



**DEPARTMENT OF
NATURAL RESOURCES**

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MEMORANDUM

TO: Forest Practices Board
FROM: Marc Engel, DNR
SUBJECT: Anadromous Fish Floor and Water Typing System Rule

On August 10, 2022, the Board will:

- 1) Discuss the Anadromous Fish Floor (AFF) alternatives received from the Water Typing Board Committee and presented to the Board at the June 27th Special meeting for inclusion in the Water Typing System rule.**
- 2) Review all decisions regarding elements of the Water Typing System rule.**

With an approved AFF alternative and confirmation of rule elements the Board can request staff to proceed with the Water Typing System rule making packet by completing:

- The draft rule and Board Manual guidance,**
- Cost benefit analysis,**
- Small business economic impact statement, and**
- SEPA analysis**

These final steps will allow for the Board to consider filing a CR-102 *Proposed Rule Making*.

The Board has been actively engaged since 2014 in the development of a permanent water typing system rule to replace the interim water typing system rule adopted in 2001. A permanent Water Typing System rule will establish how to classify streams, lakes and ponds including how to locate the water type break between stream segments containing fish habitat (Type F Waters) and segments lacking fish habitat (Type N Waters).

For the purpose of guiding discussions and assisting the Board to understand the outstanding issues and rule elements associated with the proposed water typing system rule, staff has prepared a Forest Practices Board Key FPB Decisions document for preparation of the August meeting, attached.

The materials provided are an overview of Board discussions and decisions regarding the rule and guidance elements, including supporting work products, to provide all elements required for a permanent Water Typing System rule. Board approval of all rule elements is necessary for staff to complete the water typing system rule packet for Board consideration and approval needed initiate the next step of rulemaking through the filing of a CR-102 *Proposed Rule Making*.

Key Board decisions

The Board began the assembly of a permanent Water Typing System rule with the approval of Policy recommended rule elements in November 2016. The key Board decisions for development and approval of rule elements:

- *November 2016*, Board accepted Policy recommended elements and additional language for inclusion on the rule, rule elements needing further clarification and elements of non-consensus; Board motion directing staff to file a CR-101 Preproposal Statement of Inquiry to notify the public the Board is considering rule making related to a permanent water typing system.
- *May 2017*, Board accepted by motion the Policy consensus elements and dispute resolution majority decisions for inclusion in the rule; and, Board assumed management for the development of the final issues needed for a complete permanent water typing system rule. Acceptance included the framework for a Fish Habitat Assessment Methodology (FHAM); and creation of a scientific expert panel to: determine those elements that would constitute a barrier and/or potential habitat break (PHB); and, recommendations for a study to identify the metrics to identify the PHBs and a plan for a PHB validation study.
- *February 2018*, Board motion accepting PHB options for inclusion in draft rule proposals and accompanying analysis. The PHB options:
 1. No action – existing rule language;
 2. UCUT Proposal as amended during board discussion;
 3. Western Tribes Proposal; and
 4. Landowner’s Proposal, as amended during board discussion.
- *June 4, 2019 Special meeting*, Board established a Board committee to make recommendations on outstanding issues associated with the proposed water typing system, specifically to:
 - § Understand the spatial analysis and work to resolve whether width can be precisely estimated for the purposes of the required economic and environmental analyses;
 - § Determine how the rule making should be applied in eastern Washington;
 - § Determine if and when the PHB validation study should be done and whether it should be combined with the study to determine physicals; and,
 - § Determine if rule language, Board resolution, or other non-rule options would suitably encourage moving toward a Lidar modelled map-based water typing rule.
 - § Board committee shall work with stakeholders to resolve any outstanding issues regarding the anadromous floor.

The Board also directed Policy to address first the anadromous floor and then road water crossing structures to recommend whether these items should be part of the water typing system rule.

- *August 2019*, Board accepted the Policy recommendations that an AFF should be considered for inclusion as a component of the water typing system rule; and additional water-crossing structure language not be included in the water typing system rule.
- *November 2019*, Board approved the Committee recommendations to:
 - § Approve how to perform the spatial analysis for the width-based PHBs;
 - § Direct the Cooperative Monitoring, Evaluation and Research Committee (CMER) to develop study designs for the PHB validation, physical characteristics, and map based Lidar model studies;
 - § Direct the Committee to explore whether there is other data available to inform the water typing system rule in eastern Washington; and
 - § Approved of the AFF workgroup charter, assigning oversight of the AFF workgroup to the Committee, and directing the Committee to bring AFF recommendations to the Board.
- *August 2020 and May 2021*, Board accepted Committee recommendation to use additional eastern Washington fish data identified by the eastern Washington Qa/Qc technical group screening process. The data added 227 fish data points to the existing 18 fish data points to perform the eastern Washington PHB spatial analysis.

On August 10th staff will present the Board identified outstanding issues associated with the proposed water typing system rule and Board actions addressing them. I am available in advance of the meeting at marc.engel@dnr.wa.gov or at 360 628-1107 to answer questions.

