FOREST PRACTICES BOARD
Regular Meeting – May 14, 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
Laura Butler, Designee for Director, Department of Agriculture
Jim Peters, General Public Member
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

Members Absent:
Frank Chandler, General Public Member/Independent Logging Contractor

Staff:
Colleen Granberg, Policy Analyst
Donelle Mahan, Senior Policy Planner
Karen Zirkle, Assistant Division Manger
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.

APPROVAL OF MINUTES

MOTION: Board Member Meghan Tuttle moved the Forest Practices Board approve the February 12, 2025, meeting minutes as amended.

SECONDED: Board Member Pene Speaks

Board Discussion:
Board member Pene Speaks suggested an addition to line 28, page 7 by adding the word “means” after “this”.

ACTION: Motion passed unanimously.

WATER TYPING SYSTEM RULE MAKING

Saboor Jawad, DNR, provided an overview of the public review process following the Board’s decision in November 2024 to initiate rulemaking. The overview included a review of the Concise Explanatory

Statement, rule language changes, and the next steps for the Water Typing Rule. He also provided an overview of the rule history which included the following:

- The Water Typing System Rule is one of the fundamental rules in Forest Practices and has origin in the Forests and Fish Report.
- The Forests and Fish Report (FFR) has a foundational goal of moving to a permanent water typing rule that is habitat based, as opposed to a fish-presence based system. The FFR also anticipates there will be field methods developed for the new permanent water typing rule.
- The Forest Practices Habitat Conservation Plan (FPHCP) references the FFR goal and anticipates a model-based water typing system rule. That model was developed; however, it was based on 30-meter elevation data and did not meet the accuracy requirement in Schedule L-1 of the FPHCP. Today, available LiDAR data is derived from high-resolution, 1-meter digital elevation model (DEM) imagery. Having a map-based rule remains a goal for water typing.
- The current effort for water typing started in 2011 with Board direction to TFW Policy:
  1) Complete Clean Water Act milestones as a top priority; and
  2) Create a process for identifying the fish/no-fish break on the ground.
- In 2013, TFW Policy members invoked stage one dispute.
- In 2014, the Board directed TFW Policy to focus on producing best management practices (BMP) for electrofishing; and review the interim rule for off-channel habitat and develop field guidance for off-channel habitat relying on current interim rule language. The Board directs the AMPA to rerun the LiDAR-based model with LiDAR data.
- In 2015, the Board directs TFW Policy:
  - Use existing information
  - Make methods as accurate as possible
  - Balance error
  - Minimize electrofishing
  - Improve map over time
  - Develop methods to locate water type breaks on the ground for the Type F/N break point
  - Ensure methods address small forest landowner concerns (map-based rule).
- In 2016, the Board accepts TFW Policy consensus recommendations that include:
  - Board Manual guidance
  - Maintaining elements of the interim rule and blending rules (WAC 222-16-030 and 222-16-031)
  - Retain current definition of wetlands, fish habitat, and bankfull width
  - Developed a Fish Habitat Assessment Method (FHAM).
- In 2016, the Board further directed TFW Policy to end dispute and deliver majority and minority reports regarding:
  - Definition of off-channel habitat,
  - Acceptance of existing concurred F/N break points, and
  - Approved to file a CR-101 Preproposal Statement of Inquiry.
- In 2017, the Board accepted consensus and majority recommendations:
  - Fish Habitat Assessment Method (consensus)
  - Off-channel habitat definition (majority)
- Existing concurred F/N breaks (consensus)
  - Default physicals will remain in rule (consensus)
  - Additionally in 2017, the Board assumed direct management of the water-typing rulemaking and authorizes to convene an expert panel of scientists to recommend PHBs.
- In 2018, the Board received the final science panel report on PHBs.
  - The Board invited and accepted separate caucus PHB proposals from within that report.
  - Caucus proposals included an Anadromous Fish Floor (AFF).
  - The Board accepted a science panel recommendation to validate PHBs through a field study.

Jawad said that early in the rulemaking process, the Board requested a report on best management practices (BMP) for electrofishing. That report was delivered to the Board in 2016 and addressed key questions.

- Detection probability: electrofishing is a preferred method, but it is not used for proving fish absence.
- Adequacy: single site visits are sufficient to determine fish presence at the time of survey.
- Harm to fish: in most situations, electrofishing surveys are unlikely to result in harmful demographic effects on headwater fish populations if appropriate precautions are taken.
    - ✓ Postpone survey or stop electrofishing if the population is suspected to contain very few breeding individuals.

