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Washington Forest Practices Board
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Re: Anadromous Fish Floor (AFF) Workshop

Dear Forest Practices Board Members:

Washington Forest Protection Association (WFPA) is a forestry trade association representing large and small forest landowners and managers of nearly 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) June 27th 2022 special meeting.

My name is Doug Hooks, the Forest and Environmental Policy Director at WFPA, filling in for Darin Cramer today. I'd like to thank Chair Smith, the Forest Practices Board members and staff for hosting this workshop.

First, I've noticed there is a lot of confusion about what the Anadromous Fish Floor (AFF) is. As intended in the Forests & Fish Report and the Forest Practice Board (FPB) confirmed in the Anadromous Fish Floor Workgroup Charter, the overall goal of the water typing system is to move from a fish presence system to a more robust and repeatable process relying on fish habitat. This is still a goal of the overall water typing system; however, it seems that some have interpreted this goal as the goal for the AFF. The goal of the AFF was not to serve as the means to determine the type F/N break as evidenced when any of the alternatives presume anadromy above existing field verified F/N breaks. The goal of AFF is to identify a point that anadromous fish may be presumed downstream and from which Fish Habitat Assessment Methodology (FHAM) may begin. With that said, the WFPA has concerns surrounding the technical and operational performance of all the alternatives, the confusion around or the lack of policy objectives and decision criteria, and the adherence to the Adaptive Management Program (AMP) process.

Recall there are three goals for the Anadromous Fish Floor Workgroup in their Charter: 1) Generate consensus data that describes anadromous fish distribution and the associated stream characteristics including gradients in multiple western Washington watersheds. 2) Determine the extent of consensus amongst stakeholders on stream characteristics that can be used to delineate presumed anadromous fish use and 3) Provide information on options for implementing an anadromous floor to make sure it is operationally feasible

and repeatable in the new water typing rules. We have heard a lot about goal number 1 and 2, but to my knowledge there has been little effort to date on operational feasibility or repeatability of the alternatives.

Anadromous Fish Floor (AFF)

Today you have been hearing about the origin and evaluation of the AFF alternatives and are charged with determining which (if any) should move forward into the water typing rulemaking process. The Forest Practices Board (FPB) and Water Typing Committee will need to establish the objectives and science supporting the problem statement before the AFF is incorporated into water typing rulemaking. None of the current array of AFF alternatives were subject to formal Adaptive Management technical and procedural standards.

As Marc Engel and others noted earlier, water typing rulemaking was initiated in November 2016 by filing a CR-101 - Preproposal Statement of Inquiry, which stated “(t)he Timber Fish & Wildlife Policy Committee (TFW) continues to evaluate components needed to establish a singular water typing rule on how to establish the break between fish and non-fish-bearing habitat waters known as the Type F/N regulatory water type break. Included in these recommendations will be a FHAM, how to identify Off-Channel habitat (OCH), and when to use Default Physical Criteria (DPC) for fish use.” There is no reference or anything resembling an AFF in the CR-101.

Forest Practices Regulations Describe the Water Typing System and Interim Water Typing System

The water typing system was envisioned to be based on a “fish habitat water type map” developed by the Dept. of Natural Resources (DNR) via a field-verified GIS regression model to show the location of Type S, F and N (Np and Ns) waters within the forested areas of the state (1999 F&F Report page 13). To develop the fish habitat water type map, “(t)he modeling process shall be designed to achieve a level of statistical accuracy of 95% in separating fish habitat streams and non-fish habitat streams. Furthermore, the demarcation of fish and non-fish habitat waters shall be equally likely to over and underestimate the presence of fish habitat. These maps shall be referred to as fish habitat water typing maps.” The maps will be updated every five years to reflect observed, in-field conditions ([WAC 222-16-030](#)).

Until the fish habitat water type maps are adopted by the FPB, the regulations describe the Interim Water Typing System ([WAC 222-16-031](#)) which will continue to be used and includes a protocol to determine fish use and/or physical characteristics contained in the regulations ([WAC 222-16-031\(3\)](#)). The fish use protocol survey includes sampling fish for one quarter mile after finding the last fish.

The FPB chose not to adopt the water typing model produced maps into rule in 2001, and 2005 due to uncertainty around the 95% accuracy requirement for modeled results to delineate water types, and instead maintained the Default Physical Criteria (DPC) along with protocol surveys (e-fishing) to determine fish use. There is no reason to think that any of this decision criteria have changed.

TFW Policy Reaches Consensus on Elements of Water Typing Rule in 2017 – FPB forms Science Team to Develop Criteria for Potential Habitat Breaks (PHB)

After the CR-101 was filed in 2016, TFW Policy reached consensus on acceptance of F/N breaks approved through water type modification forms, and the FHAM. The FPB adopted an OCH definition in May 2017 and directed a Science Team to determine criteria for Potential Habitat Breaks (PHB)/Permanent Natural Barriers (PNBs). The Science Team produced two reports, the first in August 2017 and next in January 2018 which now contained the original PHB recommendation and five new PHB recommendations. The FPB

