

Forest Practices Board
Committee on Water Typing Rule
October 14, 2019
Natural Resources Building
Olympia, Washington

Committee Members Present:

Bob Guenther, Committee Chair and General Public Member
David Herrera, General Public Member
Jeff Davis, Director's designee, Washington Department of Fish and Wildlife
Paula Swedeen, General Public Member
Tom Nelson, General Public Member

Staff

Marc Engel, Colleen Granberg, Marc Ratcliff, and Patricia Anderson, DNR
Phil Ferester, ATG

Welcome and Introductions

Bob Guenther, Committee chair, called the meeting to order at 1:10 pm.

Approval of Minutes

The Committee approved the October 2, 2019 meeting summary with no changes.

Public Comment – Potential Habitat Break (PHB) Validation and Default Physicals Studies

Martha Wehling, Washington Forest Protection Association (WFPA), reiterated their position that:

- A validation study is necessary and should include an evaluation of potential habitat breaks (PHB), default physical stream criteria and the anadromous fish floor (AFF).
- Using the existing adaptive management process will help ensure scientifically sound science.
- The PHB validation, default physical stream criteria and lidar model studies all need the same measurable performance targets – equitable, repeatable and accurate.

She said the committee can and should discuss and include in the recommendations to the Forest Practices Board (Board) what the performance target(s) should be.

Recommendations for PHB Validation and Default Physicals Studies

Committee Chair Guenther said this meeting is to begin developing potential recommendations the committee might present to the Board for the permanent water typing system rule. He asked committee members for their thoughts specific to (1) having the Cooperative Monitoring, Evaluation and Research Committee (CMER) develop a revised PHB validation study, (2) having CMER evaluate the feasibility for combining the PHB validation and the default physicals stream characteristics into one study and (3) phasing the PHB validation study to start with eastern Washington.

The ensuing committee discussion on potential recommendations included: the need for the Board to evaluate the goal of the water typing system rule in relation to the commitments of the Forest Practices HCP; ensuring the PHB validation and default physical characteristics studies contain the same measurable targets and standards; having the Adaptive Management Program (AMP) through CMER develop the PHB validation and default physical stream characteristics study designs; and the need to prioritize these studies within the AMP budget.

Committee member Swedeen stated that the target for fish habitat protection, per the commitments within the Forest Practices HCP, needs to be incorporated into the study designs. She suggested having CMER include accuracy standards into a field based approach for the fish habitat assessment methodology (FHAM).

Committee member Davis expressed the need for the committee and the Board to discuss the goals of the water typing system rule and associated accuracy targets for the protection of fish habitat. It was acknowledged that the Board needs to determine if the target to protect fish habitat is based on fish presence or based on fish habitat as defined in the agreements of the Forest Practices HCP.

Committee members agreed that accuracy targets need to be defined and incorporated into the study designs. The committee agreed that a decision by the Board is needed to define the accuracy as it relates to the measurement of fish habitat. This target would then be given to CMER to incorporate into the study designs.

The committee then began discussions for refining their recommendations for the Board based on previous committee meeting discussions and associated evaluation documents. Topics needing additional work were outlined in the Board's June 4, 2018 motion, which tasked the committee to work with DNR and stakeholders to provide recommendations on unresolved issues for the rule.

Committee member Nelson offered amendments to the list. He suggested adding a recommendation for DNR to engage a small advisory group to provide technical feedback to DNR during the spatial analysis for both the PHB and AFF options and a recommendation for the PHB validation and default physicals criteria studies to go through the adaptive management process.

Committee members offered several suggestions to refine the wording of the draft recommendations. It was recognized that the edits discussed at today's meeting would help provide context to the draft recommendations, but it was the committee's expectation that their report to the Board would be finalized at the November 5 committee meeting.

Mark Hicks, Adaptive Management Program Administrator, encouraged the committee to recommend the Board establish the goals and targets of the water typing system rule instead of relying on CMER to determine those elements. He said specific goals such as the accuracy targets and the end of fish habitat versus last fish needs to be decided before CMER begins to develop a study design.

Committee members agreed that the objectives and the accuracy standards need to be defined before work can begin on developing a PHB validation study through CMER. Committee members felt the Board should provide context for the over-arching goals.

Public Comment – Water Typing System Rule Making for Eastern Washington

Ray Entz, Kalispel Tribe, said the eastern Washington tribes do not support a water typing rule for western Washington only – any rule adoption should apply to both sides of the state. He said a fish presence target can be a good indicator for defining fish habitat. To avoid risks to fish from a delay in rule adoption, he suggested the Board consider postponing water typing changes until a rule is in place or not accepting all concurred water type modification forms until after the rule is adopted. He said the Upper Columbia United Tribes technical report #2 and the listing information for bull trout and cutthroat could help provide historic fish distribution information. He also stated the tribes have typically found that fish populate streams much higher than is assumed, and in some cases fish are found in the upper reaches of stream systems.