The report provided important conclusions; several of which were used in Board Manual Section 23 for conducting FHAM.

Jawad said that a key element of the rule is the FHAM, which is the field method that the Board asked TFW Policy to develop. FHAM is a stepwise process that relies on identification of potential habitat breaks (PHB), which are geomorphic changes to in-stream conditions that could potentially serve as a habitat break for fish.

The Board instructed CMER to start working on a PHB Validation study, which is now in the field. The study is looking at about three hundred sites across the state to conduct surveys.

The Board did not select any one of these criteria at the time and established a committee of Board members to address the anadromous fish floor (AFF) and questions about PHBs.

In 2018, there was an effort to measure PHBs in the field. The task was to inform whether it's possible to detect PHBs in the field. This effort produced a report to the Board, including a manual on how to survey for PHBs.

The AFF was a tribal proposal alongside PHBs. The intent is that physical stream characteristics downstream from which all streams can be presumed to have anadromous fish use. The end of AFF constitutes a place to start a protocol survey.

Jawad reported the timeline for the rulemaking decisions:

In 2022 the Board:

- Approved the inclusion of two AFF and three PHB alternatives for analysis.
- Approved a definition of AFF.
- Acknowledged overall rule objectives and elements, including a commitment to have a map-based water typing rule system.
- Directed staff to complete the spatial analysis, CBA, SBEIS, SEPA and prepare CR-102 Proposed Rule Making packet for Board consideration to initiate rule making.

In August 2024, the Board decided to:

- Move specific AFF metrics and methods for field delineation to Board Manual Section 23; and retain the concept of AFF and definition in rule.
- Move all PHB metrics to Board Manual Section 23 and retain in rule the PHB definition and the associated FHAM.

In November 2024, the Board approved rule language and requested staff to file CR-102 to begin the public review process.

Jawad concluded that staff would request the Board adopt the proposed rule at their June 6 meeting. Staff would also request a delayed effectiveness date of January 1, 2026. During the June 6 special meeting, the

Board will also consider amendments to Board Manual Section 23, which provides technical guidance related to the Water Typing System Rule.

BOARD MANUAL SECTION 23 GUIDELINES FOR FIELD PROTOCOL TO LOCATE MAPPED DIVISIONS BETWEEN STREAM TYPES & PERENNIAL STREAM IDENTIFICATION (PART 1)

Saboor Jawad, DNR, shared that since the Board's August 28, 2024 decision, staff has been working with a workgroup to finalize the board manual section. Jawad reviewed the draft board manual section which included Parts 1 and 2 previously Parts 1 and 3. He said this guidance document is to assist in the implementation of the Water Typing System rules.

Board member Steve Barnowe-Meyer asked for clarification on whether a landowner has met the permit requirement if there is an AFF point off the landowner's property that they do not have access to. Jawad said that if an effort is made and there is justification that the subject water is above the AFF then the landowner has met the permit requirement. Maggie Franquemont, DNR, added that consultation with experts is also recommended.

Board member Speaks expressed concern that the delineation language is not in rule.

Board member Speaks asked for clarification on the use of the term "biological significance" when it is not in rule. Jawad confirmed the term "biological significance" is not in rule and is in the board manual for context of the delineation of Type F and N waters.

Board member Speaks asked who the final arbiter is when decisions are made in the field. Jawad responded that the ID Team is typically the decision maker but in the case of a difficult decision, DNR considers the consensus of the ID Team, but the final decision maker is DNR.

Board member Jim Peters asked what would strengthen the term "biological significance"? Jawad said the use of biological significance in the guidance is not a substantive change to the rule and if there is public comment that requires clarity or a definition, there is a process that can be followed. Jawad states that the guidance as he sees it is good.

Board member Peters expressed concern with inconsistencies with rule interpretation in the regions. Jawad responded that if there is an issue in any one region, the Division will reach out to all regions with training, discussions and written guidance.

Board member Speaks shared her concern that individual forest practice foresters can be influenced by landowners, leading to inconsistent messages. Jawad assured the Board of transparency through the normal practices and how forest practice application data is tracked, and the rule is implemented.

Board member Speaks requested an annual report on the application of the rule once adopted. Jawad clarified that WTMFs are voluntary and not required by DNR when a landowner is doing a forest practice application.