voted in August 2017 to go with the PHB recommendations from the first report without establishing a gradient threshold under which all waters would be considered to have fish. In January 2018, the Science Team took an unexplained change in direction, and included gradient thresholds and Bank Full Width (BFW). The Science Team contradicted statements made in the first report that discrete thresholds did not perform as well at minimizing error, did not reflect changes meaningful to fish movement, and are more difficult to reliably measure in the field than changes in stream channel characteristics. This unexplained change in direction and a flawed analysis of PHB performance are the primary reasons why the second Science Team report lacked consensus from all panel members. Both Science Team reports noted there were no data supporting the current DPCs as accurately reflecting the boundary of fish distribution in the state. This was the first time AFF appeared in the record, when Chair Bernath requested AFF options as part of the PHB proposal. Landowners found out second hand from another caucus less than a week before the February 2018 meeting and had to scramble to produce a proposal. While there had been informal conversations about the concept between individual caucus members, the term AFF can be found nowhere in the TFW Policy or Forest Practices Board record. Following considerable discussion amongst FPB members, the three PHB and AFF proposals were accepted by the FPB for consideration in potential rule making, in addition to the existing water typing rule. Staff were directed to prepare the required analyses: 1) the Cost Benefit Analysis, 2) Small Business Economic Impact Statement and 3) SEPA to accompany the draft water typing rule.

The Origin of Anadromous Fish Floor (AFF)

At the May 2019 FPB meeting, there was a discussion about the uncertain origin of the AFF concept and if some portions of the proposed rulemaking should be remanded back to the Adaptive Management Program (AMP). The FPB scheduled a special meeting in June 2019 to decide. FPB staff recommended formation of a FPB committee to oversee ongoing water typing rule making work as well as review of the proposed PHB/DPC validation study design. FPB staff recommended the AFF be remanded to the Adaptive Management Program for deliberation and decision making, including dispute resolution if necessary. The FPB chose to form the FPB Water Typing Rule Committee and limited the consultation with the AMP over the AFF to a yes/no question of TFW Policy. TFW Policy expressed concerns with the process, but ultimately responded with a qualified yes in answer to the FPB's question as to whether the AFF should be considered for inclusion in the water typing system rule. The Water Typing Rule Committee proceeded to develop a draft charter for the AFF Cooperative Workgroup. While the FPB's Water Typing Committee did not clarify the purpose and objectives of AFF, they generally agreed that the AFF is about presumed anadromous habitat, where there is anadromy all the time therefore no need to conduct a protocol survey. By November 2019, the FPB received nine recommendations from the Water Typing Rule Making Committee, among them was to clarify the goals and targets for the water typing system rule and overseeing the AFF Cooperative Workgroup. The most important recommendation to clarify goals and targets for the water typing system rule, remains unaddressed, or lacks agreement to this day. Despite the lack of agreement about the objectives of the AFF, technical and policy work continues outside of the formal Adaptive Management Program. The AFF did not go through the required Adaptive Management scientific protocols that all rulemaking is required to do. A technical report and policy recommendations were forwarded to the Water Typing Rule Committee for consideration in early March 2022, no consensus was reached.

Gradient Thresholds Have Substantial Upstream Error

Confusion around the intent of AFF and lack of Policy objectives have promulgated advocacy. Justification for a 7% or 10% AFF is not tethered to the Forests & Fish principles, past FPB expectations for the Water Typing System rule of 95% accuracy in determining F/N breaks and would jeopardize the agreed upon Fish Habitat Assessment Methodology to determine the F/N break. Furthermore, spatial analysis shows that these

alternatives will exceed all fish habitat 20-35% of the time, exceeding current agreed to F/N breaks, and classify thousands of miles of stream with unknown fish habitat as Type F, with no opportunity to correct errors by protocol surveys. It has been suggested that the ID Team process will address this concern, but an exponential expansion of IT Teams to determine if a landowner can perform FHAM is not practical nor consistent with FPB expectations. After analyzing 30 years of data, the frequency of anadromous fish at the current F/N break is less than 5%, far exceeding the area of anadromy.

Thank you, Elaine, for your presentation on the alternative recommendations. WFPA supports those. Landowners designed alternative D to address our understanding of the AFF objectives:

- minimizing use of FHAM in known anadromous streams and in small, low gradient streams with presumed seasonal anadromous use; and
- locating a potential starting point for FHAM.

However, alternative D also contains unacceptable error in that it exceeds known/presumed anadromy by a significant amount, all fish ~2% of the time, and classifies many miles of stream with unknown fish/habitat as F. While these errors appear to be far less than other AFF alternatives, they suggest more refinement of alternatives is necessary and reflect a lack of thorough AMP vetting.

AFF and other elements of water typing are not just about fish. As you know, Policy is currently discussing alternatives for Type Np buffers. Where the Type F buffers end, Type Np buffers begin, so they are directly related. The Forest Practices rules constitute the Forest Practices Habitat Conservation Plan (FPHCP), which is a landscape plan that evaluated the contributions of each rule or buffer as a system and across the landscape as conservation measures. Which is why, as some of you may have heard, that Landowners have proposed a solution for the AFF, PHBs, Np buffers, priority CMER science, and improved decision-making process. However, it does stop short of recommending AFF/PHB metrics. We suggest that the FPB not move forward with placing untested metrics into rule, but that we move forward with rule adjustments which have been recommended by the AMP. The remainder should live in guidance only until they have been thoroughly evaluated in the AMP process. We recommend the science work on the AFF/PHB metrics as soon as possible. We are ready and willing to work with others to secure the funding to do so.

Thank you for the opportunity to comment, should you have any questions I can be reached at dhooks@wfpa.org or (360) 915-4508.

Sincerely,

Doug Hooks

Director of Forest & Environmental Policy
Washington Forest Protection Association