Gretchen Lech, Hancock Forest Management, spoke on her experience with the water type modification process. She said that most of their proposed water typing changes were based on fish habitat characteristics and not necessarily based on a fish presence survey. She said her experience is different than Entz on how much over prediction and ecological damage is potentially happening on the landscape.

JD Marshall, Hancock Forest Management, said the current water type modification process is a challenge and said they would support a process that provided more certainty for their planning efforts. He said that determining the definition of suitable fish habitat is the key and what the committee has been charged with.

Martha Wehling, WFPA, reminded the committee that rule changes under RCW 76.09.370(6) must be based on science. She said there is data available that CMER collected in three different studies that could be used to help inform an eastern Washington rule. She said that the data does not necessarily include the same methodology for measuring channel characteristics as the proposed PHB validation study, but additional data collection could resolve that issue.

Steve Barnowe-Meyer, Washington Farm Forest Association, provided some small forest landowner demographics for the committee to consider when developing recommendations. He said that with a little effort to gather additional data and utilizing the Cole study could improve accuracy of a predictive model for the eastside.

Water Typing System Rulemaking for Eastern Washington

Given public testimony, committee members discussed options for determining the process for analyzing a rule for eastern Washington. Committee Chair Guenther acknowledged the expressed concerns with a delay in rulemaking, but acknowledged the need for sound science. He proposed it might be a viable option to delay a rule for eastern Washington until an eastside PHB validation study can be completed.

It was suggested that the Cole study and other similar studies in addition to maps showing historic anadromous fish populations could help inform fish habitat. The committee discussed the feasibility of evaluating the distribution of Brook trout in comparison to native fish populations to assess the extent of fish distributions. The committee acknowledged that maps showing fish distribution would be helpful to augment the science to inform fish habitat. Committee members also recognized the difficulty of finalizing a western Washington rule without finalizing an eastern Washington rule.

Acknowledging a comment to place a moratorium on water type modifications during the ongoing rule making process, committee member Nelson said that notion is not feasible.

Committee members asked those representing the caucuses in eastern Washington to comment on the Board's current eastern Washington PHB options.

Entz said the eastern Washington tribes are less confident in their proposed PHB option given the results of the pilot PHB validation study. He said they were disappointed when the PHB validation study was defunded since a validation study might help refine appropriate PHB metrics.

Marshall questioned to what extent introduced fish species account for current native fish distribution and potential extirpation of native fish and whether this should be addressed. He said they find that the physical stream characteristics in rule over predict for Brook trout specifically.

The committee decided to continue to discuss and develop recommendations for the eastern Washington rule option at the committee's upcoming November 5th meeting.

Public Comment – Map-based Water Typing Rule

Martha Wehling, WFPA, said WFPA supports the small forest landowner caucus comments from the last meeting requesting that a map-based water typing system remain in the rule proposal. The map-based rule was a fundamental tenet of the management framework. She said the goal is to understand what was intended in the Forest Practices HCP for fish habitat in addition to understanding the background of the Forests and Fish Report and the shared risk concept. She said that a future map-based rule, a PHB option and the default physical stream criteria should identify the same spot in the stream and the goal is the identification of fish habitat even if fish aren't currently present.

Steve Barnowe-Meyer, Washington Farm Forest Association, said the current rule language does not include a model. He said the HCP is predicated on a map-based rule. Currently, both the default physical characteristics study design and the lidar-based model study design are unfunded projects in CMER and suggested they become interwoven. He said in order for folks to move forward, all parties need to listen to each other and to seek solutions to each other's problems. He added that a map-based rule is the more equitable and operationally accurate for small forest landowners than a rule based on default physical characteristics.

Map-based Water Typing System Rule

Committee member Swedeen asked if it is possible to put placeholder language in the water typing system rule for a map-based option.

Engel responded that it is possible, but if it was not developed at the time of rule adoption, it would not be enforceable. He said the Board needs to be careful not to replace an interim rule with another interim rule.

Board Counsel Ferester reminded the committee that the current rule has both a rule that is not currently effective (WAC 222-16-030) as well as a rule that is effective right now (WAC 222-16-031). He said it has caused confusion to have two rules on the same subject.

The committee discussed different options for how to consider a future map-based water typing system rule. There was concern that any future developed model might not meet the intended accuracy standards. Most committee members agreed that a map-based system is a viable goal, but did not arrive at a definitive proposal as a potential recommendation to the Board or how to address a map-based rule in the immediate future.

Committee Chair Guenther suggested committee members think about alternatives for a map-based water typing system and resume discussions at the next committee meeting. He reminded the committee that they would be refining the recommendations at the November 5 committee meeting with the goal to present their recommendations to the Board at their November 13 meeting.

Meeting adjourned at 4:10 p.m.