Chair Young asked how the insertion of the term "biological significance" developed. Jawad said that there was a lot of discussion about the physically limited movement that excludes the AFF and the term "biological significance" was agreed upon as the correct term.

Board member Speaks said that if there is a minimum action to be taken, historically that action becomes the maximum practice action. She requested that a decision is made that is more protective than the least protective option described in the board manual.

Board member Ben Serr asked if the PHBs listed a menu of options, or if all are applied when conducting FHAM? Jawad said any one of them can be a PHB. He further clarified that one cannot arbitrarily say that something that functions as a PHB is not a PHB.

Board member Serr said the stream gradient example may lead to confusion. Jawad said that DNR is following Board direction.

Board member Speaks said she is concerned with how the PHBs are listed in the board manual as it appears a less protective option can be selected than another in the same area. The manual does not give any explanation of which PHB might be more protective. Jawad responded that overlooking a F/N break is very unlikely using this process.

Board member David Bowen said he remembers that the Board was postponing adding the PHBs to rule to get more information.

Franquemont said the Board will see this board manual section again in their November Board meeting.

GENERAL PUBLIC COMMENT

Ken Miller, Washington Farm Forestry Association (WFFA), said that he hopes the Board will avoid the Type Np trainwreck. The Adaptive Management Program was created out of a collaborative shared risk consensus of nearly all Board members represented. TFW has failed to find a win on a more impactful Np opportunity that now has the Board between two untenable choices of tripling Np buffers versus do nothing. He said less drastic rules such as a 25-foot, full-length buffer or the minority's doubling buffers should be part of the CBA. Collaboration would look at potential ways to shift trees in excessive fish buffers to Type Np buffers.

Elaine Oneil, WFFA, said that WFFA asked the University of Washington (UW) to estimate impacts of the Type Np buffer rule on small forest landowners, and ended up scooping up all landowners. What is relevant is there are over 400,000 stream segments that are untyped and unknown. UW estimated that 206,000 acres of forestland will be impacted by the proposed rule and that is more than what is in the IEc report. The lost asset value to private landowners is 2.3 billion, and that is more than twice the upper limit in the preliminary CBA. She said it is important to pause the proposed rulemaking and think about the impacts and question whether benefits exceed costs, especially when benefits are not quantitative.

Vic Musselman, WFFA, said that the proposed Type Np buffer rule will have a tremendous cost impact placed on forest landowners. The IEc report underestimates the costs and does not quantify benefits. A decision to proceed with the Type Np proposed rule will add 32 percent in lost value to private forestland owners. This would be significant, especially when compared to benefits that are only described qualitatively. Landowners should not be asked to bear costs without appropriate compensation.

Richard Hopkins said that he opposes the change to the Type Np 50-foot buffer. The methods and materials that led to the analysis in the preliminary CBA are not factual or field verified. The proposed buffer change would severely impact forestland owners. Independent peer-reviewed studies have concluded that larger buffers on perennial streams will gain no additional benefit for wildlife, bank integrity, stream temperature, large woody debris, or nutrient cycling.

Court Stanley, Association of Washington Counties, said that the counties support the Water Typing Rule proposal. The approach gives stream typing professionals the guidance needed to make on-the-ground, stream-by-stream determinations of the end of fish habitat. He said counties have substantial concerns about the Type Np rulemaking. The proposed rule has substantial costs to landowners and counties without considering a lower-cost alternative that could achieve similar results. The proposed rule also has a decrease

in harvestable acres, decrease in volume, up to 1,800 jobs lost, and an excise tax reduction of $1.2 million per year. Rural counties depend on excise tax revenue for basic services to residents.

William Vogel said the studies for Type Np did not isolate stream temperature data from the most likely contributing variables, and did not have adequate sample size to be considered a stream temperature study. The hard rock study had only three sites with large differences between them. Bill Vogel said that in the 2006 USFWS biological opinion, he wrote that the initial Type Np strategy would result in some temporary warming of some Type Np streams. There is not enough information to refute the Rules are not working. Bill Vogel said that there are other factors related to temperature.

Don Lentz said when Forests and Fish was passed it seemed excessive, however there were some good things: no changes in riparian rules for 50 years and small forest landowners would receive fifty percent of the value of new buffer trees under FREP. The possibility of more salmon was fantastic. The results of TFW were interesting and water quality improved, but the riparian zones took twenty-five percent of our property out of production. Don Lentz said that he does not understand the need for larger buffer zones, we need better information about the effectiveness of riparian zone rules in controlling stream temperature before the Board considers taking people's property away and asked the Board to stop the proposal.