ME/TH

Attachment

Forest Practices Board
Key FPB Decisions
2016 – Current

Meeting Date	Action (Motion)	Meeting Material	
		Minutes	DNR/Policy Reports
November 8-9, 2016	<p>TFW Policy Committee’s Type F Recommendations CR-101 Motion passed unanimously.</p> <p><u>Acceptance of Policy consensus recommendations and direction to Board staff to prepare draft rule and guidance</u> Motion passed unanimously.</p> <p><u>Acceptance of Policy recommendation for development of a Fish Habitat Assessment Method</u> Motion passed unanimously.</p> <p><u>Direction to Policy regarding non-consensus issues</u> Motion passed unanimously.</p>	<p>November Meeting Minutes</p>	<p>TFW policy Committee Type F Report</p> <p>Review of Off Channel Habitat Protection Final Report</p> <p>Recommendations for BMPs re Electrofishing</p> <p>AMPA Water Typing Reports</p> <p>Technical Working Group Recommendations to Assist in the Development of Type F Habitat Guidance</p>
May 9-10, 2017	<p><u>Dispute Resolution</u> Motion passed unanimously.</p> <p><u>Consensus Recommendations</u> Motion passed unanimously.</p> <p><u>Forest Habitat Assessment Methodology</u> Motion passed unanimously.</p> <p><u>AMPA to convene and lead a group of internal and external science/technical experts to work under the direction of the Board, in consultation with the TFW Policy Committee caucuses to identify team members.</u> Motion passed unanimously.</p>	<p>Meeting Minutes May 2017</p>	<p>Actions Regarding Permanent Water Typing System Rule</p> <p>TFW Policy Recommendations</p> <p>Water Type Comments for Consideration</p> <p>Comments on Water Typing Mediation and Progress</p> <p>Water Typing OCH Presentaion</p> <p>Water Typing Comments FP-HCP Electrofishing Summary</p> <p>Water Typing Comments Eastside Tribes FHAM</p>
February 13-14, 2018	<p>Potential Habitat Break Recommendations Motion passed unanimously.</p>	<p>Meeting Minutes February 2018</p>	

Forest Practices Board
Key FPB Decisions
2016 – Current

Meeting Date	Action (Motion)	Meeting Material	
		Minutes	DNR/Policy Reports
May 9, 2018	<u>Water Typing System and PHB Validation Pilot Study</u> Motions passed.	Meeting Minutes May 2018	Update on the PHB Validation Study Design Report
August 8, 2018	<u>Clarification of PHB Alternatives</u> Motion passed.	Meeting Minutes August 2018	Water typing system rule update 2018 Water typing rule-making status Adaptive Management Program Quarterly Staff Report Update on PHB study and design
November 14, 2018	<u>Potential Habitat Break Validation Study Design</u> Motion passed.	Meeting Minutes November 2018	Potential Habitat Break (PHB) Pilot Study Final Report Evaluation of physical features that define fish habitat in forested landscapes across WA Water typing rule-making update presentation PHB Pilot Study of Presentation to Board Review of the Role of Small Tributary Streams as Salmonid Habitat Additional Perspectives and Supporting Science Related to Use of Tributary Junctions as Potential Habitat Breaks
May 8 & 9, 2019	<u>Consensus proposal in response to Type Np Study results in Westside Basalt Lithology</u> Motion passed.	Meeting Minutes May 2019	Consensus proposal in response to study results of Type Np streams in Westside basalt lithology Typing System Rule and Board Manual Development Update

Forest Practices Board
Key FPB Decisions
2016 – Current

Meeting Date	Action (Motion)	Meeting Material	
		Minutes	DNR/Policy Reports
			Effectiveness of Experimental Riparian Buffers on Perennial Non-fish-bearing Streams on Competent Lithologies in Western Washington Transmittal of the PHB Validation Study Design Report
June 4, 2019	<p><u>establish a Board committee to facilitate staff and Policy caucuses' discussions</u> in order to make recommendations on outstanding issues associated with the proposed water typing system effort, specifically to:</p> <ul style="list-style-type: none"> · Priority one is to understand the spatial analysis and work to resolve whether width can be precisely estimated for the purposes of the required economic and environmental analyses; · Determine how the rule making should be applied in eastern Washington; · Determine if and when the PHB validation study should be done and whether it should be combined with the study to determine physicals; and, · Determine if rule language, Board resolution, or other non-rule options would suitably encourage moving toward a Lidar modelled map-based water typing rule. · Board committee shall work with stakeholders to resolve any outstanding issues regarding the anadromous floor. · Request the Board committee to report back to the Board on progress at the August 2019 meeting; with recommendations on how to move forward on the water typing system rule at the November 2019 meeting. · The Board directs TFW Policy to address first the anadromous floor and then road water crossing structures to recommend whether these items should be part of the water typing system rule. TFW Policy will report back to the Board committee as quickly as possible on each item. 	Meeting Minutes June 2019	Memo re anadromous floor overlay

