. Besides the science itself and the process that the Board went through, she said the TFW Policy technical group was unfairly limited by not allowing them to look at anything beyond a 0.3 degrees Celsius change. She expressed uncertainty about how this process will play out, where the authority at Ecology lies, interpreting science, understanding the process, and making decisions at TFW Policy, CMER and the Board. This has been a messy process.

Board member Jim Peters referenced Board member Butler's reason for abstaining from the vote and said he disagrees that the Board decision is going to have an impact on the decision being made by the Department of Agriculture. He described the regulatory role of the Board and the jurisdiction around permitting forest practices, expressing the hope that the agricultural community and counties will gain an understanding of riparian protection through scientific study and the salmon recovery goals.

Board member Peters said a regulatory backstop for all riparian habitats is needed. He said a collaborative type of decision-making process was agreed to and when decisions were made it was done collectively; follow through and respect that process rather than use the process to stop moving forward. He summarized the decisions made by the Board to this point and that the Board needs to move forward today.

Board member Barnowe-Meyer said he agrees with Board member Peters that the agreement was to help solve each other's problems and work together to identify paths to alternatives addressing the issues. He

said the technical workgroup had an understanding that the temperature change of 0.3 was a limit and that alternatives were developed based on that understanding. If the understanding had been a threshold or trigger for further analysis, then different alternatives would have been developed. He said at the Board's May 14, 2025, meeting, Ecology presented something different and that is a major impact. He said this rule puts a burden on landowners and because of the costs the Board should not be moving forward with only one alternative.

Board member Tuttle said if rule changes succeed in preventing stream warming, cumulative effects should not be an issue. She said WFPA attempted to look at the cumulative effects of an entire Type Np basin harvest that would match the hard rock and soft rock study, which seems like something to do to support the scientific results of the studies. She said WFPA brought this proposal initiation to TFW Policy prior to the dispute resolution and TFW Policy refused to move forward with the study and look at cumulative effects and the downstream impact of what this rule change means. She said outside of the hard rock and soft rock studies, parameters have not been addressed, discussed, or evaluated by this Board.

Board member Ben Serr said he recognizes through RCW 76.09.040, that the legislature chose to give Ecology a unique role in the Board's rulemaking. Given Ecology's regulatory authority over water quality to meet Clean Water Act protections, Commerce believes the Board has no viable alternative but to advance the rulemaking to maintain federal regulatory assurances and avoid potential litigation. He said Commerce is concerned about the financial burden this rulemaking places on landowners and the broader economic impact to the forest products industry and local economies and would like a less burdensome alternative that Ecology could find agreeable if the rule making moves forward. The costs are disproportionately borne by small forest landowners, timber related businesses, and entities that rely on timber tax revenues, such as counties and school districts. He said while this decision pertains specifically to the proposed Type Np buffer rule, it does not exist in isolation. If the rulemaking goes through unchanged, Commerce would like to see more money for the Forest Riparian Easement Program which has historically been underfunded.

Board member Speaks said this decision is part of a larger picture. Using climate change as an equivalency, there is a concept of private land ownership that gives individuals the benefits and sometimes the liabilities of owning land within our economic structure. She said there is a larger concern over a longer period of what that land means to the human population in general and it's easy to fall back on the position to only look at the immediacy of the present proposal. She said when thinking about the larger picture, the question "what is the future of our environment overall" comes to mind.

Board member Tuttle echoed the importance of climate change and leaving the world better for the next generation. She said from her perspective, if the Board really wants to move forward on the climate change issue, the Board should reinvigorate previous directions given to the Adaptive Management Program to do the extensive monitoring that was required originally as part of the agreement.

ACTION: Motion passed. 5 Support (Speaks, Young, Bowen, Conklin, Peters) / 4 Oppose (Barnowe-Meyer, Tuttle, Thompson, Chandler) / 2 Abstentions (Butler, Serr)

EXECUTIVE SESSION

None.

Meeting adjourned at 2:30 p.m.