Robert Mitchell said he feels unrepresented by any caucus on the Board. He has objections to the Board's continued approval of electrofishing studies. Electrofishing may be a convenient method, but it consistently underrepresents fish presence and drives fish downstream. He said it is not adaptive management it's regulatory bias. He suggested a different approach to use non-tax revenue returns from financial markets to compensate landowners for leaving all streams widely buffered. It expands habitat protection voluntarily rather than continuing a slow, adversarial, regulatory process.

Rob Purser, Suquamish Tribe, (shared by Ashe Roorbach) suggested two clarifications to the proposed water typing system rule language: 1- clearly identify that any measurable physical stream characteristic used to identify the AFF is biologically significant to anadromous fish; 2-clarify that the protocol survey may begin above the AFF or uppermost point of known fish use whichever is higher in the steps that describes the steps to conduct FHAM (line 281, page 7).

Jamie Glasgow, Nature Fish Conservancy, said the Board failed to select a criteria from among the three PHB options rather selected all and inserted all options for both PHBs and AFF into the board manual. The result will be business as usual. He said he disagrees that DNR foresters will have less consistency, implementability, and enforceability than they do now. As written, the proposed rule will create confusion and cause arguments between landowners and reviewers leading to more field visits, more ID teams, and ultimately creating inefficiencies and bogging down the FPA and WTMF workflow.

Darin Cramer, Washington Forest Protection Association, said in 2019 after a Tier II presentation to TFW Policy in 2018 from Department of Ecology, the narrative began to change: the measurable change in temperature became a limit. Exceeding it would be a violation of water quality standards. He said that is not true. If it is not a limit, then there are other lower cost alternatives that could perform similarly, that should be considered. He urged the Board to get answers prior to their June 6 special meeting.

Rico Vinh, Conservation Caucus, said staff documents and presentations have consistently stated that the Board the objective of the water typing rule is to develop field applied methods to reliably identify accessible fish habitat in an objective and repeatable way, and to put those methods and key guidance into rule where appropriate. He said instead measurable criteria have been stripped out and moved into the non-binding guidance. Practitioners now face a menu of options in the board manual, none of which are required. This is a list of suggestions leaving habitat protection entirely up to subjective discretion of foresters and

consultants. He urged the Board to closely monitor implementation and commit to fixing the rule quickly if it fails to protect resources and adopt a rule that is objective, repeatable, and enforceable.

TYPE NP WATER BUFFER RULE MAKING

Maggie Franquemont, DNR, presented the status of the rulemaking effort. She said the Type Np Buffer Rule is scheduled for action by the Board at their June 6, 2025.

Franquemont provided a description of the rule proposal. The rule changes include amending the riparian protections for Type Np streams in western Washington from two sided buffers for at least 50% of the length of the stream to one of two prescriptions based on basin size:

- Prescription 1: A 75-foot, two-sided, no-harvest buffer on all Type Np streams for the first 600 feet upstream of the point designating the end of Type F water and beginning of Type N water or for the lowest 600 feet for isolated Type Np streams. Upstream of the first 600 feet, the streams bankfull width (BFW) determines the width of the buffer. For streams less than 3ft BFW there is a two-sided 50 ft no-harvest buffer. For streams greater than 3ft BFW, landowners have the option between a two-sided 65-foot no-harvest buffer, or a two-sided 75 ft buffer where the outer 25 ft can be managed.
- Prescription 2**:** A 75-foot wide, two-sided, unmanaged continuous buffer when a Type Np basin greater than 30 acres is to be harvested 85% or more over a five-year period.

Franquemont said the next steps include:

- The Board would consider initiating rule making at their June 6, 2025 meeting to start the public review process.
- If rule making is initiated:
    - Update Board Manual Sections 23 and 7
    - Conduct four public meetings in late July & early August
    - Board to consider rule adoption at the regular November 2025 meeting.

Karen Zirkle, DNR presented a summary of the SEPA analysis conducted for this rule making. A SEPA checklist was completed per WAC 197-11-704. The concern for increased land conversions is not a risk factor according to the data collected on the Type Np rule change. If the Board initiates rulemaking, the Chair will likely issue Designation of Non-Significance. It will then be filed with the Department of Ecology's SEPA register at the time the proposed rule has been filed with the Office of the Code Reviser.