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2016 – Current

Meeting Date	Action (Motion)	Meeting Material	
		Minutes	DNR/Policy Reports
	<ul style="list-style-type: none"> Request the Board chair to ensure that staff continues working toward completing those aspects of the water typing system rulemaking guidance, preliminary CBA/SBEIS and environmental analysis as the Board committee resolves outstanding issues. Board staff will provide an update at the August Board meeting. Motion passed unanimously		
August 14, 2019	No action.	Meeting Minutes August 2019	
November 13, 2019	<u>Water typing system rules recommendations from TFW Policy.</u> Motion passed.	Meeting Minutes November 2019	
February 12, 2020	<u>Funding up to \$75,000 for GIS support work for the anadromous fish floor work group.</u> Motion passed.	Meeting Minutes February 2020	
August 12, 2020	<u>Committee recommendation to accept eastern Washington stream data.</u> Motion passed.	Meeting Minutes August 2020	
November 10, 2021	<u>Type Np Buffer Potential Rulemaking – CR-101</u> Motion passed.	Meeting Minutes November 2021	Rule Making Regarding Type Np Buffers Water Typing System Rule Committee Update Update on Water Typing Study Design Development Memo

Forest Practices Board
Key FPB Decisions
2016 – Current

Meeting Date	Action (Motion)	Meeting Material	
		Minutes	DNR/Policy Reports
	Water Typing Rule Committee		
July 2, 2019	No Action.	FPB committee on water typing rule Meeting Summary	Charter – FPB water typing system rule committee (draft)
July 9, 2019	No action.	FPB committee on water typing rule Meeting Summary	Charter – FPB water typing system rule committee
July 17, 2019	No action.	FPB committee on water typing rule Meeting Summary	FPB Committee on water typing rule meeting material
July 20, 2019	No action.	FPB committee on water typing rule Meeting Summary	
Sept. 24, 2019	No action.	FPB committee on water typing rule Meeting Summary	Charter – Anadromous fish floor workgroup
October 2, 2019	No action.	FPB committee on water typing rule Meeting Summary	FPB Rule Proposal for a Permanent Water Typing System
October 14, 2019	No action	FPB committee on water typing rule Meeting Summary	Water Typing Recommendations (draft)
November 5, 2019	No action.	FPB committee on water typing rule Meeting Summary	Potential Committee recommendations for the FPB (draft)
January 8, 2020	No action.	FPB committee on water typing rule Meeting Summary	

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Key FPB Decisions
2016 – Current

Meeting Date	Action (Motion)	Meeting Material	
		Minutes	DNR/Policy Reports
February 11, 2020	No action.	FPB committee on water typing rule Meeting Summary	Workplan for the Anadromous Fish Floor Workgroup Outline of scope of work/deliverables for GIS contract (draft)
April 17, 2020	<u>accept the final scope of work for the Anadromous Fish Floor.</u> Motion passed.	FPB committee on water typing rule Meeting Summary	
May 5, 2020	No action.	FPB committee on water typing rule Meeting Summary	
July 14, 2020	No action.	FPB committee on water typing rule Meeting Summary	
August 3, 2020	<u>Committee advance the screen data presented by Chris Mendoza forward.</u> Motion passed.	FPB committee on water typing rule Meeting Summary	
October 7, 2020	No action.	FPB committee on water typing rule Meeting Summary	
January 15, 2021	No action.	FPB committee on water typing rule Meeting Summary	
April 28, 2021	accept the eastern Washington CMER data subset and tribal data as presented to the Committee on April 28 for inclusion in potential habitat break (PHB) spatial analysis. Motion passed.	FPB committee on water typing rule Meeting Summary	
August 3, 2021	No action.	FPB committee on water typing rule Meeting Summary	Anadromous Fish Floor Project Update

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Key FPB Decisions
2016 – Current

Meeting Date	Action (Motion)	Meeting Material	
		Minutes	DNR/Policy Reports
Sept. 24, 2021	No action.	FPB committee on water typing rule Meeting Summary	The Anadromous Fish Floor Project Spatial Analysis Workshop - Data Sources and Alternatives
Oct. 18/19, 2021		FPB committee on water typing rule Meeting Summary FPB committee on water typing rule Meeting Summary	Anadromous Fish Floor Analysis (draft) Objectives/Direction for Anadromous Fish Floor
Nov. 17, 2021	No action.	FPB committee on water typing rule Meeting Summary	
Dec. 14, 2021	accept the anadromous fish floor (AFF) policy members' recommendation for additional analysis of: <ul style="list-style-type: none"> · Alternative D and A4 (10%); and, · Alternative A4 (7%) and · Alternative A4 (5%). Motion passed.	FPB committee on water typing rule Meeting Summary	Anadromous Fish Floor Spatial Analysis Anadromous Fish Floor (AFF) Policy Memo Anadromous Fish Floor (AFF) Finding report
January 5, 2022	No action.	FPB committee on water typing rule Meeting Summary	
January 24, 2022	No action.	FPB committee on water typing rule Meeting Summary	
March 15, 2022	No action.	FPB committee on water typing rule Meeting Summary	Addendum to Anadromous Fish Floor (AFF) Policy Memo Conservation Caucus Preferred Alternative Anadromous Fish Floor Addendum Report