ECONOMIC ANALYSIS OVERVIEW ON THE TYPE NP WATER BUFFER RULE MAKING

Maura Flight, Industrial Economics Incorporated (IEc), said that she was the project manager for the work on the preliminary cost benefit analysis (CBA) and Small Business Economic Impact Statement (SBEIS).

Megan Sheahan, IEc, said the presentation would provide an overview of the analysis with enough detail to understand the weighing of costs and benefits associated with the proposed Type Np buffer rule.

Sheahan said that for the rulemaking effort, the objective is to improve temperature protections for Type Np streams in western Washington to achieve compliance with water pollution control laws and meet overall performance goals of the Forest Practices HCP and WACs. The objective of the Cost Benefit Analysis (CBA) under RCW 34.05.328 and rulemaking is to determine if the probable benefits of the proposed rule are greater than its probable costs, considering both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented. The objectives of the Small Business Economic Impact Analysis (SBEIS) under RCW 19.85.040 are to determine:

- If the rule results in more than minor costs to businesses.
- If costs are disproportionately incurred by small businesses; and
- What steps might be taken to reduce the costs of the rule to small businesses.

Sheahan said that the analysis framework meets the legal standard of identifying and comparing probable costs and benefits. She included the following in her presentation of the CBA:

- Categories of economic cost effects
- Categories of economic benefits
- Changes in economic activity, regional economic
- Effect categories determined not probable

Sheahan said that a key finding of the economic analysis is that the rule, if adopted, has a significant distributional effect. Costs are born by tens of thousands of forestland owners, and negative effects are experienced by employees of timber-related businesses as well as negative economic impacts to counties.

Benefits to values associated with water quality improvements and species and habitat conservation are experienced by millions of Washington households.

Sheahan reported summary finding of the SBEIS is that the rule is likely to result in more than minor costs to businesses stemming from added limitations on timber harvest in riparian forests. Based on information from Washington Department of Revenue, the majority of businesses are small businesses in timber-related sectors. Therefore, the proposed rule disproportionately impacts small businesses.

DEPARTMENT OF ECOLOGY'S TIER II ANALYSIS

Chris Briggs, Department of Ecology, presented the Department of Ecology Preliminary Draft Tier II Analysis report on the proposed Type Np Buffer Rule for western Washington.

He said Ecology has found that the proposed Type Np Buffer Rule would substantially improve water quality relative to the current Type Np Rule environment. The proposed buffer prescriptions should result in minimal warming of waters after harvest and likely only under certain conditions; and found it is necessary and in the public interest to allow the adoption of the proposed rule.

Briggs said that Ecology has the authority to implement the federal Clean Water Act and state Water Pollution Control Act and the Forest Practices Rules are the implementation tools which secure compliance with the federal Clean Water Act and state Water Pollution Control Act on state/private forestlands.

Washington state's antidegradation Tier II program functions as a regulatory pollution prevention program to provide an extra measure of protection for water quality. In the case of water temperature, this means keeping higher quality water that is already clean and cool, clean and cool.

Ecology supports the proposed rule and finds it necessary and in the public interest to allow the adoption of the proposed rule.

2025 WORK PLAN

Maggie Franquemont, DNR, said Board Manual Section 17 needs to be updated to address implementation concerns that have been raised since it was approved last fall. She recommended it be added to the work plan.

MOTION: Board Member Pene Speaks moved to approve the workplan as presented.

SECONDED: Board Member Meghan Tuttle

Board Discussion:
None.

ACTION: Motion passed unanimously.

STAFF REPORTS

There were no questions in the following reports.

- Adaptive Management Program Update
- Small Forest Landowner Office Update
- TFW Policy Committee Update
- Upland Wildlife Update

BUDGET UPDATE

Saboor Jawad, DNR, provided the following update:
As of today:

- There is no approved budget yet and it is uncertain what a final budget will look like.
- The overall budget for the Forest Practices Program has been reduced by 2.2 million dollars in the General Fund State monies. This will impact the Board's rule making efforts by a reduction of $570,000.
- No further reductions were made to the Adaptive Management Program. The program is approximately $1.5 million less than requested.

Jawad said he will provide another update at the Board's August meeting.

EXECUTIVE SESSION

None.

Meeting adjourned at 4:05 p.m.